Khul’ divorce in Egypt: public debates, judicial practices, and everyday life
Sonneveld, N.

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2 The “khul’ law” criticized: the first pen

Introduction

In 2005 an Egyptian opposition paper by the name *al-dustūr* re-emerged after it had been banned in 1998. Even though I liked reading the newspaper for its good selection of news topics, I was especially attracted on another level by the many cartoons which were always included. Not only were they rather easy to read for a non-native Arabic speaker and reader like me but they also knew how to disseminate their message very well in funny, albeit concise, ways. A section in the newspaper presented itself as a newspaper of *qalamani* (two pens).\(^{39}\) Inspired by this concept, I decided to also present the analysis of the debates on *khul’* as an analysis of two pens: the first pen being the one with which newspaper articles were written and the second pen being the one with which cartoons were drawn and films were produced.

On a more theoretical level an analysis of “two pens” shows that the public debate is not only an exchange of rational arguments, depending on discursive texts and words. The other half of the debate is largely graphic in nature: in works of popular culture media, such as films and cartoons, not only language but also what Moors calls the politics of appearance and dress play an important role (2006, 115-31). Given the visual nature of the film and cartoon genre, it is even quite difficult to de-emphasize the body (cf. Noble 2004, 156), and as a result graphics and images can be used to make non-verbal statements. Moors, who criticizes the Habermasian notion of the public sphere (among other things) for its exclusive focus on rational debate as the only legitimate form of participating in the modern public sphere, claims that other forms of critical expression and non-verbal modes of communication should also form part of an analysis of the debate in the public sphere (2006, 115-31).

In this chapter I will elaborate on the debate on *khul’* as it appeared in the written text of national media such as newspapers and magazines whereas chapter 3 provides an analysis of the cartoons and two films on *khul’*. Questions that are raised include the following: Who were the opponents and defendants of the new law; what reasons did they have for either opposing or defending the new law; what arguments did they use to express their criticism; which sources did they refer to when they tried to legitimatize their point of view (e.g. did they refer to *fiqh* (jurisprudence in Islam), to societal problems, to international conventions such as the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), to other countries where women already had gained the right

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\(^{39}\) Bilal Fadl and ‘Amr Salim are the cartoon’s textwriter and illustrator.
to file for a divorce without the consent of their husbands) and how did certain points of view become dominant (Moors 2003)?

2.1 Opponents and proponents of *khul*: using the language of Islam

The adoption of the landmark *khul*’ clause turned Egyptian women into one of the few groups of women in the Muslim world who were in a position to file for a unilateral divorce⁴⁰ and “received considerable coverage internationally” (Welchman 2007, 42). Domestically, I recall, the introduction and implementation of *khul*’ did not pass without resistance. The clause rocked the country at the turn of the third millennium and provoked widespread public discussion in the People’s Assembly, among the ‘ulama’, the Islamists and among the general public. The *khul*’ clause was so controversial that the law itself became popularly known as the “*khul*’ law” making people forget that *khul*’ was actually only one article of a procedural law consisting of seventy-nine articles.

In contrast to what one might expect, the “*khul*’ law” was also criticized by many defenders of women’s rights, one of whom was none other than Husna Shah, the scriptwriter of *urīdu Hallan*. In an interview in an Egyptian newspaper in 2000 she said that *khul*’ will only be used in cases of extreme necessity since the wife will have to forgo her financial rights such as alimony. For this reason, a woman will hesitate to approach a court. Husna Shah even predicted that women who do not opt for *khul*’ but who continue to live in discordant marriages, will resort again to “the cleaver and the plastic bags,” a reference to criminal cases in which women, unable to obtain a divorce, ended up murdering their husbands. Husna Shah did not stand alone in her criticism. Other women’s activists also were of the opinion that *khul*’ would only be an option for richer women since they were

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⁴⁰ It is only in Tunisia that men and women have equal divorce rights. Repudiation outside of court is prohibited and makes the divorce invalid (article 30 of PSL 1956). Men and women in Tunisia can divorce by mutual consent; on the basis of harm or without a ground for divorce being explicitly mentioned (Mashour 2005, 585-86; Perl and Menski 1998, 289). Except perhaps South Yemen in 1974, no other Arab state has gone as far with regard to reform of Muslim divorce law as Tunisia (Pearl and Menski 1998, 290).

It is often argued that already in the 1960s Pakistan became the first country where a unilateral form of *khul*’ divorce was introduced in which the consent of the husband was not a prerequisite to make the divorce legally binding. While this is true, it must be noted that until 2006 the basic issue debated in case law was whether a woman seeking *khul*’ needs to provide proof of her inability to live with her husband (cf. Akbar Warraich and Balchin 1998, 201; Hodkinson 1984, 271). In 2006, however, the Pakistani Supreme Court decided that the *khul*’ request itself is demonstrative of the wife’s hatred and aversion towards her husband. This decision implies that a court cannot refuse a *khul*’ request to a wife (Lau 2007, 464). From its implementation in 2000 onwards, Egyptian women who request a *khul*’ divorce only need to state that they hate living with their husbands. They do not need to satisfy the court that this is the case.
the only ones likely to be able to repay the dower as well as give up their financial rights. It is worth recalling that the issue of women’s financial hardship also transpired in urūdu Hallan where in contradistinction to Duriya, the other (lower class) women did not come to court in the hope of obtaining a divorce. Most of them so desperately needed their husbands’ nafaqa (maintenance) that they had no choice but to enter in endless and sluggish courtprocedures in order to force their unwilling husbands to provide for them (see also 1.3).

At this point opponents and some proponents of improving women’s rights were united in their criticism of khul’. Yet, where opponents to the law also criticized it for being a law for rich women only, their criticism went deeper than that. Especially in the Islamist newspaper al-sha’b, mouthpiece of the al-’Amal (Labour Party) political party, it was claimed that elite women were behind the implementation of the “khul’ law” and that the law only talked about their problems, not about those of Egyptian society in general. The private aspirations of these elite women even became fixed items on the agenda of many international conventions (al-sha’b 28 January 2000, 5). According to al-wafd newspaper, newspaper of the liberal al-Wafd political party, this was exemplified by the fact that they mainly draw on a repertoire of concepts such as human rights, UN conventions and other international conventions, which do not mean anything to the masses. For example, the National Conference on Women, which was held in Cairo in June 1994, was criticized for failing to address the real problems Egyptian women are facing. “Away from the spotlights of official conferences and declarations, Egyptian women face serious challenges.” Egyptian women are not interested in “the importance of their political role” and “the philosophy of equality.” These women worry about other things: husbands who ran away; crowded public transport; raising their children (al-wafd 12 June 1994, 3).

Interestingly, these elite women, of whom many work in women’s NGOs went to great lengths to present the law as being in accordance with Islam. They used the Habiba hadith to improve the acceptance of khul’ among the masses. Faced with “…difficulties in reaching out to the people who are supposed to be the direct beneficiaries of their programmes” (Abdelrahman 2004, 139), women’s NGOs have become increasingly aware of the fact that women from different class backgrounds may have different interests in family law reform. This is clear in the

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41 See for example Hoda Zakariyya (2003); Hoda Badran, head of the Alliance of Arab Women, an NGO (The Independent, 25 January 2000); and Azza Soliman, director of the Center for Egyptian Women’s Legal Rights, an NGO (al-Ahram Weekly, 3-9 February 2000).

42 Although al-Wafd is said to be a liberal political party, they entered into electoral alliances with the Muslim Brotherhood in 1984. In 1987 the Muslim Brotherhood also forged an alliance with the Labour Party.

43 Abdelrahman shows how the Egyptian middle classes used NGOs to achieve a Western model of progress at the beginning of the twentieth century (2004, 47).
statement of Mona Zulficar, lawyer, member of the NCW and one of the leading forces behind the implementation of the “khul’ law”:

“It was evident that we could not rely on modern constitutional rights of equality before the law, as these did not equally apply under family laws, which claimed to be based on the principles of Shari’a. We could not afford to shy away from the challenge and continue using solely a strategy based on constitutional and human rights. We had to prove that the religious discourse could also be used by women to defend their cause” (forthcoming).

This statement proves that women’s rights organizations have chosen to adopt a religious discourse in order to reach out to the masses. However, this strategic thinking also serves another purpose:

“They [the religious extremist groups] accuse any secular feminist opposition of being anti-Islamic, an agent of either the “non-religious” Eastern block or “the corrupt” Western block. It was therefore essential for the women’s movement to diversify its strategies and adopt a credible strategy that could reach out and win the support of simple, ordinary religious men and women.” (forthcoming).

In a study on the Egyptian women’s movement, al-Ali also observes that the women’s movement has often been accused by Islamists and conservative forces of collaborating with the West “by importing alien ideas and practices and disseminating them throughout society” (2000, 1). Consequently, the discursive framework came to be dominated by Islamist agendas (ibid, 216). In the case of the “khul’ law”, this had the effect that women activists tried to reach out to the masses by speaking what they perceived to be “their” language, that is to say, the language of Islam, while it simultaneously resulted in the almost complete absence of the usage of terms such as human rights and women’s rights. For example, when Zeinab Radwan, dean of dar al-‘ulum (House of Knowledge) of Cairo University was asked about the new law and its relation to human rights conventions, she claimed that: “Human rights conventions are not the term of reference here, the Islamic Shari’a is, so let us not get off the subject” (al-Ahram Weekly 13-19 January 2000). Only Magda Adli, physician and member of the Nedim Centre for the Reparation and Management of Violence against Women, pointed to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which was absent from the debate. She was of the opinion that the shari’a should not have been the only term of reference (ibid).

The National Council for Women was established in 2000. Under the leadership of the president’s wife, Suzan Mubarak, it serves as the umbrella organization for all Egyptian NGOs working on women.
In her analysis of the Egyptian press coverage at the time of the promulgation of the “khul’ law”, Tadros noticed how the government shied away from using the vocabulary of equality, human rights and women’s rights. Instead it used to justify the implementation of the law by claiming that the new law would stabilize the Egyptian family. It hardly ever dared to say that the law was in the interest of women too (2003, 87-8). Ironically, opponents to the law used the language of human rights (saying that the new law is a violation of human rights since it mingles in the internal affairs of the family) and they referred to a violation of the constitution (since a husband is not allowed to appeal a khul’ verdict), but only when it served their own goals (ibid, 86-7). Tadros claims that: “…Since the beginning the government was determined to distance itself from both those who call for equality among the genders and women’s NGOs (as it was careful not to back the law under the pretext of defending women’s rights) (ibid, 88).”

As has been noted earlier, since the 1970s Islamists have succeeded in attracting a large following among the lower (middle) classes - often through the establishment of Islamic NGOs- as a result of which women’s organizations have become increasingly aware of the fact that they have to adopt a strategy that challenges the religious extremist movement (cf. Singerman 2005). Both developments strengthen the emergence of a public sphere in which the religious language of the shari’a becomes a forceful argument to persuade others and to gain legitimacy for one’s actions.

This, however, should not lead us to conclude that former attempts at reforming PSL were not articulated in the language of Islam. Since its codification, starting at the beginning of the twentieth century, Muslim Personal Status Law has always been subject to legal reform. By making use of different Islamic methods, such as takhayyur (adopting elements from the other three schools of law in an eclectic manner), talfiq (combining elements from the various schools of law into a new doctrine) and ijtihad (independent interpretation of the sources of Islam) reformers have tried to adjust Islamic law to the needs of modern times. By applying these methods reformers presented the reforms as the result of a process of internal revision within the shari’a and thus they hoped to avoid confrontation with the conservative elements in their societies. This has not proved to be easy and reform of family law has often aroused public controversy. Especially in the nineties, when debates on family law reform were attended by a wider and more diverse group of participants “family law reform has been hotly contested throughout the Muslim world” (Moors, 2003, 1).

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* See also Abu-Lughod (1998, 15, 18, 20).
* Pearl and Menski note that “it appears that the Ottoman Law of Family Rights of 1917 opened the floodgates of legal reform” (1998, 287).
* For a more detailed account, see Layish (2004).
Egypt is no exception to the way of Family Law reform. Starting from the beginning of the twentieth century, reformers have applied the methods of takhayyur and talfiq in order to present the reforms as the result of a process of internal revision within the shari’a.\textsuperscript{48} However, the fact that its first personal status laws were issued in periods in which no Parliament was functioning in order to put a stop to the conservative opposition, reveals much of the controversy that reform of PSL provokes, even when articulated in the language of Islam. Thus, it was not new to resort to the language of Islam in the khul’ case while the khul’ case also shows that resorting to the language of Islam is only a means to participate in the debate. It does not tell us anything about the outcome of the debate or its acceptance by the masses as will become clear in the following.\textsuperscript{49}

Despite the fact that opponents and proponents of family law reform in Egypt differ in their interpretation of how family law should be reformed, due to conflicting visions of society, family and Islam, both groups express their wishes in terms of Islam and shari’a. During the debate all participants claimed that the Habiba hadith was the determining precedent behind the “khul’ law” but they all used an interpretation of the hadith that best served their interests.\textsuperscript{50} Hence, all participants were looking for a true understanding of Islam and they all claimed that they have the right to interpret the sources of Islam in an authoritative manner. This brings up the question, who decides what interpretation is the right one? In other words, who decides what real Islam is, and, as a consequence, who is the better Muslim?\textsuperscript{51}

In this light Buskens (2003) and Schulz (2003) claim that in order to arrive at a true understanding of the debates which surround reform of PSL (in general

\textsuperscript{48} For a more detailed account on Egypt, see Lombardi (2006, chapter 5).
\textsuperscript{49} This raises the question as to why women activists such as Mona Zulficar make it look as if the strategy of framing reform of PSL in the language of Islam was innovative? Were women activists really of the opinion that “the ordinary Egyptian woman” who wants to divorce her husband is looking for some sort of Islamic justice or was this idea imposed on them by international women’s organizations? For example, in the 1980s, the CEDAW committee had suggested the idea of “…taking into consideration the principle of El Ijtihad in Islam” (Welchman 2007, 35) in response to the reservations as to compatibility with Islamic law which Egypt (and other countries) had included in the Women’s Convention in the 1980s.
\textsuperscript{50} In Speaking in God’s Name, Abou El Fadl claims that the new ijtihadists (the Wahhabis and Salafis) use the classical tradition in a highly selective, unsystematic and opportunistic fashion but since the criteria for inclusion or exclusion are never clearly articulated, this explains why they reached the conclusions as they did (2003, 171-77).
\textsuperscript{51} In this light it is interesting to note that Juynboll, in Encyclopedia of Canonical Hadith reports that except for one tradition [the Malik tradition], the canonical traditions are silent on khul’. In the pre-canonical collections, however, the khul’ procedure is not only discussed extensively but also always against a non-Prophetic background. This leads him to suggest that “Perhaps the inference is justified that khul’ was in the first instance a separation device based upon (ancient) customary law (’urf) rather than on legislative reasoning by means of Qur’án and sunna (2007, 380-1).
and respectively in Morocco and Mali), we must analyse them as political phenomena, i.e., we need to clarify the power balance between influential groups, both within and outside society, and their respective relationships to the state.

Welchman even states that scholarly literature on PSL in the Arab World has come to consider family law reform as an almost primarily political issue (2007, 39).

2.2 The government and al-Azhar: an uncomfortable alliance

At first glance, one is inclined to treat the conflict which was ignited by the “khul’ law”, as one between opponents (Islamists and religious conservatives) and proponents (the government and women activists –often embodied through advocacy groups such as women’s rights and human rights NGOs-).

Abdelrahman, for example, reinforces this assumption when she claims that the general political life of the country is characterized by the struggle between Islamists and secular intellectuals (2004, 186) whereby Islamists - often through Islamic NGOs - accuse both the government and women’s groups of being puppets of the West. According to Islamic NGOs, women’s groups “are trying to upset the natural laws about men and women which God created” (Abdelrahman 2004, 193). In order to combat their power, the Egyptian state tries to adopt an Islamic identity. In this light, the relationship between al-Azhar and the government also plays an important role as Egyptian governments from Nasser onwards have used al-Azhar to give their politics a veneer of legitimacy.

In 1961 Nasser turned al-Azhar into an arm of the Egyptian government expecting its ‘ulama’ who had become government employees to promote Nasser’s ideas of Arab Socialism and to give his policy a veneer of religious legitimacy. After Nasser, Sadat and Mubarak also used al-Azhar to acquire public approval for controversial policy decisions such as the Camp David Accords of 1978. The khul’ law of 2000 was no exception to this rule. Of course, not all ‘ulama’ of al-Azhar were happy to lose their independent position from the state and the Grand sheiks of al-Azhar have had different relationships towards the government varying from outward hostility to the government to close cooperation and allying with the government. Thus, although the government had assumed the authority to appoint the sheikh of al-Azhar, the institute was not completely under government control and was still able to influence Egyptian politics. Sadat, for example, is said to have awaited the conservative Sheikh of al-Azhar to die before he dared to

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52 Apart from Islamic NGOs, Islamists have also tried to exert political influence through other institutions of “civil society” such as political parties and professional associations. When they were barred from parliamentary politics –after the government had put an end to the experiment of “controlled inclusion of mainstream Islamist opposition forces in Parliament” in the 1990 and 1995 elections (Norton 2005, 136), Islamists were able to gain important positions on boards of professional legal and scientific associations and syndicates through democratic elections (cf. al-Sayyid 1995; Ibrahim 1995; Karam 1998; Zubaida 2001).
introduce the 1979 PSL reform and it was very painful for the Mubarak government when the 1994 International Conference on Population and Development (ICPD) of the United Nations, which was held in Cairo, met with such fierce resistance from both the side of the Islamists and al-Azhar that the foreign press coverage predominantly focused on the conflict between al-Azhar and the Egyptian government (Moustafa 2000, 13).

A few months earlier the controversial ICPD\textsuperscript{53} was preceded by a national conference on women in Cairo in June 1994 during which the then sheikh of al-Azhar, Jad al-Haqq, also had taken an anti-governmental position. At this point it is worth mentioning that during the *khul’* debate some anonymous members of al-Azhar’s Academy of Islamic Research started to compare the current sheikh of al-Azhar, Tantawi, with his predecessor, Jad al-Haqq. They claimed that the latter dared to oppose Mubarak during the Women’s conference of June 1994 as a result of which Mubarak finally decided to choose the religious side saying that he would not allow anything to be stated in Egypt that is against religion (al-sha’b 21 January 2000, 2).

In fact, sheikh Tantawi’s reputation of uncritically representing the views of the government was a recurring topic in the debates on *khul’*. The controversies surrounding the sheikh of al-Azhar started in November 1999 when the Academy of Islamic Research of al-Azhar had discussed and approved the draft of the *khul’* law. According to Fawzy, however, in the session of 11 February 1999, in which the draft was approved, “...fourteen of the members of the Academy were absent; fourteen members spoke and eight others stayed silent throughout the session. Of the fourteen who spoke, according to the record of the meeting, five supported the law and eight objected” (2004, 59). In spite of this, from November 1999, when the draft law was first presented to the parliament, the government and the sheikh of al-Azhar, Tantawi were not afraid to repeatedly claim that a majority of the members of the Academy for Islamic Research had given its approval to the law and that, therefore, it was compatible with Islam (cf. al-ahālī 19 January 2000, 10; al-sha’b 18 January 2000, 3). Apart from the fact that some members of the Academy gave anonymous interviews in which they conversely claimed that many members of the Academy had actually opposed the law (cf. al-sha’b 18 December 1999, 3; al-sha’b 18 January 2000, 1) since it was contradictory to Islam (cf. al-aHrār 1 January 2000; al-sha’b 18 January 2000, 2; al-sha’b 20 January 2000, 3; al-sha’b 25 January 2000, 3), some members also stated that Tantawi was behaving as a *muwazzaf* (civil servant) and not as the sheikh of al-Azhar. They said that only the

\textsuperscript{53} The conference was criticized both in and outside Egypt. Sudan and Saudi Arabia, for example, boycotted the conference (Shaham 1999, 466). The Vatican also vehemently opposed the conference. It particularly rejected women’s right to abort and Family Planning.
government employees of al-Azhar had voted in favour of the law. The independent members had voted against the law (al-sha’b 21 January 2000, 2).

What is even more surprising is that during the sessions in which the Academy had gathered to discuss the draft law and which were chaired by Tantawi, the latter repeatedly took an anti-women stance. For example, when the Academy was discussing the issue of women being repudiated without their knowledge, Tantawi stated that it was dangerous to believe women on their word (in cases of repudiation without the wife’s knowledge) as it would only lead to zina (adultery). He added that many women, who hated their husbands, claimed that the latter had repudiated them so that they could marry other men. “We often read in the newspapers that women marry four men,” he concluded (Sawt al-umma, 17 December 1999). Despite this women-unfriendly attitude, Tantawi vociferously defended the draft law before the People’s Assembly as well as in the public debate. In my view this proves that Tantawi deems it important to represent the views of the government on controversial issues even if they contradict his own personal opinion or that of al-Azhar in general.

It also shows that it would be too simple to treat the debate which surrounded the introduction of the khul law as one between opponents, that is the religious establishment and the Islamists, and proponents, that is women’s organizations, religious modernists and state officials (cf. Moors 2003; Schulz 2003, Welchman 2003). During the heated controversies not only the government and women’s rights organizations were being attacked by opposition parties, even the sheikh of al-Azhar was summoned by al-sha’b newspaper to resign. Moreover, within al-Azhar controversies broke out between those who were supporting the reforms and those who were opposing them.

According to Zeghal, scholars have focused too exclusively on the political emergence of the Islamists in the 1970s as a result of which they tended to overlook the emergence of a new political behaviour among the ‘ulama’ during the same period (1999, 371-2). She calls these ‘ulama’ peripheral ‘ulama’ and shows how they distanced themselves from the official voice of al-Azhar through the process of da’wa (proselytism), thereby introducing different colours of Islamism inside al-Azhar. The Front of al-Azhar ‘ulama’ is but one example of the new behaviour of al-Azhar ‘ulama’. It reappeared again after it was forced to submit to the Nasser regime in the 1960s. In 1995, Yahya Isma’il, a professor in the faculty of theology,

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54 According to Fawzy, the issue of the validity of extra-judicial divorces by men that are not formally registered nor witnessed, also formed a point of contestation in the debates on the “khul’ law” (2004, 59). In the newspapers and magazines which I read, the subject did not form an important issue. In the life of Nura, however, it was a recurrent problem and even one of the main reasons behind her reasons for divorce. See for more, chapter 4 onwards.
became the secretary-general of the front (Zeghal 1999, 390-1). It is remarkable that the front appeared again on the instigation of the then sheikh of al-Azhar, Jad al-Haqq, who tried to disengage al-Azhar from the Mubarak regime from 1989 onwards (ibid, 388). With regard to the “khul’ law”, some parliamentary observers claimed that the government had waited for some highly visible conservatives to die, such as the sheikh of al-Azhar, Jad al-Haqq (died in 1996); Muhammad al-Ghazali (died in 1996), and sheikh Muhammad al-Sha’arawi (died in 1998), before it dared to introduce the new law (Cairo Times: Divorce on Demand). I doubt whether it is a coincidence that all three prominent religious figures had been government ‘ulama’ of al-Azhar who had started to become critical of the government. For some “deviant” ‘ulama’ (and other Islamists, including the Muslim Brotherhood) al-ṣa’b newspaper became a platform for disseminating their anti-government rhetoric.

Apart from the fact that some ‘ulama’ accused Tantawi of deviating from the teachings of Islam, they might also have been worried that the new interpretation of khul’ threatened their position of power since the doctrines of the four schools of law were bypassed during the process of drafting the law. The four schools of law do not have an interpretation of khul’ in which the consent of the husband is not a prerequisite for the divorce to become valid (cf. Arabi 2001, 182; Linant de Bellefonds 1965, 422:1061). In order to arrive at an interpretation of khul’ as a unilateral divorce the drafters of the law presented the Habiba hadith as the decisive principle behind the khul’ law. Where fighters for reform of PSL had resorted to practices such as takhayyur (adopting elements from the other three schools of law in an eclectic manner) and talfiq (combining elements from the various schools into a new doctrine) to arrive at a “modern” interpretation of PSL, women activists and the government could not have accomplished the khul’ reform by using the methods of takhayyur and talfiq. They needed a method that opened up the possibility of exploring the sources of the shari’a (the Koran and the sunna of the Prophet) without the interference of fiqh (jurisprudence in Islam) (Arabi 2001). Arabi even claims that by sidestepping the four schools of law generations of Muslim jurists and their intellectual heritage were neutralized (2001, 186-88).

Despite and perhaps because of the fact that their position of influence is being undermined, it is not unthinkable that the ‘ulama’ will turn out to be one of the most prominent participants in a public sphere that is in debate over the correct interpretation of Islam and Islamic law in modern times. However, ‘ulama’

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55 In 1994, the Front of al-Azhar ‘ulama’ fought its first battle against the ICPD conference which was held in Cairo in September 1994.

56 The position of ‘ulama’ is also being undermined by the emergence of new mass media such as the Internet, satellite television and the mobile phone. Internet and television mufti’s, for example, are in competition with mufti’s who work at al-Azhar’s dar al-ifta (building housing the office of the Grand Mufti).
and Islamists were not the only participants in the public debate on *khul’*. In the case of the *khul’* law parliamentarians, even those of the ruling NDP party, strongly objected to the law too.

### 2.3 *Khul’* in front of the Egyptian parliament: a far from dull debate

The fact that even the MPs of the ruling party vehemently opposed the law reminds me of the fact that, as we have seen before, reform of PSL was often pushed through in periods of parliamentary recess to put a stop to the conservative opposition in parliament.\(^{57}\) The ruling of unconstitutionality of 1985 has shown that in the long term such ploys are inapplicable to any attempt at legislation which is not deemed by the Egyptian High Constitutional Court to be in accordance with the constitution (see also 1.4).\(^{58}\) Does this mean that the “*khul’* law” made its way through parliament in a democratic manner notwithstanding the fact that many MPs of the ruling party fervently opposed it? The way the government and women’s rights activists finally ushered the “*khul’* law” through parliament led Singerman to conclude that the *khul’* law of 2000 “strengthened the links and the relevance of parliament to civil society (2005, 164). Strangely enough, Singerman also claims that the speaker of parliament “used the derisive descriptions of women [in the parliament] as an excuse to halt debate on the bill…” and that “closing off debate certainly enhanced the bill’s chance to survive a vote” (2005, 178) while it “represented only the second time that the NDP seriously opposed government policy, but in the end, party discipline won the day and the bill was passed by a majority” (ibid, 176-77). Let us now turn to the presentation of the *khul’* law in front of the parliament to see what happened.\(^{59}\)

A friend of mine once said that Egyptian parliamentary life was not only dull in as much as the MPs, of whom the greater majority were of the ruling National Democratic Party (hereafter, NDP), never deviated from the government’s point of view, she also thought it outrageous that they were paid such big salaries for doing nothing and for not trying at all to improve the life of the ordinary Egyptian citizen. Her story illustrates a widely felt feeling of resentment towards an indifferent and apathetic People’s Assembly. In January

\(^{57}\) The 1920, 1923 and 1929 reform laws were all enacted in periods in which no Parliament was functioning (cf. Bernard-Maugiron and Dupret 2002b, 5).

\(^{58}\) In imitation of Egypt, Jordan also implemented an unilateral form of *khul’* divorce in the summer of 2003, when the parliament was on recess. When the parliament returned from its holiday, it rejected the *khul’* clause saying that it was violating the *shari’a* and that it would encourage the breakdown of the family (cf. al-safir 4 August 2003).

\(^{59}\) For a presentation of the debate on *khul’*, see also Fawzy (2004, 63-7); Tadros (2003, 83-100); and Zakariyya (2003, 45-81).
2000, however, when the parliament had to vote on the draft of the “khul’ law” the situation was different.60

A few days before the People’s Assembly would first convene, 100 MPs requested to participate in the discussions surrounding the new law (al-masā’ 8 January 2000) and a heated confrontation between the members of the People’s Assembly was expected (al-masā’ 8 January 2000).

On 16 January 2000 the People’s Assembly convened to discuss the draft law. In a meeting of the National Democratic Party delegates, held one hour before the People’s Assembly convened, the Minister of Parliamentary Affairs Kamal al-Shazli, asked the Members of Parliament to exercise party loyalty and to keep their objections to the bill to a minimum. After the passing of the law, some National Democratic Party deputies complained, mostly anonymously, that a lot of pressure was exerted on the MPs of the NDP to vote in favour of the law and to withdraw their more than 100 amendments to the law (al-sha’b 18 January 2000, 3; al-jumhūriya 20 January 2000; al-wafd 26 January 2000, 1; al-wafd 28 January 2000, 3; Cairo Times, 20-26 January 2000; al-‘arabī 30 January 2000). This seemingly left a MP of the NDP from Upper Egypt unimpressed, as he claimed that khul’ would destroy the basis of the family and for that reason his religious commitment preceded his political commitment to his party (al-sha’b 18 January 2000, 3).

Other MPs claimed that khul’ would only encourage women to rebel against their husbands (cf. al-sha’b 28 January 2000, 3; al-wafd 17 January 2000). It was said that women were too emotional to be granted the right to unilateral divorce and that they would misuse it for frivolous reasons thereby destroying their families. For example, Yassin Serag al-Din, head of the opposition Wafd party delegation rejected khul’ on the grounds that it would only benefit women from wealthy backgrounds. Moreover, in his view, it was a violation of the shari’a to give women the right to unilateral divorce. Besides, women would misuse the right to khul’: “If a woman sees that her husband is less handsome than his friend, should she seek a divorce?” he asked (al-wafd 17 January 2000; al-sha’b 18 January 2000, 3). Other opponents seconded this, adding that the law would invite women to rebel against their husbands, thereby disrupting their families.

During the second session MP ‘Ali Nasr objected to the draft arguing that men are superior to women. He illustrated his statement by making the following comparison: “A rooster can have forty hens and a lion marries more than four lionesses, but it has never happened that a hen married two roosters.” Thereupon the minister of Parliamentary Affairs, al-Shazli, objected, and Surour interrupted to say that Nasr’s opinion was insulting. MP Mustafa al-Ridi apologized on Nasr’s behalf. Nasr said he had nothing to apologize for and walked out of the Assembly hall (al Ahram Weekly 20-26 January 2000). Ragab Hamida, representative of the

60 See also Fawzy (2004, 63) and Singerman (2005, 176).
Ahrar party warned not to sacrifice the supremacy of men for the sake of the principle of equality. He, like many others, claimed that the consent of the husband is a prerequisite in order to make *khul'* valid. The Minister of Justice reacted to this by rhetorically asking why the wife of Ibn Thabit (Habiba) went to see the Prophet if the matter was dependent on the consent of both spouses? According to the Minister, she went to see the Prophet because he was the judge (al-sha’b 18 January 2000, 3).

During the session on 25 January, Yassin Serag al-Din, head of the Wafd Party, exclaimed that only twenty-three members of the Academy of Islamic Studies had attended the meeting (in which they voted on the draft law) while the government had claimed that 35 members had voted in favour of the law while only five had opposed the law. Therefore, he said, any agreement they had reached with regard to the new law was invalid. In his hands he held the papers that were supposed to corroborate it. Thereupon, his microphone was closed so that others could not hear him, in something, which according to *al-sha’b* was a serious precedent that the PA had not witnessed before. However, Serag al-Din continued by screaming that the law was against the *shari’a* and that it would destroy the future of the *umma* (the community of Muslim believers) (al-sha’b 28 January 2000, 3). Serag al-Din was annoyed by the fact that the Assembly did not bother to listen to the opposition’s viewpoint, which was supported by documents. “Unless it listens to this viewpoint, the Assembly will turn out to be something like a cabaret.” Speaker of the Assembly, Ahmad Surour, objected, saying that is was shameful to use the word cabaret to describe the Assembly. Hereupon Serag al-Din and four other members of the Wafd Party walked out of the session (al-wafd 26 January 2000, 1; al-sha’b 28 January 2000, 3; al Ahram Weekly 27 January-2 February 2000).

On 26 January, after six sessions lasting thirteen hours in total, the People’s Assembly passed a revised version of the draft Personal Status Law. The People’s Assembly was decidedly more vociferous than what people had come to expect, with a larger than usual number of deputies present to discuss the new procedural law. Of its 454 members 111 members voted for the draft, three abstained, and the remaining 340 members of the Assembly either did not show up or did not sit out the debate (Cairo Times, 29 March 2002). The compromise version still allowed women the right to *khul’*, however, on the condition that she and her husband participate in a three months arbitration process instead of the original sixty days. If the arbitration attempt fails, a judge has to pronounce an irrevocable divorce. As for the article that allowed women to travel unaccompanied, whether their husband consented or not, it was stricken from the draft altogether. The article on imprisonment of husbands who had refrained from providing for their families, even after a judge had ordered them to do so, was abolished as well. Moreover, the
government decided that instead of sixty percent, a husband should now spend fifty percent of his salary on alimony (al-wafd 28 January 2000). The article on legal recognition of ‘urfi marriages came through unaltered. It allows both spouses to apply for divorce in court, a circumstance denied to them in the previous law.

Apart from the venomous criticism which was aired, it was surprising to see that the most fervent opponents of the *khul* clause (as well as the clause that gave women the right to travel alone and the clause that allowed women in ‘urfi-marriages to obtain a divorce) were MPs from the ruling NDP as a result of which NDP party leaders had to resort to all sorts of measures to enforce party loyalty. Hence, where I claimed before that it is not easy to simply class people in either camp of opponents or proponents, the case of the MPs of the ruling party again shows that not all government officials were in favour of the law. Just like the *ulama* of al-Azhar, who are governmental paid functionaries too, the MPs of the ruling NDP were divided on the issue of *khul*.

Many MPs of the ruling party stated that they were under considerable pressure to vote in favour of the law. Apparently, this was one measure the government resorted to in order to silence opposition to the law.

2.4 The right to exercise *ijtihad*

Yet, where in the People’s Assembly the religious legitimacy of the law; women’s right to travel without the consent of the husband and the fact that a wife could obtain a divorce without her husband’s consent caused general dismay and were recurrent points of discussion, we have already seen that the opposition in the newspapers went further than that. With only one representative in the parliament, the Labour Party relied on its newspaper (*al-sha’b*) to attack the law (Fawzy 2004, 67). For example, in its 28 January 2000 edition it claimed in its headlines that that the government used the People’s Assembly as a cover to pass whatever amendments to the law. Furthermore, the large media campaigns, which were launched to criticize the law, also served to give a political dimension to the new law in which the international political context characterized by globalisation and the bad influence of Zionism and the United States, was assigned an important role. Especially *al-wafd* and *al-sha’b* newspapers, the mouthpieces of the Wafd Party and the Labour Party respectively, were very vocal in their criticism of the law. Despite the general use of Islamic language and al-Azhar’s approval of the law, they still said in their headlines that: “The project of the Personal Status Law is a step towards complete secularisation of the state” (*al-sha’b* 31 December 1999, 2), “The colonization strips Egyptians of anything that refers to shari’a” (ibid), “The

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61 The al-Azhar *’ulama* were not divided on the clause that allowed women to travel alone. Even the sheikh of al-Azhar declared that it was against Islam after which the clause was stricken from the draft law altogether.
Zionist plans to destroy the family go further than amending Personal Status Law” (al-sha’b 18 January 2000, 2), “Undoubtedly, the West pressures [for the new law] aiming at spreading the dissolution of the Egyptian and Islamic family” (al-sha’b 21 January 2000, 5), “The law is a result of the Population Council…and this affront against men hurries to destroy society” (al-wafd 23 January 2000, 3), “The government wrests approval of the People’s Assembly on the amendments of the Personal Status Law” (al-wafd 28 January 2000, 1), “‘Shazli’ [the Minister of Parliamentary Affairs] speeds up the ratifications of the proposals [to the new PSL] in order to prevent misunderstandings abroad” (ibid).

Where the NDP MP from Upper Egypt openly questioned why the government was in such a hurry to implement the draft law and why it could not add another one or two months in order to properly discuss the draft law (al-sha’b 18 January 2000, 3) and where other MPs also wondered why the government hurried to implement a law which had taken nine years to prepare, Magdi Husayn from al-sha’b newspaper was quick to provide an answer to this question. This well know Islamist journalist claimed to have found an answer in the United Nations’ international agreements on Women and Population which the Egyptian government had signed and which it had to implement before April 2000 on pain of penalties imposed by the United Nations and the United States (al-sha’b 18 January 2000, 2). Especially al-sha’b newspaper spoke in terms of a Western, Zionist conspiracy which aimed at destroying the Egyptian, Muslim family. Through international conferences on Women and Population the enemy tries to enter in an alliance with the Egyptian women’s movement which subsequently pressures the government to take up the project of liberating women.  

Hence, by accusing the government and the women’s movement of collaborating with the West, this Islamist newspaper tried to exclude the former’s right to participate in the debate on reform of PSL. This simultaneously makes clear that a larger issue was at stake: namely, who has the right to speak out in matters pertaining to Islam and Islamic law (see also Buskens 2003). In this context the principle of *ijtihad* plays an important role, something which is exemplified by the following statement in al-sha’b.

In the statement: “Text of the proclamation of ‘ulama’ of the honourable al-Azhar concerning the PSL project” ‘ulama’ of al-Azhar claimed that not even the colonizer, who employed two reigns in order to spread its vices, namely, education and legislation, dared to change PSL. They accused al-Azhar’s Academy of Islamic

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Welchman states that for Arab states in general “References [by opponents of women’s rights] to ‘international conferences on women’ are not infrequent…” and serve to situate the discourse on women’s rights “within the larger context of colonial and neo-colonial agendas, cultural imperialism and hostility to Islam and the Arabs” (2007, 38-9). Abu-Lughod claims that this has been the case ever since the late nineteenth century (1998, 243). See also Mernissi (1987, 23).
Studies of having confiscated the right of the righteous ‘ulama’ to debate and criticize the law, of having monopolized authority in Islamic Law. By way of an Islamic precedent, they wanted to make clear that every scholar has a duty to disseminate his knowledge or else God will curse him and throw upon him a ring of fire. In the end they addressed the president in a friendly way and asked him to postpone the introduction of the law by at least three months in order to enable them to revise the law (al-sha'b 18 January 2000, 2).

This statement makes clear that some ‘ulama’ of al-Azhar felt excluded from what they considered their field of specialization: *ijtihad*, the process of deriving *fiqh* from direct engagement with religious texts (Lombardi 2006, 21).

The importance of interpreting the sources of Islamic law in the debate stems from the possibility it may give to steer a new course for Islam and Islamic law. This is exemplified by the fact that both opponents and proponents of the law are in agreement that the Habiba hadith serves as the determining Prophetic precedent behind the new *khul’* clause (Arabi 2001). However, they all used different versions of the hadith in order to use an interpretation which best served their interests. Hence for liberals, Islamists and the government alike, *ijtihad* is a prerequisite for the renewal of Islam in a modern world. However, the question arises, who decides who has the right to exercise *ijtihad*? In other words, whose interpretation ultimately becomes the dominant one?

While the government pressured and threatened the NDP MPs to vote for the new law, in the case of the Labour Party and its newspaper al-sha'b the government reacted by banning its activities in May 2000 after a press incident in May 2000. This had incited a public demonstration by al-Azhar students over the re-printing of a controversial book (A Banquet for Seaweed) which led to “1200 [tear gas] bombs and 4200 shots being fired by the police at al-Azhar students” (al-sha'b 12 May 2000, 3). The al-Azhar students admitted to not having read the book but claimed that a three-article series in al-sha'b had evoked their anger. While the Labour Party won several lawsuits over its disclosure, the government appealed and decided that “the party would remain banned until it expelled anti-regime elements and abandons its Islamist rhetoric” (Stacher 2004, 229).

What is more, in August 2002 Yahya Isma’il, former secretary-general of the dissolved Front of al-Azhar ‘ulama’, was ruled a one-year prison sentence for having insulted the sheikh of al-Azhar, Tantawi. Tantawi felt insulted after an article, published by Isma’il, had appeared in al-sha'b newspaper. The article was entitled “Khul’: Made in America” and criticized Tantawi’s approval of *khul’*. The article reflected an old dispute between the sheikh of al-Azhar and the Front of al-

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63 It merits note that Lombardi states that the type of *ijtihad* as it was practiced by the classical Sunni *fuqaha* (experts of *fiqh*) is not always in line with the way practitioners use *ijtihad* now (2006, chapter 5).

64 For more details, see Stacher (2004).
Azhar ‘ulama’. Since the latter repeatedly criticized the liberal views of the Sheikh concerning different matters, Tantawi decided to dissolve the front in 1999 (al-Ahram Weekly 29 August-4 September 2002). The whole affair reflects conflicting points of view within al-Azhar and it clearly shows how the deviant ‘ulama’ of al-Azhar are affiliated with Islamist-oriented groups.65

The government, however, not only had to put up with opposition stemming from NDP MPs, al-Azhar ‘ulama’ and independent Islamists. At the same time, it also had to keep under control women activists who were critical of the government. In the nineties it sometimes reacted by pitting adversaries against each other. For example, in the early nineties the government closed the liberal Arab Women’s Solidarity Association of Nawal al-Saadawi and its license and assets were handed over to an Islamist women’s organization (cf. al-Ali 2000; Zuhur 2001). In February 2000, only a few weeks after the January legal reforms, this renowned and controversial secular women activist attempted to establish a national Women’s Union NGO to unite 200 NGO’s working in the field of women under one umbrella organization. The government, which did not support this initiative, decided instead to establish its own organization, the National Council for Women (NCW) in March 2000 with Suzanne Mubarak as president. At the 2000 UN Beijing +5 conference on women in New York, Egypt’s delegation was dominated by the National Council for Women. Two reports had been written, one by the National Council for Women, the other by the other 421 NGO’s. However, the speech Suzanne Mubarak held almost totally passed over the views of these NGO’s (Zuhur 2001).

Allowing women like Nawal al-Saadawi, in their eyes a renowned secular women activist, to become head of an organization that intended to take 200 NGO’s under its wings would have thwarted the interests of the government. Certainly, she would have deployed activities to upset the Islamists and the general public. To curtail social unrest and to promote its own moderate form of feminism in- and outside Egypt, the government established the National Council for Women. According to some independent women activists most of the donor money from the European Union and USAID now goes to the NCW instead of being distributed among the other women’s rights NGOs. Some also argue that the government has tried to bring influential advocates of women’s rights under the wing of the NCW. By alluring potential “troublemakers” with influential positions

65 Buskens mentions how in the case of Morocco the small minority of ‘ulama’ who were critical of the proposed reform of family law “[M]ay fit with the Moroccan tradition of individual Islamic scholars who confront the government in Islamic terms…” (2003, 123). For the case of Egypt, see Zeghal (1999).
in the government with good salaries the government attempts to keep the public sphere under control.\textsuperscript{66} With one political party and its mouthpiece having disappeared from the public debate; one Islamic scholar in prison for having insulted the sheikh of al-Azhar for defending the “\textit{khul’} law” and with women’s NGOs all brought under the wing of the governmental NCW the political landscape had changed and the Egyptian public sphere was reconfigured. This seems to transpire in new reforms of PSL which were implemented in the wake of the “\textit{khul’} law” in January 2000. They included: an amendment of the “\textit{khul’} law” in May 2000 through which the previously abolished article (which stated that men who do not provide for their families were liable to imprisonment) was included in the law again (article 76 (bis) of law No. 91 of 2000); the implementation of a new marriage contract including the right to include substantive stipulations in August 2000; the implementation of a clause which allowed women to travel without the consent of the husband in November 2000; the appointment of the first female judge in January 2003; the right of Egyptian mothers to pass on Egyptian nationality to their children in 2004; the opening up of a new Family Court in October 2004; while at the beginning of 2007 thirty women judges were appointed to the lower courts.

Why did all these developments follow one another so quickly after the introduction of the “\textit{khul’} law”? Was \textit{khul’} used to divert attention away from these other, controversial changes? Was the opposition stricken numb or were opponents’ priorities drawn by other developments? Did opponents simply grow tired of the debate or did they start to realise that \textit{khul’} did not have such a profound influence on society after all? Did these reforms stir up such a commotion again? For the sake of conciseness, I mainly focus on the debates surrounding the introduction of a new marriage contract and women’s right to travel, since these reforms incited heavy opposition in the mid-nineties and January 2000 respectively.

2.5 \textit{Khul’}: a cover for other controversial reforms?
A few months after its controversial introduction, the “\textit{khul’} law” was amended for the first time. In January 2000, due to heavy opposition in the People’s Assembly, the government had decided to strike from the draft law the article which made husbands who did not pay alimony to their families liable to imprisonment.
According to opponents in the People’s Assembly, this provision was already covered by article 293 of the penal law. However, since the main reason behind the introduction of law no. 1/2000 was to facilitate procedures in the field of PSL, the

\textsuperscript{66} The NCW has assumed an increasingly important role in stimulating and preparing reform of family law. For example, the NCW, along with the Ministry of Justice, helped prepare the draft law for the setting up of a Family Court in Egypt.
article was still implemented in May 2000 (article 76 bis of law no. 91 of 2000) (Bernard-Maugiron 2004, 376) although the term of imprisonment was reduced from three to six months to a period not exceeding thirty days. This amendment seems to have passed unnoticed.

**A new marriage contract**

A few months later, in August 2000, a new marriage contract with the right to include stipulations in the contract became operative. We have seen before that the proposal for a new marriage contract caused a lot of upheaval in the mid-nineties. The then sheikh of al-Azhar opposed it saying that it deviated from the *shari'a* as well as that it would discourage young people from marrying. Another common argument was that the new contract would shift the relationship between the spouses from one which was based on compassion and respect to one in which heavy materialism would prevail. Due to the heavy criticism it suffered, the project of the new marriage contract was put on the shelf and ultimately developed into the new procedural law of 2000, the “*khul’* law”.

When the new marriage contract was implemented after all on 16 August 2000, the controversies it aroused were relatively mild in tone. Where in the discussions which had surrounded the introduction of the “*khul’* law”, advocates of the reform had been continuously accused of participating in a Western (Zionist) conspiracy which aimed at destroying the Egyptian Muslim family, such language remained largely absent in the discussions concerning the new marriage contract. For a large part this can be attributed to the fact that a few months earlier (May 2000) the government had banned the activities of the Labour Party and its newspaper *al-sha'b*. In January 2000, both *al-wafd* and especially *al-sha'b* newspaper had not only claimed that the law was against the *shari'a* and that it exposed society to a great danger, their opposition to the law had been especially characterized by their vicious anti-Western and anti-government criticism.

Hence, when the new marriage contract was implemented, *al-sha'b* was not longer able to express criticism while *al-wafd* hardly took up a pen to cover the reform. As far as I know, not a single caricature or article was published. This minimal coverage might have been related to the death of the leader of the Wafd Party, Fu’ad Serag al-Din on August 14, 2000, an event that filled the newspaper for many days. However, a few months later, in November 2000, when *al-wafd* finally published an article about the new marriage contract, its criticism was still void of anti-Western and anti-government rhetoric. In the article it was argued that the new contract would make it more difficult for youngsters to marry. As a result, the number of spinsters would increase significantly thereby posing a threat to the stability of society. In the article a *ma’dhun* (marriage and divorce registrar) predicted the course of marriage in Egypt by giving an example in which a bride,
insisting on including stipulations in the marriage contract, angers the groom to such an extent that he walks out of the mosque. At the same time, however, it was also predicted that future spouses would hardly dare to insert stipulations in their contract, not wanting to cause problems in a marriage which had not yet even taken place. The new Family Insurance Fund was criticized too. In this fund the groom had to donate an amount of approximately 2000 Egyptian pounds in order to make sure that his future family would not be left with nothing in case he repudiated his wife. In the article it was argued that the instigation of this fund would only serve to increase the problems of young couples that wanted to get married (al-wafd 11 November 2000).

In general, the same lines of argument that had prevailed in the mid-nineties were repeated in 2000: “The new marriage contract is void of love and compassion!! The holy contract is transformed into an agreement that resembles the establishment of a trade company. Youngsters are afraid of the stringent stipulations…and the number of disputes will increase” (al-masā 10 April 2000); “The confusion surrounding the procedures of the [new marriage] contract are a clear invitation to disintegration” (al-aHrār 22 August 2000); “Islam arranges for a stable relationship between husband and wife. So, why should we fool around with the shari’a?” (al-aHrār 22 August 2000); “Prohibited from marriage because of the new marriage contract” (al-aHrār 30 August 2000). In particular, ma’dhun-s (marriage and divorce registrars), who were supposed to implement the reform in their daily practice, were opposing the reform, both on religious and procedural grounds. Sheikh ‘Azz al-Din al-Sayyid ‘Ata, head of the association of ma’dhun-s, complained that the reform had passed without the ma’dhun-s being consulted or informed about the new procedures. Furthermore, this ma’dhun and the secretary of the association of ma’dhun-s agreed that they would never allow a couple to insert stipulations which would deviate from the shari’a, such as granting a woman the right to travel without the consent of her husband (al-aHrār 22 August 2000).

Both in the mid-nineties and in 2000, advocates of the new contract merely reacted to these accusations by saying that the stipulations would only become legally valid when both parties had consented to it (cf al-wafd 11 February 1995; al-jumhūrīya 14 April 2000; ākhir sā’a 31 May 2000; al-ahrām 8 September 2000). Moreover, inserting stipulations would make men think twice before they set out to harm their wives. This, the proponents to the new contract claimed, would not.

The same arguments dominated an article about the new marriage contract which al-wafd published on 28 May 2000, two months prior to the implementation of the new marriage contract, on 16 August 2000.

We can of course wonder whether grooms really donate 2000 Egyptian pounds to the Family Insurance Fund. During my fieldwork, people never brought up this subject while they certainly would have complained about it in cases where the provision—presenting yet another financial burden on the groom (and his family)—was implemented in reality.
lead to the destabilization of the family. On the contrary, it would bring balance and harmony to the family (al-wafid 11 February 1995). Not surprisingly, advocates of the new contract denied that the reform was against the *shari'a* (cf. al-Ahram Weekly 1-7 June 2000). In this light, councilor and head of the department of the High Constitutional Court, 'Abd al-Muna'im Ishaq, said that the new contract was not against the *shari'a* as long as its stipulations did not legitimize the forbidden or forbid the legitimate (ākhir sā'a 31 May 2000).

Strikingly, during the debate on the new marriage contract, participants seldom mentioned that in the Ottoman period it had been common for women to safeguard their interests in marriage by including stipulations in their marriage contracts (cf. Abdal Rahman Abdal Rehim (1996); Hanna (1996); Sonbol (1995); Tucker (1998)). A professor of religion and philosophy at al-Azhar University who claimed that inserting stipulations was already being practiced in the formation period of Islam as well as in the Andalusian era (al ahrām 8 September 2000) was the only reference to this old practice which I came across.

**Women's right to travel without the consent of the husband**

A husband laughs boisterously at the funeral of his wife. A friend approaches him and requests him to show some respect on this occasion. He obeys his friend for some time, but cannot help himself and starts laughing loudly again. His friend wants to know the reason for his strange behaviour. The husband whispers into his friend’s ears: Can you believe that this is the first time in our marriage that I can see my wife outside the house and know where she is going (al-sha'b 28 January 2000, 5).

It did not take long for the next reform to come up. In November 2000 the High Constitutional Court declared unconstitutional article 3 of decree 3937 of 1997 which stated that women were only allowed to apply for or to renew a passport after they had obtained permission from their husbands. Article 8 and 11 of law no. 97 of 1959, which stated that the Minister of Interior Affairs was authorized to decide the conditions upon which a citizen could be granted a passport, were abolished too. The court concluded that both articles contradicted the constitution which states that every citizen has the right to freedom of movement, unless a judicial order states otherwise.\(^69\)

In January 2000, article 26 or the travelling article of the “*khul’* law” had been abolished due to the heavy opposition it faced. Instead, law no. 1 of 2000 states that those who are prevented from travelling can resort to a judge of temporal matters. Through the ruling of the HCC, however, this article was cancelled and women were given the right to obtain a passport without the

\(^69\) Ruling of the High Constitutional Court, 4 November 2000.
consent of the husband or the Minister of Interior Affairs after all. Since the consent of the husband to allow his wife to obtain a passport had always been seen as an implicit authority to travel (Bernard-Maugiron 2004, 381), the ruling of the HCC had the effect that from that time onwards, women could travel without the permission of their husbands.

Where ‘ulama’ had been divided on whether or not to agree to the khul’ article in January 2000, with regard to women’s right to travel without the consent of the husband almost all, if not all, ‘ulama’ stood united in rejecting this right in January 2000. Even the Sheikh of al-Azhar, who was heavily criticized by other ‘ulama’ for his support of khul’, surprised both friend and foe when he rejected firmly women’s right to travel without the consent of the husband in the People’s Assembly. MPs, both those who were opposing and proposing the law, reacted to this unprecedented move by applauding. The Minister of Justice and the Minister of Religious Endowments, who had not expected that the Sheikh would object to the travel article, were not amused (al-jumhūriya 20 January 2000). The Sheikh’s statement had undermined the religious legitimacy of the article which then was doomed to failure. According to the government-based newspaper al-ahrām, Tantawi’s objection to this article constituted one of the most important results in the discussions which surrounded the introduction of the “khul’ law”, both in and outside the People’s Assembly (19 January 2000).

In practice, however, the issue of women’s right to travel soon moved to another plane after some court cases showed that husbands’ preventing their wives from travelling was not in the interest of the family. In March 2000, Alexandria’s court of administrative procedures decided in its ruling that the right of a husband to prevent his wife from travelling is not an absolute right, meaning that a husband can only use this right in cases where it serves the interest of the family and not when it is exercised out of sheer desire by the husband to get back at his wife (al-ahrām 6 March 2000). In June 2000, again an administrative court overruled the decision of the Ministry of Interior (jihat idari) which had refused to grant a sick boy, whose mother wanted to seek medical treatment for him in France, a passport since the father objected to this. In its ruling the court declared that medical treatment is a human right (al-ahrām 3 June 2000).

When the ruling of the HCC passed in November 2000, advocates of women’s rights were quick to defend the new reform by pointing out that husbands often infringed on the interest of the family by preventing their wives from travelling. They used examples of women who wanted to visit sick family members or who sought medical treatment abroad but whose husbands refused to give them permission to travel. The reform was also defended by a psychologist and others who claimed that the reform would lead to a balance between men and women. As a result, women would become more aware of their responsibilities.
towards their families which, contrary to what the January 2000 opponents to the article had claimed, would prevent the breakdown of the family (cf. nisf al-dunyā 19 November 2000). Others, like Nawal al-Saadawi, also argued that the law was not a blessing for women, although they considered the amendment to be an important step in the right direction. Al-Saadawi warned that article 11 of the constitution, which states that a proper coordination between the duties of a woman towards her family and her work in society should be secured [by the state], would be used by men to prevent their wives from travelling under the pretext of the interest of the family (al-ahrām 7 November 2000).

The law was also defended on religious grounds. Mona Zulficar, lawyer and member of the National Council for Women (NCW) was one of the most important forces behind the “khul’ law” and quoted a few Koranic verses to stress that the Koran sees men and women as equals. As for the Prophetic saying in which the Prophet says that a woman is not allowed to travel for more than three days without a mahram (close male relatives of a woman with whom she cannot marry), she claimed that the saying was not absolute and that it was interpreted in a specific historical setting. Times have changed, she said, and women in Muslim countries have come to occupy important positions, such as head of the government, and for that reason women should not be denied the right to travel (nisf al-dunyā 19 November 2000).

It is remarkable that this time the January 2000 opponents to the travel article did not criticize women’s right to travel. al-wafd, which in January 2000 figured among those who were at the forefront of opposing women’s right to travel, did not publish a single article or cartoon about the reform. Other January 2000 opposition papers mainly restricted themselves to a rather objective covering of the reform in November 2000. The discourse which had previously predicted the destruction of the family once women were given the right to travel at will and which had been characterized by fierce anti-government and anti-Western propaganda, suddenly had lost most of its viciousness. In a few cases it was argued that the shari’a does not allow women to travel for more than three days without a mahram and for that reason the ruling of the High Constitutional Court was opposed (cf. al-aHrār 7 November 2000; al-muSawwar 10 November 2000; al-ahrām 29 November 2000). It was also argued that only in cases where a husband misuses the right to prevent his wife from travelling: when she wants to visit sick family members who are living abroad, or when she or any of her children need to travel abroad for medical treatment for example, she should have the right to travel without his consent (cf al-muSawwar 10 November 2000). This opinion was seconded by the Sheikh of al-Azhar who added that in such cases there should be: “No obedience to a human being [the husband] who disobeys his creator.” It is interesting that Tantawi’s defence of the travel article and the ruling of the HCC
was followed by an attack on the constitution by a professor of al-Azhar University, Ashraf Abu al-Sa’ud, who wondered how it was possible that women were allowed to travel at will while the constitution stipulates that the shari‘a is the main source of legislation. According to him, women’s rights and human rights were just slogans which aimed at the destruction of the Egyptian family (ibid). While not arousing much debate, his criticism again shows how the ‘ulama’ of al-Azhar have divergent opinions on women’s rights.

The “khul’ law” declared constitutional
Since its instigation in 1979, Egypt’s High Constitutional Court has often played a decisive role in matters of high controversy such as: the PSL of 1979 which it declared unconstitutional in 1985; the issue of polygamy which it declared in 1994 to be a definitive right and a universal human interest while it simultaneously stated that it is not contrary to the right to polygamy for a wife to stipulate in her marriage contract that her husband may not take a second wife (Arabi 2002, 345-51); the travel article of 2000 and the “khul’ law” of 2000 which was declared constitutional in December 2002. Hence, almost two years after the HCC had given women free space to travel alone, the High Constitutional Court again arrived at a controversial ruling in December 2002 when it declared that the “khul’ law” was constitutional.

A man from Alexandria whose wife had divorced him by way of khul’ had filed a case in which he contested the constitutionality of the new Personal Status Law and, in particular, the khul’ clause. In its ruling, the High Constitutional Court declared the new Personal Status law constitutional on the grounds that it did not violate the shari‘a because both the Koran and the sunna of the Prophet supported it and because legislators have the right to promulgate a law whose rulings are not open to appeal, if there is an acceptable justification for it. It is interesting to note that the HCC used the al-Bukhari version of the Habiba hadith in which the Prophet divorced Habiba against the will of her husband (al-jarida al-rasmiya, issue 52, 26 December 2002, 50-9).

The ruling of the HCC incited al-wafd to take pen in hand and within a period of ten days two caricatures and six lengthy articles were published. Surprisingly, however, its tone had become very mild. Before, in February 2000, al-wafd had published the story of the first Egyptian woman to ask for khul’. She was portrayed as an ignorant peasant woman who wanted to divorce her husband because he started to treat her badly after he married a second wife, a marriage to which she herself had been a witness (al-wafd 1 February 2000, 3). In December 2002, however, al-wafd published a lengthy article in which women were called upon to speak about the difficulties they were facing with husbands who, among other things, ran away and who stopped providing for their families and whom the
interviewed women tried to divorce by way of *khul’*. The article was very mild in its tone and the women were portrayed as victims of reckless and irresponsible husbands. It was even said that: “The final rulings on *khul’* [had come as] a means for tortured women to fast relief” (al-wafd 18 December 2002, 3). When I compared these and other articles to those which were published before, during and shortly after the introduction and implementation of the “*khul’* law”, I was under the impression that al-wafd had changed from a fierce opponent of reform of PSL –linking it to issues of Westernization and foreign influence, to a sympathizer of women who were stuck in difficult marriages. In general, I am inclined to conclude that newspapers and magazines no longer presented reform of PSL as a conspiracy between foreign powers and Egyptian government officials (including religious government officials) notwithstanding the fact that the PSL reforms which followed the “*khul’* law” were controversial in nature as well. What is interesting is that the cartoons that al-wafd published still depicted brutish and ugly women dominating their small and insignificant husbands, an issue which will be taken up in the next chapter which deals with films and cartoons.

2.6 Conclusion
Where in *urīdu Hallan* the Islamists had been absent, they were clearly present in the public debates on *khul’* as played out in newspapers. The two newspapers al-sha’b and al-wafd that ran the most blaring headlines were both newspapers of political parties –the Labour Party and the Wafd Party respectively - and as such marked the debate on *khul’* as a political game in which there was a struggle “between those who seek to locate women’s emancipation…at the heart of the development of nation and of society, and those who try to dislocate such a project as an alien Western import”, to use the words of Abu-Lughod (1998, 243).

However, things are not as straightforward as they seem. If the debate has made one thing clear then this is that it is not easy to classify opponents and proponents of the law. The religious establishment did not form a homogenous bloc nor did the government. With many of its own MPs opposing the law, the government first had to work to secure the cooperation of MPs from its own party. Having realized the passing of the law with a majority vote in Parliament, high government officials were confronted with ‘*ulama’* from al-Azhar who accused the government of being a Zionist entity. These “deviant” government ‘*ulama’* even accused the sheikh of al-Azhar of being *kafir* (unbelieving). Conversely, the women’s movement and the leftist political parties used the religious authority of al-Azhar to claim that since the *khul’* law was approved by the sheikh of al-Azhar, its Islamic validity was secured. After intensive cooperation with high government officials, the *khul’* law was passed in general assembly form with a majority vote in Parliament.

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70 This also applies to the case of Yemen (Würth 2003), Mali (Schulz 2003), Palestine (Welchman 2003 and Shehada 2005), and Morocco (Buskens 2003).
officials, women activists were proud to present the *khul‘* law as being in accordance with Islam.

Yet, the women’s movement did not form a homogenous bloc either as many women’s activists claimed that the law was only a law for rich women who could afford to renounce their financial rights in return for a *khul‘* divorce. One of them was Husna Shah, none other than the scriptwriter of *uridu Hallan*. Other activists went further and accused women activists who were behind the implementation of the “*khul‘* law” of having become members of the governmental NCW for reasons that were related merely to prestige and money. Apart from that, they also accused the government of not having dared to address reform of substantive law out of fear of the Islamists. For that reason, they believed the government to have introduced substantive clauses such as *khul‘* in a procedural law.

Despite the complexities of the alliances made in the debate, there is one thing that stands beyond doubt: all parties resorted to the language of Islam in order to present their particular point of view as the true understanding of Islam. For this reason, and in line with the contributions to the issue of *Islamic Law and Society* concerning public debates on reform of PSL, we can speak of the emergence of a Muslim “public sphere” in which norms and values are legitimized only when expressed in the language of Islam. Within this public sphere, however, the issues that are at stake are not necessarily religiously motivated. Fawzy, for example, argues that the MPs of the ruling party who vehemently opposed the “*khul‘* law” on religious grounds had to bear in mind the upcoming parliamentary elections. The MPs of the NDP wanted to present the voters with an image of being defenders of religion, “filling for public opinion the space left by the absent ‘Muslim Brothers’” (2004, 65).

Probably, the Wafd and the Labour Party too had the parliamentary elections in mind when they venomously attacked the “*khul‘* law.” In order to touch emotions and to create an appearance of being guardians of true Islam, they accused the government and the religious authorities that were supporting it of being lackeys of the West who sacrificed the principles of Islam for donor money. Other ‘*ulama‘*, however, who used *al-sha‘b* newspaper as a platform to disseminate their message, might have been worried that their position of power was threatened now that the legislature had issued a form of *khul‘* divorce which was absent in the four schools of Islamic law. While reformers in the past had resorted to *takhayyur* and *talfiq* in order to reform PSL, this time around the legislator had directly consulted the Koran and the *sunna* of the Prophet. According to Arabi this

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71 In 1995 military trials had sent many of its best members to prison while in the manipulated parliamentary elections of 1995 the Muslim Brotherhood had only managed to win one seat in the Parliament (Makram-Ebeid 2001).
would impact on the course of legal development in Egypt and other Muslim countries for some time to come (2001).

Yet, the debate has also shown that resorting to the language of Islam is only a necessary means to participate in the debate. The use of religious language does not tell us anything about the outcome of the debate (see also Buskens (2003) and Schulz (2003)). In the Egyptian case, the government seemingly was the one that ultimately decided who had the right to interpret the sources of Islamic law, and hence, the limits within which the public debate could take place. The fact that under no circumstances was it willing to allow the Labour Party to operate again unless it restrained its anti-regime and Islamist rhetoric makes it clear that this political party and its newspaper had pushed the limits of acceptable political behaviour. After the Labour Party and its newspaper were forced to leave the public debate, the Wafd party and its newspaper apparently decided to rein in their language, and as a result the fierce and venomous anti-Western critique of the government and al-Azhar was struck dumb. In fact, numerous PSL reforms which were introduced shortly after the implementation of the “khul’ law”, some of which had proved highly controversial before, hardly seemed, on implementation to arouse any editorial emotions.

Of course, we might well think of other reasons that also explain the lack of interest in reform of PSL. For example, the Palestinian Intifada which started in September 2000, and the widespread anger the Israeli response provoked, surely contributed to diverting attention away from matters of PSL. The government did not, however, allow Islamists who before had slandered its Islamic credibility by accusing it of merely being a puppet of the West, to assault its cultural authenticity as well. Instead, the government responded to its critics by creating and implementing its own Islamic politics. It created its own form of Islamic modernism which has been succinctly described by Fathi Naguib (died 2003), then first deputy president of the Court of Cassation and one of the main forces behind the law: “Compliance with shari’a must continue because it is closely related to people’s religious beliefs and it does not contradict any of the international agreements that Egypt had signed” [my addition] (al-Ahram Weekly 1-7 March 2001).

Interestingly, this statement simultaneously shows that the Egyptian state cannot forcefully impose its ideas about modernization and reform of PSL. In other words, the Egyptian state is forced to come up with an answer to reform of PSL that both satisfies the international community, which includes activists for women’s rights, on which the state must rely for much funding, and satisfies Islamists and the population at the grassroots level on whom the government ultimately depends for its legitimacy. This explains why the government made concessions to the opposition (by extending the reconciliation period; abolishing
the travel article and by refraining from issuing an Explanatory Memorandum). The debate on *khul'* reflected the general political situation of a country in which Islamic identity and cultural authenticity both play an important role.

Apart from making concessions to its opponents, the Egyptian government also had to contend with the authority of the High Constitutional Court. A popular strategy of Islamists is to take matters of controversy to court. In this way Islamic lawyers have won many controversial cases. I have already touched upon the fact that during the debate on *khul'*, opponents of the law sometimes referred to the constitution (which states that the principles of Islamic law are the main source of legislation), in order to highlight that *khul'* was unconstitutional and thus unislamic. Hence, where proponents of *khul'* used al-Azhar as an authority in matters of religion, Islamists rejected the authority of al-Azhar and instead relied on the judiciary in general and the HCC specifically to deal with matters dealing with Islam. By bringing before the HCC lawsuits in which they challenged Egyptian laws as un-Islamic and unconstitutional, “the responsibility for creating and implementing an official government theory of Islamic law moved from the executive and legislative branches to the increasingly independent judiciary” (Lombardi 2006, 5).

In such cases, the government is no longer able to ultimately decide on the right interpretation of Islam and Islamic law. Hence, when a husband in Alexandria whose wife divorced him through *khul'* filed a case in which he claimed *khul'* to be unconstitutional, the government was no longer in a position to control the fate of the *khul'* article. In the end, the outcome of the public debate on *khul'* was decided, not by the government, or al-Azhar, but by the High Constitutional Court, a body that had not participated in the public debate on *khul'* and that used the Koran and the al-Bukhari version of the Habiba *hadith* to provide a final answer to the question as to whether *khul'* was constitutional and, for that matter, in accordance with Islamic law. In this sense, the Egyptian case resembles the case of Morocco where both opponents and proponents of reform of PSL looked to the king to make a final decision with regard to a new proposal for reform of PSL (cf. Buskens 2003). However, while in the case of Morocco, the king is the *amir al-mu'minin* (commander of the faithful), the Egyptian High

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72 For more on opponents' efforts to extend the reconciliation period, see 5.2. In 4.5 and 4.6 I elaborate on the issue of the Explanatory Memorandum.

73 The High Constitutional Court has a reputation for being a bastion of independence and while the ruling of constitutionality of the *khul'* law was to the government’s advantage, this should not lead us to conclude that the HCC in general takes the side of the government. The 1979 PSL, for example, was ruled unconstitutional by the HCC in 1985 and in the 1980s the HCC invalidated laws concerning elections to the Parliament as a result of which the Parliament was dissolved twice (cf. Arabi 2002, 353). Arabi stresses that the commitment of the HCC “to democratic values and constitutional principles ought to be emphasised” (2002, 353).
Constitutional Court consists of secularly trained judges and, as such, is not an institute of religious authority or learning. This, one would expect al-Azhar to be.

In all, the way the debate on reform of PSL unfolded in the period after the introduction of the “khul’ law”, should not lead us to conclude that the criticism surrounding khul’ had been completely struck dumb. As we have already seen, after the HCC ruled khul’ to be constitutional, al-wafd newspaper continued presenting cartoons which depicted what would happen once women were given the right to khul’. What is more, in the years following the implementation of the “khul’ law”, the films muHāmī khul’ (2003) and urīdu khul’an (2005) constituted the most critical voices in an otherwise rather docile public debate concerning PSL and women’s rights. The issue of PSL reform was shifted away from newspapers, where rational ideas and opinions are exchanged through the use of texts, to other styles of communication and to other ways of making a statement, in this case through using films and cartoons in which (audio) visual materials play an important role. The next chapter will show how this happened.