

LEGAL REFORM AS AN INSTRUMENT FOR GENDER EQUALITY: THE CASE OF EGYPT

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The women's movement in Egypt has always used legal reform as a fundamental strategy in its struggle for gender equality and justice. The women's movement recognized since the beginning of the 20th century that the provisions of law, whether Constitutional or Civil Law, are essential instruments of social change. In fact, the current Egyptian Constitution, like most modern constitutions, provides for the principles of equal opportunity and equality before the law without discrimination based on sex, race, language, religion or creed¹. Moreover, the vast majority of Egyptian laws provide for gender equality.

However, the law can only be effective in achieving its objectives when it is properly implemented, not only because of fear of penalty or reprimand but also out of conviction that this law serves the common best interest of all the citizens and slowly becomes integrated as part of the culture.

Legal reform as a strategy for achieving gender equality and justice traditionally passes by two phases. The first phase represents the struggle to issue a new law asserting equal rights or amending an existing law in order to eliminate discriminatory provisions, and the second phase covers the struggle for implementation.

The following is an analysis of certain aspects of the legal reform strategy as applied by the women's movement in Egypt particularly with respect to family law and personal status matters law during the last three decades, showing the successes achieved, the difficulties faced and challenges still to be addressed.

1. ABSENCE OF THE LAW AND THE IMPACT OF POLITICAL WILL

In certain cases, important issues are not regulated by law. This leaves the matter open to speculation and misinterpretation. A classic case is the FGM, a harmful practice which has been practiced by Egyptian Moslems and Christians for thousands of years, similar to other countries located around the banks of the River Nile. However, because the law was silent, this practice was erroneously accepted over the years to be a religious practice. Under NGO pressure, an attempt by the Minister of Health in 1996 to prohibit this practice in public hospitals through a decree, based on the powers and authorities granted by law to administer and regulate health care and medical services, was challenged before the court as violating the principles of *Sharia*. NGO's and the Medical Syndicate joined the Government in defending this decree. Although the Administrative Court of First Instance cancelled the Ministerial Decree, the High Administrative Court passed a final judgement upholding its validity.

¹. Articles (8) and (40) of the Egyptian Constitution

This was a good result but neither stopped, reduced the practice of FGM nor made it explicitly a criminal offence. Progress was achieved only in the last decade when the Egyptian Government expressed its political will to address this harmful practice and the National Council for Childhood and Motherhood (“NCCM”) launched a campaign together with NGO’s to combat FGM in the media and through education. Finally in 2008, amendments to the Child Protection Law passed by Parliament by virtue of Law 126 for 2008 banned FGM explicitly for the first time and thus FGM has now clearly become a criminal offence penalized under the Penal Code. However, enforcement of the law will not be easy, as parents seek to carry out FGM for their little girls thinking of it as a source of protection rather than mutilation and life threatening. Accordingly, the struggle must continue through consciousness raising, education and monitoring implementation and enforcement of the penalties under the law in order for this legal reform to bear results.

2. INADEQUATE OR DISCRIMINATORY LAWS

2.1 Advocacy as a Strategy for Legal Reform

A classic example of legal reform seeking to replace an inadequate law by a modern up to date law was the campaign to issue a new law on procedures in personal status courts to replace the *Sharia* Court Regulations issued in the late 19th century, which were still applicable even though the *Sharia* Courts themselves were abolished in 1954 and replaced by Civil Courts. This 15-year campaign succeeded in issuing a revolutionary law in 2000, Law 1/2000. The campaign used advocacy in the media and building strategic alliances with the Ministry of Justice and the National Council for Women.

Although the law was a procedural law which aimed at improving access to justice through facilitating and accelerating court procedures in family law disputes to protect women’s and children’s rights, the law also covered certain revolutionary aspects. These included the voluntary right to “*Khul*” which gives the wife a unilateral right to terminate the marriage contract in exchange for a waiver of her financial rights to compensation, including deferred dower and financial maintenance. The right to “*Khul*” balances the husband’s unilateral right to terminate the marriage through divorce in exchange for payment deferred dower, financial maintenance and compensation under the law, and does not deprive the wife from requesting and obtaining divorce through the court for damage while maintaining her rights to deferred dower, financial maintenance and compensation. Law 1 for 2000 also provides for family insurance system to guarantee execution of court judgements for financial maintenance of the wife and children and the regulations issued in accordance with this Law allowed inclusion of special conditions in the marriage contract, such as authorizing the wife to unilaterally divorce herself (*Talaq Tafwid*) and restricting the husband’s right to take a second wife without the prior permission of his first wife.

As a consequence of Law 1/2000, in 2004 Law 10 on Family Courts was issued to establish the first specialized family courts in Egypt and the Arab World applying ADR's and further accelerating procedures and facilitating enforcement of judgements. Moreover, Law 11/2004 on Family Insurance was issued establishing a fund to finance enforcement of court judgements on financial maintenance.

The above laws represent important steps to enhance gender equality and access to justice. However, implementation of such laws faces resistance and obstacles and must be monitored continuously to improve the quality of services provided by the courts, through training, developing regulations and facilitating enforcement procedures. For example, the right to "*Khul*" faced 60 challenges as unconstitutional before the Supreme Constitutional Court during the first six months from its enactment, alleging that it is in violation of the principles of *Sharia*, which the Constitution considers a major source of legislation. The challenges were rejected by the Supreme Court, but still judges in certain cases accept pleas and arguments that delay procedures unnecessarily in violation of the law which obliges the judge to issue a judgement for divorce upon the request of the wife without need for any cause or proof of any kind.

2.2 Challenge before the Supreme Court as a Strategy for Legal Reform

During the last two decades, the women's movement focused on eliminating discriminatory provisions from the various laws, as such provisions are clearly unconstitutional. The women's movement used advocacy in various forms through NGO activities, the media and working with the National Council for Women, Parliament and the Ministry of Justice in an attempt to build alliances. A particularly effective mechanism used by NGO's was real life testimonies by mothers and children about their sense of deprivation and daily problems encountered. Moreover, available legal mechanisms were also used, such as challenging such discriminatory provisions before the Supreme Constitutional Court. All these strategies were successfully used and resulted in elimination of the discriminatory provisions under the Nationality Law which was amended in 2004 to give Egyptian mothers equal right to pass Egyptian nationality to their children. Another example where both strategies, i.e. advocacy and court procedures, were successfully used, is the amendment of the Social Insurance Law to eliminate a discriminatory provision depriving the husband from his right to his deceased wife's pension, where the Supreme Constitutional Court abolished the discriminatory provision in 2003 and the law was amended in 2004.

Discrimination under the Tax Law was eliminated in 2005 under the Tax Law which recognized married working women as equal tax payers having the same rights to tax deductions available to working husbands. This was in response to advocacy efforts made by the women's movement in the annual conferences of the National Council for Women during the period 2000 to 2005.

On the other hand, there are still certain discriminatory provisions under the Penal Code which have been resisting change despite continuous advocacy efforts by the women's NGO's and the National Council for Women. These relate to texts of the Penal Code providing for more strenuous penalties and more lenient conditions for the crime of adultery which is committed by the wife as compared to the conditions and penalties applied when adultery is committed by the husband.

Again both strategies, i.e. advocacy and challenging the discriminatory provisions before the Supreme Constitutional Court are being used to eliminate such discrimination.

3. AN ADEQUATE LAW AND THE CHALLENGES TO IMPLEMENTATION

The vast majority of laws provide for gender equality and equal opportunity but there is a large gap between the law in theory and its implementation in practice.

Such laws face challenges in implementation either due to (i) lack effective monitoring and enforcement mechanisms, (ii) no exercise of rights particularly when laws are in advance of the prevailing culture and attempting to lead the movement for change or (iii) because of gender bias based on religious misconceptions, traditions or customs.

An example of an adequate law that is not implemented because of the failure of beneficiaries to exercise their rights, gender bias and tradition is the law on political rights. According to the Egyptian Constitution and the laws governing exercise of political rights, the Egyptian woman and the Egyptian man have equal political rights without distinction. Women in Egypt have gained political rights since 1956. Moreover, the law requires that all citizens entitled to exercise political rights, whether male or female, enroll themselves in the electoral register. However, the figures demonstrate that women's participation in political life, whether as voters or candidates, is not commensurate with their numerical weight in society, in which they constitute slightly less than fifty percent of the population. This is sometimes attributed to the general political climate, which does not encourage political participation for men and women, as well as the weakness of the existing political parties and other institutions in civil society. It may also be attributed to several changes in the laws governing elections, which were implemented during the period from 1983 to 1990 as a result of claims that the proportionate lists election system was unconstitutional. In addition, common culture and tradition still perceives politics as a man's domain and does not encourage women to occupy leadership positions or run for elections.

Further, women are not sufficiently conscious of their political rights or trained to acquire the necessary skills and knowledge to enable effective exercise of such rights. Despite the efforts of NGO's and the National Council for Women to help increase women's consciousness of their legal rights and develop their capabilities and skills, the presence of women in political life has not improved substantially.

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In the elections of 2005, the percentage of women's representation has not exceeded 2% in Parliament and 5.6% in the Shura Council. The latest Constitutional amendments of Article (61) of the Constitution, under the pressure of the women's movement and the National Council for Women, provides that the election laws should guarantee fair representation of women in the parliamentary councils. This permits affirmative action, which is expected to be introduced in the next year in the context of a new election system providing hopefully for proportional lists, where women would be entitled to fill certain seats or by introducing a quota system whereby minimum seats would be allocated for women.

In this case, legal reform will be used to induce change and enhance women's political participation by the force of law.