Khul' divorce in Egypt: public debates, judicial practices, and everyday life
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6 Maintenance and obedience: Egypt’s changed reality

6.1 Nura wants to work abroad\textsuperscript{180}

Nura wanted to introduce me to her colleagues, so we had arranged to meet in front of the post office where she was working. When I met her there, she explained to me that she worked six days a week from eight until one, after which she always went home to prepare lunch and watch television for the rest of the day. Since she had left her children at her mother-in-law’s house, she no longer had many obligations after work. She used to see her children after school in the late afternoon. However, now that their timetables had changed she had to go to their school early in the morning in order to be able to see them.

When we entered the post office she introduced me to her colleagues who were very welcoming and friendly. Most of her colleagues were female, except for her boss and one other male colleague. Nura urged me to sit down and proudly presented our breakfast of \textit{mahshi} (one of Egypt’s most famous dishes) which she had prepared at five o’clock that morning. She talked a lot about her children and, like in court she opened her wallet to show me photos of her children. She told me that her eldest daughter would turn thirteen next week and that she was very worried about her since she had to repeat a year at school. According to Nura this was due to her, and her two younger brothers missing Nura a lot. “Every time they see me, they tell me that they want to live with me. Unfortunately this is impossible,” she said. “My mother is opposed to the idea. She thinks that the house is too small; that we do not have money to provide for them; and that three children in such a small house will cause a lot of \textit{dawsha} (noise). Well, I guess my mother is right. We only have one room and a kitchen without running water. My mother is disabled and never leaves the house. It is not fair. My mother-in-law receives a lot of money from her children who work in Saudi Arabia and Kuwait. She uses part of the money to raise my children. However, if I want to take back my children, she is only prepared to give me an allowance of a hundred pounds a month. Of course, that is not enough. Three hundred pounds is the minimum for raising three children. At the moment, I only earn 79 pounds a month. Here at work, I am the only employee who does not have a permanent contract. I work on a temporary contract basis and they can fire me whenever they want,” she finished her story.

At noon, just before I wanted to leave the post office, Nura’s boss summoned Nura to come, telling her that her daughter was on the phone and that she wanted to talk to her. Nura jumped to her feet and ran to the phone. “I will see

\textsuperscript{180} Meeting Nura at the post office, Feb. 17, 2004, Cairo.
her on Thursday at seven o’clock in front of her school,” she said happily when she came back. Nura was still hoping that she would be able to find work which would pay better. She asked me if I knew a solution. Just like the times I met her in court, she told me that she hoped to find work in the Emirates where she knew people who could employ her. “But first I have to be divorced, otherwise I need my husband’s permission to travel and of course he will never let me go. In the meantime I will try to find a second job so that I can rent a flat and take back my children,” she said.

I asked her why her husband had married a second wife although he knew that he would go to prison soon. Nura said that she did not know. “Because he is very selfish I guess,” she said while shrugging her shoulders. “And what about his mother, can’t she take financial responsibility for you and his children if he is not able to shoulder his responsibilities?” I asked her. “Well, that is the way it should be. But she really spoiled him and the other members of his family did so too. After all he has done, they still provide for him. After I left the house of my mother-in-law, I first went to live with my sister who lives near to them. This enabled me to still see my children a lot. However, after a while I decided to move in with my mother who lives far away from my children’s school. I felt I did not have a choice, as the husband of my sister got tired of my presence in the house and the fact that there was another mouth to feed. Next month it will be a year since I left my sister’s house,” Nura said sadly.

Upon overhearing our conversation about mothers-in-law, a colleague of Nura joined our conversation. She had just become the mother of a baby son called Yusuf, who was lying in a cradle next to her desk. Like Nura she was eager to tell me about her problems with her mother-in-law. “I live with my mother-in-law too. She is my mother’s sister,” she started to tell me after which I interrupted by saying: “So, she is treating you well, isn’t she?” “Not at all,” she replied, “She should treat me nicely since she is my maternal aunt, but she does not,” Nura’s colleague said. She wanted to continue but she was interrupted by Nura who said that she does not see her mother-in-law any longer. “She is killing me,” Nura said, as she was pointing at her knee which was infected and which was causing her a lot of pain. “The doctor already gave me six injections, and now I have to take a lot of pills. All the problems come from the pressure in my head. I could have been paralysed, just like my mother,” she finished her complaints. The mother of Yusuf had to laugh and said that Nura’s problems with her knee were simply a result of her and so many other Egyptian women being overweight. And indeed, Nura, who was short, weighed more than a hundred kilos. Another female colleague of Nura, who was also clearly overweight, said that her husband would divorce her if

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At the time of this visit (17 February 2004) women no longer needed the permission of their husband in order to be able to travel (see also 6.2).
she were to lose weight. One of the few male employees in the department was tall and slim and he addressed me by saying: “This” and he pointed at Nura and the other woman, “is the result of eating a lot of mahshi. So, you better be careful, Nadia. I refuse to eat a lot of mahshi and for that reason I am still rather slim,” he said jokingly.

Another female colleague of Nura joined our table. She looked like she was in her forties and told me that she had been working at the post office for more than ten years. She looked serious when she told me that she wanted to find a good husband for Nura. “I know a lot of nice men and hopefully one will be Nura’s next husband. I want to help her. Nura is afraid of her husband because she is divorcing him by way of khul’. He will not like that at all and therefore she is afraid of his reaction,” she told me. “But at the moment he is in prison, isn’t he?” I asked her rhetorically. “Yes, he is, but it will only take a few years before he will be released again,” she said anxiously whereafter she asked me if I could find Nura a Dutch husband so that she could leave the country in order to earn money. I told her that he should be Muslim. “Or a Christian who does not mind that his children will be raised by Islamic standards,” she replied. I was not sure whether Nura minded us talking about a new husband or about religion, but it was clear that she tried to change the subject by introducing me to her “habibi” (darling), a boy in his early twenties who worked at the office performing all kinds of errands for the employees of the office. He was standing in the background for a while listening to our conversation but finally decided to approach Nura to ask her if the foreigner (me) knew about khul’. Nura told him something which I did not understand but he grabbed a chair and started to tell us about the sister of his mother who also divorced her husband by way of khul’. “Why?” Nura asked him. “Because they were always fighting,” he replied. Nura turned to me and said that the boy’s aunt had deserted her children too. “Did she really leave her children after the divorce?” I asked him. “Yes,” he replied, “she really did so since she was unable to provide for them.” “You see,” Nura said almost relieved, “I am not the only one. She is in the same circumstances as I am.”

Shortly after, most of the employees left the office as it was time to go home. I found myself alone with Nura again and while Nura was putting the pan with the mahshi leftovers in a plastic bag for me, I decided to ask her about ‘Afaf’s whereabouts. Instead of telling me how ‘Afaf was doing, Nura started to castigate ‘Afaf for not being muta’allima (educated) and for just saying everything that came to her mind. “‘Afaf can hardly write her name,” she continued, “and her case is on the 22nd of February. I wanted to call her, but it seems that she was not at home. By the way, I will go to my village again on Thursday or Friday,” she said. Nura gave me the bag with the mahshi leftovers after which we walked to the buses. On our
way, she showed me a small bottle of perfume. “It costed 17 pounds. I bought it in instalments,” she said. Then she had to run in order to catch her bus.

6.2 Going abroad: only a prerogative for rich women?
After I left the post office I kept thinking of how Nura’s colleague was trying to find Nura a new husband while Nura herself had repeatedly made it clear on that and on other occasions that she did not want to marry again. Marital life had disappointed her and besides that, her mind was more occupied with getting her children back. So, where Nura was concerned about finding a (second) job, preferably abroad, her colleague talked about a new husband. In other words, where Nura was hoping for a future in which she was no longer dependent on a husband and in which she would be able to provide for her children, her colleague wanted her to return to a situation in which she would be dependent on a husband again. However, marrying again while simultaneously regaining custody over the children do not easily go hand in hand. Apart from the fact that women lose their right to custody if they remarry, it is also unlikely that a man would consider providing for three more children who are not his. According to Nura it was even of paramount importance to divorce her husband and remain single, since she was of the opinion that if she wanted to travel abroad in order to find work, she would need the permission of her husband.

In this light it is interesting that the draft law of the “khul’ law” (law no. 1 of the year 2000) was not only criticized for giving women the right to unilateral divorce, it was also criticized for allowing women to travel without the permission of the husband. Yet, where the khul’ article finally made its way through the Egyptian Parliament, the travel article was so controversial that it was struck from the draft law altogether (see 2.5). What the khul’ article and the travel article had in common though, was the criticism they conjured: they were said to be designed for rich women only.

However, many Egyptians, who live and work abroad, are from modest backgrounds as they are migrant workers in the countries of the Gulf, Jordan, Lebanon and Libya. Although, it cannot be denied that the majority of the Egyptian migrant workers are male, during my fieldwork I came across a few cases that show that situations of economic hardship force women to migrate too,

182 For a legal overview of the allocation of custody in Arab states, see Welchman (2007, 137-42).
183 Although the situation might have changed somewhat as a result of the establishment of big industry clusters such as Dubai Media City (DMC) and Dubai Internet City (DIC). Dubai Internet City, for example, has over 850 companies employing more than 10,000 workers (http://en.wikipedia.org/wiki/Dubai_Internet_City, 28 July 2008). It would not surprise me if many of its workers are from Egypt as DIC claims that its skill and manpower opportunities are good due to its strategic location between two large pools of highly skilled knowledge workers –Egypt/Jordan and the Indian subcontinent (http://www.dubainternetcity.com/why_dubai_internet_city/, 28 July 2008).
or at least make them consider travelling abroad for a while in order to find better job opportunities. For example, whereas Nura wanted to work as a murabbiyya (nanny) in an Egyptian family living in the Gulf, a client of lawyer Abu Bishoy had worked as a teacher in Oman. Her husband, who was much younger than she was, had decided to follow her and, apart from stealing the money she had earned with her job, he had also accused her of adultery after which she had decided to divorce him by way of khul'. A client of lawyer Waguih was working as a nurse in Saudi Arabia, while her husband, also younger, who was working as an electrician had stayed behind in Cairo. In another case Amina left Egypt in order to work in the Gulf as a teacher. She was from a small village close to Dumyat (provincial town in Lower Egypt) and although she had always worked as a teacher in the village, she and her husband had decided that wages in the Gulf were much better. She was the first to leave Egypt. Her husband and children were to follow her later. The last case I came across concerned an unmarried upper middle class woman in her late forties who decided to migrate to Yemen in order to find a better paid job. She chose to live in Yemen because her brother already worked there as a judge.184

Although it is well known that the majority of female domestic workers in the Gulf, Jordan and Lebanon are from South-East Asia (Sri Lanka, Indonesia and The Philippines), the examples show that at least a small number of Egyptian women work there too. This is not strange given the fact that many Egyptian women work as domestic servants or teachers in Egypt. In light of the fact that between 18 and 30 percent of the total number of Egyptian households consists of female-headed-households I would not be surprised to learn that the number of women who consider working abroad is even larger than expected.185

What is important in this regard is the observation that during my visit to the post office where Nura was working, Nura was of the opinion that she could only travel abroad after her divorce had been finalized. If she was still legally married, her husband would definitely object to her wish to travel without his consent. Apparently Nura did not know that this was no longer the case. Although the travel article had been struck from the initial draft law, it was still silently implemented in November 2000 (see also 2.5). During an interview with judge ‘Abdalrahman, one of the main drafters of the “khul’ law”, he mentioned that most women are not aware of this amendment and that they still think that husbands can prohibit their travelling.186 If this was not the case, the number of women who

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184 In a study on the Egyptian women’s movement, al-Ali also mentions how after her father’s death, one respondent had lived in Saudi Arabia where her mother was trying to scratch a living by working as a teacher (2000, 86).

185 I am aware of the fact that the total number of female-headed-households also includes households in which women were left alone precisely because the husband migrated to work in the Gulf.

186 Interview with judge ‘Abdalrahman, 28 January 2004, Cairo.
might consider working abroad or who might actually take the step to work abroad, might be even higher.

Although research has been done on male Egyptians who work as migrant workers in the Gulf, as far as I know, no research has yet been conducted on Egyptian female migrant workers. Such an investigation is important, especially after the Minister of Labour and Immigration signed a memo in June 2007 to the employment of 12000 Egyptian women in Saudi Arabia (Haaretz 7 June 2007). The agreement raised a loud outcry of protest because people feared that women would become prostitutes. The protest involved a gender element as well, as people wondered why women rather than men were being sent to Saudi Arabia. One opponent remarked that it would have been better if the Minister had solved the unemployment of young men since men who find work will marry immediately and thus solve the problems of young single women too (ibid). This, as we have seen in chapter 4, is not totally in line with reality as women increasingly contribute to marriage preparations, among others because men sometimes marry women who are many years their senior. In fact, in two out of the five cases which I just discussed, the migrating woman was married to a younger husband.

The new developments concerning Egyptian women working abroad enhance the importance of the cases which I presented above. Although their numbers are too small to allow for strong inferences, I still consider these cases to be significant since we observe again how a draft law was criticized for merely being a law for rich women while it is not unlikely that a large number of women who would profit from a law which gives them the right to travel without the consent of the husband, would be women from poor or modest backgrounds. This not only challenges the accusation that the “travel article” was merely designed for rich women. It also, and more significantly argues against a prevalent notion in Egypt of women in roles as mothers and housewives confined to the house. The cases which I presented show a different reality since women were the ones who were travelling abroad for the sake of work, leaving the (ex-) husband and sometimes also the children (temporarily) behind. In most cases husband and wife agreed that the wife would go abroad in order to look for better work opportunities. These women left the marital home with the permission of the husband.

In Nura’s case, however, the situation was more complex as her husband had summoned her to give up work after they married. How would he agree to Nura working abroad now? Moreover, according to the Personal Status Law of 1985, women are not allowed to leave the home for the sake of work without the permission of the husband. Nura would have been declared nashiz (recalcitrant) if she had left the marital home in order to work. At the same time, however, the
decision of the High Constitutional Court in November 2000 gave her the right to travel without her husband’s consent, at least this is how the decision was explained to me by the high judge who was one of the main drafters of the “khul’ law” (and how the reform was presented in newspapers). In my opinion, these conflicting messages about women’s obedience at the legal level, reflect changes taking place at the societal level where the issue of women’s obedience and men’s duty to provide forms a recurrent issue in marital disputes and often leads women to run away and petition the court for nafaqa. This subsequently prompts husbands to submit a ta’a claim. I will discuss these court actions in the following sections.

6.3 Women who abandon the marital home & the issue of ta’a
Let us now consider the following story from the 1970s. Although this story and the following story are about the divorce experiences of men from the upper (middle) rather than the lower (middle) class, for reasons that will become clearer below, I have decided to include them at this point.

Mahmud, doctor at a Cairene university, married his first wife in the early seventies. Soon after she got pregnant problems started. According to Mahmud, his father-in-law, who was a judge of good standing, was very demanding and afraid that Mahmud would not be able to give his daughter the life which he thought she deserved. He urged his daughter to ask Mahmud to divorce her which Mahmud refused. After his refusal, his wife ran away to her parents and subsequently filed for nafaqa, claiming that Mahmud was not providing for her. She demanded a large amount of money and in an effort to stop her claims, Mahmud’s lawyer advised him to submit a ta’a claim. Mahmud was shocked and told his lawyer that he would never do such a thing. “I am not going to drag my wife back home,” whereupon his lawyer told him that he had no other choice if he did not want to go bankrupt. Reluctantly, Mahmud submitted a claim for ta’a. Soon after that, his wife, her father and Mahmud came together and they decided that Mahmud would drop the ta’a claim and pronounce the talaq. In return his wife and her father promised to drop the nafaqa claim.

The story of Mahmud resembles the story of the Ain Shams doctor of the “breakfast story” (see 5.5) in several ways. Both men were doctors at a university; having troubles with a meddlesome father-in-law; and reacting to their wives’s running away from the marital home by submitting a ta’a claim. Nura’s husband did not submit a ta’a claim, but it is very probable that this was because he was in prison at the time Nura filed for a khul’ divorce. In many other cases, however, I

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187 See also Al-Sharmani (2008, 24). This is not only the case in Egypt. For an overview of cases outside Egypt, see Antoun (1990: Jordan, see also 6.4); Mir-Hosseini (1993: Morocco and Iran) and Peletz (2002: Malaysia). In the court of Gaza City, women also file a lot of nafaqa cases, but the number of ta’a cases is low, only forming 1 percent of all lawsuits (Shehada 2005, 151, 222).
found that husbands reacted to their wives’ leaving of the marital home by submitting a ta’a claim. The pattern in the pre-khul’ as well as in the khul’ era is often the same: the wife leaves the marital home without the permission of the husband after which the husband reacts by submitting a ta’a claim, which subsequently prompts the wife to oppose the ta’a claim by filing for a divorce in response (see also Brown 1997, 214, and Würth (1995) for the case of urban Yemen), be it a judicial or a khul’ divorce. Moors notes a similar pattern in Palestine: women who feel badly treated by their husbands return to their father’s house after which the husband sends mediators to persuade her to return home. Placing conditions on her return, she might accept but when mediators are not able to solve the marital dispute, women often submit maintenance and suitable housing claims which subsequently prompts husbands to control the damage by submitting a ta’a claim (1995, 143). At this point, I will first elaborate on the precise legal and social meaning of ta’a.

6.4 The meaning of ta’a (obedience) on the legal and social level

In a study on litigant strategies in an Islamic court in Jordan Antoun notes that in 1959-60 “…the largest single category of cases involved a wife’s demand for maintenance (63).188 The second largest involved the husband’s demand for conjugal obedience [underlining is mine] (1990, 25). A few decades later the situation in neighbouring Egypt is not much different as the concepts of women’s obedience (ta’a) and maintenance (nafaqa) are often bracketed together, both on a social and a legal level.189 Where the law assigns husbands the legal duty to support their wife and children, wives have a legal duty to be obedient to her husband in return (article 1 of law 25/1920; article 11, bis. 2 of law 100/1985). Although the link between maintenance and women’s obedience on the legal level is clear, the precise meaning and nature of women’s obedience is not. According to Najjar “obedience involved the wife staying at home and not leaving without his permission, and giving him sexual enjoyment” (cited in Welchman 1999, 331). The explanation of disobedience in the Explanatory Memorandum of the 1979 PSL reads: “the most obvious manifestation of this obedience is that the wife lives in the marital home which the husband has prepared for her” (jum’a, 261; Welchman 1999, 122). Differentiating between overt and covert forms of disobedience, Fluehr-Lobban and Bardsley-Sirois found that courts have been reluctant to become involved in

188 According to Welchman, maintenance claims still constitute a primary reason for women in Arab states to turn to court (2007, 93). The same applies for women in Malaysia (Peletz 2002, chapter 3).
189 According to Welchman there are only four Arab states in which the legal code makes no mention of a wife’s duty to obey her husband. These are the codes of Tunisia (1993), Libya (1984), Algeria (2005) and Morocco (2004) (2007, 94).
allegations of covert disobedience since they take place in the intimacy of the marital home and are hard to prove as a result of that. For this reason, disobedience has become associated with more overt forms of disobedience, such as cases in which a woman leaves the house of the husband without his consent (1990, 40).

What these different descriptions of obedience have in common is that they point to a duty for women to stay in the marital home. In a society, however, which requires women to participate in the public economy as a result of which women, like men, contribute to the household income, such a definition of obedience becomes unpractical. As a result, law codes in Arab states concerning women’s obedience to her husband usually also deal with the wife leaving the marital home in order to go out to work (Welchman 2007, 97). In Egypt, article 11, bis 2 of law no. 100/1985 reads that a woman who leaves the house to go out for work does not lose her right to maintenance, unless she abuses this right, when it harms the interest of the family and when the husband has requested her not to exercise this right (see also Fawzy 2004, 39). Hence, in Egypt, women’s specific right to work and their right to leave the marital home in general, are still very much dependent on the permission of the husband. The decision of the High Constitutional Court to give women the right to travel without the permission of the husband (see also 2.5), is in contrast with this. This contradiction in the law is reflected in public debate. On the one hand, opponents of women’s liberty base their arguments on the 1985 PSL, while on the other hand, advocates of women’s rights lean on the decision of the High Constitutional Court and see themselves backed up by daily reality.

Not surprisingly, the issue of women’s obedience and freedom of movement especially surfaced during the introduction of the khul’ law as the Egyptian khul’ divorce considers the consent of the husband to the divorce irrelevant and, as a consequence, this type of khul’ divorce highlights women’s disobedience par excellence. At the judicial level this is reflected by the fact that the practice of khul’ is often equated with disobedience. For example, in some legal textbooks khul’ is defined as disobedience or recalcitrance on the side of the wife, while in other sources it is claimed that women who resort to khul’ are hypocrites whose lot will be hell (reciting a saying of the Prophet who claims that women who ask for a divorce without good cause will await the smell of hell). Since a woman’s disobedience gives a husband the right to enforce his wife’s obedience by

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190 See also Fluehr-Lobban and Bardsley-Sirois (1990); Welchman (1999, 123); Sonbol (2003, 155).

191 See for example: al-najjār (2004, 46) and al-ahrām (13 July 2001). Scholar Zantout shows how in the view of the Hanafi jurists, khul’ is closely linked to the concept of nisba (2006, 10).

192 See for example: jum’a (n.p., n.d.).
submitting a ta’ā claim, this partly explains the observation that ta’ā and khulʿ frequently go hand in hand.

When a judge declares a woman disobedient, she will lose her right to be maintained by her husband. What is interesting is that the implications of the institution of ta’ā go beyond the (now) ultimate sanction of the withdrawal of maintenance for a wife who has left the marital home (Welchman 1999, 132). This is exemplified by judge Yusuf admitting that there is a strong relationship between ta’ā and khulʿ claims. In his perception a ta’ā claim is often an indicator of a marriage which has come to an end. Hence, when a husband submits a ta’ā claim, the wife often makes the best out of a bad bargain by filing for a khulʿ divorce. Judge Yusuf’s perception is in line with how many Egyptian women think of a ta’ā claim. When we talked about ta’ā they seldom mentioned the fact that if a woman loses a ta’ā claim, she no longer has a right to demand nafaqa (maintenance) from her husband. Apart from the fact that many did not know or, in the cases where they knew, that it was very difficult to secure the forthcoming awards of maintenance, they seemed to be more worried about the social consequences a ta’ā claim could entail. These women perceived such a claim to be a message from their husband that the marriage had broken down and that he wanted to end the relationship without costs. As Iman, who at the time of the fieldwork was a MA student at Cairo University, told me: “If a man resorts to ta’ā, the wife knows that he wants to get rid of her at all costs and that he wants to break her” (see also Human Rights Watch 2004, 30-2).

A few years earlier, Iman had already brought up the concept of nushuz (violation of marital duties on the part of the wife) when we were talking about khulʿ. At the time Iman had been very critical of the new khulʿ law saying that when a woman expresses her wish to divorce her husband, the latter can appeal the divorce in court after which the wife will be declared nashiz (recalcitrant) and will enter the bayt al-ta’ā (“house of obedience”) as a result of that. According to her, the “house of obedience” was a kind of home where nashiz women were confined, each in a small room with a bed, until they were willing to pledge obedience to their husbands again. Iman concluded that she feared the

For the case of Palestine, Shehada also notes that judges in ta’ā cases know that the marital relationship has become bitter and that the husband is likely to have acted out of revenge (2005, 211).

Visiting the Zananiri Court, 30 May 2005.

According to the sources of shariʿa, nushuz also includes those instances in which the husband violates his marital duties. For more, see Zantout (2006, 1).

A Palestinian woman who had lived for a long time in Egypt and whom researcher Shehada met in the waiting-room of the court of Gaza city, said: “In Egypt, [the house of obedience] consists only of a mattress and jug, that is all. But in Gaza, the house of obedience is an apartment with full equipment. How is it possible to discipline women in such a way?” (Shehada 2005, 212). At least in terms of treatment, the Egyptian House of Obedience seems to have had a Tunisian equivalent: the so-called prison of Broken Hearts (Dar Jawad). In sixteenth-twentieth century Tunis, in cases which concerned the
stigmatization she would have to suffer as a nashiz when she went to file for khul’:
“It is one thing for a woman to say that she is applying for divorce and quite another for her to say that she is applying for khul’.”

It was only later that I learnt that a woman who is declared nashiz will “only” lose her right to maintenance. According to some lawyers I interviewed, many people do not know this and they still think that husbands have the right to force women home who ran away without their permission. For the Jordanian situation, Welchman also concludes that “…by no means all women are aware of their rights in the face of a ta’a claim by their husbands, and may not be aware that the award cannot be forcibly executed. …Although the actions for ta’a have “lost their teeth” due to non-enforcement, and although the number of claims are decreasing, the concept still intimidates women” (1999, 132). This, I think, is partly a result of the pervasive influence on its audiences, both in and outside Egypt, of the Egyptian film industry in general and the film urīdu Hallan in particular. For the case of Syria, for example, Carlisle shows that lawyers suggested to her “that when men threatened to have their wives forcibly returned to the marital home under bayt al-tā’a they were making a claim to a right that had been depicted in a recently televised Egyptian historical drama, since it is not a provision in the SLPS [Syrian Law of Personal Status]” (2007, 59). This anecdote underlines that, notwithstanding the introduction of legal changes to the contrary, many Egyptians (and Syrians for that matter) still associate ta’a and nushuz with a forceful return of the wife to the marital home or the bayt al-ta’a. In such a situation, women will resort to various strategies to avoid the enforcement of a ta’a claim.

**Strategies to avoid the enforcement of a ta’a claim**

According to the male arbitrator Hisham, women can easily avoid the enforcement of a ta’a claim by telling the judge that they are willing to return to the house of their husbands. In that way they show they are willing to pledge obedience again after which a judge must dismiss the ta’a claim. Nevertheless, I wondered how a couple would continue marital life after the husband has made it very clear that he does not approve of his wife’s behaviour and/or no longer wants to provide for her. Apparently judge Yusuf was of the same opinion as he considered a ta’a claim to be an indicator of a marriage’s end.

Fluehr-Lobban and Bardsley-Sirois also stated that ta’a seemed to indicate that a marriage was breaking down as it often precedes a petition for divorce (1990, 51-2). As they remarked in 1990, ten years prior to the introduction of the “khul’ law”:

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197 According to Carlisle, legal awareness is influenced by popular culture, a factor which she believes “has yet to receive the attention of studies into Muslim family law in practice” (2007, 58).
“Divorce because of proven abuse (talaq al-darar), is the most frequent ground for judicial divorce in Egypt, and many of these cases have arisen from prior instances of obedience orders, and on objections and appeals to the ta’a orders” (1990, 50). According to the authors there are various strategies which women invented in order to oppose their husbands’ ta’a claim.

A first strategy was to tell the judge that living under the constant threat and reality of abuse made them decide to leave the husband’s house. A second strategy consisted of telling the judge that the house their husband had provided them with, was not a proper shari’a- dwelling and for that reason, they had a right to refuse and to leave it (1990, 47). In two cases (out of five) women castigated the court for not having offered them sulh (arbitration) and for that reason they still explicitly requested the court to attempt to reconcile them. When the court offered sulh both women rejected it. Although Fluehr-Lobban and Bardsley-Sirois did not count a request for sulh as a strategy, I do consider women’s explicit sulh request to be a third strategy to delay the enforcement of a ta’a claim. Some litigants will use the delays, due to the courts’ heavy reliance on expert opinions (Brown 1997, 192), to their advantage.

The findings of Fluehr-Lobban and Bardsley-Sirois were based on cases which had happened at least a decade before the “khul’ law” was introduced. With the introduction of khul’ in 2000, I argue, a fourth strategy emerged as women tried to circumvent a ta’a claim by submitting a khul’ request in response. In the case of the “breakfast story,” for example, we have seen how the wife of the Ain Shams doctor reacted to her husband’s ta’a claim by filing for a divorce for khul’. We have also seen how the female arbitrator Fatin remarked that in such cases wives hope that filing a request for khul’ will frighten their husbands to such an extent that they would rather make the best of a bad bargain by dropping the ta’a claim. Thus, in the same way as ta’a and nashiz are stigmatizing concepts which still intimidate many women, the concept of khul’ intimidates many men since husbands who are divorced by way of khul’ are often sarcastically called makhlu’, which literally means that their wives have got rid of them, like pulling out a bad tooth. We only need to remember the films muHāmī khul’ and urīdu khul’an as well as the many cartoons on khul’, to get an idea of what it means for men to become makhlu’.

Thus, while some women will submit a khul’ claim out of fear and in order to terminate the marriage as soon as possible, other women will resort to khul’ in order to pressurize their husbands to drop the ta’a claim. In both cases, the new Family Court and the arbitration which it offers can play an important role as the couple living in disharmony is summoned to appear in front of two professional arbitrators. Especially in cases such as those of Nura where women move into households which are composed of females only and in which a father figure is absent, the arbitration in court might be the only way to guarantee a dialogue
which is otherwise not forthcoming (see for further elaboration on this subject chapter 7). This, of course, raises the question as to what the result of this will be. In the case of Hisham we have seen how he associated khul’ with women’s irrationality and jealously, even linking it to prostitution, while in his dealings with his clients he professed a women-friendly attitude.

According to Fatin, in approximately sixty-five out of a hundred cases, the marital dispute is settled through a so-called ibra’ divorce (see for further elaboration 6.5), while in a much smaller number of cases, disputes are settled through sulh (reconciliation). Her statement was underlined by the reports which Fatin and Hisham had to submit to the judge, and of which I was given a few copies. Studying these copies not only made clear that most disputes were settled through a consensual (ibra’) divorce, they also showed the conditions on which the settlement was based. Often these conditions were more favourable to women than the conditions under which women obtain a khul’ divorce. As pointed out in chapter 4, in case of khul’, women often have to pay back more than the registered (symbolic) prompt dower, while they sometimes also have to pay back their outstanding rights, such as a deferred dower which they have never received at all. In case of an ibra’ divorce taking place inside court, under the auspices of Hisham and Fatin, women usually agreed to “only” give up their financial rights in return for an officially registered divorce through the ma’dhun (marriage and divorce registrar). Moreover, a divorce to which the husband has consented is likely to be less damaging to the status of women than a controversial khul’ divorce.

Besides being favourable to women, in my opinion, a settlement through ibra’ can also be in the interest of men. This especially applies to men who fear the consequences which a khul’ divorce, and their subsequent status as a makhlu’ would have on their status and reputation. In such cases, the consensual ibra’ divorce is likely to have the approval of both husband and wife, who are happy to escape the humiliation which a divorce by way of khul’ would entail for both of them. Sometimes, however, a settlement inside court (formal in the following) through ibra’ is not at all what husbands who submit a ta’ā claim hope to achieve. In the next section, I discuss what they had hope to achieve and how the khul’ court procedure thwarts their plans.

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178 In this light, I found a study on Tunis interesting in which Largueche shows how judges in sixteenth-twentieth century Tunis tried to regulate marital disputes. In case of “poor treatment” or “cohabitation difficulties” the couple would be supervised by a judge, in their own house or in a house prepared for that reason. According to Largueche, women often regarded the intervention of the court as a means to guarantee a dialogue that was otherwise not forthcoming (1996).
6.5 Husbands using ta’a as a strategy

When a wife is “disobedient” her husband has a right to call her back into his obedience by submitting a ta’a claim. Sometimes, however, a husband’s claim is motivated by a wish to divorce his wife without costs and marry another woman instead. In such cases the husband is the one who is “disobedient” as it were. According to Judge Tarik, women have started to also use khul’ in order to frustrate a husband who wants to divorce in a cheap way.199 In such a case, the husband does not want to pronounce the talaq but instead tries to push his wife to accept an informal (out-of-court) ibra’ divorce. In return for his “consent” to the divorce, whether or not encouraged by submitting a ta’a claim, he will ask her large sum of money. According to Judge Tarik the introduction of khul’ has made such ibra’ divorces by “mutual consent” nearly impossible. In case a husband asks an exorbitant sum of money, the wife can file for khul’ in which case she “only” needs to pay back to him the dower which he gave her upon marriage.200 The observation of Judge Tarik is interesting as it rejects the idea expressed in the previous section that ibra’ may be advantageous to women. Judge Tarik, however, was not referring to a formal ibra’ divorce which is obtained inside court, but to an informal, out-of-court ibra’ divorce.

In case of an informal ibra’ divorce the wife will normally request the husband to divorce her (by expressing the words talliq-ni) after which he will ask her to exempt him (by expressing the words ibri-ni) from all legal rights to which she would be entitled in case the husband were to repudiate her. Although in most cases the wife will exempt the husband from paying her the mu’akhir al-sadaq (deferred dower) and the different types of alimony, she sometimes also pays her husband a large amount of money in addition. This informal ibra’ divorce is also known in Egypt and the rest of the Muslim world as a khul’ or mukhala’a divorce.

The four Sunni schools of law emphasize the character of khul’ as a negotiated divorce settlement initiated by the wife and in the Ottoman Period, this consensual khul’ divorce was quite common. This explains why I sometimes witnessed how Egyptians were under the impression that the new khul’ was actually not that new. For example, when a journalist visited Wafa’s village (the first Egyptian woman who filed for khul’), an old man asked the journalist: “What is new about Khul’? We have always done it here.” According to the journalist, the man was referring

199 For women trying to push their husbands into a cheap divorce, see 6.6.
200 Visiting Judge Tarik at the Zananiri Court, 18 October 2004.
201 According to Welchman mukhala’a divorces are in fact mubara’a divorces. Mubara’a divorces are based on a renunciation of outstanding rights, while under a khul’ divorce, a wife needs to return rights she already received. However, in most legal codes in the Arab states, khul’ refers to settlement in which the wife has to relinquish her outstanding rights (2007, 112). See also Pearl and Menski (1998, 283).
This meaning of *khul'* as a consensual divorce is also expressed in the first sentence of article 20 (the *khul'* article) of law No. 1 of the year 2000: “A married couple may mutually agree to *khul’*...” [underlining is mine]. The rest of the sentence highlights a different meaning of *khul*’: “...However, if they do not agree and the wife sues demanding it [al-*khul’*], and separates herself from her husband by giving up all her financial legal rights, and restores the dower to him which he gave her, then the court is to divorce her from him.”

As far as the past is concerned, Ottoman court records have revealed that judges did not only register *khul’* divorces, they were also very keen on preventing men from coercing wives into a *khul’* agreement in order to take their dower (Tucker, unpublished paper). When I asked a few judges whether they check if a woman’s wish for *khul’* is generated under pressure from her husband, they told me that they do not do this as it is not part of their duty although they admitted that it does happen.

A regional excursion encourages the presumption that the number of out-of-court *ibra’* cases, in which women are forced to consent to their husbands’ *talaq* and renounce their rights, might be quite high. In the case of Gaza and the Westbank, where 90 percent of all divorces take place outside the court in the form of unilateral *talaq* and through divorce by mutual consent (*khul’* or *talaq muqabil *ibra’*) (Welchman 1999, 135), the number of *khul’* (or *talaq muqabil *ibra’*) cases consistently outnumbered the number of unilateral *talaq* cases (Welchman 1999, 139). This means that “in the vast majority of cases where marriage is terminated by divorce, the wife is not entitled to claim the financial rights she is otherwise assumed to be due at the end of a Muslim marriage” (ibid, 142). Although Welchman says that the good thing about these *ibra’* divorces might be that most marriages break down by mutual consent, she also draws attention to the fact that at least in some cases husbands push their wife into a “consensual” divorce in order to obtain a cheap divorce (1999, 143). This is confirmed by Shehada, who observed how judges in Gaza City court often tried to find out the real reasons behind a husband’s *ta’a* claim as they knew that men often acted out of revenge (2005, 211, see also Moors 1995, 141). For the case of Egypt I have not found any data on the ratio between unilateral *talaq* cases and informal divorces by mutual consent. However, I came across many instances which led me to believe that an...
ibra’ divorce is sometimes used by husbands as a means to divorce their wives in a cheap way.\textsuperscript{204}

For the Moroccan situation, Mir-Hosseini noted that wives submitted nafaqa claims which led their husbands to react by submitting ta’a claims.\textsuperscript{205} Mir-Hosseini explains this as a “reflection of the unequal nature of marital rights and obligations. Women resort to court to improve their bargaining position vis-à-vis their husbands. Men come to court to offset—or pre-empt—their wives’ actions (1993, 50). In a study on religious courts in Malaysia, Peletz argues along similar lines (2002, chapter 3). We have seen that the Egyptian case is more complex as husbands also initiate actions in court to obtain a particular aim, a cheap divorce for example. According to Judge Tarik, this strategy is now made difficult as the introduction of the “khul’ law” has thwarted husbands in their attempts to divorce their wives in a cheap way. Instead of wives paying their husbands a huge amount of money, this judge claimed that women can now resort to khul’ in which case they “only” need to pay back one Egyptian pound.

At this point, some critical observations should be added. On the one hand, women sometimes pay much more than the amount which is registered in the marriage contract (see also chapter 4). On the other hand, however, we have also seen how, in case of (the judicial) khul’, both husband and wife are now required to appear in court in front of two professional arbitrators who seem to put pressure on both the husband and the wife to reach, through a formal ibra’ divorce, a reasonable settlement which takes into account the needs of both parties. Most likely, this will especially work to the advantage of women who return to households which are run by females only and in which a father-figure, for whatever reason, is absent. Hence, the result of the introduction of the compulsory governmental attempts at reconciliation is that in cases in which husbands try to push women into a cheap divorce, often through filing for ta’a, women’s bargaining power has increased.

6.6 Women using khul’ as a strategy

In the previous section I paid much attention to husbands who push their wives into a cheap divorce. In this section, I want to show that women too try to push their husbands into a cheap divorce, by constantly nagging him to divorce her, for example. The examples of films and television serials in which women express the words tallaq-ni (divorce me!) to their husbands are numerous. During the British

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\textsuperscript{204} See for example: the observation of Judge Tarik Amin; the different meetings with a woman arbitrator at an arbitration office in Kafr al-Sheikh; the meetings with lawyer Abu Bishoy and different reports in the newspapers.
\textsuperscript{205} This is no longer the case in Morocco as the 2004 legislation no longer mentions the wife’s duty to be obedient to her husband (Welchman 2007, 94).
mandatory period (1920-48), women in Palestine who wanted to divorce their husbands but who had few legal grounds to do so, used triple repudiations, which their husbands had uttered, regretted but could not revoke to their advantage. In such cases, they would ask the court to confirm their husbands’s repudiation (Moors 1995, 144), and obtain, whether or not intentionally, a cheap divorce in the process. And while the previous section showed how the consensual out-of-court *ibra’* divorce made its appearance inside the court building, as it were, in the following section I want to pay attention to the way in which the judicial *khul’* divorce came to be used as a strategy outside the court building, by women such as Rahma.

Through a common friend of ours, I met Rahma, an upper middle class woman from Cairo in her early thirties, who wanted to divorce her husband because he refused to consummate the marriage. When she asked her husband to pronounce the *talāq*, he refused. At the time, *khul’* had just been implemented and Rahma threatened her husband that he would become the first *makhlu’* of the country if he did not divorce her. Finally, he gave in to her wishes and they divorced out-of-court by way of *ibra’*.

Apparently there are various reasons which make women decide to opt for a *khul’* divorce. Where women sometimes use *khul’* as a response to avoid the enforcement of a *ta’a* claim or to thwart a husband who wants to divorce in a cheap way, Rahma’s and other cases also show that women not only use *khul’* to offset their husbands legal actions, they also take the initiative to file for a divorce through *khul’*: to encourage a divorce by “mutual consent” in the case of Rahma; but also to pressure the husband to change his behaviour towards her; to urge the husband to increase his financial contribution to her and the children, or for reasons which are not related to the marital relationship itself. For example, divorced women in Egypt are entitled to a part of their father’s pension and in case the father does not have a pension, they have a right to social security money from the government. A judge in the Zananiri court told me that for this reason many women decide to ask for a *khul’* divorce, after which they cash the money from the government while they remain living with their husbands.206 Where in the latter case it is unlikely that a woman’s request for *khul’* will be followed by a *ta’a* claim, in the majority of the cases, a request for *khul’* is followed by a *ta’a* claim. I once asked Amal, lawyer at the Egyptian Centre for Women’s Rights (ECWR) which gives poor women free legal assistance, whether a *khul’* request provokes the husband to submit a *ta’a* claim. She immediately said: “Oh yes, this happens all the

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206 This was confirmed by a woman who works as an arbitrator in the arbitration office in Kafr al-Sheikh and who said that she sometimes suspected women of filing for a *khul’* divorce in order to become eligible for financial support from the government (October, 9, 2004).
time.” To be sure, she consulted one of her colleagues who said that this happened in approximately seventy to ninety percent of the cases.

In 1990, Fluehr-Lobban and Bardsley-Sirois concluded that the area of ta’a was the most active of PSL in Egypt (41, 43). After the introduction of the khul’ divorce at the beginning of the new century, it seems that not much has changed.207 Yet, there is one important difference. If the husband in the pre-khul’ era could prove that the wife had run away from home for no “good” legal reason, the court would declare her nashiz after which she would be exempted from her right to maintenance. In cases where women file for khul’, the issue of (not) receiving maintenance, alimony and a deferred dower is irrelevant since the wife will have to give up her financial rights anyway. For this reason, financial considerations cannot be the reason husbands often react to their wives’ khul’ request by submitting a ta’a claim. Although lack of legal awareness may partly explain why they still do so, it is also possible that they use ta’a to delay the proceedings of the case as well as to redeem their shattered pride, and to make their wives give up the khul’ claim by appealing to the fact that the concept of ta’a still intimidates many women. Just as he would carry the stigma of being a makhlu’tor the rest of his life, his wife would also bear the stigmatization of being nashiz.

All these strategies, employed by both men and women, show that Egyptians use the court as one among a set of tools to achieve a particular end. Or, as Brown claims “…Cairenes seem exceptional in the Arab world only in the full range of legal tools available to them and their need and inventiveness in using them” (1997, 201). This might explain why the results of preliminary statistics on khul’ show that of the total number of divorce cases filed in court, a majority was dropped after a certain period of time. Although this may be due to several reasons (pressure from the family to drop the case; insolvency on the part of the women to pay back the prompt dower; lawyers’ failure to show up in court leading to dismissal of cases), it may well be that once men and/or women have achieved their particular end, they will drop their case. In a study on litigant strategies in an Islamic court in Jordan, Antoun also concludes from court cases of 1959-60 that: “a very significant portion of cases raised in the Islamic court is dropped before reaching the stage of court judgement: 40 percent of claims for conjugal obedience [ta’a] were dropped, while more than half of the 63 claims for maintenance by the wife were dropped” (1990, 39). These, and other scholars’

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207 This contradicts the situation in the Palestinian territories where the number of ta’a cases is decreasing (Welchman 1999, 126).
findings all suggest that courts are a forum where marriage problems are negotiated.  

6.7 Conclusion

In chapter 5, I remarked that the conflict between the female arbitrator Fatin and the male arbitrator Hisham seemed to be representative of the conflict that occurs in many Egyptian households and in which the issue of men’s authority in the home and wives’ obedience is debated. In this chapter, further impetus was given to this assumption.

First of all, by the observation that not only upper class but also lower class women like Nura use, or want to use, a new law which gives them the right to travel abroad, for the sake of work. Apart from the fact that this made clear that the travel article was not only designed for rich women, it also made clear that the picture of Egyptian women being confined to the house is not in accordance with daily reality. On the contrary, in some cases women even leave behind their children thereby defying rules about their proper roles as mothers and wives in the marital house. The ruling of the High Constitutional Court of November 2000 seemed to recognize this development by giving women the right to travel without the permission of the husband.

According to Personal Status Law 100/1985, however, women need their husbands’ permission, not only to travel abroad but also to leave the house in the first place. If women leave the marital home without the permission of the husband, the husband can petition the court to declare his wife nashiz as a result of which she will be exempted from her right to nafaqa. Thus, where women have a legal right to travel without the consent of the husband, practice shows that there are numerous cases where the husband opposes his wife’s leaving the marital home (after a marital dispute for example) by submitting a ta’a claim. Although we have seen earlier that “disobedient” women are no longer returned to the marital home by force, the concept of ta’a still intimidates many women. As a consequence, women have always resorted to various measures to avoid the enforcement of a ta’a claim. Submitting a khul’ request, I argue, has proven to be a new way to push husbands to drop their ta’a claim. This is related to the fact that the concept of khul’ frightens men who are afraid to become a makhlul’, that is to say, a husband whose wife has got rid of him in much the same way one pulls out a bad tooth.

As indicated earlier in chapter 4, khul’ cases are often opposed by husbands and sometimes these husbands’ opposition has the result that women pay back large sums of money to their husbands. In that respect, I tentatively claim

208 See for example, Carlisle’s study on Syria (2007); Mir-Hosseini’s study on Morocco and Iran (1993); and Shehada’s study on Gaza, Palestine (2005). For the case of Islamic law and courts in general, see Rosen (1989).
that the establishment of a new Family Court in October 2004 has come as a relief, especially to women who left their husbands and subsequently moved into a household headed only by their mother, in which a father-figure who could mediate on the “disobedient” woman’s behalf is missing (for more see chapter 7). Why is this the case? When a woman submits a *khul’* request, she and her husband are summoned to appear in front of two professional arbitrators who have their office in the court. Although Al-Sharmani’s findings on family courts in Egypt show that generally husbands do not show up for mediation sessions (2008), the situation might be different with regard to *khul’* court cases. In such cases, it is not unlikely that the husband appears in court if only to escape the humiliation which becoming a *makhlu’* entails. This seems to transpire from the documents from and communications in the office of Hisham and Fatin which made clear that in most cases the marital dispute resulted in a divorce by mutual consent, a so-called *ibra’* divorce in which the (financial) needs of both parties were taken into account and through which both husband and wife could escape the humiliation which becoming a *makhlu’* or *nashiz*, respectively, would entail. This “reasonable settlement,” however, is not in the interest of men who use *ta’a* as a strategy to obtain a cheap divorce. This strategy implies that when a husband wants to divorce his wife without costs, he will make her life so miserable, among others things by submitting a *ta’a* claim which might frighten her to such an extent, that she will accept a divorce by “mutual consent” in which she has to give up her financial rights. However, if the wife reacts to her husband misbehaviour by submitting a *khul’* case, both she and her husband will need to appear in front of the two professional arbitrators with results which I described above and which thwart the original plans of the husband.

Where men use *ta’a* as a strategy, women sometimes use *khul’* as a strategy, not only to prevent a costly divorce such as described above but also to achieve other particular aims. Although there are cases in which women use *khul’* in order to obtain an additional source of income by appropriating (parts of) the pension of their fathers (to which divorced women are entitled), in many cases I was under the impression that they hoped that *khul’* would change the husband’s behaviour, and make him provide for her and the children for example. Especially in such cases, the intervention of professional arbitrators can guarantee a dialogue between husband and wife which would otherwise not be forthcoming leading to a settlement which takes both parties’ needs and desires into account.

The previous chapters give reason to believe that courts do not work to women’s advantage. Judges think that women use *khul’* to marry other men and make women back large amounts of money to their husbands and for court-appointed arbitration. Male arbitrators such as Hisham use women-unfriendly language. And there is the establishment of a new Family Court, which might have
the result that the justice system is being closed to many women, because of its explicit rationale to keep divorce and other personal status cases out of the overburdened legal system. This chapter, however, has also shown that courts and the new Family Court in specific, sometimes also work to women’s advantage.

For the case of Egypt, Brown claims that the courts have become one forum among several that are used to negotiate marital disputes (1997, chapter 7). His findings are supported by Rosen, who claims that Islamic courts in general are used by litigants to negotiate (marital) relationships (1989). This explains why, notwithstanding the many obstacles women may face in court, a large number of women still resort to court. While this chapter has shown that this is certainly true to some extent, the cases of Nura and ‘Afaf, have also pointed out that for some women the court is the only forum of resort. In such cases, where the husband is in prison or absent, women seem to be more motivated by practical reasons than by negotiating the terms of divorce (see also Hill (1979)). This raises the question as to when courts become the only forum of resort and when courts become part of a social landscape in which out-of-court strategies are also used to negotiate marital disputes. Posing this question simultaneously raises another question, namely: to what extent do “traditional” forms of support still play an important role in situations of marital dispute? This question gains special importance in cases where women such as Nura return to a female-headed-household where there is no father figure who can mediate on their behalf. The issue of the strength of “the family” in general, and that of “traditional” forms of reconciliation in specific forms the subject of the next chapter.