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## LAW | RESEARCH ARTICLE

# Constitutional protection of Egyptian women's rights in personal affairs

Aliaa Zakaria<sup>1</sup> and Alaa Abouahmed<sup>2\*</sup>

**Abstract:** This article addresses various controversial issues relevant to the status of Egyptian women in personal affairs, specifically the validity of customary marriage and divorce, the implications of Khul', and the wife's right to file for divorce in case of her husband's remarriage to another woman. By critically examining these matters, the article aims to shed light on the challenges faced by Egyptian women and advocate for necessary reforms. The article delves into the legal intricacies and social implications of customary marriage, highlighting the absence of official recognition and its adverse effects on women's rights. It analyzes the role of Khul', the financial settlement made by the wife to obtain a divorce, and explores its impact on the wife's economic autonomy. By shedding light on these issues, the article advocates reforming the customary marriage system, providing equitable financial settlements, and safeguarding women's right to divorce. It emphasizes the urgency of legal and societal changes to address the systemic disadvantages faced by Egyptian women in personal affairs. The findings provide valuable insights for policymakers, legal practitioners, and advocates striving for gender equality and social justice in Egypt.

**Subjects:** Family, Child & Social Welfare Law; Human Rights Law & Civil Liberties; Islamic Law

**Keywords:** Women's legal status; customary marriage; divorce; Egypt; khul'; personal affairs

### 1. Introduction

Societies are organised and governed by the laws that define the rights and obligations of individuals, in response to both social needs and natural progression. The development of any society can be measured by the status of women within that society and, in this context, the law must always adhere to the principles of equality laid out in the Constitution. Despite this, the law can sometimes undermine women's status instead of achieving a desired societal change such as equality with men (Ghonim, 2009, p. 14).

### ABOUT THE AUTHORS

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Egyptian legislation contains many articles and provisions concerning women and is the framework that defines women's rights and the limits of their role; as such, it identifies women's status in Egyptian society. Alongside the many developments in Egyptian law on personal affairs, there has been a legislative reform that is accompanied by Supreme Constitutional Court rulings seeking to preserve the legal rights of Egyptian women and thus facilitate their empowerment.

In this study, we consider whether the Egyptian Supreme Constitutional Court has preserved laws protecting Egyptian women and abolished those which undermine women's rights. Further, we focus on whether the Court has adopted Sharia law to empower women in issues of personal affairs.

**Methodology;** The study employs a mixed-methods approach, combining legal analysis with critical research, to comprehensively research the challenges Egyptian women face in these areas. The article begins with an in-depth legal analysis with critical, encompassing an examination of relevant statutes, case law, and constitutional provisions pertaining to customary marriage and divorce in Egypt. By critically assessing the existing legal framework, this study aims to evaluate its impact on women's rights and gender equality. Through the mixed-methods approach, this research uncovers the challenges faced by women, including the limited legal protections, financial implications, and social stigmas associated with customary marriage and divorce. It highlights the implications of Khul' Mahr on women's agency and economic autonomy, as well as the complexities surrounding the wife's right to file for divorce in cases of her husband's remarriage. Drawing from the findings, this paper advocates for legal reforms, policy changes, and increased societal awareness to address the systemic inequalities and ensure the protection of women's rights in personal affairs.

The paper is divided into the following themes: the ruling of the Court regarding khul' (divorce for consideration); the wife's right to file for divorce if her husband takes another wife; the submission of incorrect data in marriage certification; a woman's right to verify divorce and remarriage (i.e., remarrying her husband after a divorce); and, customary marriage.

## **2. Khul' (divorce for consideration)**

Khul' is a legal term in Egyptian law that refers to a type of divorce that is initiated by the wife. It allows a woman to obtain a divorce from her husband without having to prove fault on his part. Instead, she can request a divorce on the basis of "hate" or "incompatibility," which is considered sufficient grounds for divorce in Egyptian law.

### **2.1. Definition of Khul'**

If a wife wishes to end her marriage, she agrees with her husband to pay him a specific amount of money in return for her divorce; if the husband accepts, khul' may be interpreted as the redemption of a life she cannot tolerate in return for the Mahr (Elmomny & Amin, 2009). This differs from ordinary divorce in being initiated by the wife, and the husband receives back the Mahr and the wife waives any financial rights she could be entitled to. Khul' is legally effected when the husband says certain terms to his wife such as: "I henceforth separate from you" (Al Rababah & Rababah, 2016, p. 1277). The following verse from the Holy Quran confirms the existence of khul' in Sharia law:

except when both parties fear that they would be unable to keep the limits ordained by Allah. Then, if you fear that they would not be able to keep the limits ordained by Allah, there is no sin on either of them if she gives back (the Mahr or a part of it) for her divorce (Al-Khul') (Surah Al-Baqarah [The Cow] Verse 229).

The Egyptian Personal Affairs Law No.1 of 2000 stresses in Art. 20 that, The two spouses may agree amongst themselves on Khul'; however, shall they fail to agree in this regard amicably, the wife may file a claim for her Khul', demanding the legal separation from her husband and

redeeming herself by waiving all of her lawful financial rights and returning the paid dowry to the husband; hence, the court shall order the wife's divorce from the husband.

Hence, Egyptian law is consistent with the Islamic Sharia in defining *Khul'*. Under both systems, the wife has to return the *Mahr* and waives any financial rights she may be entitled to.

## **2.2. The concept of *Mahr* and its implication in the validity of a marriage and divorce**

In Islam, Allah ordained that marriage should be based on a good, everlasting relationship in which there is affection and companionship. However, if resentment appears between the spouses to the point that the continuity of their companionship has become impossible, then the husband is entitled to a divorce and the wife to ask for *khul'* by returning the paid dowry. (Elsaedi, 2012, p. 175).

In Islamic law, the *Mahr* is seen as the right of the bride and is considered her property, which she has full control over. The amount and type of *Mahr* are agreed upon by the couple before the marriage ceremony, and it can take the form of money, property, or any other valuable item that the bride agrees to accept. The *Mahr* is typically paid to the bride either at the time of the marriage ceremony or at some point during the marriage. (Elsaedi, 2012, p. 150).

The *Mahr* is an essential element of the marriage contract, and its absence can be a ground for annulment or dissolution of the marriage. In other words, if the *Mahr* is not mentioned in the marriage contract or is not paid as agreed upon, the wife has the right to seek a divorce. In case of divorce, the *Mahr* becomes due to the wife unless she waives her right to it voluntarily.

This means that if a couple decides to divorce, the husband is required to pay the full amount of the *Mahr* to the wife as part of the divorce settlement. In summary, *Mahr* is an important component of Islamic marriage and divorce. It represents the financial and social security of the bride and ensures that she is protected in case of divorce or any other unforeseen circumstances.

To be legally valid, *khul'* must fulfil certain stipulations. First, both spouses agree to conclude their *khul'*, and their mutual agreement means it is considered an irrevocable divorce (a non-retractable repudiation). Second, if the parties are in disagreement, the wife can file a claim asking the court explicitly for her *khul'* in return for forfeiting all financial rights as ordained by Allah, and then the court grants the divorce. (Al-Sartaw, 2007, p. 180).

Law No.1 of 2000 stresses that, before a court grants divorce, it must first attempt to reconcile the two spouses by arbitration for three months. Art. 18(2) of the same law states that if the two spouses have children, the court must attempt reconciliation at least twice, with a separating period between each attempt of between 30–60 days. Art. 19(1–2) specifies two arbitrators for the reconciliation attempt, both of whom submit their final verdicts after taking an oath before the court.

## **2.3. The opinion of the supreme constitutional court**

### **2.3.1. The supreme constitutional court**

The Supreme Constitutional Court of Egypt is the highest court in the country for constitutional matters. It was established by the 1971 Egyptian Constitution and is tasked with interpreting the Constitution, resolving disputes between different branches of government, and ensuring that Ordinary laws, Laws complementary to the Constitution, and regulations are consistent with the Constitution:

Ordinary laws: These are laws that are passed by the Egyptian Parliament and cover a wide range of topics, including civil, commercial, criminal, and administrative law. Ordinary laws are subject to the same procedures for amendment or repeal as other laws.

Laws complementary to the Constitution: These are laws that are enacted to fill gaps in the Constitution or to clarify its provisions. They are intended to provide a more detailed framework for the implementation of the Constitution and are considered to have a higher legal status than ordinary laws. The draft law is then submitted to the People's Assembly or the Shura Council for discussion and debate. Members of Parliament have the opportunity to propose amendments to the draft law, which are then considered and voted on.

### 2.3.2. *The supreme constitutional court issued an opinion in 2012 that affirmed the legality of Khul'*

Khul' is a type of divorce in Islamic law that allows a woman to initiate a divorce by returning her dowry or giving up her financial rights in exchange for a divorce. In Egypt, the Supreme Constitutional Court issued an opinion in 2012 that affirmed the legality of Khul' under the Egyptian Constitution and Islamic law. The Court also noted that Khul' is consistent with the principles of justice, equality, and human dignity enshrined in the Constitution.

Interestingly, many have objected to these provisions, as in a claim filed before the Egyptian Supreme Constitutional Court which was based on the unconstitutionality of Art. 20 of Law No.1 of 2000 (known as the Khul' Law). Several points were made in the claim.

First, such laws are considered to complement the Constitution, and before their passing they must be presented to the Egyptian Shura Council (Art. 195 of the Egyptian Constitution of 1971). The claimant believed that this procedure had not been duly conducted. Second, the claim stated that the Khul' Law is against Islamic Sharia as it includes several provisions contradicting the Holy Quran and the Prophet Mohammed's Sunna. Third, the law does not comply with the Constitution regarding the Right of Litigation, under Art. 68 of the Constitution, as the right of appeal through two levels of litigation shall be granted (i.e., a court ruling may be appealed before a higher judicial body). The claimant stated that, in Khul' Law, a court order of khul' is final and cannot be appealed, and an objection was lodged on these grounds. (Al Rababah & Rababah, 2016, p. 1287).

The Supreme Constitutional Court issued a ruling in 2002 in (Claim No.201 of the Judicial Year 23). It first stated that the Khul' Law was duly presented to the Shura Council on 25–26 December 1999, and that consequently it does not contradict the provisions of the Constitution in this regard. Further, it stated that Art. 2 of the Constitution of 1971 stipulates that the principles of Islamic Sharia are the main source of legislation and so no law can be passed in contradiction to these, according to the Holy Quran:

The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness. And it is not lawful for you [men] to take back [from your wives] any of your Mahr [dowry given by the husband to his wife upon their marriage] which you have given them, except when both parties fear that they would be unable to keep the limits ordained by Allah. Then, if you fear that they would be unable to keep the limits ordained by Allah, there is no sin on either of them if she gives back [the Mahr or a part of it] for her divorce [al-khul']. These are the limits ordained by Allah, so do not transgress them. And whoever transgresses the limits ordained by Allah, then such are the Zalimun [wrongdoers] (Surah Al-Baqarah [The Cow] Verse 229).

Besides this clear provision in the Holy Quran for the wife's right to demand a divorce (khul'), the Prophetic Sunna also records an incident of a woman who came to Prophet Mohammad asking for khul' from her husband. Prophet Mohammad asked if she was willing to return the dowry given to her by her husband and she accepted. Therefore, the existence of khul' in Islamic Sharia is confirmed by both the Holy Quran and Prophet Mohammed's Sunna. That is, Islam stresses that a wife need not live with a husband she resents. Returning to the court's ruling on the appeal, the court thus ruled that the law in question does indeed conform to Islamic Sharia, and the appeal was dismissed. (Farhoud, 2021, p. 20).

Moreover, the Supreme Constitutional Court also ruled that the prohibition of two levels of litigation in Khul' Law does indeed fall within the legislator's discretion, without contradicting the right of litigation. The court ruling stressed that the Khul' Law is an integrated complete unit whose purpose is to prevent damage to either spouse. The court further added that the law was passed to redress the grievances of wives living with husbands they resent, and to exempt the husband from financial expenses following the divorce; that is, khul' obligates the wife to return her dowry, without any financial obligation being incurred by the husband. On this basis, requiring litigation on two levels contradicts the purpose of khul', which does not aim to increase resentment between the litigants. (Ghonim, 2009, p. 10).

It is also interesting to note that, if a wife rejects such arbitration, the court may not abide by the wife's reasons for this rejection. In other words, the court may not seek specific legal or lawful causes for the wife's decision. In such a case, the court's role is limited to ensuring the return of the paid dowry in the same amount recorded in the official marriage document.

The Supreme Court has thus ruled that the Khul' Law does not contradict the Egyptian Constitution. Indeed, the Khul' Law may be considered a legal breakthrough in that it has confirmed a well-known fact that, historically, Islam has always promoted women's rights when rejecting life with their spouse, and the law also stresses this. When drafting the Khul' Law, the legislator has excluded any attempts of appeal against a court ruling, considering that an appeal against such a ruling is based on the probability of a fault by the court of the first instance, regarding the facts, evidence or legal grounds, which is a completely different case from the khul' claim.

### **3. The wife's right to file for divorce in case of her husband's remarriage to another woman**

#### **3.1. The opinion of the supreme constitutional court**

Under the Egyptian Law for Personal Affairs, Art. 11 of Decree-Law No.25 of 1929 states that a wife shall be entitled to file for divorce if her husband takes another wife. The Supreme Constitutional Court verified the constitutionality of this legal provision in 1994 in its ruling on (Claim No.35 of the Judicial Year 9), which was made on the grounds that Art. 11 prohibits a husband from the right to take more than one wife. Art. 11 entitles the wife to file for divorce even if their marriage contract has no prohibition on the husband's second marriage. However, the wife's claim to divorce is based on several objective conditions (Elmomny & Amin, 2009, p. 55). First, the wife suffers moral or material damage from her husband, and this offence is such that it is impossible to resume their companionship. Second, an evaluation of the extent and type of this damage is at the discretion of the competent judge, who may not order the wife's divorce until reconciliation has been attempted or rejected. (Elmomny & Amin, 2009, p. 56).

In addition to upholding the constitutionality of Art. 11, the Supreme Constitutional Court stressed that the wife must submit clear evidence of the damage incurred, as follows: 1) the damage shall result from the husband's execution or lack of execution of a certain action; 2) the damage shall take place in reality, without any delusions; 3) the damage shall be evident, not assumed; 4) the damage with all of its elements shall be separate from the incident of the husband's remarriage to another woman, as this damage may not be consequent to this remarriage; and, 5) the damage shall be unforgivable. Moreover, the court clarified that the damage incurred by the first wife refers to damage that makes marital companionship between the two spouses impossible. That is to say, the husband's action of marrying an additional wife may not in itself be interpreted as the damage incurred by the first wife. Therefore, if these stipulations are duly fulfilled, the judge will order the first wife's divorce, under the general rules of a fault-based divorce, as outlined in Art. 6 of Decree-Law No. 25 of 1929, amended by Law No.100 of 1985. (Claim No.35 of the Judicial Year 19, 14 August,1994).

However, these stipulations are unreasonable and unlikely, taking into consideration the nature of the human psyche, and it may also be difficult to affirm that the first wife is not morally and psychologically damaged by the action of her husband's marriage to a second wife. Although the Supreme Constitutional Court has provided justice by confirming the wife's right to file for divorce, there should also be provision for divorce based on the moral and psychological damage incurred by the first wife due to her husband's second marriage. We therefore argue that a new amendment is required which grants the first wife a divorce if her husband marries again, without the need to verify if damage was incurred by the first wife.

### **3.2. The submission of incorrect data upon the marriage certification**

The Egyptian Law for Personal Affairs requires the husband to inform the marriage officer of his marital status upon certification of any new marriage contract; otherwise, the husband faces imprisonment of up to six months and/or a fine of up to two hundred Egyptian pounds (Art. 23 of Decree-Law No.25 of 1929, as amended by Law No.100 of 1985). There is also a penalty for the notary who violates this law, and they are legally required to inform the first wife of her husband's additional marriage (Bakri Mohammed, 2014, p. 415). The Supreme Court ruled on the constitutionality of this provision, stressing that a marital relationship requires honesty and devotion to ensure its continuity; such penalties are enacted for family protection and the continuity of a marital life based on honesty and fidelity. This would be contradicted if a husband were to marry another woman without informing his first wife, since he would not, as the Holy Quran states, be "living with her honourably" (Surah An-Nisa' [The Women] Verse 19).

Therefore, the court has not only ruled that this legal provision is both constitutional and compliant with Islamic Sharia (Claim No.145 of the Judicial Year 18, 3 June 2000), it has also confirmed that the husband's right to take another wife does not entitle him to refrain from informing his first wife beforehand. In light of this, the right to remarry should be bound to the obligation to inform the first wife so that she may take any action she deems necessary; that is, the first wife's notification should be a stipulation for the validity of the second marriage. Moreover, since a judge may only order a fine of low value, and the notary's fine is no more than fifty Egyptian pounds, we firmly believe that the penalty of imprisonment should be more severe and the value of the fines increased (Bakri Mohammed, 2014, p. 416).

### **3.3. Women's right to verify divorce and marriage reinstatement**

It is widely known that in Islamic Sharia a husband is guaranteed the right to divorce without recourse to his wife, by the mere articulation of his decision. Nonetheless, Art. 5 of Law No.25 of 1929 as amended by Law No.100 of 1985 make various stipulations: 1) the husband must have the divorce certification notarised within thirty days of the date of divorce; 2) the wife must be fully aware of this divorce when she attends the notarisation procedures; 3) and, the notary must send the wife a divorce notice sent and deliver a copy of her divorce certification (Elsaedi, 2012, p. 100). If the husband fails to have the divorce duly notarised, Art. 23 of the same law stipulates imprisonment for up to six months and/or a fine of up to two hundred Egyptian pounds. The notary faces imprisonment of up to one month and a fine of up to fifty Egyptian pounds if they violate any obligation set forth in law; a court may also order their dismissal or suspension for up to one year. (Bakri Mohammed, 2014, p. 417).

A serious problem thus arises if the husband fails to have the divorce duly notarised. Art. 21 of Law No. 1 of 2000 concerning the regulation of litigation procedures and status in the issues of Personal Affairs specifies the methods for verifying the divorce as the testimony of witnesses, and notarisation by an officially sealed certificate. This legal provision has led to several practical problems before the judiciary. In one claim, for example, a husband divorced his wife and then denied the divorce, leaving the wife to demand verification of the divorce so that she could resume her life. ((Elsaedi, 2012, p. 169). However, she claimed that the verification provided for in Art. 21 is unconstitutional, and the Supreme Constitutional Court concurred, stating:

In Law No.25 of 1929 and its amendments, concerning some provisions of Personal Affairs, the legislator was keen not to stipulate a restriction on the permissibility of verifying the divorce through all stated methods of verification. However, the same Article 21 provision states that the divorce incident may be verified through certification and notarization, which is considered one method only. Therefore, this provision is against the law and the Constitution; as it could cause severe damages to the divorcee religiously, not to mention its consequences that might expose the divorcee to the gravest types of restrictions on her freedom, especially those that might threaten her right to life (Court Ruling No.118 of the Judicial Year 26, 15 January 2006).

However, in a hearing in December 2015, the Supreme Constitutional Court dismissed (Claim No.14 of the Judicial Year 30) which was filed against Art. 22 of Law No.1 of 2000 concerning the regulation of litigation procedures and status on issues of Personal Affairs. This legal provision stipulates that a husband who wishes to reinstate a marriage following a divorce shall notify the wife that she has been reinstated by official notice, issued within 60 days. This claim concerns a divorcee who demanded a court ruling for her marriage enjoyment compensation (Elsaedi, 2012, p. 170). In support of her claim, she explained that she had been divorced against her will and for no reason whatsoever on her part. The ex-husband claimed before the court that he had reinstated his wife before the end of her waiting period,<sup>1</sup> but had not officially notified her; this claim was of course denied by the divorcee. Under the legal provision, the husband must officially notify her within 60 days if he is to avoid the divorcee denying that she has not been informed of the marriage reinstatement, and this did not occur in this claim (Hebah, 2012, p. 135). The Supreme Constitutional Court therefore ruled:

The legal provision in question has been subject to manipulation by some men who have divorced their wives through a Revocable Divorce (Retractable Repudiation); and that it is through the husband's claim that he has reinstated the marriage to his wife before the end of her waiting period, but the husband has just failed to notify his divorcee of this reinstatement until it is after the end of her lawful waiting period. Those men have committed such manipulation to deceive the stated provisions of the waiting period or to underestimate the right of the divorcee to learn about her marriage reinstatement before her divorce becomes an Irrevocable Divorce (Non-Retractable Repudiation). (Claim No.113 of the Judicial Year 26, 15 January 2006).

Hence, the law obligates a man who divorces his wife to inform her officially of their marriage reinstatement before the end of her waiting period, both to avoid her denial of knowing about this reinstatement and to protect her legitimate rights. That is to say, the purpose of this legal provision was to achieve a public interest that is worthy of care and protection, and hence the court has regulated on the disparity between the legitimate rights of the husband and wife, to fulfil the public interest, preserve the right to honour, and ensure family safety. (Bakri Mohammed, 2014, p. 132).

#### **4. Customary v. legal marriage**

##### **4.1. 4.1 the main difference between legal marriage and customary marriage**

Before addressing issues with customary marriage and its severe harm to women, we must first identify legal marriage and its conditions to differentiate between the two types. Legal marriage is a lawful, permanent union and solidarity between a man and woman concluded for reasons of chastity and the establishment of a family under the care of the husband (Hasanein, 2009, p. 12). There are three main conditions for legal marriage (Kassem, 1993, p. 55). The first concerns validity, which must be fulfilled by both parties, and includes the following terms: 1) the legal capacity of both contracting parties; 2) the convening of a council of proposal and acceptance (i.e., the man asks the woman for her hand in marriage, and the woman or her deputy assents at the same place and time); and, 3) the conformity of proposal and acceptance (i.e., the man may ask for certain special conditions, and the woman or her deputy responds by accepting these conditions without change). The second is a set of conditions for women only (Elsaedi, 2012, p. 45). The



woman must be an adult and not a child, and she must not be unmarriageable for the husband because of a close family relation, e.g. his sister (Hasanein, 2009, p. 15). The third concerns the conditions of the marriage contract's validity: the woman must be lawfully marriageable to the man; the marriage contract must be drafted for a permanent marriage, not a temporary one (known as the pleasure marriage, which is just another form of adultery); and, there must be witnesses to the conclusion of the contract (Kassem, 1993, p. 50). Witness testimony is mandatory for the contract's validity, based on the prophetic hadith: "There is no marriage without witnesses; there is no marriage without the permission of a guardian and the testimony of two witnesses". Thus, a legal marriage does not require verification in a customary or official document, as it is a consensual contract with no stipulation for formality or certification. (Elsaedi, 2012, p. 47).

Regarding customary marriage, this is an undocumented marriage which generally appears as two types. The first is a lawful, customary marriage that fulfils all the lawful terms and conditions of Islamic Sharia with certification stipulation, according to Law No.78 of 1931. However, from the legal viewpoint, such a marriage is not legally acknowledged if denied by either spouse (usually the husband). That is, by law, a marriage is only considered valid when concluded through a public official. The second type of customary marriage does not fulfil all lawful terms and conditions because it is concluded either without witnesses or with unqualified witnesses (i.e., those lacking the stated legal capacity by being insane or immature). In this regard, all jurists agree that such marriages are considered secret and are nothing more than a form of adultery unacknowledged by law and religion as a marriage (Kassem, 1993, p. 55).

Concerning the data on customary marriage contracts, in 2020, the Central Agency for Public Mobilisation and Statistics in Egypt recorded 113,048, representing 12.9% of all those registered in this year; this figure was 132,374 in 2019, dropping 14.6%. In other words, a marriage validation contract is simply the registration of the date of a customary marriage, regardless of the duration of this marriage, so that the wife may acquire her lawful rights. Official data indicate that the number of concluded marriage contracts in urban areas was 357,832 in 2020, representing about 40.8% of all marriage contracts, compared to the 2019 figure of 384,597, a drop of 7.0%. In rural areas, concluded marriage contracts totalled 518,183 in 2020 (59.2%) compared to 543,247 in 2019, a drop of 4.6%. From these statistics, customary marriage still occurs at a very high rate in Egypt, despite its numerous problems.

#### **4.2. 4.2 the ruling of the supreme constitutional court about customary marriage**

In this regard, the Supreme Constitutional Court ruled on 7 June 2009 regarding (Claim No.45 of the Judicial Year 28). The claimant filed a claim in 2003 for the unconstitutionality of the provision of Art. 17(2) of Law No.1 of 2000 concerning the regulation of some litigation procedures and status in the issues of personal affairs. The claimant demanded a ruling on the validity and enforceability of a contract of customary marriage concluded between herself and a deceased man at the time of the claim. In 2004, the court dismissed her claim for lack of official verification of the contract. Later, the claimant challenged the constitutionality of Article 17, which states that "In case the husband denies the marriage, all claims arising from marriage contracts in subsequent events after August 1st, 1931 shall not be accepted unless the marriage is established by an official document. Nevertheless, divorce or annulment claims are accepted depending on the circumstances, if the marriage is established by any other form of writing."

The claim was based on several reasons: 1) it is against the principles of Islamic Sharia; 2) it forfeits the principle of personal freedom as stated in the Egyptian Constitution; 3) it contradicts the Constitution on preserving the religious and ethical values of society; 4) it contradicts the lawful principle that permits the marriage verification through all stated methods of verification; 5) there is a difference between the verifications of marriage and divorce, as the provision provides for the dismissal of all claims concerning the verification of customary marriage, in case of denial but also permits accepting divorce claims if the marriage was officially verified; and, 6) it

contradicts the legal provisions of Art. 2, 9, 12 and 41 of the Egyptian Constitution of 1971. (Claim No.45 of the Judicial Year 28, 7 June 2009).

Some scholars support the opinion of the Supreme Constitutional Court, emphasising that Art. 2 of the Constitution states that the principles of Islamic Sharia shall be considered as the main source of legislation; hence, no legislative text may contradict any of the definitively established and indicative Sharia provisions (Farhoud, 2021, p. 22). In this regard, the court firmly believes that these principles may never be changed, i.e., these firm principles—whose ultimate purpose is the preservation of religion, self, reason, progeny, and property—may never be changed or altered. (Bakri Mohammed, 2014, p. 55).

Furthermore, about the Right to Personal Freedom, as outlined in Art. 41 of the Egyptian Constitution of 1971, the court also believes that these rights may not contradict the established traditions of the community within which the individuals live (Claim No. 45 of the Judicial Year 28, 7 June 2009). This includes the right to marriage and the consequent rights to start a family and nurture its individuals, all of which are guaranteed personal rights that may not ignore the religious and ethical values. In this context, the court believes that a legal marriage is a verbally concluded contract between two parties fulfilling the required legal capacity, upon the mutual expression of their will to conclude their marriage. In addition, to be a valid legal marriage, the stipulation of openness must be fulfilled by the attendance of two witnesses (who fulfil the required legal capacity of freedom, sanity, and maturity) (El Maghreby, 2007, p. 70). Moreover, a magistrate of law or the ruler in charge (i.e., the head of state) may prohibit the competent judges from hearing any judicial claims or restrict the hearing of any claims by what they deem necessary, subject to the surrounding circumstances and restrictions of time, place and persons. (Ghonim, 2009, p. 12).

Hence, a magistrate of law or the ruler in charge may set certain restrictions about hearing and deciding on specific judicial claims, according to the constraints of status quo, people's needs and the protection of rights against manipulation and forfeiture (especially claims concerning marriage and divorce); taking into consideration that the majority of people are reassured to these restrictions, knowing that they have been stipulated for the preservation of family rights (Farhoud, 2021). Moreover, regarding the claim about how the said legal provision violates the principle of equality as outlined in Art. 40 of the Egyptian Constitution of 1971.

Some Scholars supported the opinion of the Supreme Constitutional Court emphasizing that Article 2 of the Constitution states that the principles of Islamic Sharia shall be considered as the main source of legislation; hence, no legislative text may contradict any of the definitively established and indicative Sharia provisions. In this regard, the court firmly believes that these principles may never be changed or altered over time; i.e. these firm principles—whose ultimate purpose is the preservation of religion, self, reason, progeny, and property—may never be changed or altered. (Farhoud, 2021, p. 25).

Furthermore, about the Right to Personal Freedom, as outlined in Article (41) of the Egyptian Constitution of 1971, including the right to marriage as well as the consequent rights to start a family and to nurture its individuals, which are all guaranteed personal rights that may not ignore the religious and ethical values, the court also believes that these rights may not contradict the established traditions of the community, within which the individuals. (Claim No.45 of the Judicial Year 28, 7 June 2009).

In this context, the court believes that a Legal Marriage is a contract that is verbally concluded between two parties fulfilling the required legal capacity, upon the mutual expression of their will to conclude their marriage. In addition, to be considered as a valid legal marriage, the stipulation of openness shall be fulfilled by the attendance of two witnesses (who shall fulfil the required legal capacity of freedom, sanity, and maturity). Moreover, a magistrate of law or the ruler in charge (i.e. Head of State) may prohibit the competent judges from hearing any judicial claims or may restrict

the hearing of any claims by what he deems necessary subject to the surrounding circumstances and restrictions of time, place and persons. (Ghonim, 2009, p. 14).

Hence, a magistrate of law or the ruler in charge may set certain restrictions about hearing and deciding on specific judicial claims, according to the constraints of status quo, people's needs and the protection of rights against manipulation and forfeiture (especially claims concerning marriage and divorce); taking into consideration that the majority of people are reassured to these restrictions, knowing that they have been stipulated for the preservation of family rights. (Elsaedi, 2012, p. 48).

On the foregoing, the Supreme Constitutional Court ruled that this legal provision is not against the Egyptian Constitution. In addition, the court found that the appealed legal provision requires that a marriage contract be officially verified for a marital claim to be heard, in certain cases. The court firmly believes that this provision is thus stipulated to protect family rights and interests against any manipulation or forfeiture; as such, its purpose is to keep the sacred solemn pledge of marriage away from any abuses or criminal acts resulting from the husband's denial or disavowal, should there be a lack of verification of the marriage. (Claim No.181 of the Judicial Year 19, 4 March 2000)

#### **4.3. Draft law for the criminalisation of customary marriage**

A draft law has been submitted to the Egyptian parliament stipulating an imprisonment penalty of one year or a fine of 10,000 Egyptian pounds for both spouses marrying via an unverified customary marriage. This new draft law was mainly proposed due to recent social studies which reported an increase in the percentage of customary marriage among students at universities. In response, some jurists of Islamic jurisprudence have strongly supported this draft law, as under Islamic jurisprudence this type of marriage is forbidden. Their plea in this regard was based on the fact that it is simply a secret marriage, without witnesses, whose attendance is a major stipulation for the marriage's validity, not to mention that this type of marriage lacks the stipulation of announcement and declaration, and is hence a forbidden secret marriage (Bakri Mohammed, 2014, p. 64).

##### **4.3.1. Conclusion**

Historically, Egyptian Muslim women have faced difficulties with their personal affairs. In this study, we have addressed some of these issues and proposed solutions by discussing relevant legal provisions in the laws governing personal affairs, especially those that have denied women certain rights despite being guaranteed rights by Islamic Sharia. The Supreme Constitutional Court reviewed these laws to decide whether they are compliant with the Egyptian Constitution. Based on this, several conclusions and recommendations are made.

First, in Islamic Sharia, divorce is an individual right of the husband which he may exercise without recourse to his wife, by the mere articulation of his decision to divorce. However, a major problem has emerged concerning the verification of the divorce; a former Egyptian law stipulated only two methods for this verification, either by the testimony of witnesses or notarisation by an officially sealed certificate. This legal provision caused severe damage to the divorcee due to her being unable to verify the divorce occurrence in several cases. To rectify this, the Supreme Constitutional Court ruled on the unconstitutionality of this provision, and so the divorce can now be verified through all means of verification to protect the divorced woman from the gravest restrictions on her freedom, especially those that might threaten her right to life.

Second, a court ruling may order the divorce of a wife through khul' if she has filed for divorce from her husband on the grounds that she resents life with him and does not wish to resume her life with him, out of fear of being unable to stay within the limits ordained by Allah. Hence, if all relevant stipulations as stated by law are fulfilled, the judge can order the wife's irrevocable divorce (non-retractable repudiation).

Third, Egyptian law was amended to obligate a man who has divorced his wife to notify his divorcee of their marriage reinstatement by an official document before the end of her waiting period. This was done so that the wife cannot deny knowledge of the reinstatement, and to protect her legitimate rights. It also prevents husbands from manipulating wives by divorcing them through a revocable divorce (retractable repudiation), to claim later that their marriage has been reinstated before the end of the waiting period.

Fourth, if the contested marriage is customary, a claim for the marriage verification shall be dismissed in case of denial; however, a claim for the divorce verification shall be accepted if the marriage was verified by any written document, whether official or customary.

Fifth, we recommend an amendment to the Personal Affairs Law to permit a wife to file for divorce on the grounds of her husband's marriage to a second wife, without the need to submit evidence for damage incurred by the first wife.

Sixth, we recommend the passing of legislation that enforces the conclusion of any marriage by an official document, to preserve women's rights. In other words, this legislation should be passed to completely and utterly prohibit customary marriage, which is often described as adultery; this will protect women from becoming trapped in a customary marriage in which they incur severe damage.

Seventh; It is important to emphasize that the issues discussed in this study affect both women and men. While the focus has been on the experiences and rights of women, we acknowledge the significant role that men can play in promoting gender equality and addressing the systemic inequalities within personal affairs. Recognizing the importance of inclusivity and collective responsibility, the proposed solutions put forth in this study encourage the active involvement of men in advocating for legal reforms, challenging societal norms, and promoting gender equality. Men have a critical role to play in supporting the empowerment of women and ensuring that the rights and needs of all individuals are respected within marriages and divorces. Our study underscores the significance of considering the role of men in the proposed solutions and acknowledges that addressing the issues surrounding the status of Egyptian women in personal affairs requires collaborative efforts from all segments of society. By working together, we can strive towards a society that upholds the rights, dignity, and equality of all individuals, irrespective of their gender.

Eighth, one crucial aspect that must be considered when addressing these challenges is the cultural and societal factors that contribute to the difficulties faced by Egyptian Muslim women in their personal affairs. Cultural norms, traditions, and patriarchal structures often perpetuate gender inequalities and place women at a disadvantage in matters of marriage and divorce. These deeply ingrained societal factors can influence the attitudes of individuals, communities, and even legal authorities, thereby affecting the implementation of legal reforms and the realization of women's rights. To effectively address these cultural and societal factors, it is essential to engage in comprehensive awareness-raising campaigns and educational initiatives that challenge harmful gender norms and stereotypes. These efforts should target various stakeholders, including religious leaders, community influencers, and the general public by encouraging open dialogues and interpretations that align with the principles of justice and equality, it is possible to find common ground that upholds women's rights while respecting religious and cultural sensitivities. It is important to acknowledge that transforming deeply entrenched cultural and societal norms is a long-term process that requires patience, persistence, and a collective effort. Change will not happen overnight, but by consistently working towards dismantling harmful practices and fostering an inclusive and egalitarian society, we can pave the way for a better future for Egyptian Muslim women.

The impact of these proposed solutions on the lives of women in Egypt would be significant. With legal recognition and protection of customary marriages, women would have access to legal remedies, such as divorce and property rights, ensuring their overall well-being and empowerment. The reforms would also contribute to challenging gender inequalities and stereotypes, promoting more equitable relationships between men and women, and fostering a society that values and respects women's rights.

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#### Note

1. The waiting period is defined by Hanafi jurists as, "the woman's waiting after the end of her marriage contract; and it is a specific period of time till the disappearance of all traces of marriage", and according to Maliki jurists as, "the woman's waiting for a specific period of time as ordained by Allah; and that is as evidence for the emptiness of her womb" (Hebah, 2012, p. 135). The period begins immediately after the divorce, the marriage rescission, or the husband's decease, whether the divorce was aware or not of the divorce incident (Badaa Al-Sana'a 201/3).

#### References

- Al Rababah, A., & Rababah, O. H. (2016). Dam pretexts and its applications base the issue of contemporary judicial divorce. *Journal of Islamic Sciences*, 9(3), 1273–1324.2016. <https://doi.org/10.12816/0030664>
- Al-Sartaw, M. (2007). *Personal status (marriage and divorce)*. Jordan Dar al fikr publishers & distributors.
- Bakri Mohammed, A. (2014). *Encyclopedia of fiqh and judiciary in personal status, Egypt*. Dar Mahmoud For Publishing.
- El Maghreby, M. (2007). *The role of the judge in the divorce lawsuit (khul'), according to islamic fiqh and the Egyptian Personal Status Law*. Al-Nahda Al-Arabia Publishing House.
- Elmomny, A. M., & Amin, I. (2009). *Personal affairs: The jurisprudence of divorce, rescission, separation and Khul'*. Al-Masira House.
- Elsaedi, A. (2012). *The provisions of marriage and divorce in Islamic Sharia*. Al-Afak Al-Moshreqa Publishing House.
- Farhoud, S. (2021). Egyptian women's empowerment in judiciary of the supreme constitutional court. *Journal of Constitutional Court*, 28(1), 22.
- Ghonim, M. (2009). Women's rights between Islamic Sharia, Egyptian law and constitutional judiciary. *Journal of Constitutional Court*, 15(1), 10.
- Hasanein, S. A. (2009). *The marriage known as customary for Muslims and non-muslims*. Al-Nahda Al-Arabia Publishing House.
- Hebah, G. A. (2012). *The positive flaws and consequences of the marriage contract rescission: A comparative jurisprudential study*. Al-Gamaa Al-Gadida Publishing House.
- Kassem, Y. (1993). *Family rights in Islamic jurisprudence part one: Fundamentals of lawful provisions*. Al-Nahda Al-Arabia Publishing House.