

Eligibility of Working Married Lebanese Women for Social Benefits

■ Arlete Juraysati

Judge, Acting President of room eight in the Supreme Court

Article 7 of the Lebanese Constitution, which was drafted in 1926, calls for equality between men and women in rights and duties without any discrimination. Article 12 also asserts the right of every Lebanese person, man or woman, to employment in the public sector.

In spite of this reality and the series of improvements and amendments aimed at giving Lebanese women their rights, some laws still discriminate between genders.

From a historical perspective, the progress of women's rights in Lebanon is marked by the following legal events:

- 1953: Women attained suffrage rights and the right to run for elections.
- 1959: The inheritance law for non-Muhammadis was passed, giving equal rights to males and females.

In addition, Legislative Decree 112, the 'employee guidebook,' which was issued on June 11, 1959 and was based on the principle of equality in rights and duties, as stated in the Constitution, opened the way for women to work in any public administrative office.

The Lebanese Labor Law, ratified in 1946, did not discriminate between the female and the male employee

except when it tried to protect the female employee. For example, Chapter 8 of the Law entitled "Employing Women and Children" and Article 52 forbid the employer from threatening to dismiss a female employee who is on maternity leave.

- 1960: Lebanese women were given the option to keep their Lebanese nationality, in case of marriage to a foreigner.
- 1974: Lebanese women were given the right to freedom of movement after the annulment of the statute that required husbands' permission prior to issuing passports to their wives.
- 1983: Punishments for the use of contraceptives were annulled.
- 1987: The age for being subjected to end of service indemnities, as per the Social Security Law, was changed to 64 years for men and women, both having the option to collect indemnities at age 60.¹
- 1993: Articles 11, 12 and 13 of the Trade Law were repealed and women were given the full competence to venture into commercial businesses, enter a joint liability company, and become authorizers in commandites.²
- 1995: Article 97, which used to forbid a third party from entering into a life insurance contract for a married woman without her husband's permission was amended and

restricted to the supervision of the judiciary, thus restoring legal competence, in this respect, to married women.³

Income Tax:

Article 34 of the Budget Law for the year 1999 covers this issue on the following basis:

- If the wife of a taxpayer is employed in a taxable employment the wife is subject to tax reduction similar to that of an unmarried woman. If the married couple has children in their custody, the father is given an additional reduction for the children, which conforms to the general principle that a couple only benefit from one tax reduction.
- In case the father dies, or if he develops a debilitating or chronically paralyzing sickness and is no longer capable of securing an income, the mother benefits from the extra tax reduction for their children.
- If the husband reaches retirement age and his wife proves that he has no source of income, the situation of the husband is considered by the income tax department as similar to that mentioned in the preceding clause and so the wife also benefits from tax reduction, even though it is not expressly mentioned in the law.

Thus, there is no discrimination against the married woman in income tax policy, except in cases where the husband, who has not yet reached retirement age, does not have any income and is not debilitated.

This essay examines an extremely important matter, one that most people are not aware of, causing a lot of women to bypass a right that the law concedes to them. But, this law is often not applied. It explains conditions for the married working woman to receive social benefits (family indemnities, sickness and maternity benefits). It also surveys the stages that led to the amendment of the provisions that deal with this issue. In the first part, the situation of the married female public servant is presented, and in the second part the situation of the female employee is presented.

Part One: The Situation of the Married Female Public Servant

In the wake of the increase in the number of female employees in the public sector in the past ten years, especially in realms that were traditionally considered to be male dominated, such as the judiciary and general security, women have begun to demand their fair share of social benefits. These benefits that include family indemnities, sickness benefits for family members of the employee and education allowances are stated in the employment guidebook⁴ and the Government Employee's Coop law, of which only the male employee used to be the beneficiary for his family, despite the female employee paying the subscriptions required of all employees by the social security fund.

Based on these revisions, in 1992 the collaborative fund for judges (*sandoog el-ta'adud*) repealed all gender discrimination for benefiting from contributions in the judiciary.

Next, and after consultations with the legislations and consultations panel, the legislature amended Article 149 of the law issued on October 30, 1999 which relates to benefits allocated to female employees who are members of the Government Employees Coop.⁵ The amended article states the following:

Unlike any other provision, the female employee, just as the male employee and without any discrimination, benefits from the contributions of the Government Employees' Coop as per the benefits and services program as well as the education allowances program, for herself and the members of her family (her husband and children) whether she benefits from family indemnities or not. She also receives benefits for anyone in her custody including her parents and siblings according to the percentages used by the Coop as dictated by the following conditions:

1. In case both spouses are members of the Coop, benefits for the spouse and children are given to the one with the higher rank or grade and with the same hospitalization classes whether he/she is the recipient of the family indemnities or not.
2. In case only one of the two spouses is a member of the Coop and the other receives benefits from another official source, the benefits of the Coop are only given to complement the benefits of the other official source.
3. An employee receives all the benefits offered by the Coop for his spouse and children (only the first five children are eligible) in case his/her spouse is not a member of the Coop and does not receive benefits from another source.
4. In case an education scholarship of a value lower than that offered by the Coop was issued, the employee must present a signed statement from the employee showing the exact amount of the scholarship paid. Only then would the Coop pay the difference.
5. In case of the divorce or separation of the couple, and also in case of dispute or desertion, benefits are given to the spouse who has the custody of the children, in accordance with the amounts stated in the bylaws of the Coop regardless of the alimony paid.

This proves the absence of any gender discrimination in public employment concerning the social benefits offered to employees.

Part Two: The Situation of the Married Female Employee or Wage Earner

The Social Security Law, specifically Articles 14 and 46 specify the individuals who have the right to receive health and maternity benefits and family indemnities. The health and maternity benefits cover the insured workers and members of their families who live under their roofs and are/or are in their custody.⁶

Family indemnities are offered to the workers and the insured members mentioned in the first provision of the first paragraph of Article 9 of the Social Security Law.

The conditions for the benefiting of the workers' children from these indemnities are specified in provisions A and B of the second paragraph of Article 46 of the aforementioned law.

A dispute usually arises over alimony and child support based on who the specified benefactors from the above-mentioned benefits are.

The general principle mentioned in the first paragraph of Article 47 of the Social Security Law states that a child has the right to only one family indemnity, if more than one parent receives it. And according to the provisions of Article 46 of the same law, the father receives the familial and educational benefits if the father and the mother satisfy the afore-mentioned conditions, except if the children are in the custody of the mother alone.

In implementation of this principle, and according to memorandum 112 dated January 18, 1972, the female employee is not legally or practically considered the head of the family and therefore is not eligible to benefit from family indemnities for her children except in the following cases:

1. If she is widowed, divorced, or is legally considered to have deserted her husband.
2. If her husband ceases to work for one of the following reasons:
 - a. He has reached the age of 60 and in this case it should be proven that the children are living with their mother and in her custody.
 - b. He is afflicted with a physical or mental disability.
 - c. He is serving a jail sentence.

Starting in 1996, after the revision of several decrees or rulings presented by female workers to the arbitral labor councils, many court decisions that recognize the right of the mother to family indemnities for her children were issued. I have chosen only two such pieces of legislation numbered 210 and 202/96, which were issued by the Arbitral Labor Council in Beirut, Chairperson Choukhaiby, and which became a permanent interpretation after Decision 200/6, dated February 21, 2006, of the General Jury of the Supreme Court. I shall mention below the most important points of these two decisions.

First: The Two Decisions of the Arbitral Labor Council in Beirut

In general, the two decisions describe a situation in which the female worker's husband does not work in either the private or the public sectors. Therefore, he has no right to any of the social security benefits. So, the children of the female, and according to the previous procedures of the

Social Security Fund, are not eligible to benefit in any way from social security, even though her employer is paying all the subscriptions to the various branches of the social security, and she is paying subscriptions for health and maternity benefits, as per the laws and procedures of the institution. This clearly shows an injustice against the female worker's rights. So the Arbitral Labor Council based its decision on the following principles:

- The fundamental purpose on which the Social Security Law and its institutions and benefits are based is undeniably the guaranteeing that the insured has a minimum sense of assurance through the offerings that it provides, most importantly healthcare and the meager familial aid.
- Adopting any interpretation or jurisprudence that conflicts with this rule of procedure will undermine the provisions of the international treaties to which Lebanon is a signatory, especially the International Labor Office Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation which warns against discrimination based on gender, religion or race.
- The social security Fund's claim that the defendant's (female worker) request cannot be answered on the basis of the laws and habits of our society – specifically, the general belief that the father is the head of the family and the one responsible for its sustenance – must be dismissed. This is because such beliefs lack seriousness and veracity and because of their clash with modern social fundamentals which consider the wife to be her husband's equal in rights and duties, and which consider her to be equally responsible for the upbringing and protection of the interests of the family. Hence, the aforementioned two decisions (201+202/96) require the social security fund to:
 1. Pay her family indemnities
 2. Allow her to receive health benefits for her children

Second: The Decision of the General Committee of the Supreme Court

The afore-mentioned decision of the general jury of the Supreme Court reiterated the provisions of the international treaties which discuss this subject, and the provisions include:

- Articles 2 and 26 of the Convention on the Rights of the Child (CRC).⁷
- Article 1 of the International Labor Office Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.⁸
- Article 3 of the International Covenant on Social, Economic and Cultural Rights (CSECR).

Then general principles for the resolution of the issue were drafted:

- The rulings on alimony and child support are usually the responsibility of the relevant sects. Thus, the social security fund's decisions in these matters do not reflect the will of the Lebanese legislation to relegate such matters

to the appropriate religious authorities. For instance, in Article 14 the word 'alimony' is mentioned and in Article 46 the phrase 'the supported child,' and in Article 47 the phrase 'child custody.' Those expressions simply mean that one of the parents handles the expenses of the children. However, the level, conditions and legal framework of this expenditure are not specified.

- When the mother and father of a child are employed, it is not possible to objectively determine beforehand what ought to be the contribution of each to child support. This, because of the variety of social, economic, and living conditions that prevail in each family.

- In light of what has been presented thus far, and in line with the principle of equality in rights and duties, the logical interpretation of the Social Security Law should be that the mother, who is a member of the Social Security Fund, should receive benefits for her children as long as they are proven to be in her legal custody (according to the afore-mentioned conditions) and as long as her husband does not receive such benefits.

The importance of continuous jurisprudence on the discrimination between the male and the female insured workers regarding legal child benefits (health and maternity benefits and family indemnities) is apparent from the issuance of memorandum number 283, dated January 19, 2004. The memorandum was issued by the general director of the Social Security Fund, repealing all previously issued memorandums that contradict it. The memorandum included the following provisions:

1. The intendment of alimony or child support mentioned in Articles 14 and 46 of the Social Security Law exceeds the juristic meaning of these two expressions, i.e. the intendment of personal affairs, to include all effective alimony even if he/she who undertakes this alimony or child support is not legally bound to do so.
2. Requesting all concerned units in the Fund to adhere to the following procedures: For the insured female to receive health and maternity benefits and indemnities for her children she must satisfy the following conditions, as per the Articles 14/2 and 46/2 of the Social Security Law:
 - a. The father must not be a recipient of any Social Security Fund benefits or any other similar sources for the same children.
 - b. A social inquiry is to be made to ensure that the children of the insured female are living under her roof and that she is the prime provider for their expenditures.

It has, however, been made apparent to me through inquiries I have made in some public administrations, that some of these administrations still do not abide by the provisions of this memorandum. They rather require the female worker to resort to the Arbitration Labor Council for a decision to guarantee her right to these social benefits, even in cases where some other women within the same department previously obtained similar decisions.

Conclusion:

Based on what has been examined above, the following could be deduced:

1. When the social fundamentals change as a result of alterations in social, economic and living conditions, the laws guiding these fundamentals need to be modified.
2. Amendments are usually undertaken by judges and are considered a natural process, since those judges are part and parcel of this society and are affected by its changes and developments.
3. It is the undertaking of court jurisprudence to modify, interpret, and sometimes disrupt, under the justification of interpretations, any laws that become antiquated and discriminatory. In all countries, the legislator has undertaken the responsibility of amending laws that do not keep up with societal developments.

The above-mentioned scenario is currently repeating itself with what is known in Criminal Law as 'honor crimes,' and for the same reasons. In recent years, jurisprudence in the courts has been moving towards implementing the rulings on such crimes in a way which in effect undermines its effectiveness because the judges are convinced that these rulings are not in line with the development in the collective mentality of Lebanese society.

And finally, it should be mentioned that even though the situation of Lebanese women has changed in the past decade in all respects, the legislature should be pressured into amending or repealing discriminatory rulings against women especially with respect to:

1. What is known as honor crimes and adultery in Criminal Law;
 2. Lebanese nationality: the right of the Lebanese woman to give her nationality to her foreign husband, as happens in developed countries;
 3. Personal affairs: instating civil marriage and enforcing a unified civil law on all Lebanese citizens, based on the principle of gender equality in rights and duties.
- Day after day, Lebanese women are playing an effective role in the educational, economic, social, and political fields. This entitles them to being dealt with fairly and to their being given their basic constitutional rights.

Endnotes

1. Law 82/7, January 6, 1987.
2. Law 380, November 14, 1994
3. The Law of December 8, 1995.
4. Decree 112/1959
5. According to Article 47 of Law 179/2000, amended by Law 324 dated April 21, 2001 and Article 2 of Law 343 dated August 6, 2001, amended in the single article of Law 387 dated December 14, 2001.
6. As per the provisions of Paragraph II of Article 14 of the above-mentioned law
7. Lebanon adopted CRC through Law 20/1991
8. Lebanon ratified this convention through Legislative Decree 70 dated June 25, 1977.

Appendix

Bill for the Amendment of Articles 11, 12 and 13 of the Legislative Decree 304, Dated December 24, 1942 (The Land Trade Law) and its Amendments

Article 1:

The provision of Article 11 of the Land Trade Law were repealed and replaced with the following provision: 'The married woman has the full merit to practice land trade.'

Article 2:

The provision of Article 12 of the Land Trade Law was repealed and replaced with the following provision: 'When in a trading business, the married woman has the right to undertake any job required by her commercial enterprise.'

Article 3:

The provision of Article 13 of the Land Trade Law was repealed and replaced with the following provision: 'The married woman has the right to enter a joint liability company or become a commissioner at a commandite.'

Article 4:

The law shall be operative as soon as it is published in the official gazette.

The Law of Obligations and Contracts

Decree 383- August 15, 1995 repealed Article 997 of the Law of Obligations and Contracts and replaced it with the following provision:

Article 997- 'No third party is allowed to enter a warrant depending on the death of a person who has been put under judicial supervision without the permission of the supervisor. This permission does not supersede the consent of the incapacitated person when required. In case neither the permission nor the consent is at hand, the contract could be repealed under the request of the supervisor, or the signatory to the conditions list or the insurer, as the circumstance requires.'

Law 87/2

Article 1

1. The insured's submission to the end of service indemnity division ends and the indemnity is liquidated when the age of 64 is completed. He has the right for his indemnity to be liquidated when he completes the age of 60 and when the stated maximum level for submission is reached.

Social Security

Family Indemnities

Article 46

A fund for family indemnities is to be established the organization of which is specified in this section and its resources are specified in Chapter 3, Section 1, Volume III, of this law.

1. Family indemnities are issued to the workers mentioned in Paragraph 1 of Article 9 and Article 10 of this law and to the recipients of health, maternity and work emergencies insurance if the incapacitation level exceeds 50 percent.

2. The claimants for family indemnities include the following:

- a. Every supported child, as per Clause J of Paragraph 2 of Article 14.
- b. Every supported child with a physical disability, irrespective of the age, and every single and unwaged girl who has not yet reached the age of 15.
- c. The legal wife living in the house if she does not have a paying job.

Social Security

Article 14

1. Social security covers both the insured and their family members. The following is added to Paragraph 1 of Article 14, as per Law 283 - December 12, 2002:

The word 'insured' as mentioned in this article is understood as both the male or female applicant without any discrimination.

2. The family members of the insured individual are those living under the same roof of this individual and under his expense.

a. The father and mother who have at least completed the age of 60 or who are incapable of providing for oneself because of a physical or mental disabilities.

b. The legal wife of the insured (in case of multiple wives only the first one receives benefits).

c. The husband of the insured individual who has at least completed 60 or who is incapable of providing for himself because of a physical or mental disability.

Paragraph D of Article 14 of the Social Security Law is annulled and replaced with the following provision (as per Article 80 of Law 220- May 29, 2000):

d. The legal natural and adopted children of the insured individual and until they complete the age of 18. If the children are incapable of providing for themselves owing to educational commitments, they receive benefits until they complete the age of 25.

- If the children are handicapped and are holders of a personal disability card, and if they are incapable of providing for themselves because of their disability, they receive benefits irrespective of an age limit.

- The aforementioned benefits stop being issued in case the handicapped individual receives unemployment indemnities, as specified in the law.

The provisions of Paragraph E Article 14 are annulled as per Law 483 - December 12, 2002, and as annexed by Article 81 of Law 220- May 29, 2000.

3. The benefits which the female insured applicant receives for her children are considered - as per the interpretation provided by the National Fund for Social Security for the aforementioned provisions of Paragraph D - an recognized right of the woman and her children, and therefore it cannot be retracted.

Article 47

1. A child is not given the right to more than one family indemnity, as per the previous article. If the conditions mentioned in the previous article are satisfied in more than one person then the family and educational benefits are issued to:

a. the father, if the aforementioned conditions are satisfied by the father and mother, unless the mother is the sole provider for the children.

b. to the adoptive parents, or guardians when those, as the parents, satisfy the mentioned conditions.

Convention on the Rights of the Child

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punish-

ment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Press Memorandum 283 January 19, 2001

Topic: The extent of benefits from the social security for children on their mother's name

In line with the Social Security Law, especially Articles 14 and 46 which relate to the right of children to receive health and maternity benefits and family indemnities.

And since health and maternity benefits include the insured individuals and the members of their families, as specified in Paragraph 2 of Article 14 of the abovementioned law, i.e., those living under the roof of the insured individual and under his maintenance,

And since family indemnities are offered for workers and the rest of the insured individuals as per the first provision of the first paragraph of Article 9 of the Social Security Law,

And since the alimony or maintenance mentioned in Articles 14 and 46 of the Social Security Law exceeds the juristic meaning of these two expressions, i.e. the intendment of personal affairs, to include all effective alimony even if he/she who undertakes this alimony or child support is not legally bound to do so,

And since the mentioned law does not discriminate between the reception of benefits between the male and the female individual with regards to the children registered under the name of one of them for benefits,

And since jurisprudence has recently not discriminated between the male and the female insured individuals with regards to the children who have the right to receive from the maternity and health benefits of social security, as well as family indemnities, in case the conditions for the entitlement for these benefits are satisfied (Resolution 6/2000 issued on February 21, 2000 by the Supreme Court),

And since in case both parents are eligible for receiving health and maternity benefits for their children, the benefits receive those benefits from their father, (Article 72 of the sixth manual – the medical manual),

And since in case both parents satisfy the legal conditions to the entitlement for family indemnities for their children, the indemnities are paid for the father, unless their legal custody is in the hands of their mother alone (Article 47-1-a of the Social Security Law),

The following has been decided:

All concerned units of the social security fund must abide by the following:
Firstly, for the insured female employee to receive health and

International Labor Convention

Article 1

The phrase "equal pay for men and women for work of equal value" refers to the specified average wages which are specified without discrimination based on sex.

International Covenant on Economic, Social and Cultural Rights

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

maternity benefits and family indemnities for her children, as per the Articles 14/2 and 46/2 of the Social Security Law, she must satisfy the following:

1. The father must not be eligible for receiving any of the benefits of the Social Security Fund or from any other similar sources for the same children.
2. A social inquiry is to be made to ensure that the children of the insured female are living under her roof and that she is the prime provider for their expenditures.¹

Secondly, all provisions issued by the general director of the fund which contradict the content of this memorandum are to be repealed, especially article 2 of resolution 77 dated March 19, 1970 (the internal plan to execute social security family indemnities), and press memorandum 112 dated January 18, 1972 which relates to the right of the female worker to family indemnities. In addition to the third paragraph of the labor conduct number 1 (which was annexed to memorandum 30 dated November 23, 1981) which relates to the right of the married female worker to family indemnities.

General Director,
Khalil Majid

Endnotes

1. Added to Paragraph 2 of Article 14 of the Social Security Law, as per Law 220 dated May 29, 2000, is provision E which states the following: E- The legal natural and adopted children of the insured worker if she has the responsibility of maintaining them due to the incapacity of the husband and according to the conditions stated in Article D of the Social Security Law. This provision expressly distinguishes between the male and female insured worker with respect to the receiving healthcare benefits for children, whereby they could receive benefits from their mother when she maintains them i.e. provides for them because of the incapacity of their father. Therefore, if the father is below 60 years of age, they do not receive the mentioned benefits whether or not he has a job. If he completes the aforementioned age limit and the mother provides for them, they receive benefits so long as the father receives the same benefits on the name of the mother (Article 14/2/D of the Social Security Law). Unlike the clear statutory provisions, the fund's administration considers that the children have the right to receive benefits on the name of their mother if their father does not receive similar benefits through another mandatory system. It must be mentioned that the addition of provision D presented above, to Paragraph 2 of Article 14 of the Social Security Law does not modify the conditions for the entitlement of family indemnities, and therefore, there is no discrimination in area between the male and the female insured individual as reached by canonical and juridical jurisprudence.

Translated by Ahmad Ghaddar