

One Way or the Other

■ Najla Hamadeh

Secretary General, Lebanese Association of Women Researchers (Bahithat)
Lebanese American University, Part-time, Philosophy,

Usually, each issue of *Al-Raida* tackles a topic whose scope is the Arab world. In this issue, we are making an exception by focusing unilaterally on Lebanon. This is primarily because discrimination against women in different Arab countries with their different legal systems would be too vast a topic. An attempt to cover several countries in one issue would not allow the depth of analysis and detail necessary to do the topic justice. On the other hand, the criticism of discrimination, discussion of the structural causes behind it, as well as some solutions to alleviate it, found in this issue on Lebanon, may be relevant to other Arab countries. We hope to be able to dedicate future issues to discrimination against women in the legislation of other countries of the Arab world.

An important observation about legal systems is that the more carefully thought out and convincingly presented they are, the more they are likely to change. This is because the coherence of codes of law may signify the legislators' anticipation of discussion and criticism; and discussion and criticism are more likely to take place when change is an envisaged possibility. It is, of course, possible that some legislators, despite their pre-knowledge that they are not going to be challenged, may still carefully examine the rationality of the laws they stipulate and of the justifications and theories they formulate to back up the laws. They may do so if they happen to be perfectionists in their work, trained in the proper use of arguments or simply because they are respectful of themselves and others. It is also certainly possible that some individuals may criticize the lack of coherence or consistency of laws, even if the criticism is too obvious and even if change is a far away possibility. Yet, existentially speaking, these two types of occurrences are rare.

Unconvincing laws and irrational justifications of laws often indicate that the legislator realizes that he/she is not going to be challenged, perhaps because he/she represents an authority 'higher' than that of common people

and common sense. When laws are supported and perpetrated by religious or political powers that cannot be questioned or cannot be held accountable or by the claim that the legislator is speaking in the name of such authority, the need to be convincing becomes trivial. Indeed, in such cases the general public may sense the futility of subjecting the laws to the scrutiny of reason and may learn to either accept the authoritarian legal system without discussion or to ignore its shortcomings, focusing on ways to get around it. Such a public may even lose the habit of rational scrutiny altogether.

Lebanon is a democracy and as such its laws are expected to be more likely to be amenable to criticism and discussion and hence to be more rationally convincing. However, a high proportion of Lebanese laws that tackle issues related to women suffer from contradiction and weak argumentation. The Lebanese public, albeit democratic, is expected to accept irrationality and injustice in its legal system not only because some rulings purport to be backed up by the high authority of religion, but also because of certain 'special' conditions that have nothing to do with the law or justice but with factors like tradition, precarious multi-confessional coexistence or the necessity to give Palestinians no option other than 'the right of return.'

Examples of Irrationality in Lebanese Laws that Pertain to Women

I. In Civil Law:

1. In a country that gives the leeway of extenuating circumstances to those who commit 'honor crimes,' it is strange that:

- a. Prostitution was legal¹ under certain specified conditions.
- b. Punishment for pimps is so lenient: For professional pimps incarceration six months to two years and indemnity between LL20,000 and 200,000 (Article 527 of the Lebanese Penal Code LPC); and for luring to and facilitating prostitution for individuals less than 21 years of age,

incarceration one month to one year and indemnity between LL50,000 and LL500,000 (Article 523 of LPC).

c. The penalty for deflowering a girl after giving her false promises of marriage is so manageable: incarceration up to six months and indemnity up to LL200,000 (Article 518 of LPC).

If we live in a society that considers illicit sexual activity to be an offense that may warrant killing the offender (usually a woman) without severely penalizing the killer (usually a man), shouldn't we assign harsh penalties either to the woman who practices prostitution and to those who lure her into prostitution or cause her to lose her virginity and possibly, therefore, her life? Shouldn't the law attempt to protect human life? Is the law interested only in accommodating men, giving them avenues to express their sexual urges, pursue easy gain and pose as 'honorable' without having to restrain either their illicit sexuality or their vengefulness towards kinswomen who get involved with other men? Does the law consider the life of women less important than the convenience and indulgence of men? Or do legislators consider the honor of men, dependent on the virtue of their women, so precious that safeguarding it is worthy of shedding blood, while women have no honor and hence may prostitute themselves, if it does not hurt or otherwise affect their male relatives?

Whatever the aims of the legislator, he/she cannot forgo the requirements of consistency, without losing trustworthiness and credibility. Consistency requires that either illicit sex is a major crime, the legal punishment for which for both offender and facilitator is proportionally colossal while the law remains lenient towards family members who punish their transgressing kinswomen with the most severe 'sentence;' or illicit sexual behavior is a minor offence and those who kill sex offenders get to face very severe punishment. As it is, Lebanese legislation seems to simultaneously consider sex offences no crime at all, (when prostitution was legal), a minor offence (as in the above mentioned penalties for pimps) and a very grave one (as in excusing or being lenient with, those who kill women guilty of illicit sexual activity).

2. Another example of the lack of rationality and of the objectivity necessary for justice lies in the definition and punishment of the crime of rape.

To allow rape within marriage (the crime of rape excludes perpetration towards the wife: See Article 503 of LPC) is to consider the wife an object owned by the husband. If women are objects, their consent should not be a condition of the legality of the marriage; and if marriage transforms them into objects owned by their husbands then killing the wife or otherwise hurting her should not be considered a punishable crime.

When English law considered women to be less than persons (they had no property rights, and their marriage contracts were drawn according to the will of their fathers or guardians, sometimes when the girls were still infants) they were considered to be the property of their respective men folk and the husband could kill his wife without incurring any punishment. But if Lebanese law considers women to be persons with contractual wills, if it considers marriage to be legal only after the consent of both parties is unequivocally given, if it considers women equal to men in the rights and obligations of citizenship (Article 7 of the Lebanese Constitution), and if it considers other crimes committed against them by the husband punishable by law, how can it allow that they be subjected to an act that totally objectifies and victimizes them as the act of rape, even if the perpetrators are the legally wedded husbands?

It may be said that the old English laws were harsh and inhuman, but at least they were consistent, unlike our current laws. In order for our legal system to pass the test of rationality, in this context, it should either consider women as objects with no wills and rights of their own and hence allow their rape by their rightful owners, and permit marrying them without their consent, or if women are considered by the law to be persons with rights and dignity it should never legalize their subjugation to the psychologically degrading and physically hurtful act of rape. In this last case, rape, including within marriage, should be considered a punishable crime.

3. A third instance of flagrant lack of rationality in Lebanese law, where women are concerned, is that of laws that govern nationality. For when legislators give blood connection as the condition for passing the nationality of the parent to offspring, how can they justify that blood connection is only between father and child and not between mother and child? From the common sense as well as the scientific points of view, there is no blood relation closer and more certain than that between mother and child. By giving sanguine connection as the basis of passing on nationality to offspring, then denying children the right to obtain their mothers' nationality, the legislator is adding insult to injury by implying an unheard of and totally senseless claim, namely the claim that there is no blood relation between mothers and their children!

Lebanese nationality laws derive from the French law of 1925. But Western traditions of old were in harmony with such a law, whereas there is no justification for it in Arab traditions. Western thinkers, as far back as Aristotle, believed that children inherited characteristics from their fathers only. This belief was never part of Arab heritage, since the earliest available Arabic poetry shows that Arabs knew that good lineage requires descent from two parents that come from well-recognized tribes/families. Early nar-

ratives, like the story of the poet-fighter-lover Antarah Bin Shaddad, tell of his being denied the hand of his cousin in marriage because his mother was a slave and hers was a free woman, though the fathers were brothers.

Nowadays, since scientific discoveries established the role of the mother as well as the father in genetic inheritance, Western laws have changed to become in harmony with scientific discoveries. Lebanese nationality laws, however, are at variance with both scientific information and our own indigenous heritage.

The above three examples indicate that Lebanese civil legislation is capable of ignoring logical consistency, as well as medical or publicly known facts, in its discriminatory legislation against women.

II. In Family Status Laws

Family status laws, which in Lebanon are relegated by the state to the various religious authorities, are not more adherent to the requirements of consistency. Indeed, under religious rather than secular authority, laws are expected to be harder to change, especially if they derive, or purport to derive, from holy texts.

Flagrant inconsistencies, backed up by authoritarian unconvincing arguments are common occurrences within family status laws, in Lebanon, as the following few examples indicate:

1. If women and men enter marriage by their declared free consent, it should follow that they are able to get out of it when they are no longer consenting to the union. If the legislator aims to protect the family by restricting the freedom of married individuals who seek divorce, this may make sense from paternalistic, pragmatic and utilitarian points of view. But how can the legislator justify giving husbands the right to break up families, even for a passing whim, and make it almost impossible for a wife to get a divorce, even for very serious reasons, as is the case with most Muslim sects? If this discrepancy in the right to divorce is based on considering a man's free will to be more important than the interests and the continuation of the family while a woman's free will is inferior to these, then it would be based on discrimination between the sexes to the extent of dehumanizing women. For consistency's sake, such a woman need not be asked to consent to her marriage for it to become legal.

The irrationality of this form of discrimination is most apparent in the literature that tries to justify it by totally unrealistic claims, capricious judgment, and weird advice. Thus Murtada Mutahhari (1991: 182-4) claims that Muslim husbands love their wives dearly and sacrifice money and comfort to gain their favor; and Muhammad

Al-Salih Bin-Murad (1931: 186-7) bears witness to the harmony that pervades Muslim family life, unlike what is to be found in families in the West. Al-Asfi (1968: 218-20) concludes, on the basis of the irrationality and emotionality of women, that if women are given the right to divorce they would divorce their husbands for the most trivial reasons, like disagreement over the color of a dress; and Mutahhari (ibid. 273) gets more explicit about the 'trivial reasons' adding that "the husband's refusing to kiss the dog or his choosing to watch a different movie than the one of her choice is capable of causing the wife to file for divorce, just as in America and Europe!" In his letters to his daughter, Al-Ibsheehi (1981:112-13) advises her to bear her burden and accept her lot, even if her husband were to turn out to be as cruel and ruthless as the Pharaohs of Egypt!

This type of 'reasoning' is clearly not based either on objective empirical evidence or on acceptable rational arguments. It is the type of argumentation that has no merit except the absolute and unchallenged power that requires the public to praise the elegance of the outfit of the naked emperor.

2. Perhaps the most glaring inconsistency and injustice in Lebanese family status laws, pertaining to women, is where the designation of the rights, or lack thereof, of mothers is concerned. For, although this is a terrain left to religious ruling, and although our monotheistic religions, from the ten commandments to prayers to 'the mother of God' to the Prophet Muhammad's recommendation to honor the mother thrice (Muslim, v.8, 102) before attending to the father, custody and guardianship of children is the legal right of fathers. And in many cases even the fathers' kinsmen have precedence over mothers.

One claimed ground for such ruling, by legislators, is the religious texts and recommendations that give husbands precedence or dominance over wives. This deduction from lesser rights of wives to lesser rights of mothers might have made sense if the various religions recognized in Lebanese legislation kept silent about motherhood and spoke of women only as wives. But since the ten commandments equate between mothers and fathers ("Honor thy father and thy mother"), and since the Holy Qur'an gives both parents the same rights over their children (see Qur'an IV, 35 and XVII, 23-4 and XXXI, 14) and indeed singles mothers out for additional recognition for their pains in carrying to term and nursing their children (see Qur'an LVI, 15 and XXXI, 14), it makes little sense to downgrade the rights of mothers simply because in the married couples' relation, husbands are given precedence over wives.

In denying mothers the custody of their children, after the first few years of life, the religious judge (*qadi*) follows the

jurisprudence of eighth and ninth century Islamic jurists (*fukaha'*), of whom it is said: "They are the peak of judgment for all time." However, even those early jurists recognized "variation in judgment with the variation of the times."

At the time of the early jurists, girls were married at a very young age. Mothers were often illiterate and housebound. Hence it was not strange of the *fukaha'* to judge that it is better for the girl to join her father at age nine, since he would be better suited to negotiate her marriage settlement. Boys often had to accompany their fathers in their trade or at their artisan shops to learn from them. Hence, being with the father from age seven was rightly judged to be appropriate. But nowadays, when the time of nurturing and schooling has been extended to the early twenties, when mothers are educated in the same proportion as fathers and are usually more available to take care of the home and the needs of children, what fair judgment can rule that children be taken away from their mothers, despite all the glorification of motherhood in the sources that jurists, of old and of now, claim to use as their main inspiration and reference? If the eighth and ninth century *fukaha'* judged that for the sake of what suited their time and the welfare of offspring of divorced parents it was alright to go against the literal meaning as well as the 'spirit' of holy texts, what pretext do the qadis of today have?

Until recently, both Christian and Muslim qadis in Lebanon followed the rulings of the early Islamic jurists. It is only in the past few years that some Christian sects started to rule differently in matters of custody and guardianship. But the long tradition of applying this type of judgment to Christian families and the on-going following of such stipulation for Muslim families are clearly, nowadays, contrary to the requirements of practicality, and usually contrary to the well-being of the children. Over and above all this, such rulings are not in harmony with the religious precepts that they purport to use as the main guidelines in religious courts.

The above are examples of the lack of rational coherence and/or the lack of agreement with the requirements of common sense and practical convenience in a great deal of Lebanese legislation regarding women. Legislation in many other countries of the Arab world, regarding women, suffers from similar shortcomings. Indeed, in the Arab world, changing such laws has rarely taken place on the basis of discussion and/or pressure applied by public opinion. Most reforms of discriminatory laws against women were prompted by the will or caprice of the totalitarian ruler or his wife, as was the case with the reforms introduced by Burghibah in Tunisia and Jihan Sadat in Egypt. Although such reforms are welcome as means to

alleviate discrimination against women, experience has shown that such reforms may be short-lived or may not effect a change in the mentality and attitudes prevalent in society. Thus, Jihan's Law was revoked soon after the assassination of her husband; and Burghibah's prohibition of polygyny does not seem to have affected people's preference, except negatively: Statistics published by the UNDP Report on Women (2006) show that polygyny is presently more favored by the people of Tunisia than by any other people of an Arab country.²

The above indicates that there is no alternative to discussion and public involvement for true and lasting reform in legal matters. Only education and discussion, in a democratic context, can lead to a modification of laws that is accompanied by, and integrated with, the beliefs and aims of the public. Laws imposed from above may remain alien to, indeed may alienate, the people and may be liable to be changed whenever the occasion arises.

From another side, if we are to dream of better laws, or even of holistically better times, what is needed is to work on making our legislation more convincing, from a rational point of view, and more commensurable with lived experience and common sense. When this is accomplished, not only will the cause of justice be served, but also discussion and, therefore, change and progress will be stimulated and a higher level of self respect and self worth will very likely be attained.

Endnotes

1. Before the civil war (1975-91) prostitution used to be legal, within a framework (area, license, medical check-ups.) At that time 'honor crimes' were totally pardonable.
2. In the manuscript of the *Fourth Human Development Report*, to be published by United Nations Development Program, 2006, the highest statistical proportion of men and women who accept polygyny amongst Sudanese, Tunisians, Moroccans, Egyptians, Lebanese, and Jordanians is that of Tunisians.

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