

Proposed Procedures to Fight Discrimination Against Women in Marriage and Inheritance

■ Sonia Ibrahim Atiyah

Attorney at Law

Lebanese society is multi-religious. The state legally recognizes 19 sects, leaving to each matters of personal status pertaining to its own community. Thus, each sect is governed by different laws and has its own courts to implement them. The different codes discriminate between men and women of the same sect, as well as between men and men and women and women, of different sects. This is in addition to the discrepancies in customs and traditions between the various communities.

The discrimination against women appears at the social and legal levels. The elimination of legal discrimination is perhaps easier than that of social discrimination, since the former ends with the amendment of legal texts and the enacting of new laws, but the latter requires long-range and persistent efforts to effect change in education and culture. Religion as well as deep-rooted traditions and ideologies may constitute significant obstacles in the way of such an endeavor. Thus, in this paper, after presenting two problems of such discrimination, I shall propose some legal amendments, that may also be effective at the social level.

The Problems **Historical Background**

Legislation that discriminates against women is mostly

found in personal status laws. But other forms of legislation also harbor considerable discrimination that stems from far-reaching historical origins. Such discrimination goes back to old legislation which did not recognize women as citizens, on the pretext of their lack of intelligence. Claims like the famous Roman jurist Gaius' that: "woman is weak of mind"¹ seem to have dominated long stretches of history before and after his time, with a far reaching impact on legislation, in general. And although lately the amendment of some discriminatory legal texts is gradually taking place, it seems that women will continue to suffer from the implementation of discriminatory provisions, especially in matters of personal status that the different religious sects consider to be based on divine inspiration. This, despite the fact that some of these provisions, such as giving fathers more rights than mothers over their children, have no basis in any revealed religion.²

As it is beyond the scope of this paper to go into great detail regarding the status of women in all the existing codes of personal status laws in Lebanon, I will restrict myself to some instances of the discrimination against women by various officially recognized sects in the marital situation and in inheritance.

Discrimination in Marital Relations:

- Both Christianity and Islam seem to consider the husband as the head of the family. From this, there ensue some biased moral precepts, like the wife's obedience to the husband, as well as biased legislation. In rare cases, as in stipulating that the husband must provide for his wife and family, discrimination favors the wife. But the general trend is towards legislation that favors husbands, as in the following examples:
- Both of Muslim husbands and husbands of the Israeli sect have the right to chastise their wives.
- A Muslim husband has the right to marry up to four wives.
- A Muslim man may marry a non-Muslim woman provided the chosen wife's religion is one of the revealed religions (Christianity or Judaism) but a Muslim woman cannot marry a non-Muslim.
- A Sunni Muslim husband may divorce his wife in her absence and without her knowledge, without cause, and without due legal process. A Sunni or a Shi'a husband is entitled to revoke the divorce, within the period of the 100 days ('iddah) required before the divorce becomes final. Either of the two husbands has the right to demand his wife's return to him, without her consent. Moreover, in both Islamic sects divorce is very easy when wanted by the husband and very difficult when wanted by the wife. Indeed, for a Shi'a woman, to divorce her husband without his consent is very close to impossible.
- Where child custody is concerned, most sects give the preferential right to the father, and sometimes even to other male members of the father's family.

Proposed Solution

In dealing with discriminatory legal texts in matters of personal status we could, in an initial phase, amend laws that do not contradict the established religious doctrines, such as laws that allow or prohibit divorce, equally for the two partners, and laws that determine the period of custody of children and laws having to do with mothers' rights over their children, which no religion explicitly relegates to a status less than that of fathers' rights.

In a second phase, it is advisable to transfer the role of ruling and implementation of judgments, in matters of personal status, from religious to civil courts. This will unify the courts and increase their efficacy as well as their professionalism. It is also an appropriate preparation for phase three.

In a third phase we can introduce a civil law that governs all citizens, regardless of their religious affiliations, except for those who choose to remain under the jurisdiction of the laws of their religious sect. Phase two, which has already taken everyday legal matters from the hands of the religious authorities, would have hopefully prepared them to accept phase three.

Poverty: Discrimination in Inheritance

It is a fact that poverty is more prominent among women. Indeed, United Nations' commissions have recently given a lot of attention to what they have come to call "the feminization of poverty." Women's economic weakness stems largely from lack of education. One other factor that contributes to the relative impoverishment of women is the discrimination against them in laws that deal with inheritance.

The reason for speaking of inheritance laws in Lebanon in the plural form is the absence of a unified code applicable to all Lebanese citizens.

In Roman times, different religious communities applied their own traditional and private laws, yet did not stop short of applying Roman Law where it did not contradict their religious beliefs. Later on, the spread of Islam did not change the situation, where non-Muslim communities continued to apply their own rules and those inspired by Roman legislation, until the end of the eighteenth century.

With the beginning of the nineteenth century, and as the dominance of the Ottoman Empire and its central authority grew stronger, Islam, according to the Hanafi School of jurisprudence, was the official religion of the Empire and became the only source of legislation. All subjects of the Empire, whether Muslims or not, applied the Islamic laws in matters of inheritance and succession by will and testament. Thus, Muslim religious courts had jurisdiction in these matters for Muslims and non-Muslims.

The fall of the Ottoman Empire after World War I ended the dominance of the Hanafi School of Islam as one law for all citizens.

On January 27, 1926, the Mandatory French Governor of Lebanon issued legislative decree No. 2503 recognizing the Ja'afari (Shiite) school and instituting Ja'afari religious courts with jurisdiction in matters of personal and family status for the Shiite Muslims.

A law promulgated on December 9, 1930 gave the Druze sect rights of jurisdiction similar to those of the Sunni and Shiite courts. Accordingly, a law for personal and family status for the Druze sect was promulgated on February 23, 1948.

In the post independence era, June 23, 1959 a civil law was issued regulating matters of inheritance for all non-Muslims. This law set up and defined new rules for inheritance, the most important of which is equality between men and women in matters of inheritance.

Here, it is worth mentioning that the Arabs before Islam denied women all inheritance rights: These were a privilege of men, as they were the only ones capable of carrying arms to defend the tribe. Islam granted women the right of inheritance on the basis of a twofold share for men according to the Qur'anic verse saying: "a male shall have the share of two females." (Qur'an IV, 11)

In short, I would say that the inheritance laws in vigor and applicable in Lebanon, are:

1. Islam according to the Hanafi School for Sunni Muslims
2. Islam according to the Ja'afari School for Shiite Muslims
3. The Law of February 23, 1948 as amended by the law of July 2, 1959 for the Druze community
4. The inheritance law of June 23, 1959 for all non-Muslims (i.e. Christians, Jews and all other religions)

In view of the above mentioned laws, the status of women in matters of inheritance is as follows:

Ja'afari School

All Islamic sects including Ja'afari apply the rule of a twofold share for males, while the Ja'afari School differs in that a daughter together with her descendents, exactly as a son, are 'exclusive' heirs, in the meaning that a brother of the deceased does not share in the estate with the brotherless daughter(s) of the latter, who is (are) entitled to the whole estate.

Hanafi School

The daughter in this School cannot be an exclusive heir. In certain cases a male inherits while his sister is deprived of the inheritance, for example: The niece is deprived of the estate of her paternal uncle who dies without an issue, while her brother inherits his uncle.

Druze Sect

The Druze community is subject to the rules of the Hanafi School when a member of the sect dies intestate. Yet, their law of 1948 has freed their will from all and any bonds. A Druze is free to give whatever part of his estate to whomever he chooses, thus permitting him, if he chooses to do so, to be fair in giving equal shares to his sons and daughters. On the other hand, this can become a ground for discrimination in view of the prevailing mentality in certain social settings, where the father can deprive his daughter(s) and/or his wife and any of his 'legal' heirs completely of any share in his estate by virtue of his testament.

The 1959 Inheritance Law for Non-Muslims

Although this law has decreed equality between men and women in matters of inheritance we still frequent-

ly see cases where parents try to bypass it through legal procedures such as contracting a sale of real or fixed property between father and son, or funneling monies through a joint bank account covered by the law of bank secrecy. Therefore, and for the purpose of eliminating this discrimination, we should follow either one or both of the following ways: On the one hand, we should work on social enlightenment to change the traditional and inherited ideas of discrimination against women, in order to make parents abstain from using illegal ways to deprive their daughters of inheritance in favor of their sons, and in order to make the females abstain from relinquishing their rights in the inheritance in favor of the males in their families. On the other hand, amendment of existing laws should take place as well as the enacting of new laws equitable to women.

Proposed Solutions

In this respect, I have prepared some projects for enacting new laws in parliament, of which I shall mention two projects: one related indirectly to the issue of inheritance and the other constitutes one method to ward off poverty from women.

I. On December 17, 1982, I presented a law project to the president of the Republic through the appropriate minister under the following title: The necessity for women to keep their maiden family names and for children to carry both family names of their father and their mother as is the case in many countries such as Switzerland, Venezuela, and others.

The Text of Law Project 1

Raison d'être:

The woman adopting her husband's family name and neglecting her maiden name, even at the social level, has the following risks:

1. The vast majority of society considers the female offspring alien to her family since birth, on the basis that she will one day carry her future husband's family name and belong to his family. Hence, fathers, and even mothers, try to deprive their daughters of some of their wealth, especially real estate, for the purpose of protecting the family wealth from outsiders (the daughter's children and husband).

2. In the case of fathers having children by different wives, it will be unknown which is the mother of each of the children. In addition to the social importance of the child belonging to his mother as well as to his father, carrying both parents' family names has a positive financial effect on the child, as he/she will no longer be considered an alien to the mother's family and consequently will not be deprived of some of the wealth of that family.

Based on the above, and in spite of the fact that official

transactions are carried out in a woman's maiden name, I have suggested that legislative measures be taken in order to oblige women to keep their maiden family names in all aspects of life, and to make children, as well, carry the family names of both their parents.

This law project, if implemented, will have a psychological effect that encourages families to treat daughters and sons in an equal manner, especially in matters of inheritance.

II. On the same date I presented a second law project to the president of the Republic through the same minister, to help in solving the problem of women's poverty. The title was: Enacting a new law that imposes upon a couple to be married the choice between the system of community-property or that of separate-property by pre-nuptial agreement and mutual consensus.

The Text of Law Project 2

Raison d'être:

A husband and wife form the nucleus of a family. Together they raise their children and tend to their upbringing, education and needs. In most cases the wife dedicates herself and her time to her basic role of motherhood and house affairs, abandoning any other job or profession or role she can play in society, while the husband works for securing the financial income to the family. Lebanese law adopts the system of separate property, considering all property or riches acquired by the husband during marriage to be owned individually by him. Such a system is frequently unfair to the woman who dedicates herself solely to the role of motherhood. In case of separation, such a wife has no share in the property acquired through the work of the husband and is left penniless and without income. She is often unqualified for work outside her house, for her lack of training at a young age and her inability to be trained after a certain age.

The outcome of the above is that Lebanese law allows the husband to benefit from his wife's work and efforts in house-keeping and bringing up the children, while she is not allowed to share the fruits of his work with him.

It appears that the French legislator has taken all this into consideration. French civil law has thus given the couple the right to choose the system that suits them best, for the management of their financial affairs, during marriage, and has left to them the possibility for change in the future. According to the system of 'Separation de Biens' each spouse keeps her or his estate without sharing it with the other spouse. While under the regime of communal-property, and from the moment the marriage

takes place, all wealth acquired during the marriage becomes the property of both partners. This same rule applies to income from property as well as any other income.

The categories of wealth that remain solely for each spouse according to the regime of community-property are the real estate belonging to either spouse prior to marriage, the movables related to his/her work, personal clothes, art works, and family souvenirs. Moreover, inherited estates or gifts during marriage remain the property of the beneficiary.

Based on the above, I have suggested the enactment of a new law giving the couple the right to choose by prenuptial agreement the regime that suits their situation, and leaving for them the possibility to change in the future.

This law project, I sincerely believe, shall have a positive effect in curbing the bad effects of discrimination against women, especially in solving the problem of women's poverty. Therefore, the status of the female in the matter of poverty can be improved by means of efforts undertaken on the legal level and such efforts are ultimately bound to impact the social level, as shown by the above proposed solutions.

Endnotes

1. It is noteworthy in this context that Fatima Mernissi in *Beyond the Veil* argues that whereas in the West women were discriminated against on the basis of their inferior intelligence, in the old traditions of the Arab world society worked to curb the power of women because it was believed that they were of superior intelligence (cunning kid).
2. In the holy books, from the commandment "honor thy father and thy mother" to Prophet Mohammad's conjuring that one attends to one's mother thrice before attending to one's father, it is clear that no preferential treatment to fathers compared to mothers is done. The only exception is Prophet Mohammad's command to call people by their fathers' names.

References

- Dr. Bashir Bilani, *Qawanen al-Ahwal al-Shakhsiah fi Lubnan (Personal Status Laws in Lebanon)*, Beirut: Dar al-'Ilm Lilmalayeen, 1971.
- Dr. Sobhi Mahmasani, *Al-Mabadi' al-Shar'iyah wal Qanuniah (The Principles of Shari'a and Law)*. Beirut: 1959 (second edition).