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


From 2000 onwards women in Egypt have a right to unilateral divorce, that is to say, to a divorce which no longer requires the consent of the husband. This right is called khul’ and gave women in Egypt one of the most extensive divorce rights in the Muslim world. Only Turkey, Tunisia and Pakistan preceded Egypt.

The right to khul’ is contained in article 20 of a procedural law in the field of Personal Status. Consisting of 79 articles, this law is the first law of the new millennium and intends to speed up and facilitate litigation in personal status matters. Especially the article on khul’ aroused much controversy and led to heated debates, although the legislature and women’s activists had presented khul’ as being in accordance with Islam and Islamic law.

This study deals with the introduction and implementation of khul’ in Egypt and starts from the idea that the discussions on khul’ involved issues of wider concern. Central questions are: what are these wider issues, to what extent are they related to Islam and Islamic law, and what is their relation to contemporary everyday reality? In order to answer these questions, this study is divided into two parts. The first part consists of an analysis of the public debate on khul’; the second part deals with the implementation of the khul’ procedure in the courts as well as the way khul’ is used in contemporary everyday reality.

The public debate

In this study, written texts such as newspapers and magazines were used in order to analyse the public debate on khul’. Films and cartoons also played an important role in the debate and for that reason they too were included in the analysis. Analyzing newspapers made clear that the legislature and women’s activists defended khul’ by saying that khul’ was in line with Islamic law. They referred especially to a hadith (saying) of the Prophet Muhammad in which the latter gives a woman permission to divorce her husband without his consent. Opponents of the law, however, claimed that khul’ was an attack on Islam and that khul’ was part of a conspiracy of the West and the Egyptian government to weaken Islam in Egypt. Through khul’, Egyptian family life would be damaged and Egyptian society would destabilize. It was claimed that women were irrational beings who would resort to khul’ for frivolous reasons, if their eye would fall on a handsome or rich
man, for example. Since khul’ requires the repayment of the dower by the wife to the husband, it was often claimed that khul’ would be a law for rich women only.

A study of the public debate 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’s 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. This lack of mutual consensus shows how sensitive the debate was and how interests diverged.

Despite the complexities of the alliance 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. In newspapers and magazines explicit references to Islam were made while in films and cartoons this happened rather implicitly. In films and cartoons others means were used to propagate the same message. Apart from suggesting that khul’ would be used by rich women, dress, language, and music were used in films and cartoons to also suggest that these women were westernized.

An analysis of the public debate made clear that discussions on khul’ were not limited to the place of Islam and Islamic law in Egypt. At the same time, there were discussions about the influence of the West on traditional marital relationships and how these would change as a result of khul’. Opponents of khul’ were afraid that traditional marriage, in which the husband has a duty to maintenance and the wife a duty to obedience, would be undermined as a result of the implementation of this law. Men would lose their authority and their role as provider to dominant and financially independent women.

Studying khul’ in the courts and in everyday life practice made clear that conventional marriage was indeed under pressure: most women who filed for a khul’ divorce and who were included in this study, worked outside the home. These women were not pursuing a career but wanted to make money to take care of their families. They were often forced to work because their husbands had left them, not seldom to marry a second wife. Being everything but rich, these women from the (lower) middle class exemplify the macro socio-economic changes which this class is experiencing.

Reality
Central in this study was the story of a woman who wanted to divorce through khul’. Her experiences during and after the divorce formed the basis of each new
chapter in the second part of this study as well as the basis for the stories of other women included in the analysis.

The story of this woman - Nura - and that of other women in similar situations made clear that women often had good reasons to ask for a divorce. That is to say, reasons that made them eligible for a regular judicial divorce through which they would be entitled to their financial rights. Nura and other women, however, opted for a khul' divorce since they considered this type of divorce to be faster than a regular judicial divorce, which could often take many years under the Egyptian legal system.

Judges interviewed were of the opinion that women who requested a divorce through khul' were after their husbands money and flat. As a result, they often decided that in case of a khul' divorce, a woman needed to repay the husband everything that he had every given her. Apart from paying back a sum of dower, which often exceeded the one Egyptian pound that was registered in the marriage contract, women sometimes had to pay their husbands the mu'akhkhar al-sadaq (the deferred part of the dower), which none of the women had ever received. Moreover, this study shows that women often carry the financial responsibilities for their families and that women's financial contribution to marriage preparations was significant. The financial contribution of the wife and the husband's failure to provide adequately for the family give rise to conflicts in many Egyptian households, but was hardly brought forward in the public debate, nor discussed by judges.

**Conclusion**

Notwithstanding the negative perception of women in court, women used the law and the possibility to divorce by way of khul'. Two arguments can explain why this is the case. First, to some women the court was the only place where they could go with their problems. Often these women were not supported by their families and/or did not have many family members. This is supported by the fact that the women who were included in this study often went living with their single mother or had started living on their own with their young children. There seemed to be a relation between khul' and these “female-headed-households.” Other women, often those who were supported by their families, used the court as a strategy to put their husbands under pressure. They made use of the fact that many Egyptian men fear becoming a makhlu', that is to say, that their wives would "repudiate" them. The strategies of men in divorce procedures were also included in this study.

Second, this study made clear that although judges often have a negative perception of women who want to divorce through khul', there seemed to be a difference between these judges' personal opinions and their attitude in court. In court they adhered to their formal position, something that was reflected in their
usage of Standard Arabic and legal language. Only in a more informal setting did judges express a negative perception of women. The one judge whose court sessions I could observe, showed that this attitude did not affect the way 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 the Arabic curriculum which is characterized by inculcation, memorization, and recitation of textbooks (Naguib 2006, 68). However, because the legislature seemed to have refrained from issuing an Explanatory Memorandum, judges used the open norms in the khul’ procedure to their own discretion, for example to define the dower.

This study also made clear that women who divorced through khul’ often remarried making it look as if opponents of khul’, who had claimed that women would use khul’ to marry a rich and handsome man, were right after all. However, the new husband was not always rich and in some cases he and the wife even agreed that he would not provide for her. Single women in Egypt are often in a difficult position and are under considerable pressure to remarry. Since they were married before, it is very difficult to marry a man who had never been married. Although this requires further study, it seems that in some cases women choose for a polygamous marriage instead of getting married to a widower or a divorced man. A polygamous marriage gives them the possibility to keep their jobs and to remain living alone and at the same time have the respectable status of a married woman. In this way these women try to reach a compromise between a public culture which promotes a model of marriage in which the husband provides and the wife obeys, and everyday reality where they have to stand on their own feet.