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

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9 Conclusion

From the last quarter of the last century onwards, in a so-called “third phase” of reform of Muslim personal status law, much scholarship has emerged which examines the substance, context and implications of such reforms (Welchman 2007, 13). This study on the introduction and implementation of Egypt’s first law of the new millennium, law no. 1/2000 or “The Law on Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters,” forms one such modest contribution. This procedural law in fact included a few substantive clauses which aroused much controversy. Especially article 20, the article on a unilateral form of khul’ divorce sparked much debate, both in and outside Egypt. As a consequence, law no. 1 of the year 2000 was soon nicknamed by Egyptians the “khul’ law.”

I start from the idea that when people debate and criticize khul’, they are engaged in a struggle over hegemony that involves other, wider issues of concern in Egyptian society. I wondered what these wider issues were; whether or not they related to Islam and Islamic law; and how they related to contemporary everyday reality? In order to provide an answer to these questions, I thought it necessary to conduct a comprehensive study on khul’ which not only analyses the public debate on khul’ but which also relates and compares this debate to the social reality in which it must operate. Hence, I started in March 2003 a study on khul’ consisting of two sub-research areas: an analysis of the public debate on khul’ as well as an analysis of the way in which khul’ operates in the Egyptian courts and contemporary everyday life.

9.1 The public debate on khul’

The analysis of the public debate consisted of an analysis of written texts such as newspapers and magazines as well as an analysis of works of popular culture such as films and cartoons on khul’. While the public debate on reform of Muslim PSL has been studied before, my fieldwork in Egypt made me decide to include works of popular culture in the analysis as well. I decided to do this after I noticed how many cartoons featured in the debate on khul’ and after Egyptians often drew my attention to films when I told them about my research. This was not only reflective of the legendary role of film, language and humour in Egyptian society but also of a culture where political opposition was limited as well. As a result, Egyptians use fun and joking “as a safe way to express rejection, opposition and anger, and to break tension” (Saleh 2004, 2). By studying both ways of participating in the public debate, I was able to see who the participants in the debate were; what issues they addressed; and what arguments they used to justify their various points of view (Moors 2003).
In newspapers and magazines, the legislator and women activists who were behind the introduction of the law presented *khul’* as being in accordance with Islam and Islamic law. Opponents to the law, however, often claimed that *khul’* was violating the *shari’a* and that the introduction of a unilateral form of divorce for women was just another indicator of how much the Egyptian government was functioning as a puppet of the West. They also claimed that *khul’* was merely a law for rich women who could afford to forfeit their outstanding rights and repay to their husbands the dower. Moreover, they charged that *khul’* would destabilize Egyptian society since (rich) women would use it to divorce their husbands for frivolous reasons. In this light, opponents sometimes called *khul’* women *nashiz* (recalcitrant).

A study of the debate in newspapers and magazines also made clear that it was not easy to classify opponents and proponents of the law. The religious establishment, women’s activists and the government did not consist of homogenous blocs: opposition did not only come from political opposition parties but also from members from the ruling party; while some women activists were behind the introduction of an unilateral form of *khul’* divorce, other women activists opposed the law by saying that it was only a law for rich women; and while the Sheikh of al-Azhar approved of *khul’*, some *‘ulama’* of al-Azhar not only opposed *khul’*, but even went so far as to accuse him of being an unbeliever.

Despite the complexities of the alliances made in the debate, it became clear that there was one thing that all parties had in common: all parties resorted to the language of Islam in order to present and justify their particular point of view. Notwithstanding the utilisation of an Islamic framework by the Egyptian women’s movement and the legislator, it has become clear that resorting to the language of Islam is only a means to participate in the debate, it does not tell us anything about the outcome of the debate. Where all participants tried to interpret the sources of Islamic law in an authoritative manner (*ijtihad*), I wondered whose interpretation ultimately would become the dominant one. After a number of incidents (one political party and its mouthpiece were abolished; one Islamic scholar was put in prison for having insulted the sheikh of al-Azhar for defending the “*khul’* law”; women’s NGOs were brought under the wing of the governmental National Council of Women; the public debate on other controversial reforms, most of them concerning PSL, and which were issued in the wake of the “*khul’* law” hardly aroused any emotions), it seemed as if the government was the one that ultimately decided who had the right to interpret the sources of Islamic law, and hence, the limits within which the public debate could take place.

Later, however, two issues merited note. First, when the constitutionality of the “*khul’* law” was brought in front of the High Constitutional Court, the “responsibility for creating and implementing an official government theory of
Islamic law moved from the executive and legislative branches to the increasingly independent judiciary” (Lombardi 2006, 5) as the High Constitutional Court, and not the government, had a final say in deciding whose party’s interpretation of Islam and Islamic law was the right one.

Second, in newspapers and magazines the debate on other controversial reforms of PSL, which were implemented in the wake of the “khul’ law” seemed to have been stricken dumb as a result of suppression by the government. Debate on the matter, however, continued in works of popular culture, through two films and numerous cartoons. Studying the debate on khul’ in works of popular culture made clear that, just like in newspapers and magazines, cartoons and films linked khul’ to upper class women who divorced their husbands for frivolous reasons, thereby disturbing the maintenance-obedience order. In the same vein, khul’ was also linked to Westernization and modernization. This was not done, however, by explicitly using the language of Islam. In the films and the cartoons, explicit references to Muslim religion in general and the language of Islam in specific, were largely absent. Instead, dress, music and language were used to suggest a world in which women dominated men and in which the traditional ways of the countryside were superior to those of the backward city. The films and the cartoons even presented a picture of an emasculated world. In this way, the films fit what Armbrust calls a “vulgar genre” (1996). This “vulgar genre” in Egyptian film criticizes the state’s project of modernity. In this light, the question as to why the government seemingly consented to the release of these films in a country where political opposition is still restricted requires more attention.

The government uses television serials to disseminate its project on modernity. Lower class viewers of television serials, however, perceive them to be constructed fantasy as these serials deal with urban, often upper-class, problems (Abu-Lughod 2005, 237-9). I wondered whether this also applied to the films (and cartoons) on khul’ since khul’ seemed to have things in common with the lives of lower- and middle class viewers. After all, the first Egyptian woman to file for a khul’ divorce, was a fallaha (peasant) called Wafa’. At this point the analysis turned from the public debate to the operation of khul’ in the courts and daily life.

9.2 The operation of khul’ in court and everyday life

Court studies on reform of Muslim PSL often focus on the position of the judge and his/her interaction with female litigants. I decided to focus on the impact of the khul’ reform on women before, during and after divorce. My decision was based on two factors. First, except for one occasion, I was not able to attend personal status cases as they were held in secrecy (behind closed doors). Second, notwithstanding a number of studies on Egyptian and Cairene family life as well as a study on female-headed-households in Egypt, to the best of my knowledge no
anthropological study on the lives of divorced women in Egypt has yet been conducted. Taking as a point of departure the life of one woman, who wanted to divorce her husband through *khul’*, enabled me to see that there was a difference between her words, her plans and her hopes as expressed in court and their actual realization in her life after the divorce. It also became clear that there was a large discrepancy between the themes that were brought forward in the public debate, and those brought by this woman, to whom I have given the fictitious name Nura, and other women’s daily experiences.

Whereas in the public debate it was claimed and insinuated that (upper class) women would use *khul’* for frivolous reasons: to marry a richer or a more handsome man; because the husband was snoring and boring; or because he forbade her to work, my fieldwork showed that at least a considerable number of adherents of *khul’* were women from the lower (middle) classes who were married to husbands who were not adequately providing for them, but who nevertheless often married a second wife without divorcing the first one. Although these women had reasons which made them eligible for a regular judicial divorce in which they would be entitled to their financial rights, in theory at least, they often opted for *khul’* since they considered this type of divorce to be faster and thus less costly.

Even though Nura only had to repay her husband a dower of one pound, the practice of the courts has shown that often judges made women pay back the *shabka* (engagement gifts), the *ayma* (a list stating the furniture which belongs to the wife) and sometimes even a *mu’akhkhar* (deferred dower) which they had never received. While this study pointed out that women’s financial contribution to the marriage and to the household organization was increasing (because women sell the gold of the *shabka*; work outside the home; increasingly marry men who are many years their junior; conduct polygamous marriages), this was not reflected in court. The judges interviewed used the open norms in the law to make it difficult for women to obtain a divorce. This applies especially to the issue of the dower as the legislator seemed to have refrained from issuing an Explanatory Memorandum. Consequently, the interpretation of what exactly constitutes the dower was left to the discretion of the judges.

In the film *urīdu khul’an* it was suggested that the husband was about to lose his flat and a lot of money to his wife who has filed for a *khul’* divorce. Interviews with judges also made clear that many of them were of the opinion that *khul’* women often were after their husbands’ financial contribution to the marriage, sometimes with an eye toward marrying another more desirable man. At first instance, this had not become immediately clear to me as judges often used formal Standard Arabic and the language of law in communicating with me. Only in a
more informal setting in which they expressed this negative view on *khul'* women, was I able eventually to understand why they often made women pay back to their husbands a dower to their husbands which was higher than the dower registered in the marriage contract. The one judge whose court sessions I could observe, showed that this attitude did not affect the way in which he interacted with his (female) litigants. He remained very formal and used a lot of Standard Arabic in his dealings with them. I related this to judges’ orientation to procedural correctness and their bureaucratic resistance to the possibility of being overruled (Dupret 2006, 167-8) as well as to the Arab curriculum which is characterized by inculcation, memorization, and recitation of textbooks (Naguib 2006, 68). Interestingly, judges interviewed seldom referred to Islam or to Islamic law to explain why they acted as they did (see also Dupret 2007).

Where judges used the language of law in their dealings with their clients (and with me), observations in one arbitration office in Cairo showed that the male arbitrator used the academic language of sociology in the communication with his clients (and with me). I especially noticed this when he used English sociological terms. In a more informal setting, judges as well as the male arbitrator expressed a negative view on (*khul’*) women. This view was quite different from the one expressed by the male arbitrator in his approach to his clients and which was marked by the absence of English sociological terms. Interestingly, having the same educational background, the female arbitrator did not use sociological (English) terms. In opposition to the male judges and the male arbitrator, the female arbitrator expressed a rather traditional view on the husband-wife relationship and the maintenance-obedience relationship in communicating with her clients, while in more informal conversations with me and the male arbitrator she tried to convince the latter of the fact that contemporary husband-wife relations in Egypt are based on cooperation and equality. It led me to tentatively conclude that in addition to class background, gender also exerts a major influence on the way court actors approach female (and male) litigants. This makes the issue of the newly appointed female judges all the more interesting. What perception do they have of women who divorce (through *khul’*)? Do they approach female litigants in a formal way, as their male counterparts seem to do, or do they create a more informal sphere in the courtroom, thereby encouraging women to express their reasons for *khul’* in court? In line with this it would be interesting to see which language they use in their communication with (female) litigants: formal Standard Arabic; informal Egyptian Arabic and/or the language of Islam?

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Where the female arbitrator pointed out that contemporary husband-wife relationships in Egypt are characterized by cooperation and equality, the male arbitrator was of the opinion that the husband needed to be in control. It seemed as if this conflict was representative of the conflict that occurs in many Egyptian households and in which the issue of men’s authority in the home and wife’s obedience is debated. It was also reflective of a conflict in Egyptian law. Where women were given the right to travel without the permission of the husband in November 2000, women still needed the permission of the husband to leave the marital home, according to PSL 100/1985. The issue of husband’s and wife’s duty to maintenance and obedience respectively was played out in court where personal status cases clogged up the legal system and where husbands’ ta’a claims prompted women to submit nafaga and/or divorce cases and vice versa.

What have women to gain in courts where a negative image of women seems to prevail? This study pointed out that women sometimes used the court as a strategy to pressure the husband. More importantly, it also showed that for some women, such as Nura, the court was the only forum of resort. In line with this, it was of importance that, notwithstanding the male arbitrator’s negative perception of women who file for khul’, he still did his best to try to make both parties understand each others point of view and to promote a dialogue. This was of important consequence in a society in which the courts are the only forum of resort for some groups of women and in which the ability of the family to negotiate in cases of marital dispute is unclear. Although academic literature presents different views on the strength of Egyptian (and Cairene) family life, with a view of the strong Egyptian family in the majority, this study has shown that women who requested a divorce through khul’ frequently returned to or established a female-headed household, that is to say, households in which a male adult was absent and in which women supported and managed the household on their own. Wafa’, the first Egyptian woman to file for khul’, went to live with her divorced mother; Nura also set out to live with her mother who lived alone, and ‘Afaf and her three children started living in a household of their own. Although in such cases friends and colleagues sometimes supported a woman on an emotional level, they did not take up the role of mediator. Instead, they rather referred the woman in question to court. As a result of the male arbitrator’s emphasis on mediation and compromise; talking with both sides; trying to make each see the point of view of the other; to listen to the petitioners as equals, I tentatively argued that the new family courts were bringing forth a dialogue which was otherwise not forthcoming. Arbitration in court, I argued, again tentatively, often led to an ibrah divorce, a divorce in court
through mutual consent in which the financial needs of both parties were taken into account and in which both men and women escaped the humiliation which a khul’ divorce entailed. In this sense, courts have become involved in the renegotiation of relationships.

The subject of households which are led by females, and the lack of arbitration within such households, as a result of which the court becomes the first and the only forum of resort, is an issue which deserves more attention, especially if we take into account that between 18 and 30 per cent of urban Egyptian households consist of female-headed-households (Bibars 2001). It is also an important subject for further research because it argues against prevalent notions in literature which state that women use the court as a strategy to negotiate marital problems. I do not deny that this is sometimes true. After all, this study has shown that men and women use the court as a strategy to obtain a particular aim. This, however, should not obscure situations in which the court becomes the only forum of resort, as happened in Nura’s case.

In the introduction to this study I observed how there is little anthropological literature on the lives of divorced women in Egypt although there are a number of studies on family life in Cairo and Egypt. This is strange since divorce occurs in approximately one out of five marriages; forms a frequently discussed subject in local opinion; and has severe consequences for women as it places them outside the social structure of society. This study has shown that one consequence of a divorcee’s being outside the social structure was that Nura considered a polygamous marriage which gave her the respectable status of a married woman while it simultaneously allowed her to live on her own and to continue working. Although the number of officially registered polygamous marriages in Egypt is low, this study has given reason to assume that the number of unregistered polygamous marriages might in fact be much higher.

After a brief period on her own, Nura married again and thereby provided ammunition to opponents to the law. However, her new husband was not handsome and rich but was already married with children and had to work at two jobs in order to eke out a living. Their marriage resembled a so-called misyar marriage: Nura and her husband did not live together and her husband visited her on a visitor’s basis in her flat; they did not intend to establish a family and they even took great care to prevent pregnancy. Although he sometimes paid the rent of the flat to which Nura had moved subsequent their marriage, he did not pay her a dibla (wedding ring), let alone a shabka, nor did he contribute at all to furnishing the apartment; to paying water, gas and electricity; and in addition Nura always paid for his food and cigarettes when he was visiting her. He also did not want his first wife to find out about his second marriage. When I came to think of it, both Nura’s polygamous marriage as well as her first marriage were in line with the findings of
my research which have shown that the model of the husband-wife relationship which is promoted by public culture is often not in line with daily reality.

This question arose as to what extent women still needed men. Not only did husbands often not shoulder their marital responsibilities by not providing for their families, but with an increasing number of women engaged in paid-jobs, they no longer seemed to need a husband to provide for them. This applied to Duriya in the film *urdu Hallan*, did it also apply to Nura? In the beginning Nura had been very averse of marrying again. She wanted to retain her financial independence (by keeping her job in the post office and by expressing a desire to travel to the Gulf for work) and her freedom of movement, if only because she considered this to be the best way to bring back into her custody her three children. Why, then, had Nura married again, only a year after she obtained a *khul’* divorce, to a man who was already married, not providing for her and who was living, at least in part, on her money?

I concluded that in Egypt, the role of a woman is defined almost entirely by her relationship to a man. After her divorce Nura did not want to marry again. Instead of taking up the position of the obedient wife, she wanted to take up the male role of provider. However, her case makes clear that everything which marks membership of the other gender, tends to be excluded from the universe of the feasible and thinkable (Bourdieu 2001, 23) and Nura’s colleagues in particular forced her to take up her role as a wife again. Their gossiping about her status as an unmarried woman made Nura feel compelled to marry again. Marriage remained the prime means of acquiring a social position and Nura had to become obedient again, at least symbolically. By resorting to a marriage to an already married man, she hoped to retain her freedom of movement and her freedom to work outside the home, and thus to make the best of both worlds.

These two worlds consisted of a public culture which promoted a model of marriage in which the husband provided in return for which the wife pledged obedience to her husband on the one hand, and everyday life experiences concerning the husband-wife relationship on the other hand. This study has shown that it is not rare for the public model of marriage and the everyday practice of lower and middle class marriages to not be in accordance with each other. The introduction and implementation of *khul’* touched on a tender spot in Egyptian society since women were given the legal right to divorce their husbands in a humiliating way. That is to say, unilaterally and by returning to their husbands one Egyptian pound. This one Egyptian pound was reflective of the increasing contribution of women to the costs of marriage and the financial organization of the household as well as the failure of some husbands to provide. The mere fact that in films and cartoons, in court, and in daily life, the language of Islam was largely absent, signified that *khul’* had provoked a discussion which was not
primarily related to Islam and Islamic law. Moreover, despite the fact that in the public debate the focus was on rich women who would use *khul'* for frivolous reasons, the practice of *khul'* in the courts and in daily life has shown that *khul'* reveals the story of Egypt's lower and middle classes and their struggle to define the rightful place of men and women in a society which is witnessing socio-economic changes and in which the issue of cultural authenticity and modernity plays an important role.