Khul' divorce in Egypt: public debates, judicial practices, and everyday life

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4 On the dower and “emotional” women

4.1 A new version of “I Want a Solution”?

Interview with Judge Muhammad, 13 April 2004, Cairo:

…..urīdu Hallan is a very old film, the film is twenty years old,” the judge said. “The film is even older,” the katib said, “and a lot has changed during all these years. The problems in the film are mashakil ‘adima (old problems).” The judge: “Not only has the law changed a lot, Egyptian society has too. Man has become weak. In case of a divorce he has to return the flat, he has to give his wife nafaqa and so on. Women have become much stronger. However, this is not bid’a (innovation), it is all in line with the shari’a. It is a good thing that husbands now start to learn how to behave towards their wives and it is good that women feel how many rights they have.” The katib smiled and said: “Maybe it would be a good idea to make a new version of urīdu Hallan.”

Naturally, one is inclined to think of urīdu khul’an as the new version of urīdu Hallan. However, we can of course wonder if this image of irrational, upper class women who divorce their husbands for frivolous reasons destroying their families in the process, is in accordance with daily reality, especially if we take into account that the first khul’ case of the country was filed by a fallaha. It is for this reason that I follow in the lead of Moors who states, in a study on families in public discourse, that at the level of social life, “we need to take into account how such ideological notions [of the family] relate to and (mis)represent everyday interactions” (forthcoming).

When I started my main fieldwork in October 2003, I still had no idea which types of women were actually making use of khul’. This, however, changed when I met a woman on the third floor of the Zananiri court in Cairo, the same court in which Duriya of urīdu Hallan learned that the judge was not willing to give her a divorce after four years of legal battle. Although almost 30 years had past, the building still looked the same. There were a few differences, however. First, while Duriya of urīdu Hallan and Maha of urīdu khul’an were both members of the upper class, the woman I met in January 2004 was clearly from the lower (middle) class. Second, where Duriya could only exclaim “if only there was khul’”, the lower class woman could tell the judge “I want khul’”. By showing the story of this lower class woman, a woman whom I have given the fictitious name Nura, I hope to contribute to a new version of the film urīdu Hallan thereby providing flesh on the bones of the question concerning the implementation of the “khul’ law” in daily life.
This I felt to be important since, as indicated in the introduction, there are not many (ethnographic) studies which pay attention to how the process of divorce impacts on the daily life of Egyptian women. In the studies on the operation of Personal Status Law in the courts, divorce (next to issues such as maintenance and custody) occupies a central place. However, in these studies researchers have often not established a link with daily reality by observing what happened to women before, during and after the divorce. Thus, while it might look self-evident, it is through the encounters with Nura that I explicitly started to realize that the process of divorcing is not an activity confined to the courts and that her court experiences should not be isolated from other aspects of her life, i.e. her work, children, friends, colleagues and her village as they impact on all these in a multitude of ways. Through short meetings and phone conversations with Nura, her family and her colleagues, I began to see her, not only as a female litigant who was trying to obtain a divorce, but also as a muwazzaffa (civil servant), as a mother, as a daughter and as a friend. For that reason, I have decided not to take the court premises as a point of departure but instead to place Nura’s story at the centre of this thesis. Furthermore, her story is not presented in one consecutive narrative. This is due to the fact that I met Nura on a regular basis but certainly not every day. As a result, I felt it imperative that these fragmentary moments of contact should be presented in chronological sequence and in the manner in which they occurred. Therefore, the course Nura’s life took both during and after the divorce was decisive in establishing the subjects of the different chapters on which the second part of this thesis depends.

Using Nura’s story as a thread running through the book does not imply that the story of this Egyptian woman from the lower (middle) classes in Cairo is representative of how Egyptian women experience divorce in general and khul’ specifically. Quite the contrary, some aspects of her life might be rather exceptional. At the same time, however, Nura’s case forms a basis from which profound socio-economic changes in Egyptian society are presented and analysed.

4.2 Presenting: “Nura”

In January 2004, I went to the Zananiri Personal Status Court; at the time the only court of first instance which handled divorce cases in Cairo. I did not go there alone. Raouf, an older friend of mine, had insisted on accompanying me on my visit to the court, thinking it would be impossible for a foreign woman who spoke only reasonable Arabic to find her way around the chaotic courts of Cairo. Although I had visited the courts a few times before, I nevertheless accepted his offer as I felt more comfortable visiting the court with an older Egyptian man. Raouf was an excellent help as he knew exactly whom to approach: the hagib (bailiff). He told him the purpose of my visit and that I needed to talk to women
who were in the process of divorcing by way of khul’. He gave him ten pounds and the hagib started to look for women who were willing to talk to me.

A few minutes later he came back with Nura, a small, well-rounded woman in her thirties. Raouf did most of the talking and urged her to sit and accept a cup of tea. “Tell me your story” he more or less ordered her to do so. I thought Nura would be shy about telling her story to a strange man accompanied by a foreign woman but the opposite was true. “I will tell you my story,” she said. “I am a mother of three and I went to live with my mother-in-law from the moment I married my husband. We lived in the area of Basatin (lower class neighbourhood in Cairo). Right from the beginning my husband did not work. Even after he travelled to Kuwait for a period of three months and ten days he came home without any money, as if he had not worked at all. We borrowed 7000 Egyptian pounds (approximately 1000 euros) from the family and from the neighbours in order to buy him a minibus. We paid the deposit and we agreed with the money lenders that my husband would pay monthly instalments in order to pay back the rest. A crisis arose when he did not do that. The cause of this crisis was that he does not like to work and instead prefers to sit in the coffeehouse and whenever I quarrelled with him about his lazy behaviour, he often started to hit me with a khartum (hose).” Nura uncovered her arm in order to show us the scars which the beatings with the hose had caused her. “After a while, his creditors filed a case against him and he was sentenced to three years in prison. He often said to me: inti taliq (you are divorced). He divorced me orally more than once and then he would take me again in the presence of a sheikh from the mosque” she continued. Only two months before he went to prison, her husband decided to marry another woman. Like Nura, she came to live in the house of his parents. This was the last straw. Not only did her mother-in-law start to treat her worse, the house was now also filled with the second wife of Nura’s husband Mahmud and the prospects following Mahmud’s release from prison looked bleak. He would not provide and every time they would quarrel about this and other things, he would abuse her, be it verbally or physically. Moreover, since Mahmud’s family always came to his rescue, both financially and by defending him against Nura, it was not difficult for Nura to foresee that under these circumstances Mahmud would never change. Nura would live forever in the house of her family in law. She decided that her freedom was worth the sacrifice of divorcing Mahmud and leaving her children behind in his family. She said, while crying: “I could not keep my children, because my mother and I, we do not have a lot of money.” My mother

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*Although divorced women have a legal right to custody of their children, it is not exceptional that women in Egypt as well as in other Middle Eastern countries, are not able to keep the children in the case of divorce. For the case of Palestine, Moors shows that the family of the wife does not always want or is able to accommodate both the divorced woman and her children (1995, 143-4) while Shehada also*
takes a pension of 150 pounds (approximately 20 euros) monthly. I work in a post office without a contract and I earn 80 pounds monthly. Moreover, my mother never fully recovered from a stroke and since she has a house with no running water and only one small room which can only accommodate two beds, I had to leave my children in the custody of my family in law. If I want to see my children, I have to go to their school, because my mother-in-law does not allow me to see them at home. Since the youngest is not enrolled in school yet, I have not seen him since the day of the Minor Feast [November 2003].” I asked her how the second wife was treating her children. She said that she was raising her children well and that she was nice to them. “They do not have children of their own yet, since Mahmud went to prison only two months after they married” she added quietly. She continued by telling us that her mother-in-law was prepared to give her an allowance of a hundred pounds a month so that Nura could take back and care for her youngest son who was not attending school yet. Nura’s eyes spat fire when she said that: “I refused to do this. I have plans to travel to Dubai to work as a murabbiya (nanny). Through a colleague at work I know people who are looking for a nanny. In that way, I will be able to save money to rent a flat for the children and me.”

I asked her why she decided to opt for a khul’ divorce instead of a normal divorce in which she would be entitled to keep all her rights. She answered by saying that a normal divorce would take too long. She wanted to finish everything as soon as possible. Raouf asked her when her case had started. She replied by saying that her case had started on the 14th of September 2003 and that there had been three sessions of arbitration. Nura was positive about her case and expected the divorce to come through soon.

When she paused to take a sip of tea, she simultaneously looked around for a woman, ‘Afaf, who was of her age and who had also started a khul’ procedure. “‘Afaf has become a friend of mine” Nura told us “and every time one of us has a court session, we try to come together to support each other.” After a little while, ‘Afaf entered the empty courtroom in which we were sitting. In terms of physical appearance ‘Afaf was the opposite of Nura as she was small and very thin which was accentuated by the tight clothes she was wearing. The only similarity between the two women was that both were wearing a small veil. Nura and ‘Afaf greeted each other heartily and immediately started exchanging questions relating to the amount of money they had to pay the court for the arbitrators. Nura excitingly told ‘Afaf that she finally had paid the 50 pounds for the mediators that day. ‘Afaf looked a bit sad. Her brother had promised her to pay the 50 pounds but he still had not done it as a result of which the judge had shows that in some cases the father (and/or his family) wants to take the children in order to avoid paying nafaqa for the children (2005, 251, 259).
postponed her case once again. ‘Aaf explained: “My husband refused to appoint an arbiter. As a consequence, the judge appointed an arbiter for him. This arbiter costs me fifty pounds, an amount I do not have. I only earn seventy pounds a month. Now, the judge does not want to rule my case because I cannot pay the fifty pounds for the arbitration sessions.”

I asked them if they had already paid back the prompt dower. Nura told me that she had: “Of course, women who want to divorce through khul’ are supposed to pay back the prompt dower. Although I only had to pay back 0.25 pound [the amount registered in the marriage contract] to Mahmud, I gave him one pound. It is a present from me to him,” she said as she smiled triumphantly. “Furthermore, I will take the furniture, and the flat is the right of the husband” she said.

Nura asked me if I wanted to hear ‘Aaf’s story too. Although ‘Aaf was a bit reluctant to disclose her story, she nevertheless told us briefly how she came to divorce her second husband: “I married [for the first time] in 1992. Two girls were born from this marriage. When my first husband divorced me, I was pregnant with the second girl. I worked to support my children but my brother was unhappy about the fact that I was working and so he asked me to marry again. One of the neighbours came to solve the matter and brought an ‘aris (bridegroom). I agreed to marry him and went to see the flat in which we were going to live and I found it empty. He told me not to worry. He would get me all the furniture. Although he lived up to his promise, I soon found out that all the things he brought me were stolen. He used to wander around in rich neighbourhoods to find out where he could steal valuable assets. Then he would steal it and bring it to me. So, I found out that his occupation was as a thief and a cheat. Later he used to hit me and since he was also always short of money, he asked me to go back to the house of my mother. In the meantime he married another woman, one of our neighbours and left me completely while I was three months pregnant with his son. Till today he has never seen his son, nor have I seen him again. So, I decided to get rid of him through khul’.”

Raouf interrupted and said that he had to go back to work but that he was willing to offer the two ladies and me a ride home in his car. In the car, Nura and ‘Aaf continued their conversation. Nura repeatedly stressed that she had had enough of marriage and that she did not want to marry again. She only wanted her children back. She asked me whether I thought she would ever marry again. It was a rhetorical question. “Of course not” she said before I was able to reply. ‘Aaf said that if she was to marry again, it would be by way of ‘urfi. According to her such a marriage was easy to contract and easy to dissolve. Later Raouf told me that he considered ‘Aaf to be sayha (a loose woman).
4.3 **Khul’…a law for rich women only?**

Whenever I entered a court, I was always struck by the high number of women litigants from the lower (middle) classes. In their *gallabiya*-s and their typical *muwazzafin* outfits, they were the main visitors to the courts. As such, the contrast with the female protagonists in the three films could not have been greater. In their neat skirt suits, beautiful jewellery, tights clothes and high-heeled shoes, Duriya, Rasha and Maha clearly would have been out of place in the courts which I was visiting. This became painfully clear in a scene in *muHāmī khul’* where the presiding judge linked the issue of fancy and beautiful women litigants’ clothes to a pleasant scent. In the film we see this judge ask the *hagib* (bailiff) an explanation for the pleasant smell which penetrates the courtroom. Normally it stinks he says. He then notices the presence of a large number of upper class women in his courtroom.

Judging from her outer appearance Nura exemplified the lower middle class litigant in the court. This small and well-rounded woman in her thirties wore a small veil, a large synthetic blouse which covered her from the neck to halfway down her knees, synthetic black trousers and old sandals. From the minute I met her, I was under the impression that she was working as a *muwazzafa*. 'Afaf, seemingly in her late twenties, looked somewhat different. She was also wearing a small veil, but in contrast to Nura she was very thin which she might have tried to accentuate by dressing up in tight clothes. Yet, the materials her clothes were made from and the way she had put on her make-up revealed her lower class upbringing. Now one could object to the observation that the greater majority of the female visitors to the court are from the lower classes by claiming that women from the higher classes avoid appearing in court in person and instead send a lawyer to court who acts as their representative. While this would run counter to the image which was presented in all three films, many judges and lawyers interviewed indeed confirmed that upper class women often send a lawyer to court to act as their representative. However, according to them this did not change the fact that the majority of the court cases were submitted by women from the lower classes as upper class women will hesitate profoundly before submitting

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99 In a study on the Egyptian legal system in the 1970s, Hill also repeatedly claims that people from the lower classes appear more frequently in court than other groups (1979).

100 The typical *muwazzafin* outfit often consists of a long, wide skirt; a long blouse that covers both the arms and part of the upper legs; and a headscarf which covers the head, the neck and sometimes the larger part of the chest and the back as well. Generally this outfit is quite plain and made of synthetic fabrics.

101 See also Hill (1979, 15). For the case of Morocco, Mir-Hosseini also claims that litigants from the upper classes use a lawyer to avoid personal involvement in the court. Conversely, in Iran, lawyers are absent since marital disputes that are brought before court must be presented by the two parties personally (1993, 30).
a court case in the first place. They are afraid that a court case will damage their reputation and for that reason, they will always try to settle a dispute indoors.\footnote{See also Brown (1997); Hill (1979); Human Rights Watch (2004, 29); and Zaalouk (1975). According to Shehada and Mir-Hosseini, the same applies to the case of Palestine (2005, 81), Morocco and, to a lesser extent, Iran (1993, 29), respectively.}

What is interesting in this respect is that although opponents and proponents of the law fiercely attacked each other’s points of view concerning khal’, we have seen that the one time that they were united in their criticism was when they both criticized the law for only being a law for rich women who can afford to pay back the dower which their husbands had given them on the occasion of the wedding. However, when I asked Nura and ‘Afaf about their experiences with regard to returning the dower, they, apart from the fact that they were hardly interested, did not have any troubles in returning the dower as it had only consisted of one pound. Nura had even triumphantly recalled how she had returned one Egyptian pound to her husband instead of the one-quarter of a pound which was registered in the marriage contract. In another case, a judge I interviewed told me jokingly how he had once asked a woman to return at least a decent and clean one-pound note to her husband. In what follows, I present a few fieldwork stories in order to gain an insight in the practice of the dower in Egypt.

4.4 The practice of the dower in Egypt

During the Ramadan of November 2003, my partner Tom and I met Muhammad and his friend Ahmad for the first time in the city centre of Cairo. In their late twenties, Muhammad and Ahmad were both originally from the area of Kafr al-Sheikh (KAS in what follows), a provincial town in Lower Egypt where they had grown up and pursued universal education. Apart from sharing the same social and geographical background, Ahmad and Muhammad were also united in having marital problems. Ahmad was married to a foreign woman whom he wanted to divorce but did not know how to and Muhammad had recently got engaged to a girl from his village (with a university degree) whom he planned to marry next August. During our meeting Muhammad complained that he had to fulfill what he described as “all the nasty things which come with marriage and engagement.” At that moment he was especially worried about the shabka (engagement gifts, usually consisting of gold) since they were already engaged but he was still unable to give his fiancée a shabka. Although her family had insisted on a relatively low shabka (compared to the other villagers), Muhammad complained that he was still not able to carry this financial burden.

When I told Ahmad about my research, he immediately asked me whether I had heard of a Yeminite sheikh’s fatwa.\footnote{I told him that I had not after which} I told him that I had not after which
Ahmad started to explain that this sheikh had issued a fatwa in which he suggested the idea of *zawag al-frind* for Muslims who are living in the West. In order to prevent illicit relations, this sheikh had suggested that youngsters should be able to marry each other while they continue to live with their parents until they were financially capable to buy or rent a flat and establish real marital life. Although the sheikh had addressed a western Muslim audience, Ahmad strongly believed that he was also surreptitiously trying to change marital customs in the Middle East. According to Ahmad, the family of the bride often overcharged the groom and his family. “For example, why does the marital home have to be completely furnished and why does a woman need fifty cups and plates while only two people are living in the house?” Ahmad had asked me rhetorically. Now that the fatwa on *zawag al-frind* had been issued, he hoped that suggesting such a marriage to the family of the bride would pressure the latter to lower their financial demands towards the future groom. According to Ahmad, the enormous costs which marriage entailed were not religiously ordained but a product of local culture. He especially meant the *shabka* which often equalled absurd amounts of money. “And what about the prompt dower?” I asked him. “Well, people in the cities hardly ever pay out a prompt dower and even in the villages the importance of the prompt dower is decreasing rapidly. The place of the prompt dower has been taken by the *shabka*. In the past people used to register high amounts of prompt dower, now they tend to only register one pound, a symbolic amount. The *shabka*, on the other hand, costs at least a few thousand pounds,” he sighed.

A few months later, in January 2004, my partner Tom and I went to the airport to pick up a Dutch friend. As always, Fathi drove us to the airport in his car. At the time, Fathi was 46 years old and had worked in Europe for a couple of years. After he was refused permission to extend his permit of residence, he had returned to Cairo in 1988. He now lived with his wife and three daughters in Masr al-Gadida, a higher middle class area in Cairo. At the time, his eldest daughter was 21 and studied art at Ain Shams University. Six months before she had been engaged to a student whom she had met at the university. They had planned to marry after she had finished her studies in one and a half years. Fathi told me that the family of the groom and the family of the bride had agreed on how to share the expenses of the marriage. The bride would furnish the bedroom and the kitchen and the groom would furnish two other rooms. Since both families would share the costs of furnishing the marital flat, Fathi and his wife had decided not to ask for a prompt dower (*mahr*). “You cannot overcharge the groom, especially since he will also own our documents.
carry the burden of arranging for a flat,” he said. “But you have to register a prompt dower in the marriage contract,” I reminded him. “True,” he said, “but most people only register a very small amount of prompt dower, in order to avoid paying taxes to the ma’dhun (marriage and divorce registrar) who takes five percent of the prompt dower.” “So you will only register one pound as a prompt dower?” I asked him. “No, not one pound, I am thinking of registering twenty-five pounds. The deferred dower, however, will be much higher. Around 500 or 1000 LE so as to prevent the groom from divorcing his wife for frivolous reasons,” he said. “And what about the shabka, will you ask him to pay your daughter a shabka?” I asked him. “Yes, I will although I am not sure whether I should insist on a shabka or not. It would definitely put the groom to great expense with the result that he cannot spend money on buying ‘afsh (furniture) since he already spent it on the shabka,” Fathi explained seriously. “In any case, we will not register the furniture of my daughter in an ayma (a list stating the furniture which belongs to the wife). I do not like the idea of an ayma. Marriage is about love and when the love is gone, the woman can have all the furniture,” he said.

In March 2004, I stayed in Kafr al-Sheikh, Lower Egypt for a couple of days. At the time, a Dutch friend was working on a water project in KAS and in order to learn more about marriage and divorce outside Cairo, I took the opportunity to travel to KAS where I was able to talk to a few of her female colleagues. I told them about my research and about the questions I had related to the dower, the shabka and other issues which form part of marriage preparations. My friend’s colleague from Tanta, Nervien, a married thirty-one year old mother of three, told me that her husband had given her a large shabka of LE 3000, which, according to her, would now equal the huge amount of LE 10.000. Besides the shabka, her husband had also bought the marital flat. Nervien and her husband decided to share the expenses of furnishing the flat. “We did it fifty-fifty,” she said. “As a result we only registered a prompt dower of 0.25 piasters in the marriage contract but we also stipulated a deferred dower of LE 15000. In cases where the husband still gives the wife a prompt dower, she is supposed to spend it on furniture. However, when you decide to share the costs of furnishing an apartment, it is of no use to give the wife a large prompt dower. We registered in an ayma both the shabka and the furniture I bought. If problems between us will occur, we will be able to divide our belongings on the basis of the ayma. In fact, the ayma is a better daman (safeguard) for the wife than the prompt dower,” she said as she finished her story.

Another colleague, Hind, did not fully agree. Hind, who was 24, had married nine months earlier and at the time of our meeting she was seven months pregnant. Immediately after her graduation from the University of KAS, Hind’s father had set out to find his daughter a suitable marriage candidate. For that
purpose, Hind was introduced to, among others, a pilot, an engineer and her present husband Ahmad. She had chosen Ahmad, the son of the brother of Hind’s father, because she had felt most at ease with him and because they both liked to joke. Since Ahmad was family, Hind and her family decided to register both a prompt dower of 0.25 piaster and a deferred dower of 0.25 piaster. “However,” she said, “in case you and your family do not know the future husband too well, it is better to ask for a high deferred dower. This will function as a kind of safeguard against a husband who divorces his wife at whim.” In contradistinction to her colleague Nervien, Hind did not consider the ayma and the shabka to be safeguards. “During a marriage the value of the furniture decreases rapidly. Look at my grandmother, of all the furniture she bought, only the furniture in the guest room still exists. And regarding the shabka, my grandmother sold her gold when my father needed money. It still happens a lot that women sell their gold when their husbands and family need money,” she said. Nevertheless, her shabka had equalled LE 10.000. What is more, they had registered the shabka as well as the furniture in an ayma and both Hind and her husband had contributed to furnishing the apartment.

Since the dower is a contractual obligation of Islamic marriage, an Egyptian marriage is not valid without a dower. Even when no specific amount is specified, the marriage contract will mention a so-called mahr al-mitl: in case of marital dispute, a judge will establish the amount of dower by estimating what amount fits the class background of the female litigant. Hence, every marriage contract contains a dower which is divided in two parts: a muqaddam al-sadaq (prompt dower) and a mu’akhkhar al-sadaq (deferred dower). As the cases show, the prompt dower has come to occupy a relatively symbolic and marginal place in the field of marriage. People only register a symbolic amount, ranging from one pound to fifty pounds, as the prompt dower (muqaddam al-sadaq) in the marriage contract. Husbands are reluctant to register a higher amount in the marriage contract because they do not want to pay taxes to the ma’dhun, the government official who registers marriages and divorces and who, according to local opinion, appropriates between one and five percent of the amount registered. Furthermore, nowadays a future wife and her family often refrain from asking a high prompt dower. Instead, they prefer to ask for engagement presents in the form of gold as well as providing a nice and sometimes also a well-furnished flat. It would therefore be offensive if the bride’s family were also to ask for a high prompt dower. For the case of Palestine, Moors also remarks that from the 1960s onwards, it became fashionable

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104 In Egypt this is often pronounced without a qāf, as nu’addam aS-Sadaq.
105 This statement is based on a random sample of marriage contracts which I collected from friends; women litigants; in the courts and in a lawyers’ office.
among upper class women to receive gifts (such as gold) at their engagement and wedding instead of a high prompt dower (1995, 108).

This trend towards the marginalization of the prompt dower does not mean that the overall cost of marriage has decreased. To the contrary, according to the cases which I just presented, marriage has become more and more expensive. Not only were Ahmad and Muhammad complaining about the difficulties men encounter when trying to marry. On television, in the newspapers and among themselves, Egyptians often express their worries about the financial expenses which marrying (off their children) entails. Singerman and Ibrahim estimate that the total cost of marriage in Egypt were four and a half times higher than GNP per capita in 1998 (2003, 92). Instead of lower marriage costs, it rather seems that resources are shifted away from the dower in favor of the *shabka* as well as furnishing the flat.106

This picture of wives overcharging the future groom and his family, worse even, of abusing a husband’s financial investment in the marriage for years on end, clearly transpires in *urīdu khul’an* where we see how Tarik spoils the wedding negotiations of his uncle’s nephew. When Tarik and the nephew meet the father of the future bride, Tarik explains to the latter that there is no need to talk about the flat, the *shabka* and the ʿafsh (furniture) but that it is more important to register 50.000 pounds as the *mahr*. The nephew whispers that he does not have 50.000 pounds but Tarik is unstoppable and much to the nephew’s astonishment Tarik tells the father of the bride that he wants the bride to sign a check consenting to pay back 50.000 pounds in case of *khulʿ*. Tarik explains to the father of the bride that he is afraid that his nephew will register twenty-five piasters in the marriage contract whereafter she will divorce him through *khulʿ* and take the rest of the money and the flat, much in the same way Tarik’s wife Maha was doing. This lack of faith in the prospective bride angers the father to such an extent that he thunders: “*Barra!*” (out!). Tarik, however, is confirmed in his worst fears when he meets a man in court who registered 1000 pounds in the marriage contract. Since he paid 20.000 pounds in reality, he is about to lose 19.000 pounds to his wife who has filed for *khulʿ*. The man is desperate. He had given in to all her whims except for one and now she had filed for a *khulʿ* divorce.

What seems to be in contradistinction to the observation that men who want to marry often face heavy financial difficulties, is the trend whereby the

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106 Singerman and Ibrahim who did a study on the cost of marriage in Egypt seemingly confirm this when they claim that “there may be a trend toward shifting resources away from the bride price in favor of contributions to necessary items like furniture and furnishings” (2003, 100). I say seemingly because they use the term bride price instead of dower while they also do not specify whether people are less inclined to pay out the prompt dower (*muqaddam al-sadaq*), register a high deferred dower (*muʿākkhar al-sadaq*) or maybe do both.
(family of) the bride increasingly shares the burden of the marriage costs. This was clearly shown in the cases which I just presented and according to Singerman and Ibrahim this financial contribution to marriage costs is caused by the fact that especially younger women are now able to work (2003, 98). Women I met often had another explanation and claimed that women’s increasing financial contribution was a result of females outnumbering males in Egyptian society by a ratio of sixty to forty (a perception which is demographically incorrect as males actually outnumber females by a ration of fifty-two to forty-eight (Central Agency for Public Mobilisation and Statistics 2004, 6). As a result, men could chose whomever they wished to marry and unless women wanted to end up in a polygamous marriage they had better not set their marital demands too high. Some women even claimed that the uneven ratio of males to females resulted in an increasing number of marriages in which the groom is not only younger than the bride but also from a lower class. Statistics confirm that these phenomena, which are frowned upon in large segments of Egyptian society, are now spreading in number. In the 1990s, in three age groups more than one fourth of the marriage contracts were between an older wife and a younger husband. In the 1960s they only represented 2 percent of all marriage contracts (Osman and Shahd 2003, 51-61). In chapter 8 we will even see that women in informal (misyar) marriages, bear the financial burden of marriage. Putting no obligation on the husband to provide accommodation or to maintain his wife, these misyar (resembling) marriages look a lot like the zawg al-frind (cf. Welchman 2007, 103). This and women’s growing financial contribution to marriage are not reflected in the film urīdu khul’an which only stresses the husband’s financial input into the marriage and the way in which women try to appropriate this. In the following section we see whether or not this also applies to judges.

4.5 Returning the prompt dower: the practice of the courts

In the last section we have seen that marriage is a pressure on the welfare of the family and that this is not likely to change as the cost of marriage is still increasing.

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107 In an anthropological study on the lives of low-income families in Cairo, Hoodfar also notes that the family of the bride is increasingly expected to contribute more to marriage preparations (1999, 66).
108 According to the Central Agency for Public Mobilisation and Statistics, there were 33,542,913 females and 35,105,576 males in Egypt in 2004 (June 2004, 6).
109 In a study on dowry and the position of single women in Bangladesh, Rozario (1998) shows that, like in the Egyptian case, people tend to think that there is a surplus of unmarried women. Although this perception is also demographically incorrect, it led parents to start paying large dowries to future husbands in order to marry off their daughters.
110 Article 20 of Law No. 1 of the year 2000 denotes the dower with the word sadaq, whereas respondents, both the legal experts and the people at the grassroots level, either use the word mu’addam al-sadaq or ma’āhr.
These increasing costs, however, are not negotiated in the prompt dower which, as we have seen, often only consists of a symbolic amount. This raises the question as to why the Egyptian legislator decided to make a *khul'* divorce conditional upon paying back the prompt dower while in practice the prompt dower is nothing more than a formality in marriage preparations (see also Fawzy 2004, 76) and why opponents often claimed that *khul'* was only a law for rich women who could afford to pay back the dower and renounce their financial rights. Did the legislator try to make it easy for women to obtain a *khul'* divorce? But how, then, do we explain that there is no Explanatory Memorandum to the law which defines what the dower should consist of? Did the legislator simultaneously try not to confront the opponents to the law too much by giving judges a lot of leeway to interpret the prompt dower as they like? Hence, in what follows I look at the way in which the courts deal with the issue of the return of the prompt dower and whether judges take into consideration women's financial contribution to the marriage.

First, however, I take a brief detour and pay attention to the question as to whether future couples and their families take into account that the huge resources they spend on marriage might be lost in the event of a divorce. Statistics show that in the period between 1991-1995 17.8 percent of the marriages ended in divorce. Although the divorce rate was much higher in the past (at the beginning of the 1930s 50 percent of the marriages ended in divorce) the present number still signifies that almost one out of five marriages ends in divorce (Fargues 2001, 258). Cuno also states that divorce rates used to be high during the late 1930s and 1940s when 'Egypt had the highest divorce rate of any “independent” state reporting data' and then continued to fall to the end of the century (in press). Cuno nevertheless opposes the recent reevaluation by both foreign and Egyptian scholars of Egypt’s divorce rates from “high” to “relatively low.” This, according to Cuno, reflects growing divorce rates in the West, more than changes in the Egyptian rate, even though the latter was declining (ibid).

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111 It is unclear to me whether or not there is an Explanatory Memorandum to the law. Some, such as Azza Soliman have argued that there has only been a draft Explanatory Memorandum and that the legislator never issued a final one. I have indeed been able to track down an Explanatory Memorandum which was issued on 13 December 1999, a few weeks before the “*khul’* law” was discussed in the People’s Assembly (manSūr 2001, 739-54). However, I have never succeeded in obtaining an Explanatory Memorandum that was issued after the discussion in the People’s Assembly and which included the changes that the People’s Assembly made to the law. For the purpose of this study, however, it is especially significant that none of the judges (including a judge who was a main force behind the law) and lawyers were able to give me a copy of the Explanatory Memorandum.

112 Historical trends have demonstrated -on the basis of court records and other historical sources- that both in the Mamluk and the Ottoman Period women frequently iniatated divorce (cf respectively Rapoport (2001) and Abdal-Rahman Abdal-Rehim (1996)).

113 I elaborate in more detail on this issue in 7.3 and 7.4.
Added to this, during my fieldwork in Egypt, I was often under the impression that divorce is as natural a thing to happen in a person’s lifetime as marriage and childbirth. For example, notwithstanding the fact that there is a limit to the number of times a husband can divorce his wife, i.e. he can only pronounce the repudiation three times in his life, in the case of Nura we have seen how her husband used to utter the divorce formula every time emotions were running high. This, of course, leaves women in a position in which they are not certain whether or not they are still legally married. Although this also applies to men, in many cases men such as Nura’s husband did not care since they have a right to marry up to four wives. However, men who do care to know whether the relationship still has the legally binding status of marriage, sometimes approach the sheikhs at al-Azhar in order to seek legal advice concerning the triple divorce. In a fit of anger, these men have uttered the divorce formula the three consecutive times necessary to bring about final divorce, although they did not intend to divorce their wives. In the same way, a friend told me how he had once visited the dar al-ifta (building housing the office of the Grand Mufti) in order to request a fatwa from one of the sheikhs. While he was waiting in the waiting room, he had asked the other men about the purpose of their visit. Most of the men were reluctant to tell him but some confided in him that they had come to ask the sheikh whether or not they could take back their wives after having pronounced the divorce formula three times, often in a fit of anger. Notwithstanding my focus on divorce cases, what probably also added to the fact that I was under the impression that divorce happens frequently in Egypt, is the popular perception in Egypt that the divorce rate is high and has skyrocketed in comparison to the past (see also Cuno (in press)). In such cases, people often blame women and young people for the high divorce rates. Sometimes they put the blame on khul’ but in other cases they also claim that women express the words talaq-ni in order to put pressure on their husbands to divorce them. In other cases young people are accused of massively conducting informal ‘urfi marriages which, according to local opinion, all too often end in divorce.

After having shown that the likelihood of a marriage ending up in divorce is significant, both statistically and in popular discourse, I now move on to show how families try to protect their daughters from divorce. The cases which I presented above, show that Egyptian families use the deferred dower, the shabka and the

[114 In a study on Islamic courts in Malaysia, Peletz shows that women often turn to court in order to seek clarification of their marital status (2002, 155). What I found interesting in the case of Palestine is that during the British mandatory period (1920-48), women who wanted to divorce their husbands but who had few valid grounds to do so, used to their advantage triple repudiations which their husbands had uttered, regretted but could not revoke. In such cases, women asked the court to confirm their husbands’ repudiation (Moors 1995,144).]
ayma to protect their daughters from the possibility of a divorce. At the same time, the case of Fathi also shows that the bride and her family try to create a balance between overcharging the future husband and including safeguards against divorce. We have also seen that the prompt dower did not play a role in protecting a woman from the negative consequences of a possible future divorce. In fact, it was only after the introduction of the khul' divorce, that its significance suddenly increased again. As we have seen, this was well illustrated in the film urdu khul'an. At first it seemed that women such as Nura and 'Afaf profited from a situation in which they could compensate their husbands by returning a prompt dower which often only consisted of a symbolic amount. Judging from Nura's body language I had even been under the impression that she was happy to have been able to humiliate her husband by pulling him out like a bad tooth through the payment of only one pound. Nura's husband had reacted by refusing to accept the one pound as a result of which it is still waiting for him in the safety of the court. Other men, however, soon started to appeal in court about their wives' payment by claiming that the prompt dower, as registered in the marriage contract, did not correspond with the amount which they had paid in reality. According to an article which appeared in the well known Egyptian magazine ruz al-yūsuf, many husbands did appeal about the returning of the prompt dower:

“Eight thousand husbands [ninety percent] who were taken off [whose wives divorced them by way of khul'] revolted against the muqaddam al-sadaq [prompt dower]. They refused to accept the amount of mahr [prompt dower] and they brought witnesses to the court to prove that they paid more” (13-19 March 2004).

Hence, low prompt dowers would make it rather easy for women to divorce their husbands by way of khul', were it not for the fact that most husbands do not accept the dower which their wives return to them. In such cases they tell the judge that they paid more. At this point it is interesting to see how judges respond to husbands' claims and whether or not they take into account the resources both men and women have invested in the marriage. The following cartoon, which accompanied the above-mentioned article in ruz al-yūsuf, provides a preliminary answer (13-19 March 2004):

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115 See also Hoodfar (1999, chapter 2) in an anthropological study on the lives of low-income families in a Cairene neighbourhood.

116 This raises questions about the inclusion of marriage stipulations in the marriage contract. While it is common to use the shabka and the deferred dower as a means to deter husbands from divorcing their wife at will, it is still rare and socially unacceptable to include in the marriage contract stipulations concerning divorce.

117 The verb khula'a can be used to denote both the pulling of a bad tooth and the act through which a woman divorces her husband through khul'.
It states that the husband, who is walking out of the Personal Status court and whose wife divorced him through *khul’*, has been returned all the *mahr* which he paid. The sentence at the bottom reads a line from the song “*salma ya salama*”. This song is often used in the context of someone returning home safely and/or gainfully.\(^{118}\)

**Judges**

The problems concerning the prompt dower soon prompted many lawyers, judges, and NGOs to take up their pen and many booklets started to circulate in which the issue of defining the prompt dower took a prominent place. What I found interesting is that none of these booklets posed the question as to how judges should handle cases in which husbands tried to evade paying taxes by registering a low prompt dower while in reality these husbands themselves had claimed to have paid more.

The booklets as well as numerous interviews with judges show that judges know about the practice of not registering the real amount in the marriage contract and that they are of the opinion that an investigation should be opened to establish the real amount of prompt dower which the husband paid the wife. For example, judge Hasan, working in the court of Kafr al-Sheikh, said that some judges will open an investigation and some will not. Why is there this difference, I asked him? “Because there is no legal text which explains what the judge should do.” In the

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\(^{118}\) This song was composed by Sayyid Darwish (1892-1923), considered one of Egypt’s greatest musicians and composers.
same vein, other judges, lawyers, and women’s rights organizations also frequently mentioned that the lack of an Explanatory Memorandum is responsible for the difficulties which surround the implementation of *khul’* in the courts. For how should this amount be established if there does not seem to be an Explanatory Memorandum which explains how the dower should be interpreted? Judge Muhammad, working in Kafr al-Sheikh, even told me that: “If you want to do your research seriously you have to be aware of the fact that the returning of the dower is responsible for most problems and delays which occur in *khul’* cases.” This judge claimed to stick to the amount of dower as registered in the marriage contract. I asked him why. “Because that is the official amount,” he responded. “Yet,” he continued, “many other judges rather open an investigation and since this takes up a lot of time, many cases are considerably delayed.” Other judges I spoke to confirmed that the problems caused by the restitution of the prompt dower are the main reason why most *khul’* cases are delayed.

Apart from taking up a lot of time, some women interviewed reported that in the end they had to return not only the prompt dower to their husbands but often the *shabka* (engagement gifts, usually consisting of gold) too and sometimes even the *ayma* (a list stating the furniture which belongs to the wife) and the deferred dower. While one can agree to paying back the *shabka*, after all this forms part of a husband’s contribution to the marriage, we should also not forget that the *shabka* often consists of gold which many women sell in case their households face financial hardship. As for the *ayma* and the deferred dower, it seems strange that women have to pay back the *ayma* and the deferred dower since the former consists of a list stating the contribution of the wife to the marriage while the latter is a financial safeguard which a woman is entitled to when her husband dies or when he divorces her. Consequently, women who have a very small sum of prompt dower registered in their marriage contract, pay back different sums of money, diverging from one pound to cases in which they also pay back the *ayma*, the *shabka* and the deferred dower. Apparently judges often do not only take into consideration that husbands have paid more to the marriage than the symbolic amount of prompt dower which is registered in the marriage contract, they even appropriate a woman’s financial contribution to the marriage by ordering her to return the *shabka*, *ayma* and sometimes even the deferred dower to her husband which he has never paid out at all. In this way, judges indirectly...

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119 Akbar Warraich and Balchin argue that in Pakistan “Family law as a whole is undermined by numerous practical problems arising out of a lack of procedural clarity” which are often the result of “customary practice and social attitudes moderate the behaviour of the legal system and influence trends in interpretation” (1998, 187).

120 In a study on Family Courts in Egypt, Al-Sharmani also notes that some female litigants had to pay back the deferred dower to their husbands (2008, 20-1).
contribute to the prediction becoming true that *khul’* is a rich-women-only divorce. What reasons can they have for doing so?

4.6 A “precedent” and its evasion

During a visit to Judge Hasan, whom I knew quite well and who was former judge of the Zananiri Court in Cairo, he had confirmed that *khul’* cases might take a year or more instead of six months due to problems concerning the returning of the dower.121 “The fact that *khul’* cases sometimes take a year or more is related to the fact that judges have to investigate how much the husband paid the wife upon marriage” he had said. His colleague and friend of mine, Ranya, had added that the investigation was done by the prosecution whereupon Judge Hasan had corrected her by saying that it was done by the court itself. Subsequently, I had taken the opportunity to show him an article which appeared in an Egyptian newspaper a few months earlier. It mentioned that, due to the problems the restitution of the prompt dower causes, three judges of the Cairo Personal Status Court decided to set a precedent in January 2004 by stating that “…The [personal status] court confirmed not to pay attention to the contentions of the husbands as long as they are not sustained by evidence; in that case they are tantamount to a trick aimed at sabotaging the case rulings” (al-akhbār 9 January 2004). Judge Hasan had reacted by saying that in ninety percent of the cases the couple only registers one pound in the marriage contract and that, for that reason he still thought it to be fair that the judge opens an investigation in order to establish how much the husband paid his wife in reality. He had continued by saying that these judges were not sincere and that he suspected them of wanting to finish as many cases as possible in a year. In order to underline what he had said about the unlikelihood of men only paying one pound as a prompt dower, he had remarked that husbands from the higher classes definitely do not register one pound in the marriage contract. That would be a shameful thing to do. “Look, I am a man. I have to show that I can prepare for a house, a car and so on for my wife.”122

There are some interesting features to this interview fragment. First, where Ranya (and other judges and lawyers too) was under the impression that the investigation into the husband’s payment had to be conducted by the prosecution, Judge Hasan had corrected her by claiming that the court itself had to do the investigation.123 Hence, besides the fact that there does not seem to be an

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121 Interview with Judge Hasan, Sep. 22, 2004, Cairo.
122 In the case of Palestine, the opposite happens. From the 1960s onwards, it became popular among the upper classes to only register a very low prompt dower (Moors 1995, 106-8).
123 In Pakistan, the country where *khul’*, in the form of an unilateral divorce, was introduced as early as the 1960s, the husband is the one who needs to prove that he paid more prompt dower than was registered. Judges do not accept a simple oral claim by him as sufficient evidence and force him to come up with documentary proof to sustain his claim. Besides, if the husband does not explicitly demand the
Explanatory Memorandum explaining how to define the *sadaq* (dower), there also appears to be a great deal of confusion regarding the type of court that should lead the investigation into a husband appealing the returning of the dower.

A second interesting feature that springs from the interview with Judge Hasan and Ranya is the way Judge Hasan reacted to the newspaper article. After I showed him the relevant precedent in the newspaper, Judge Hasan claimed that the precedent is not a binding one since it was not established by the court of Cassation, a prerequisite for a precedent to be binding. As a result, this judge did not consider the precedent to be binding, although he admitted that returning the dower causes delays in *khul'* cases. However, what I found more interesting is that he did not stress that men’s allegations might be a trick to delay *khul’* cases. Instead, he still claimed that it was fair to thoroughly investigate whether or not the husband paid the wife more than the prompt dower registered in the marriage contract. As Judge Hasan in Cairo remarked on this occasion: “If I am under the impression that a woman has an eye on another man I will make sure that she pays back to him everything he ever gave her. I will make sure he gets his rights and that she pays back everything to him. Otherwise he will not be able to marry again.”

Apparently, this judge is of the opinion that women who file for *khul’* are only looking for other men to marry, behaviour which is unacceptable to him since these women use the money their husbands invested in the marriage in order to marry other men as a result of which the divorced husbands no longer have the financial means to marry again. Most other judges whom I showed the newspaper article reacted in the same way. Of special interest is the case of three judges working in the court of Kafr al-Sheikh, a provincial town in Lower Egypt. On the first of April 2004, I had entered this court with a friend of mine, Muhammad, in order to observe some personal status cases. Inside the court building Muhammad had asked a lawyer the way to the court room. The lawyer, who was an influential lawyer in KAS, said that the sessions for that day were over but that he could take us to the room where the three judges were residing. When I explained my research to the judges and after I had asked them some questions in Arabic, one of the judges turned to Muhammad and the lawyer telling them the following:

returning of the compensation, it is not obligatory for the wife to pay any amount at all: “If the wife fails to pay the *zar-i-khula* ordered by the court, her divorce is still legally valid. Meanwhile, if the husband still wants to receive the payment, he has to file a separate civil suit against his ex-wife. This might cost him more money than the *zar-i-khula* was worth... (She December 2004, 265).

This practice contradicts the attitude of Pakistani judges. According to a Pakistani article, judges were often willing to accept small, symbolic amounts as the *zar-i-khula* if they felt that the husband was at fault (She December 2004, 264).
“Most khul’ cases are filed in the countryside. In the cities women can live anonymous lives. As a consequence they can and do have many illegal relationships. Here in Kafr al-Sheikh this is not possible. So, if a woman has an eye on another man, she will have to divorce the first husband first. For this reason, women in the cities prefer to file for a judicial divorce. They do not want to give up their rights and they do not mind if their case might take a little longer than a khul’ case because in the mean time they can still enjoy an affair with another man. So, don’t trust women’s tears in court. These are just crocodile tears. All women cry in court.”

The judge did not address me, maybe under the impression that I would not fully understand. Judging from the body language of Muhammad and the lawyer it was clear that they felt very uncomfortable and Muhammad did not dare to translate this judge’s words to me. “I will tell you later, outside” he hissed. The lawyer asked me, in Arabic, if I had more questions left, clearly wishing the meeting to come to an end. Following up on the judge’s remark, I decided to pose a last question and asked the judge to explain to me why some women file for a judicial divorce and why others want to divorce by way of khul’. Interestingly enough, the judge now became more subtle and less outspoken and used the legal categories under which a woman must fall in order to become eligible for a judicial divorce, such as abuse and desertion, to denote the difference. I found this interesting and back in Cairo I tried to find out how other judges would react to this question. Would they tell me that khul’ women are only looking for other men or would they explain the difference in legal terms? In the Zananiri Court in Cairo, Judge Magdi, for example, reacted as follows:
NS: “Do women who divorce by way of a judicial divorce and women who file for a divorce by way of *khul’* have different reasons for the divorce?”

JM: “Yes, women who file for a judicial divorce are suffering from maltreatment by the husband, desertion or a second marriage of the husband. Women who file for *khul’* have reasons unrelated to the reasons I just mentioned.”

After a few interviews I was under the impression that most of the judges have a dual discourse. When being “officially” interviewed, most of them have a tendency to explain things according to legal categories. In a more informal setting they tend to stress that *khul’* women are emotional and demanding. Cases in which a woman files for a *khul’* divorce will only encourage this line of thinking since women do not need to state their reasons for divorce which leaves ample room for judges to interpret those women’s cases as they like. Although I (regrettably) never asked the judges what made them think that women want to divorce in order to marry a second husband and why they think that husbands really paid more than one pound, I was often under the impression that judges’ class background (the greater majority of the judges are from the upper classes) influences the way they perceive female litigants who ask for a divorce through *khul’*. As we have seen, Judge Hasan said that in reality husbands pay much more than one pound for the simple reason that if they do not impress their future wife (and her family) with a nice apartment and a good car, they fail in their role as men. What adds to this is the information Judge Muhammad provided me with during an interview at the Zananiri Court in Cairo.

Seemingly, this judge had a good idea as to what husbands from different classes spend on marriage preparations. During the interview he told me that whereas the number of *khul’* cases had been high in the beginning, the number of *khul’* cases was now declining in comparison to the old-style judicial divorce. As a

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123 Interview with Judge Magdi, Jun. 5, 2004, Cairo.
126 In the Netherlands, a Dutch Parliamentarian requested research into the societal background of judges in general and those of the High Council specifically. A survey had revealed that Dutch judges were detached from reality and as a consequence, their representativeness was in question. The survey which was conducted as a result of the Parliamentarian’s request, revealed that the majority of the judges were from the upper classes (Huls 2004). Something similar transpires in the case of Yemen, where Würth presents a case of a woman which Würth and the rest of the audience in the courtroom found astonishing. Astonishing since the woman was able to address the judge in eloquent literary Arabic. This contradicted the majority of the cases in which educated judges are confronted with clients who are not well educated and who speak unintelligible dialect to them (1995, 321).
127 Although I do not deem it unlikely that a husband from the upper classes buys a car in the name of his wife, I wonder whether he will buy an apartment in her name.
consequence, whereas the majority of khul’ women had first been from the higher classes, lower class women became the major consumers of khul’ later. I did not understand and asked the judge to explain to me why this was the case. The judge tried to explain by asking me very patiently: “Did the registered prompt dower before the introduction of the khul’ consist of a small or big amount of money?” “A small amount of money” I answered. “So, how much did a women pay back in case of khul’?” “Something like one pound” I answered again. “Exactly, and this is why husbands from the higher classes told their sons to register the true amount, so that they would get it back in case of khul’. For this reason it became too expensive for women from the higher classes to file for khul’ and they turned to file for a judicial divorce. In the lower classes, however, the husband really was not in a position to pay more than one pound and so he always registered the true amount as a result of which it is still easy for lower class women to pay back the prompt dower” he ended.128

What I found interesting in this regard is that while the government and women’s NGOs had defended the khul’ law by explicitly claiming that it was in accordance with Islam, the judges whom I interviewed on the issue of the dower seldom took Islam or Islamic law as a point of departure in explaining why they interpreted the prompt dower the way they did, although law no. 1 of 2000 clearly states in article 3 that the prevalent opinions in the school of Imam Abu Hanifa apply when the law is unclear.129 According to Bernard-Maugiron, this especially applies to situations which concern the dower (2004, 359), in theory at least. In practice, judges rarely look for Hanafi principles (ibid, 383-4), and rather resort to the code of Muhammad Qadri Pasha (ibid, 358), or, as I argue bring to the fore their own class background and their own perceptions of women, marriage and divorce. This is interesting since the Hanafi jurists were of the opinion that in khul’ cases, women needed to compensate their husbands by paying the latter an amount which was equal to, or possibly less than, her dower, but not exceeding it in value (Zantout 2006, 3, 13, 40-1). Both Bernard-Maugiron and my observations are supported by Dupret who claims for the case of Egyptian Personal Status Law that “At the very place where it is supposed to be massive and overwhelming, that is, in personal status law, references to Islamic law are conspicuous for their paucity” (2007,97).

128 Interview with Judge Muhammad in Cairo on 13 May 2004.
129 In a study on polygamy in Egypt, Lindbekk explicitly paid attention to the question as to whether judges refer to fiqh in their rulings. She states that upon interviewing judges about their use of fiqh, it seemed they had turned the traditional sources of law in classical shari’a upside down. Their list of sources in order of priority was as follows: (1) legislation and judicial practice; (2) the Koran; (3) the sunna; and (4) the Hanafi school (2006, 111).
Hence, the data reveal that many *khul'* cases are delayed due to problems caused by returning the prompt dower. Husbands frequently appeal the fact that their wives only return the amount written in the marriage contract which, with the exception of the upper classes, often consists of only one pound. Instead of one pound these husbands claim that they paid more. Apart from the fact that it is not clear which court should investigate such a claim, it is surprising that judges as well as legal literature are not disturbed by the fact that these husbands are in fact admitting that they violated the law by evading paying taxes. Nor do they pay attention to the possibility that men might use such a claim to obstruct a smooth proceeding of the *khul'* case. Instead, they seem to be more disturbed by the idea that, according to them, many women who file for a divorce through *khul'* want to marry another man and use the money the first husband invested in the marriage for this purpose. When I asked some of the judges whether they had considered the possibility that women were opting for a *khul'* divorce because it was faster than an old-style judicial divorce, they reacted by saying that this was no longer the case since a lot of new judges were appointed a few years earlier. None of the judges mentioned women’s financial contribution to the marriage.

Although some judges oppose the idea that women want to divorce in order to marry a second man, others do not care or reason that this is preferable to adultery. However, what remains is the fact that they think women want to divorce for this reason. A polite way of saying this is by claiming that *khul'* women do not have explicit reasons for the divorce as opposed to women who file for a judicial divorce. The fact that in cases of *khul'* a woman’s reasons for divorce are not explicit, while in the case of a judicial divorce there are legal categories, such as harm and desertion by the husband, which she must fall under in order to become eligible for a judicial divorce, simultaneously reinforces judges’ perception of *khul'* women as women who want to divorce to marry another man.

Women litigants know that the way judges perceive women might influence the proceedings of their case. As early as 1975, Zaalouk remarks in a study on divorce cases initiated by Egyptian women in the Zananiri Court that: “There seems to have emerged among the women [litigants] a sensitive, instinctive knowledge of what were proper modes of behaviour, speech and appearance one had to adopt before the judges in order to secure a better chance of obtaining a divorce. Women advised each other never to mention the fact that they hoped to remarry, to always appear meek and poorly but conservatively dressed, and to mention non-support and absence as the cause of divorce.” (1975, 152. See also Fahmi 1987, 20). Almost thirty years later, not much seems to have changed. For

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130 See also Human Rights Watch (2004).
example, Hoda, a woman from the higher middle classes who lives in Masr Gadida, said to her friend Laila who filed for a divorce by way of *khul'*:

“If you go to the court tomorrow, make sure you are dressed very soberly. Tie up your hair in a knot. You are a beautiful woman. The judge and the lawyers will notice that. If you are dressed elegantly they will suspect you of having a relationship with another man.”

At this point it needs to be mentioned that although judges' perception of *khul'* women might influence the way they view such women's cases, I was often under the impression that even if *khul'* contradicts the judges' social beliefs they will adhere to it rather than have their case overruled in the Court of Cassation. As a result, judges do implement *khul'* in a legally correct way. This is underlined by Dupret who claims that with regard to Personal Status cases in Egypt, the orientation of judges and other legal practitioners is towards procedural correctness, reflecting among others their bureaucratic resistance to the possibility of being overruled (2006, 167-8). In view of this, Lombardi claims that in the nineteenth century, the Egyptian legal system was heavily influenced by the then existing (French) continental legal system in which ‘creative judicial “interpretation” was, at least theoretically, kept to a minimum…’ (2006, 63). For the case of Syria and Palestine during the seventeenth and eighteenth century, Tucker also concludes that due to the codification of (family) law, the old system lost its flexibility as judges' discretion was minimized considerably (1998, 185).

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131 Interview with Dr. Hoda Zakariyya in Cairo on 14 May 2004.
132 For the case of Palestine, Shehada states something similar. There the women’s waiting room in the court has become a forum for peer-to-peer advice (2005, 80-7). In a study on Islamic family law in Morocco and Iran, Mir-Hosseini also observes that litigants try to influence the judge by appearing poor and needy: “For the sessions, women take off their jewellery and dress shabbily; men underquote their earnings and hide their actual level of income” (1993, 29).
133 For the case of Pakistan Sheikh notes how with regard to the issue of consentive marriages: “Though both Justice Malik Muhammad Qayyum and Justice Khalil-ur-Rehman Ramday upheld a woman’s right to contract a marriage without the consent of her *wali* (marriage guardian), the wording of their judgment made it clear that they felt constrained to uphold a law that dictated a stance which was in contradiction to their own moral convictions” (unpublished paper). For the case of Jordan, Sonbol too mentions that judges in Jordan stick to the law as they do not have much leeway to interpret the PSLs in a free manner since codes and procedures have to be applied strictly. This means that “Although most judges are quite conservative, the one who could make a difference are constrained from doing so by the law (2003, 183).
134 After two hours of vehemently disparaging on the *khul'* law I asked a Sufi leader who claimed to have many judges among his following, how these judges' disapproval of the law affected their work in court. He looked at me in surprise and said: “Not at all. They are judges and so they have to implement the law, whether they like it or not.”
Nevertheless, while this might be true to a certain extent, I agree with Dupret that this does not mean that judges merely become “la bouche de la loi” since a judge always needs to interpret the law and apply it to the facts which are brought to his attention (2006, 148). In other words, “applicable law is itself an object of interpretation” (ibid) in which the act of interpretation can be constrained by judges’ orientation to procedural correctness, or facilitated by the (un)deliberate creation of legal lacunae by the legislator. The latter, I argue, transpires in the Egyptian case on khul’ where judges use the parts of the law that are not (yet) clearly defined, in an Explanatory Memorandum for example, or not legally binding, such as the principle to adhere to the amount of dower as registered in the marriage contract, as a way to create difficulties for women who want to divorce by way of khul’. In a study on decisions taken by the shari’a courts in matters related to PSL during the period 1900-55, Shaham also claims that judges who were opposing the reforms expressed their opposition by interpreting the reforms’ articles narrowly. This narrow interpretation took advantage of the existence of legal lacunae – that is, issues left undealt with by the legislators or issues that were defined in an ambiguous manner (1997, 233). This observation is important as we have seen how in the year 2000 the Egyptian legislator seemingly refrained from issuing a final Explanatory Memorandum to the khul’ law as a result of which judges were given much leeway to interpret the prompt dower as they wished. Something similar seems to apply to situations in which women file a fault-based judicial divorce on the basis of harm. In such cases, the law does not specify harm, and leaves it up to judges’ discretion to decide whether a woman is eligible for a fault-based divorce. In practice, judges often issue a ruling on the basis of the socio-economic class of the woman, whereby they reason that women from the upper classes are more easily harmed than women from the lower classes (cf. Chemais 1996, 68; Fahmi 1987, 21-3; Human Rights Watch 2004, 28-30). Hence, while Tucker shows that flexibility and judges’ discretion worked to women’s advantage, the case of Egypt makes clear that flexibility can also work against the interest of women (see also 5.4).

4.7 Emotional women and polygamy
In this section I explore in more detail the difference between women who file for a judicial divorce and those who file for a khul’ divorce. We have seen that according

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135 This is also the case in Palestine (Shehada 2005, 147) and in the secular legal system of Turkey, lower court judges often tolerate formally forbidden practices such as polygamy and informal (religious) contracted marriages (Yilmaz 2003). See also Welchman (2007, 20-1).

136 Although praising Shaham’s study, Dupret simultaneously criticizes Shaham for having failed to see that “applicable law is itself an object of interpretation” too and that a practical study of Personal Status law should always include an analysis of how judges orient themselves to legal categories (2006, 144-9).
to many judges interviewed the former have “good” legal reasons for the divorce while *khul’* women’s wish for divorce is informed by “other” reasons. Although we have already noted that “other” reasons often can be seen as a polite way of saying that women who file for *khul’* are looking for other men or have other unjust reasons, I now use the cases of women who file for a judicial divorce on the basis of polygamy to explore in more detail the precise meaning of women litigants’ “other” reasons for divorce.

During my fieldwork, a Norwegian student of the sociology of law, Monika Lindbekk, did research on Egyptian divorce cases based on polygamy. According to the judges she spoke with, (in a few cases I was present too) women can easily obtain a divorce on the basis of polygamy if they are able to prove that the second marriage caused them harm. Although five judges said that they often allowed women to divorce on the basis of both material and emotional harm, most other judges said that women in such cases can only divorce if the second marriage causes them material harm, which, according to them, means financial harm because the husband stopped providing for his wife and children, or sexual harm caused by the fact that the husband neglected his first wife sexually in favour of the other wife. These judges said that they would not grant a divorce on the basis of polygamy if the wife “simply” could not bear the thought of her husband having married a second wife.

With regard to law no. 100/1985, Monika claimed that the legislator initially intended to grant women the right to divorce their husbands on the basis of both immaterial and material harm. In the People’s Assembly there was much discussion on how to define the term “immaterial harm” (*darar manawi*). The outcome was that the People’s Assembly left the question of the definition of “immaterial harm” up to the discretion of the judges. The legal practice was quite liberal in the years that followed the promulgation of law no. 100 of 1985 (Lindbekk 2006, 70). However, in 1994 the High Constitutional Court issued a verdict in which it said that the negative subjective emotions which wives in polygamous marriages experience are not sufficient to override the benefits that arise from polygamy such as the possibilities it offers women “to having a family in whom her life finds continuity” (ibid; Arabi 2002, 347).

If women cannot bear the thought of their husbands having married other wives, they better file for a *khul’* divorce. At least, this was the message which I heard one of the judges bestow on Monika. Apparently, this judge believed that *khul’* had become a repository for women whose decision to divorce was based on emotional reasons. During the debates which I described in part one, one of the most expressed reasons for opposing *khul’* was that women were too emotional to be given the right to unilateral divorce. At the slightest sign of trouble they would rush to divorce their husbands thereby destroying their own families as well as
Egyptian family life. In general, the judges I met did not deviate from this line of thinking. Although they did not always care, it was clear to them that women’s wish for *khul‘* was often driven by irrationality and jealousy.¹³⁷

In view of this, it is interesting to mention a few fieldwork cases in which women, whose husbands married a second wife asked for a *khul‘* divorce. Were the reasons underlying their request motivated by jealousy “only” or did the second marriage cause them material harm? If we consider the case of ‘Araf again, we cannot help but concluding that her case is an example of a woman who was deserted by her husband who married one of the neighbours while ‘Araf was pregnant with their first child; had two small children from a former marriage to take care of; and was left without any financial provisions. As a result, she was forced to work again. Her case was not an exception. After Nura’s husband married a second wife, his financial contribution to the marriage declined even further while strangely enough he had also been the one who ordered Nura to resign from work after they had just married. After Nura’s husband was sent to prison, Nura too was forced to resume work. During the research I met and heard of women who were abandoned by their husbands and who either went back to the parental home or who went on living alone with their children. Since the second marriage of their husbands had caused them material harm they were all eligible for a judicial divorce through which they could have kept all their financial rights. Still they decided to file for a *khul‘* divorce instead, which they explained by saying that a *khul‘* divorce was much faster than a judicial divorce.¹³⁸ Besides, they reasoned, even if they were to obtain a judicial divorce it might take them another few years for the alimony to come forward, if at all. Apparently at least some women filed for *khul‘*, not because their suffering was purely emotional, but rather because they suffered from material harm but felt that they were not able to claim their legal rights.¹³⁹

Now one could object and claim that the cases mentioned above are exceptional cases, since statistics show that only a small percentage of the husbands marry polygamously. Cuno, for example, notes that from 1927 to 1986 the proportion of married Muslim men with more than one wife declined from 4.8 percent to 1.9 percent (in press). Most likely, however, these statistics are based on

¹³⁷ See also 5.5 and 5.6 for the case of professional arbitrators.
¹³⁸ As has been mentioned earlier, regular fault-based divorce cases can take many years.
¹³⁹ In a study on Family Courts in Egypt, Al-Sharmani also notes that women in *khul‘* and regular divorce cases seek divorce for similar reasons the most common of which are the failure of husbands to provide; husbands’ desertion and spousal abuse (2008, 21). Interestingly, according to her findings the main difference between women who file for *khul‘* and those who file for a regular divorce was that the latter “had complete financial and emotional support of their extended family” (ibid, 43). See also chapter 7.
officially registered marriages in which the husband neatly registers all his wives in the new marriage contract (a fact which the law obliges him to do). This practice does not seem to be in line with the reality which I experienced in Egypt and in which many husbands leave the marital home for another woman while they do not divorce their first wife; do not maintain her and their children; and marry the second wife through an informal so-called ‘urfi marriage. Statistics by the National Centre for Sociological and Criminological Research (NCSCR) underline this impression as they show that during the first three years of marriage 25 percent of the husbands marry another wife. Seventy percent of these second marriages end up in divorce (al-Ahram Weekly 26 February-3 March 2004). Unfortunately, I was not able to access the statistics myself and find out how the research centre had arrived at such a high number of polygamy cases. Still, I have decided to include them at this point since both the centre’s findings and my fieldwork experiences make clear that we should at least be aware of the fact that polygamous marriages, both formal and informal, might occur more frequently than statistics suggest (see also Hill, 1979, 89). Often, polygamous marriages cause severe material harm to the first marriage as the husband loses interest in his first wife and children and more often than not, reduces the money he spends on them and in some cases he completely stops providing for them.\(^\text{140}\)

This problem, however, was not paid much attention to during the debates which accompanied the introduction of the \textit{khul’} law, nor did judges believe that women could have good legal reasons for a \textit{khul’} divorce. Instead of castigating men for leaving their families in order to marry other women and for not providing for their families as a result of which women were often forced to work outside the home (again), judges and those participating in the public debate often accused women who filed for \textit{khul’} of being \textit{nashiz}. That is to say of having left the marital home for frivolous reasons thereby destroying the marital home and their families in the process. I will return to the issue of women’s disobedience in more detail in the next two chapters.

4.8 Conclusion

The debates and the films which I discussed in part one, portrayed women who filed for a divorce through \textit{khul’} as emotional and irrational beings who only wanted to divorce for trivial reasons. This picture of women, often from the upper classes, was most clearly embodied in the main female character of \textit{muHāmī khul’} Households in which the husband runs away and in which the wife is left to take care of the household alone form part of so-called “female-headed-households” (in the following: FHH). The percentage of female-headed households in Egypt reached between eighteen and thirty per cent in urban Egyptian families (Bibars 2001). I will return to the issue of female-headed-households in more detail in chapter 7.

\(^{140}\) Households in which the husband runs away and in which the wife is left to take care of the household alone form part of so-called “female-headed-households” (in the following: FHH). The percentage of female-headed households in Egypt reached between eighteen and thirty per cent in urban Egyptian families (Bibars 2001). I will return to the issue of female-headed-households in more detail in chapter 7.
who not only wanted to divorce her husband because he was snoring, but who had also fallen in love with her lawyer before her divorce case was even issued a ruling.

The story of Nura, however, represents a markedly different reality. Her story, and that of other women such as ‘Afaf reveal that women are accused of characteristics which are actually those of men. First, at least a large number of women who resort to *khul‘* are women from the lower (middle) classes (see 4.3) who want to divorce husbands who often themselves were looking for other women and who had married a second wife without continuing to provide for their first family (in the case of Nura) or who had left their first family for another woman without divorcing their first wife (in the case of ‘Afaf). As a result, both Nura and ‘Afaf were forced to work outside the home again.

Apart from the fact that in such cases women are often forced to shoulder the financial responsibility for their families, in case they want to divorce their husbands through *khul‘* they also have to compensate them by paying back the prompt dower. In contrast to the public debate in which it was claimed that only rich women would be able to do that, the prompt dower is not negotiated in marriage preparations, and often only consists of a symbolic amount. This would make it rather easy for women, from all classes, to divorce their husbands, were it not for the fact that men soon started to appeal in court the fact that their wives were divorcing them in what they considered to be a cheap way.

The question arose as to how judges would react. Would they castigate men for having evaded paying taxes (by registering a false amount of prompt dower in the marriage contract); for not providing for their families; would they recognize women’s financial contribution to the marriage or would they take the side of men? Often judges responded to husbands’ claims by commanding the wife to return to her husband not only the prompt dower but also the *shabka*, the *ayma* and sometimes even the deferred dower. Why did judges feel the need to put the *shabka* on the same footing as the dower; to appropriate the furniture which women had invested in the marriage (through the *ayma*); and why did they make them pay back a deferred dower which the husband had never paid out? Interviews with judges revealed that they were often of the opinion that *khul‘* women only wanted to divorce in order to marry another man and that women would use the money which the first husband had invested in the marriage to marry the second husband. As a result, the bereaved first husband would not be able to marry again. This picture, however, was not in accordance with social reality as the fieldwork data show that women’s (and their families’) financial contribution to the marriage is increasing, something which is most clearly illustrated by the fact that in the 1990s more than twenty-five percent of the
marriages in Egypt was the result of women marrying men who were not only younger of age but also from a lower class.\footnote{141 In chapter 8, we will see that this also applies to situations in which men and women conduct informal marriages.}

Yet, most of the judges interviewed not only did not recognize women’s financial contribution to the marriage but they seemingly also failed to see that sometimes women were the main providers in their families. Instead (like opponents in the public debate) some judges called **khul’** women **nashiz** (recalcitrant). On a legal level being declared **nashiz** signifies that a woman has disobeyed her husband and no longer has a legal right to be maintained by the latter. Disobedience by the wife towards the husband often implies that the wife has left the marital home without his permission. While it is true that **khul’** women often leave the marital home in order to work we have already seen that their absence from the marital home was not motivated by a desire to pursue a career – as was the case with Maha in **ur’dhu khul’an** - but rather they tried to make ends meet as their husbands were not willing to provide for their families. What is more, where **khul’** women were accused by judges of using the divorce to marry another man, we have seen earlier that often these women’s husbands were the ones who had left the marital home for another woman and who were destroying their families financially, by not providing for them, as well as emotionally.

Husbands were not called to account by judges. To the contrary, it seems as if men’s failure to provide; the fact that they were looking for or even marrying other women; and the fact that they appropriated women’s financial contribution to the marriage were projected on women and as such women became symbols for problems which men were having. In the same way as the cartoons had illustrated a process of gender role reversal, the social practice of the dower in **khul’** cases also shows that what is at stake is a process of reversal, this time of reality. On a judicial level this was expressed by ordering women to give to their husbands their furniture, their gold and sometimes even a deferred dower which they had never received. The very fact that judges were in a position to treat women in this way was facilitated by the legislator who had seemingly refrained from issuing a final Explanatory Memorandum through which it could have explained how to define the prompt dower. This created a legal lacuna as a result of which judges were in a position to use the prompt dower, of all things a symbol of women’s increased financial contribution to the marriage, as a means to make it difficult for women to obtain a divorce through **khul’**.

Hence, the practice of **khul’** in the courts reveals judges’ perceptions concerning changing gender norms and the financial contributions of men and women to the marriage. To some extent these perceptions reflected judges’ own upper class background. Where these judges’ perceptions were in line with the
public debate on *khul’*, there was also a difference between the statements of judges and the ones in the public debate in the press. In contradistinction to the public debate in the press, judges seldom referred to Islam (ic law) to explain why they acted as they did.

What applies to the dower equally applies to the issue of legal arbitration. While women who ask for *khul’* are accused of destroying the family and as a result have to undergo arbitration, in cases where husbands (literally) run away from their marital responsibilities, the welfare of the family is hardly ever considered, nor are these husbands subjected to a compulsory legal form of arbitration for the sake of the family. This led Human Rights Watch, in its report on divorce in Egypt, to conclude that: “Taken to its logical conclusion, the troubling implication of the court requirement that women, and only women, attempt to reconcile with their spouses is that only women are capable of destroying the family (2004, 26).”

In the next chapter I elaborate on the phenomenon of arbitration in *khul’* cases.

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142 For the case of Jordan, Sonbol also states that in the case of divorce “the good of the community” is not considered in cases where husbands abuse their right to divorce or polygamy (2003, 179).