

Round Table Personal Status Laws

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Personal Status Laws were the subject of a round table discussion held at the Institute for Women's Studies in the Arab World in January 2005. The participants were Dr. Bechir Bilani, Attorney at law, Mohammad Matar, Attorney at law, Ahmad El-Zein, Attorney at law, Judge Arlette Juraysati, and Dr. Ibrahim Najjar. The moderator was Dr. Najla Hamadeh. Also present were Dr. Dima Dabbous-Sensenig, Acting Director of the Institute for Women's Studies in the Arab World, and Myriam Sfeir, Assistant Editor of *Al-Raida*.

Questions:

1. Bearing in mind the rigidity of religious laws and the domination of government or official authority over civil legislation, which of the two types of law would yield fairer family laws? Which of the two types is in the interest of the general public?
2. In a society where the authority of the state and its institutions is weak in comparison with that of religious figures, is it better to keep the implementation of laws in the hands of religious courts rather than in those of civil courts?
3. Which courts are more susceptible to corruption and more compliant with the dominant forces, the religious or the civil?

4. What are the implications of the existence of different personal status codes on citizenship and national unity?
5. How does the discrimination between men and women in legislation affect each of men, women and children?

Answers:

Arlete Juraysati: The answer to your questions is evident: We need to impose a civil law in Lebanon. I believe it is the only solution. Family laws are very biased. I have come across very many cases of abuse and discrimination against women during the past 30 years. Being a judge, people trusted and confided in me, and with time I realized that discrimination against women is not a class issue, it is as widespread among the rich as among the poor. Based on my experience, I can assure you that all discriminatory laws against women will disappear upon imposing a civil law. Civil laws are egalitarian in nature. They equate between men and women. Let's face it, Muslim as well as Christian religious personal status codes regard women as the property of the husband and treat them as minors. For instance, if a woman's husband passes away, her in-laws and brother-in-law are considered legal guardians over her children. Not only are personal status codes very unfair, but also religious courts are very corrupt. I am not saying that civil courts are perfect

or ideal, but they are comparatively more knowledgeable in justice procedures and less biased.

Mohammad Matar: In answer to the first question, I believe civil courts rather than religious courts ought to oversee family matters for several reasons. First of all, if we are eager to bring about a legitimate and correct civil society in Lebanon, and if we are to abide by the Lebanese Constitution which categorizes Lebanon as a civil rather than a religious country, then we must relegate all matters related to family law to civil courts. In this context, it is important to observe that the revised Constitution of 1990 declares Lebanon a republic with a multiparty system based on multiple religious groups. Moreover, the Taif Accord stipulates that all sects in Lebanon ought to respect each other. However, the Taif and other Lebanese legislation failed to prioritize personal and individual freedom over religious laws. I am a firm believer in personal freedom and choice. Hence, given that Lebanon is a civil country, it must adopt a positive law rather than a religious one. There is no harm in having religious laws and consulting Muslim and Christian sources of legislation. However, laws ought to be civil and lawyers should be trained in civil matters, though I believe they have to be knowledgeable in religious laws as well. The advantage of having positive laws is that civil laws can be amended, whereas religious laws are immutable and unchangeable. The inheritance laws for Muslims are a good example of the impracticality of applying fixed laws to changing social dynamics. In general, codes of personal status rarely change despite changes in circumstances and conditions. Yet, here I would like to give an example that proves otherwise. During the Ottoman Empire reforms were suggested and there were amendments in the law that governs Amiri lands (crown lands). The law was modified so that women could inherit equally to men.

If there is one society in Lebanon then there should be one unified law that governs family matters. For example, custody issues are general societal concerns that should be unified and not associated with religion. As it is, the laws that govern custody matters differ among the various religious sects in Lebanon.

AJ: This limits individual liberty which is recognized and sanctioned by the Lebanese Constitution. Why am I obliged to abide by religious laws? Why should the personal status laws formulated by my sect govern me? Where is my freedom of thought? Why are my human rights curtailed? Why should I be stigmatized or labeled since birth as belonging to a specific sect? Why am I obliged to lead my life in accordance with the rulings of my sect? Let us face it, religion-based personal status laws are the laws that mostly emphasize inequalities between men and women. Hence, alternative laws should be drafted.

Ibrahim Najjar: It is important to define what we mean by family laws. They are laws that govern marriage, alimony, divorce, custody, filiation (*bounoue*) and, inheritance, for Muslims. Religious laws differ between Christians and Muslims. It is very difficult to change or modernize (*noutawir*) Islamic *shari'a* and jurisprudence because the laws that govern the family are mostly related to faith. Islamic *shari'a* originates from a sacred text that is supposed to govern all time. *Shari'a* law aims at regulating religion as well as all aspects of social and political life.

Because of their 'sacred' origins very many family laws are immutable and no matter how hard legislators try to reform them, they can't change them much. The Jaafari school of law, however, is more liberal than the Hanafi one because the former didn't "close the door of exegesis (*ijtihad*) or interpretation."¹ Jaafari jurisprudence is subject to reform where new *fatwas*² or religious edicts are constantly introduced. If it is possible to amend *shari'a* law, the problem remains "who has the right to reform these laws?" Unfortunately, there is no uniform method to determine who can issue a valid *fatwa* and who cannot, and upon whom such *fatwas* are binding. Is a *fatwa* from Al-Azhar binding?

Among Christians one can modernize theology and religious ordinance. Yet, who is allowed to do that? The Vatican can do it only for Catholics. However, this proved very tricky in Lebanon. When the Vatican, in 1991, issued the rules and regulations that apply to Catholics, the Catholics in Lebanon started applying these laws. Yet, the government had no notion that the laws were amended and they were being applied!

In 1951 the Lebanese government asked the different sects to submit a draft law regarding personal status laws. All the sects complied and submitted drafts. But, the proposals contained very many inconsistencies and gaps. This impelled the Lebanese government to disregard them. Also, in 1993, the Orthodox Church presented a new personal status law. This, also was so full of errors and discrepancies that the courts were – and still are – unable to apply it. For instance, they amended the custody law by raising the custody age to 14 years for both sexes. However, applying the newly amended law was problematic because of certain ambiguities: Is the law relevant to the present only or does it have a retroactive effect? Does it apply to divorce cases settled prior to the amendment of the law? Unfortunately, there are very many problems that were not addressed when the laws were amended.

NH: From the general trend of things, one suspects that what impeded implementation of this modernized law

was more its being favorable to women than its being 'ambiguous.'

IN: I believe that Islamic *shari'a* is immaculate in its drafting. There is excellence in drafting laws within Islam to an extent that Christians, for the past four decades, adopted and applied Islamic *shari'a* in matters related to inheritance.

NH: They did because it favored men.

IN: We need to recognize that laws are not promulgated from nil. They are the result of historical development. Prior to the advent of Islam, female infanticide was the norm. Hence, the teachings of Islam were very revolutionary. Islam introduced guidelines that regulated one's whole life. Yet, with the passage of time these rules and regulations were no longer capable of accommodating new contexts and changing needs and conditions.

Ahmad El-Zein: One should keep in mind and adopt the 'general principle rule' or *al-qa'ida el kulliyya*.³

IN: I would propose creating a new sect, i.e. 'the non-religious sect' that is governed by civil laws. It is a secular sect that is governed by implications of previous solutions to the conflicts arising from ambiguous laws. Hence, the same rules that apply to the different sects in Lebanon apply to it.

We live this schizophrenia in laws daily in Lebanon and that is why I am raising this issue. Before we say let's see if civil laws are better than religious laws, we have to see where we can modernize gradually in order to cope with changing trends and new situations.

Let me give you an example: I recently handled a divorce case where a husband divorced his wife without her knowledge. The wife had no notion of the divorce and was not informed of the ruling (*hikm*) in order to be able to appeal. This divorce case was considered as a regular divorce although she was divorced in absentia. The divorce was finalized in a single session, and within one hour the registry bureau (*qalam*) gave the husband a copy of the ruling permitting enforcement (*sourat salihat lil tanfeez*). The husband took the paper to the personal status registries and registered the divorce. He then took the kids and refused to let the mother see them. Even though she appealed, my client – who is an American citizen married to a Lebanese Muslim – was not allowed to see her children. The Muslim religious courts claimed that they have no authority to allow her to see her children and the civil courts stated that they are unfit to supervise the case. Between the two, my client is still suffering. Such problems can be avoided when a civil law is adopted.

AZ: The issues being discussed are very delicate given that they are related to personal beliefs and religious creeds. Article 9 of the Lebanese Constitution stipulates the respect of religion and honoring family laws that correspond to the different sects in Lebanon.⁴ I agree with what has been said – especially in a religiously pluralistic society like Lebanon. An optional unified civil law could be the solution. It is a law that might appeal to many Lebanese citizens. This law is worth fighting for because it embodies a very important and very useful development. As it is, Muslims are faced with two obstacles: The unyielding, obstinate and narrow-minded stance of religious men, and the difficulty of Islamic reform (*al-ijtihad*). It is true that there is a rule that says that "it cannot be denied that texts may change with the shifting of times and places," yet no one dares change laws pertaining to personal status. The existing religious codes are considered divine, and their source is God, not society. Hence, laws and rules regulating personal status and inheritance (specifically for Muslims) are seen as absolute and eternal.

IN: This is true, though there are exceptions to the rule. For instance, there is a law in Lebanon that was issued in 1974 and re-issued in 1983 that is related to inheritance of the end of service indemnity. Legislators found a ruse (*hilat shar'iyya*) to include indemnity as inheritance by saying that when the Qur'an came about there was no end of service indemnity and so we can apply new laws regarding this matter. The laws that were accordingly implemented had nothing to do with Islamic *shari'a*, yet the justification given was that necessities permit the forbidden (*al darourat toubeeh al mahzourat*). Another similar example relates to civil marriages contracted abroad and then registered in Lebanon.

Bechir Bilani: Problems stem not only from religious laws but also from the way/s we interpret and apply these laws. In Egypt the rank of sheikh was refused to any religious man without civil law education alongside his qualification in religious legislation. Often, problems stem from incorrect rulings by religious men and not from the religious texts themselves. Errors often are the result of misapplication of religious texts. During the times of the Prophet when people used to ask him for advice he sometimes refused to give them an answer, stating: "You are more knowledgeable about your affairs." The Prophet wanted to avoid answering so as not to make a rule of things. Problems are often in the understanding or the application of laws rather than in the text itself.

NH: Our aim is not to import laws but to come up with fairer ways of dealing with issues of divorce, for example.

BB: Civil marriage is not the solution. I believe that religious marriages are the best form of union. I agree, how-

ever, that non-religious people should have their separate laws. Concerning inheritance for instance, according to Islamic *shari'a*, men incur all expenses. I believe that civil marriages lead to bad results. Evil is innate and you need an innate thing like faith to stop evil. I refuse to fight faith, religion is very important. Without faith we will act like savages.

MM: In answer to the second question, until we acquire an optional civil law that deals with personal status issues, I would rather see laws implemented by civil judges just like in Egypt, Tunisia, and Syria. Corruption prevails in Lebanon and religious courts are not immune. Court rulings are biased and unfair unless one is well connected. Groups belonging to the same sect side with each other and religious figures support members of their sect. The advantage of adopting a positive (civil) law is that under it one is no longer subject to the whims of religious judges and how fair or unfair they happen to be. There is a due process that has to take place.

AJ: With all due respect to the various religions, we are incapable of building a country when citizens pledge allegiance to a sect rather than a country. We should adopt one law and one court system that oversees all matters related to personal status issues. As judges we are taught that laws are mirrors of society and they progress or stagnate with it. Judges in Lebanon have managed to modernize laws extensively, thus improving the situation of women. Faith is a personal matter that cannot be imposed. With regard to corruption, I agree that there is corruption, but I believe that the situation can be salvaged.

BB: What you are calling for is the creation of a civil law for all, or an optional one. Yet, in doing so you didn't solve the problem of confessionalism and the ills that result from it.

IN: I disagree with Dr. Bachir. If we don't leave any leeway for the formulation of a secular sect that is governed by secular laws this would imply that once a person is born he/she is trapped and becomes the victim of the laws that govern his/her sect. It is true that one can change his/her religion but one has to still choose from within the different sects and religions recognized in Lebanon. Buddhism is not a recognized religion in Lebanon. We are in a very closed society.

NH: We live in a caste system, as Safiyah Saadeh claims.

MM: I have two brief comments to make. When I was still a university student in London I was amazed at how well behaved the English were in terms of queuing. One would be waiting at a bus stop and everyone would queue. So I thought it stemmed from their sense of

social courteousness. Yet, after several years, and to be specific, in 1998 I found out that there was a queuing law that was imposed in 1905 and was cancelled several decades later. The justification for changing the law was that it became redundant. People got used to queuing. As a result of the 1905 law, the English learned to queue, and with time it became an act of civility and politeness and not a legal obligation. Hence, laws are interactive and are capable of changing behavior. Another point is concerning positive law: There is an outcome consequent to authority's imposition of laws. What Dr. Billani was saying was that even if you have the non-secular sect, namely the 18th sect, confessionalism will remain. There is a famous saying by [John Maynard] Keynes to the effect that good money chases bad money. So if someone wants to marry from a different religion he/she is free, and so is another who wants to marry from the same religion and opt for a civil marriage, but if he/she finds that religious marriage is better then it is ok too. The operation is not mutually exclusive. There should be room for freedom of the individual. Discrimination is prevalent among all religions and sects and so we have to broaden our horizons. We are not born with a manual. Religions try to take away the freedom of their followers.

AJ: Religion is a private matter. It is a personal relation between the individual and God. There is no reason why should we live at the mercy of religious laws. Had I been given the choice I would have contracted a civil marriage.

AZ: Concerning questions 2 and 3, I disagree that religious authorities, especially among Muslims, are not revered or respected. It depends on which laws these courts are implementing. If you want to allow civil courts to implement religious and *shari'a* laws, the courts need to be rehabilitated. *Shari'a* judges are more knowledgeable and capable of dealing with these problems. The whole issue revolves around which text should be applied. Until we have a unified law I would rather see the laws in the hands of the religious courts. These courts are less expensive and more efficient. There, having a lawyer is not obligatory. Also, appointing someone (*tawkiil*) is easier and the sentencing is quicker. In principle, I am a secular person so I am in favor of an optional civil law with civil courts overseeing the rulings. Concerning corruption, it is everywhere. There are ethical and corrupt Christian and Muslim religious figures.

NH: Do you think there is more control in civil courts?

AZ: I disagree. In religious courts one can appeal and there is a complaint and inspection process.

AJ: I believe that the solution is in adopting a unified

obligatory civil law and civil marriage law for all sects and an optional religious law for each sect.

AZ: I personally believe that true religiosity is nonexistent in Lebanon. People are fanatic and pledge allegiance to their religion or sect without understanding the true meaning of faith. Had the judge who handled the case Dr. Najjar mentioned earlier been a pious and true believer he wouldn't have made such a ruling. Even though divorce is an acceptable practice in Islam it is still considered the most hated of lawful practices (*akrah al-halal*), and mothers can never be denied seeing their children. Usually in divorce cases the religious judges have to try and make amends between the couple. If the judge fails he tries involving parents and if, after all that, they are still adamant about getting a divorce, then a divorce will be granted.

IN: Religious courts are paternalistic in nature and religious judges believe that they are implementing justice that comes from God. Corruption is very prevalent in religious courts. Politics and political power, wealth, donations, as well as the right connections play an important role in resolving personal status issues.

MM: Christian and Muslim religious courts look down upon women. Anything given to women is regarded as charity. If you see how women are treated in religious courts you will be horrified. Women have no existence in religious courts, whereas in positive courts there is no such thing.

IN: Religious judges are not knowledgeable and lack the proper legal training. We should abolish all religious courts. What is happening in religious courts is horrifying.

AZ: Before abolishing religious laws or courts, let us first try to change the electoral law.

BB: I have no objection to adopting an optional civil law that oversees matters related to personal status, upon one condition: The law should contain a text that considers all individuals who adopt the civil law to have renounced their religious and confessional identity. This prerequisite prevents individuals from taking advantage of their religion and sectarian affiliations to secure jobs and top ranking positions within the government. In the case of couples who have contracted civil marriages abroad – in countries where civil marriages are a necessity – they should, upon returning to Lebanon, be required to either renounce their religious status, if they are willing to abide by the rules and regulations that govern their civil marriage, or else they should contract a religious marriage.

MM: (Answer to questions 4 and 5) This creates a schizophrenic situation. The confessional system is based on a multiplicity of positions and often ambiguity of solutions. In personal status issues one has to act in a certain manner. This schizophrenic situation is partly caused by the multi-colored confessional system.

BB: I believe that the many laws applied are not the problem given that people are never united. They will always argue over politics, belong to various political parties, etc.

AJ: People disagree on programs. This confessional system prevents one from fighting corruption and punishing individuals, because they are protected by their affiliation to a sect or religion.

MM: Any contract that is lop-sided, where one party has very many privileges over the other, leads to discrimination. I disagree that divorces are easily granted when the marriage is a civil one. However, religious divorces are more difficult and problematic because they are not egalitarian.

BB: Adopting a law for civil marriage will not solve the problem of sectarianism.

AZ: The problems the citizens are facing, in my opinion, are not the result of the variety in personal status codes governing sects in Lebanon. The prevalent political system is responsible for the absence of a true sense of nationalism. This causes citizens to be more affiliated with their sects. It is important to note that practicing one's religion freely while respecting that of the other is an important achievement.

Endnotes

1. *Ijtihad* or Islamic jurisprudence.
2. A *fatwa* is a legal pronouncement according to Islam, issued by a religious law specialist on a specific issue. Usually a *fatwa* is issued at the request of an individual or a judge to settle a question where *fiqh*, (Islamic jurisprudence) concerning the issue in question is not clear.
3. *Al-qa'ida el kulliyya* stipulates: *La younkar taghayour al-ahkam bi taghayour al-zaman wa al makan*, (It cannot be denied that rulings of early jurists may change in accordance with change in the times or locations).
4. Article 9: Liberty of conscience is absolute. By rendering homage to the Almighty, the State respects all creeds and guarantees and protects their free exercise, on condition that they do not interfere with the public order. It also guarantees to individuals, whatever their religious allegiance, the respect of their personal status and their religious interests.

The Opinion of a Religious Authority Parson Dr. Habib Badr President of the Evangelical Religious Courts of First Instance in Beirut

Editor's question:

Do you believe that giving jurisdiction over family legislation to religious courts rather than civil courts has any advantages? What are they?

Giving spiritual or religious courts jurisdiction over family legislation in Lebanon was not a decision taken on the spur of the moment or during a neutral time in history or in a vacuum. It is also not a pure legislative system independent of the public political system that constitutes the foundation of Lebanon's modern state and its prevalent political atmosphere. The confessional system applied in our country today was adopted during the French mandate and developed from the 'religious system' (millet) that prevailed in Lebanon and the wider region under the Ottoman Empire's 400-year rule.

This millet system is an Ottoman device by means of which non-Muslims enjoy Muslim protection. It derives from practices that the consecutive Islamic states (Umayyad, Abbasid, Fatimid, and others) applied to 'the people of the book' (believers in revealed religions i.e. Christians and Jews) and Muslim minorities.

Hence, it is not possible to judge the characteristics of the spiritual courts system in general without talking about the public, political and civil system prevailing in Lebanon today.

Giving religious courts jurisdiction over family legislation is based on the general principle that religion should determine the identity of the communities that make up the Lebanese state

History proves that the organizing frameworks and the political structure in any country, including family legislation, must stem from the social nature and sociological fabric of the country in question. In our country, the current confessional system does not draw a line between religion and state. This reality is the result of the region's history, which is marked by the Islamic conceptualization of the state and of its organization. Family legislation stemming from this vision is principally based on religious identity and therefore cannot fall within the jurisdiction of another legislative system, regardless of its kind, by simply writing it into another system.

Following the example of Europe, where state and religion have been separated for almost three centuries, is useless

and does not help us in assessing the advantages and qualities of confessional legislation. Judging our system as 'retarded' or 'underdeveloped' compared to its counterparts in the West is similarly useless. It is important to remember that during the Middle Ages Europe knew a 'dark' period during which it confused religion with the state before progressing and relinquishing this confusion. The foundations of Western societies stemming from Greek, Roman and Christian heritages facilitated a shift from the system which confused state and religion to a system which distinguished between them. But our oriental society is of a different nature.

Islamic ideology, which prevails in our region, does not believe in separating religion from daily life. There is no shame in that – i.e. there is no shame in the fact that the religious or confessional factor, whether political or legislative, provides the foundation of a society or state, provided that this confessionalism preserves the principles of the rule of law, human rights, freedom, equality, and democracy. This is not impossible as the Lebanese experience has shown in the past two centuries. I believe that if confessionalism is correctly applied it can preserve many of the religious legislative system's advantages while reducing its disadvantages.

It is true that misuse of the jurisdiction of religious courts (even the entire confessional system) over family legislation has in recent years stained the reputation of the confessional system. It is also true that many younger Lebanese principally refuse this system in favor of the Western secular system, which gives the civil (or secular) state jurisdiction over civil and family legislation. However, the confessional system has many advantages that can be brought to light if it is correctly and ethically applied, and if amendments are introduced to modernize it and better adapt it to the requirements of our era.

One of the most pressing amendments needed relates to the rights of women as mothers, wives, and daughters. We, as an evangelical confession, have sought to amend our personal status system in this direction. However, there is much that is yet to be done.

In conclusion, I wish to say that the current confessional law, under the present circumstances and for our reality as Christians living in the Arab and Islamic world, remains the best guarantee of our freedoms and rights until the nature of our society and its civil political fabric are changed.