

## THE TUNISIAN WOMAN AND HER PLACE IN POSITIVE LAW(1)

This book was written (in both Arabic and French) for the sake of informing both men and women about "the legislative and regulatory texts which govern them so that each party may have adequate knowledge of his rights and his duties."

The author gives tribute to President Habib Bourguiba for his support of woman's cause, right after the realization of the country's independence. In 1956 he took the initiative of publishing the Code of Personal Statute which rehabilitated woman's rights, long disregarded in the period of stagnation. During the last 20 years, further rights have been acquired by the Tunisian woman.

The book contains a complete record of the woman's legal rights in the Family Code, namely those concerning marriage, divorce, inheritance and family responsibility. It also records the laws defining her rights regarding education, work, management of economic affairs, citizenship, politics and military service.

This summary will only point out the laws which take a revolutionary aspect or reflect the progressive attitude of the legislators in both the family code and the Constitution.

### 1 – Laws concerning the young girl

- a. According to Tunisian law, girls share with boys the right to attain civil capacity at the age of twenty.
- b. If the girl is the sole heir of her parents, her uncles and cousins have no right to share in her inheritance. Only the grand parents retain this right.
- c. A girl has the right to receive from her parents full maintenance until she gets married.

### 2 – The married woman

- a. Polygamy has been abolished by a law promulgated on Aug. 13, 1956.
- b. The minimum age for marriage is fixed at 20 for boys and 17 for girls. Any violation of this law requires a special authorization from the judge who may grant it only for major reasons while he takes care to consider the interests of the couple.
- c. The marriage contract may be performed by two notaries or by the officer of civil law. In both cases the presence of two witnesses is necessary at the ceremony.
- d. A wife enjoys complete authority to administer her property and her money without her husband's permission. She may, however, appoint her husband as superintendent of her possessions on condition that she would receive from him a regular account regarding this function.
- e. A husband is required to provide for his wife. If she is financially capable to contribute to the family expenses, a law of the personal statute requires her to share in them, while the court of appeal (July 16, 1968) opposed this law by declaring that a husband should provide for his wife under all circumstances.
- f. In article 11 of the family code, it is stated that the marriage contract may include any clause or condition which the wife requires the husband to fulfill. In case

of nonfulfillment of the stipulated conditions, she has the right to claim divorce.

### 3 – Divorce

Concerning divorce, the law states the following:

- a. Divorce may be effected only through legal courts.
- b. Efforts should be made to bring about reconciliation between the parties.
- c. A wife has equal right with her husband to claim divorce.
- d. During the period falling between the attempt for reconciliation and the verdict of the judge, it is necessary that urgent measures be taken regarding the residence of the couple, the maintenance of the wife and the care of the children.

### 4 – Nationality

A Tunisian woman who has been married to a non-Tunisian has the right to confer her nationality on her children born of this marriage.

### 5 – Adoption

The law promulgated on March 4, 1958, considers adoption legally allowed, defines the conditions that regulate it and states the equality of rights and obligations between the adopted and the legitimate child.

### 6 – Family Planning

The law which was passed on Sept. 25, 1975 authorized abortion during the first three months of pregnancy, provided that it takes place in a hospital and through the mediation of a legally authorized doctor.

After the lapse of three months, pregnancy may also be interrupted if, according to a doctor's diagnosis, it is supposed to interfere with the mother's health or to produce some other harm.

Contraceptive products may also be imported, sold and used.

The same tolerance applies to the use of contraceptive methods, whether classical or modern. A threefold aim lies behind family planning: liberation of women, protection of the mother's health and birth control.

### 7 – Women's Education

No discrimination is made by the Tunisian constitution between men and women concerning the right to education. "Women who have been enslaved for many centuries are now convinced that education is the key to their economic independence and their future security."

Recently the Tunisian state ratified five international agreements regarding woman's employment.

### 8 – Women and Politics

Tunisian women, since 1959, have the same political rights as men, though they have not been able until now to play an active role in politics.

### 9 – Women and military service

The law does not discriminate between the sexes in requiring military service. Accordingly women are under the same obligation as men to serve the flag, but the law has not yet been put into practice.