

Steps Towards Empowerment:

A Legal Report

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Foreword by the Hariri Foundation for Sustainable Human Development

The study of Women and Law was the result of our conscious belief that the main problem with our society is not in the law but in the relationship of the individual, as citizen, to the law and the awareness of his/her rights based on those laws.

The law that gave Lebanese women their rights to voting and running for office, did not result in a political presence commensurate with her education and political awareness.

Laws are the pillars of society and their role is to regulate the relationship between individuals and society on one hand and society and the state on the other. A society that uses its laws well, is one that is capable of discerning the flaws and developing them according to its needs and evolving relationships.

This study presents an approach to the laws related to women, their role and their interaction with their environment and their state, taking into consideration the particularities of the Lebanese society.

This study reflects the reality, without any bias or interference on our part. Our concern was to present the reality as it stands leaving the resolution of the issues involved to those concerned. We hope that this study will contribute to increasing the level of awareness of the existing laws, encourage their correct application and assess their impact on our daily lives in order for us to see how suited they are to the needs and development of our society.

Bahia Hariri

Nature of the Report

This report is an analytical study of several real life cases involving litigation in which women, as a party, suffer as a result of the existing discrimination in the laws applied in Lebanon. As such, this report is not inclusive of all forms of discrimination that exist in the laws but restricted to the legal problems raised by the analysis of the case studies made available.

Objectives of the Report

The report was prepared to serve the following purposes:

- Monitoring the legal status of women in existing Lebanese laws.
- Exposing the gaps related to the legal status of women.
- Presenting adequate recommendations that contribute to rectifying the legal system regarding the status of women.

Sources of the Report

This report was based on the study of 50 sample cases chosen for their pertinent portrayal of the injustice that women endure as a result of gender discrimination in the laws.

The samples were collected as a result of collaboration with veteran women NGOs working in the public social sphere in general and on women's rights in particular. These NGOs have long been the refuge of women in their family-related problems, offering them moral as well as legal support.

Thus, and in the service of scientific integrity, it is important to underline three major points regarding the above mentioned collaboration:

- The NGOs were responsible for the documentation of the cases by the social workers working for them.
- The social nature of the work conducted by these NGOs and their concern with family-related problems limited the cases to the confines of family laws and to the analysis of the legal "problematic" they raise.
- The NGOs concerned were responsible for the verification and subsequent authentication of the selected cases.

The Approach

Work on the report started by studying each of the above mentioned 50 cases. Every file was carefully examined and legal briefs were written for each establishing legal cause, including the facts and legal issues raised. The cases were then filed according to their legal "problematic" and nature, which resulted in six main categories: Domestic Violence, Dissolution of Marriage, Custody, Alimony, Nationality, and Inheritance.

The report was then divided into six chapters according to the above classification. The chapters included the following subtitles:

- Introduction: A general overview of the subject discussed in the chapter.
- The legal framework: A brief exposé of the rules of law that govern the subject in the Lebanese legal system.
- The samples: An account of the samples and the facts of the conflict, the legal cause and the laws that are discriminatory to women.
- Data analysis: A general reading of the legal problematic presented by the sample.
- A legal analysis: The study of the legal issues that were exposed by the analysis and a diagnostic analysis of the discrimination involved and the ways to address it.
- The recommendations: Recommendations that, if adopted, could contribute to the elimination of the causes of gender discrimination in the law and help achieve gender equality in the situations under discussion.

The Style Adopted

The report was written according to the criteria adopted by international reports in as far as the approach to style underlines the importance of easy reading, clarity, pragmatism and precision in as much as it is possible. A reader-friendly style was adopted to make it accessible to all those concerned with the issue and not only jurists.

An Open Horizon

Every subject presents material that could be explored further through an in-depth legal study. However the nature of the report imposed restrictions in time and style.

As such, it is useful to point out that the report holds the seeds to new horizons that can be explored further and a methodology that can be adopted to portray gender discrimination in other legal fields.

Chapter 1: Dissolution of Marriage

1-1 Introduction

Marriage is one of the oldest legal and social institutions known by human society. If the word generally refers to the consensual union of a man and a woman, as an institution it refers to the interpersonal relationships acknowledged by both state and religion. The meaning of marriage differs from one culture to another and from one religion to another in so far as its nature, the rights and obligations it incurs, and also its termination.

1-2 The Legal Framework

The word “Talak” commonly used in Arabic, as a counterpart to the word “divorce” in French, to refer to the dissolution of marriage¹ is not precise from a legal point of view. The reason is that the dissolution of marriage takes on different forms in the Lebanese legal system, and follows the Personal Code of the different religious confessions. The following is a description of the forms of dissolution allowed by each confession in Lebanon.

1.2.1. In the Christian Confession

Marriage is sacred in Christianity: “What God has joined together no man shall set asunder”¹. The most important result of the sanctity of marriage is that dissolution is not recognized by any of the different Christian sects. This has in turn been reflected in the Personal Code adopted by the different Christian sects in Lebanon and which stipulates the inability of any of the two parties to dissolve the marriage².

However circumstances can emerge to infringe on the percept of non-dissolution and as an exception to the rule. Some of these circumstances are commonly agreed to by the different sects as a reason to end the marriage, others are not. Whereas the Orthodox sects recognize two means for ending a marriage: annulment or divorce; Catholics only admit to annulment.

The main reasons stated for annulment are:

- One of the stipulated objections to marriage such as kin-marriage for example;
- Polygamy;
- The lack of legal capacity of any of the parties;
- Deceit or force as a basis for the marriage, in addition to others stated by some of the sects³.

¹ HANNA Malek,(1978), Dar el. Naher, Beirut, p88

² Article 107 of the Personal code of Catholic Community issued on 22\2\1949
Article 112 of the Personal code of the Latin Community issued on 22\2\1949

Article 63 of the Personal code of Orthodox Community, Article 61 of Armenian Orthodox community

³ Article 55 of the Syriac Orthodox community

The reasons for annulment are stated in article 853-862 of the Personal Code of the Catholic Community; article 64 of the Orthodox Community; article 28 of the Syriac Orthodox Personal code; article 49 of the Armenian Orthodox Personal code; and articles 34 and 35 of the Anglican Personal code.

What is relevant here from a gender discrimination perspective is two points:

- First is that all the accepted reasons for annulment are objective reasons concerning the validity of the marriage vows regardless of the sex of the party concerned, thus it does not raise any gender discrimination concerns.
- Second, the claim for annulment for the stipulated reasons is allowed for both parties with no discrimination in any of the legal texts.

The picture is different in the case of break-up or divorce. Article 54 of the Personal Code adopted by the Orthodox Church, stipulates 5 reasons as legal grounds for divorce:

- The wife posing as a virgin;
- Willful, un-coerced adultery by the wife;
- Habitual intoxication and entertaining strange men,
- The destruction of a man's crops willfully by the wife
- Apostasy by any of the two spouses.

The latter is the only cause that applies to both men and women, where as the loss of virginity applies only to the wife. The hypothesis of the law is that habitual intoxication and dissipation, adultery and the destruction of crops by the husband does not give the wife cause for divorce, while the reverse is true.

Article 141 of the Personal Code of the Ashuryan Orthodox Church, stipulates six causes for the dissolution of marriage, they are:

- Apostasy
- Attempting to kill one another
- Insanity
- Conviction of one of them on ethical-related crimes
- Impotency
- Marriage through deceit.

Apart from the "impotency" clause, all the other causes apply to both spouses equally. However, the subsequent articles regarding divorce contain discrimination against the wife. Article 143 stipulates five causes that allow the husband to divorce his wife, if she:

- Poses as a virgin
- Willfully destroys her husband's crop,
- Disobeys his repeated demand for her not to visit a certain house or see a particular person of dubious reputation
- Sleeps outside the conjugal home and in a questionable place
- Disregards a judicial rule to follow her husband to his place of residence.

Whereas article 144, allows a wife to ask for divorce if her husband:

- Facilitates adultery for her
- Performs fellatio

- Falsely accuses her of adultery.

The personal code and procedural law of the Greek Orthodox Church of Antochia and all the East holds similar discrimination between men and women in the causes for divorce (articles 69 and 70), whereas the causes for dissolution apply equally to both.

The Armenian Orthodox Church does not discriminate between the spouses; article 62 of their Personal Code stipulates seven reasons:

- Adultery by any of the spouses
- Attempting to kill each other
- Apostasy
- Abstention from performing conjugal duties
- Insanity
- Absenteeism of one of the spouses for five consecutive years without a word.
- The use of brutal force by one of the spouses.

As for the Anglican Church, its articles regarding dissolution and divorce are also void of any discrimination, and apply to both spouses. Article 39 of its personal code states five causes for dissolution:

- Insanity
- Apostasy
- Absenteeism for a period of more than five consecutive years without word
- Abstention from performing conjugal duties for more than three years
- Attempting to kill each other.

Article 42 stipulates the right of both spouses to file for divorce in case of adultery.

In summary:

- Marriage for Catholics can only be dissolved through annulment, whereas for other Christian sects, particularly the Orthodox, both dissolution and divorce are possible.
- Marriage is annulled, in most Christian sects if a prior or contingent defect is revealed, one which renders it false. This condition holds no discrimination and applies to both spouses.
- The reasons for the dissolution of a valid marriage, in the sects that allow it, hold discrimination in so far as some are only applicable to the wife when it's her fault, while the men's responsibility is restricted.

1-2-2 In the Muslim Sects

The approach to both the institutions of marriage and divorce differs in Islam. Marriage for the Arab communities, before Islam, was tantamount to

a contract of restitution, with the legal status of women similar to a slave. A woman was subject to tutelage all her life, trading her father's for her husband's by virtue of contract, in which the woman is the subject and the dowry is the compensation the husband pays the father, in return for ownership⁴.

The Islamic Sharia changed the legal status of women, and abrogated all the characteristics that made the marriage contract one of restitution, while keeping it a civil contract without imposing a religious or official body entrusted with its ratification. The woman thus became party to the contract and not its object, and the dowry a gift and not the price. The Islamic Sharia undervalued the significance of the dowry by making it symbolic, at a time when fathers equated the price to their honor.

As for the dissolution of the marriage, it was done in two ways before Islam: unilaterally by the husband without the consent of the wife "Talak" or for a price the woman pays in return for her emancipation, known as "khalaa". Islam did not make any changes regarding these two ways, but added a third judicial divorce by virtue of a ruling on the grounds of irreconcilable differences between the spouses.

Article 337 of the by-laws of the religious tribunals stipulates that "each spouse can file for separation on the grounds of disputes or abusive behavior like beating, cursing or coercing the spouse to indulge in the forbidden". The ensuing articles govern the due procedure for filing such claims, and article 343 stipulates that in the case of proof of abuse or more by the husband, then the judges ruling is for separation, imposing on him all the marital financial rights in favor of the wife. Whereas in the case of proof of the wife's liability, then the ruling is for 'khalaa' and the loss of all or part of the dowry in commensuration with the harm incurred.

It is clear from the above that both concepts of marriage and divorce are discriminatory to women. The Islamic Sharia allows a husband to unilaterally divorce his wife, without her say in return for paying her dowry paid and the financial rights incurred by the divorce. Whereas, not only is the wife not accorded the same right, but has to absolve her husband of his financial responsibilities, in all or in part, in return for his consent.

As for separation or divorce as a result of irreconcilable differences or abusive behavior, Islamic Sharia gave both spouses equal rights, allowing both to ask for divorce. However, divorce by a judge's ruling is allowed only for Sunnis and not Shiites. Article 346 of the by-laws of the religious tribunals stipulates that this form of divorce does not apply in the Jaafari religious tribunals.

In short:

- The Islamic Sharia allows the husband to unilaterally decide to divorce his wife without her say.
- A wife does not have the right to decide to divorce but needs her husband's consent for "khalaa".
- Irreconcilable disputes and abusive behavior allow both spouses to get a judicial divorce with no discrimination as applied by the Sunni Courts.
- Judicial divorce is not applicable in the Jaafari courts.

⁴Ibrahim Fawzi, Family rules in pre-islam "jahiliya" period and Islam, Dar al-kalima, 1983,p43

1-3-The Samples

1-3-1 A wife caught her husband in bed with another woman in the matrimonial house and left to her parents' house. Before she could take action against him, the husband filed an action suit against her for adultery which was later rejected.

The wife filed a divorce action before the Druze confessional court demanding compensation for the dissolution of marriage, the judge ruled for divorce, giving the wife all the financial rights, without determining any additional indemnity resulting from the responsibility of the husband despite the provisions in the laws of the Druze community .

1-3-2 A Lebanese couple (Shiite) fought a lot due to differences in their educational level. The dispute turned into violence against the wife. The latter filed an action suit before the Jaafari religious court asking to oblige the husband to perform his religious obligation and treat her well.

The court attempted to conciliate between the two and no effort by family and people of good will was spared to solve the conflict amicably. The Mukhalaa (divorce) occurred in return for exempting the husband from his financial obligations towards the wife.

1-3-3 Two Lebanese persons concluded their marriage before the Jaafari religious court, then moved to live in Denmark. After settling there, the husband started to hit his wife; she turned to the legal authorities and filed for divorce in the Danish courts which judged in her favor.

The wife returned to Lebanon and tried to execute the divorce judgment. The Jaafari religious court refused to acknowledge any effect of the mentioned judgment as the wife has no right to ask for divorce in Jaafari rites.

The wife tried recourse to the Shiite Higher Council to find a solution. The husband proposed a compromise stipulating her renouncement of her legal rights and turning over the deeds of an apartment bought with her own money in return for his consent to the divorce. The wife was obliged to accept the offer due to the absence of any other solution.

1-3-4 A wife was subjected to physical violence from her husband, which started during her first months of pregnancy. She tried to give him a chance to change his behavior and asked for guidance and advice from experts in family guidance but the husband remained the same. When the wife resorted to the Jaafari religious court, she found out that she could not file for separation on the basis of disputes (irreconcilable differences). The husband abused of this situation and forced her to cede all her legal rights including her custodial right to the newborn in return for divorcing her.

1-3-5 "M.H." gave birth to a girl, which made her husband angry because he wanted a boy. The disputes between the couple increased and all the

efforts to conciliate between the spouses failed. They did not solve these disputes, divorced and the husband settled all her financial and legal rights. .

- 1-3-6 “Sh. Y.” married in 1980 and gave birth to four children. Her husband neglected her and sought another woman. She tried to convince him to change his mind but he insisted, divorced her and paid her dowry as stated in the marriage contract, which in Lebanese currency was valued in 2001 (date of divorce) at ten US dollars.
- 1-3-7 A wife suffered from physical violence during her four years of marriage. She filed a divorce petition before the Sunni religious court. After a long trial and indulgence of the judge towards the efforts of conciliation despite the evidence of dispute and violence, she finally was able to obtain a judicial divorce.
- 1-3-8 “H.M.” married at the age of 24 when she was still studying at the university. After six months of marriage and because of her studies, she neglected her obligations towards the husband leading to disputes between them. Friends (among whom was a clergyman) tried to conciliate between them to no avail. They agreed to divorce against the wife’s renouncement of half of her financial rights.
- 1-3-9 A wife suffering from domestic violence first tried to hide the matter; but as it aggravated she turned to her parents for help. As a result of sustained efforts, the husband agreed to divorcing her against renouncing custody right of her under-aged child.
- 1-3-10 A wife suffering from domestic violence turned to the Jaafari religious court asking for divorce which the husband refused to grant because he did not want to pay her dowry that had increased in value with time. As result of the slowness of judicial procedures and despite the evidence of violence, the wife agreed to relieve her husband from all financial rights in return for divorce.
- 1-3-11 Two Lebanese were married in church in Lebanon then moved to live in the United States of America. Disputes started between them and with no friends, relatives or clergymen to help them solve their problems; the wife turned to the American courts demanding divorce, which she obtained. Back in Lebanon she could not enforce or register it in the Lebanese records of civil status because of the exclusive competency of the spiritual courts. The Evangelical Spiritual Court, which she resorted to, did not acknowledge the divorce issued by American courts.
- 1-3-12 Two Lebanese were married in the Orthodox Church. After a short period of time, the husband suffered a progressive neurological disease which prevented him from performing his matrimonial obligations. At first, the wife understood the situation and tried to help her husband until she reached a stage that she could no longer bear. She turned to the spiritual court asking for divorce. She was informed that the orthodox jurisdiction does not allow the divorce because of illness as marriage vows were made in sickness and in good health.

- 1-3-13** A wife discovers that her husband takes drugs and is involved in an illegal business as well as being unfaithful. She filed for separation before the Syrian Orthodox Spiritual Court but she was surprised that the betrayal of the husband does not constitute grounds for divorce unless it happens in the matrimonial house or if the husband takes on a mistress publicly.
- 1-3-14** A man took on a second wife based on the provisions of the Sharia in that allow polygamy. The first wife turned to the religious courts demanding separation but the judge rejected her action because a demand of separation between spouses can be granted for specific reasons, polygamy not being one of them.
- 1-3-15** A Shiite concluded a temporary marriage (marriage of pleasure) without the knowledge of his first wife. When she found out, the latter turned to her parents who advised the husband to forgo the temporary marriage but in vain. The wife did not try any judicial procedure knowing that the Jaafari jurisprudence allows temporary marriage and considers it as a right.
- 1-3-16** A Shiite concluded a temporary marriage (marriage of pleasure) without the knowledge of his first wife and neglected his matrimonial obligations. Relatives intervened to prevent the husband from the temporary marriage but in vain. The wife asked about the legal means that could be adopted to defend her rights; she was informed that she could submit an action to obtain alimony without divorce because the Jaafari jurisprudence does not recognize separation particularly on the grounds of temporary marriage which is legal and legitimate according to the mentioned jurisprudence.
- 1-3-17** Soon after her marriage, Sahar's husband started abusing her physically and mentally. He often hit her and blamed her until one day he tried to stab her with a knife. She obtained a report from the medical examiner confirming the corporal violence and filed criminal charges as well as a claim for separation before the religious courts. Due to the lengthy period of the trial, Sahar dropped the separation claim and filed for divorce and had to cede all her rights and leave her private belongings in the matrimonial house in order to obtain it.
- 1-3-18** "Ahlam", a Lebanese girl bearing the Australian citizenship married a relative, and discovered that his only reason for marrying her was to obtain the Australian citizenship. The competent authorities in Australia refused to confer the citizenship to the husband due to faults committed by him; this led to disputes between him and Ahlam. He waited for her to visit Lebanon and obtained a decision prohibiting her from travel, and then forced her to renounce her legal rights in return for divorce and lifting the travel ban.

Ahlam opposed the travel ban, claiming that the only reason for the disputes with her husband was his devious attempt to obtain the Australian citizenship but the court insisted on its decision considering that it is the husband's right to prohibit his wife from

traveling whenever he wants.

Note that during the trial period, Ahlam reached an agreement with her husband to divorce and cancel the travel ban in return for her renouncement of her legal rights ; but the husband breached the agreement and asked her to return to the matrimonial house without condition. The court could not accept Ahlam 's petition and she was obliged to obey her husband.

- 1-3-19 A married man (father of eight children) proposed marriage to “Wajiha”, a Lebanese girl with the Australian citizenship after he convinced her that he had divorced his first wife in Australia.

Wajiha accepted the marriage and they lived two years in Australia where he benefited from the salary given to her by the authorities. When they returned to Lebanon to visit their parents, Wajiha was surprised that her husband wanted her to remain in Lebanon and reside with his first wife.

The husband hid Wajiha's passport and filed an action suit of obedience before the Jaafari religious court and obtained a decision prohibiting her travel.

In counterpart, Wajiha filed an alimony suit against her husband prohibiting his travel; as well as she also filed for divorce.

The court decided to combine both alimony and obedience in one action suit. The divorce petition went before the Jaafari Mufti in order to issue a fatwa to divorce Wajiha, because the judge has no right to issue divorce without the approval of the husband unless by a legitimate fatwa regardless of the serious reasons presented by the woman plaintiff.

- 1-3-20 Fadwa suffered from domestic violence, she asked for separation and visitation rights before the religious courts after taking shelter in her parents' house and leaving her children at the matrimonial house because she could not support them and her parents' house was too small.

As a result and due to the lengthy period of the trial and despite the confirmation of violence, Fadwa accepted to renounce part of her legal rights in return for divorce, obtaining only part of her dowry, with an agreement to see her children once a week.

- 1-3-21 Samah married without the approval of her parents and gave birth to two children. At the beginning of the marriage, the relationship with her husband was good but it deteriorated because of her mother-in law's intervention in their lives. As a result, the husband neglected his familial obligations and changed his rite from Maronite to Moslem, remarried with the encouragement of his mother and traveled with his second wife to Dubai, sending Samah a letter informing her that he did not want to continue his life with her nor his children. Samah left the matrimonial house because of her mother-in-law's

continuous harassment and went to her parents' house, where she filed for annulment and custody.

1-3-22 Aida married a man who obliged her to leave work after marriage to serve his father. Later on, she discovered that the husband suffered from psychological disorders, sexual perverseness, and was a drug addict. From the first day of marriage, he hit and hurt her and prohibited her from seeking medical help. As result of the severe beating, she miscarried.

1-3-23 Mirna married against her parents wishes and had a girl. Her husband started hitting her soon after their marriage. Mirna filed for annulment in the Maronite Spiritual courts but in spite of the violences changed her plea to abandonment as the marriage contract allows her to benefit from her husband's health insurance as well as from alimony for her daughter.

1-4 Data Analysis of the Samples

1-4-1 At the level of the contentions in the samples that lead to either divorce or asking for divorce, the general analysis of the samples shows the following:

-Around 39.1% of the contentions arose from domestic violence and wife beating; 21.7% from the husband taking a second wife; 8.7% from the husbands' adultery; and 30.5% from other different reasons.

-Around 82.7% of the contentions were caused by the husband, while only 4.3% by the wife and 13% by irreconcilable differences attributed to both parties.

-39.15% of the contentions came before the Sunni religious courts, 30.45% in front of the Shia religious courts, 13 % before the Catholic courts: 4.35% in front of the Druze religious courts ; 8.7% before the Orthodox; and 4.35% before the Anglican courts.

1-4-2 At the level of the results of the domestic contentions in the samples, the overview of the materialities and facts shows the following:

-61% of the disputes ended in separation, 35% did not and 4% are still pending with no clear results.

- 64.3% of the separation were reached through agreement of the parties, 14.3% by the unilateral decision of the husband; 14.3% were a result of a judicial ruling regardless of the husband's will, a 7% of the samples were unclear as to how the separation was reached.

-64.3% of the separation cases were contingent with the wife's total or partial renouncement of her rights to custody/ visitation/ alimony/ dowry. In 7.1% of the cases the wife got her full rights, while 28.6% did not have the necessary information to allow follow up of the lack or acquisition of rights after the separation.

-The agreement of the spouses on divorce procedures was in 88.9% of the cases contingent with either partial or full abnegation of the rights to custody/ visitation and/or/ alimony and/or dowry, whereas 11.1% of the samples were not explicit on the details of the divorce.

-77.8% cases of domestic violence ended in separation, while 22.2% did not.

-87.7% of the separation cases due to wife beating was reached as a result of the agreement of both parties; while 14.3% were reached by judicial ruling regardless of the husband's wishes.

-All the contentions arising from domestic violence ended in separation as a result of the agreement of the parties, and were done after the wife agreed to renounce in full or in part all her rights to custody and/or visitation and/or alimony and/or dowry.

1-4-3 As for the reasons that some cases did not end up in either separation or in asking for one, they are according to the analysis of materialities and facts:

-The unwillingness of the wife to separate from her husband for financial reasons.

-The intolerable long trial period and procedures.

-The inability to dissolve the marriage under religious laws.

-The lack of the wife's rights to file for divorce without her husband's consent under the laws and percepts applicable by the religious tribunals concerned.

-The inadmissibility of divorce or separation rulings reached by foreign civil courts and their non-recognition by religious courts.

-The inability of the wife to ask for divorce without the husbands consent according to the laws applied in the competent religious tribunals.

1-5 Legal Analysis

1-5-1

Some of the religious laws in Lebanon are clearly unjust to either spouses or one of them, in some of the articles or in their percepts. One of the clearest examples is the inadmissibility of breaking the marriage vows for any reason that arises after a valid union has been blessed. This percept adopted by the Catholic Church can in some cases be injurious to the spouses or one of them at least when it is applied in absolute strictness.

In paragraph 1-3-23 of the sample mentioned above, we find the husband (Maronite) guilty of three infractions of the religious code which governs his personal status: One: the deceitful change of religion, to marry another woman; two: entering a second marriage knowing perfectly well that his religion prohibits polygamy; three: trying to shirk his marital responsibility by neglecting his first wife and travelling with the second. The wife on the other hand is a victim of these three infractions and has no legal recourse that enables her to get legal separation and live independently with her children or even get married again.

1-5-2

Some religious laws can be "unjust" as a result of the absence of explicit texts and legal percepts. An example of such an absence is the inability

of a wife to file for dissolution of the marriage in the Shiite sects. Samples detailed in paragraph 1-3-3, 1-3-4 & 1-3-10 cite the situation of a wife that had to renounce her legitimate right (granted by the Islamic Sharia') to either dowry, custody or other in order to get her husband's consent to " Khalaa' , despite proof of domestic violence as the basis of contention. Other examples include the absence of texts or legal precepts in the Orthodox Church that allow the wife to ask for divorce if the husband sustains an injury that prevents him from pursuing a normal sexual life (sample1-3-12) .All the different religious sects allow divorce if one of the spouses willfully abstains from having a sexual relation with the other, and also allow annulment if the husband deliberately conceals an illness that prevents him from sexual intercourse. As for an illness that occurs in the course of the marriage, then this is neither cause for annulment nor divorce as the impotence was not voluntary.

1-5-3

Some religious courts do not comply in full with the laws or precepts of their respective sects nor to due procedure set in their by-laws. As an example, we cite article 337 of the by-laws of the Sunni Courts, which stipulates the right of each of the spouses to file for divorce on the grounds of abusive behavior or irreconcilable differences; whereas we notice from the analysis that 85.7% of the cases in which the wife separated because of proven domestic violence were reached through agreement with the husband, while divorce by judicial ruling accounted for only 14.3%. Taking into account that in most cases of divorce by agreement the wife had to concede most or part of her rights, this was particularly true in the cases in front of the Sunni courts, in spite of the fact that article 337 grants divorce to the battered wife and forces the husband to honor all her financial rights.

1-5-4

There are other legal principles that are not applied by the religious tribunals and that could constitute an effective tool to prevent damage incurred by other precepts. We can cite for example the civil nature of the Islamic marriage, meaning that it is a consensual contract between the two parties and as such the husband for example can vow, in the contract, not to marry another or include a condition that gives the wife the power to divorce herself in case of abuse or a second marriage; or other such conditions that can be included in the marriage contract in order to preclude any dispute that might lead to the courts.

1-5-5

The dissolution of marriage is governed by the Personal Code of each religious sect, and as such it was part of the reservations made by Lebanon when it signed the Convention on the Elimination of All forms of Discrimination against Women (CEDAW).

The reservations made by Lebanon regarding the issues of Nationality and Personal Status Code, only serve to officially confirm the continuous gender discrimination present in the Religious Legal Systems and also, that any amendment in the interest of establishing gender equality is inadmissible or inaccessible, at least for now.

1-6 Recommendations

1-To create a research center, specialized in documenting divorce cases, studying their causes and proposing adequate solutions for addressing them.

2-To co-operate with International NGO's in order to lobby for the abrogation of all the reservations that were made by the Lebanese Legislator on the CEDAW convention and amend the existing religious legal systems to ensure gender equality, particularly in marital rights and obligations.

3-To amend the rules of jurisdiction in view of giving civil courts the right to review divorce cases while preserving the rights of the parties to chose the religious law applicable by of their community.

4-The various jurisprudence schools in the recognized religions are called upon to develop the religious outlook of marriage and adopt a more tolerant view that allows the spouses to turn to the religious courts for divorce on the valid grounds or when the continuation of the marriage is detrimental to the parties involved.

5-The spiritual judges in religion courts are called upon to interpret the existing legal texts and allow for a more evolved understanding of marriage, the conditions for its annulment or dissolution, and also help fill the legislative gaps.

6-The enactment of a unified civil law that governs marriage allowing parties of different religions to marry civilly and then seek the blessing of the chosen religious competency. The marriage contract and any ensuing dispute would be subject to civil law.

7-To develop the legal aid program in the judicial system allowing persons with limited means to benefit from expert legal counsel.

8-To encourage non-governmental organizations to increase effective collaboration with the religious courts entrusted with marriage contracts. These NGO's would form specialized teams encharged with educating engaged couples on the legal system that will govern their marriage and raising women's awareness in particular to the legal means available to them in preventing and/or circumventing contentions that might arise from the application of laws that are discriminatory to women.

9-To evolve the religious views of the marriage institution of marriage and the related laws through the jurisprudence of Catholic clergymen, allowing both spouses to seek the dissolution of marriage on serious valid grounds or when the continuation of the marriage becomes more detrimental than its dissolution.





Chapter 2
Domestic Violence

2-1- Introduction

Domestic violence against women can be attributed to several reasons:

1-The cultural tradition of Lebanese society is deeply influenced by both Oriental and Arab cultures, both based on masculinity and raising girls to be submissive to men, a culture where men are raised to look down on women and treat them as inferior.

2-The social structure which shows women as dependent on men economically. This financial subordination allowed some men to mistreat women, practice violence against them on the basis that “he provides for her blessings” and that “she is nothing without him”.

3-Some legal texts indirectly incite husbands towards domestic violence, such as article 503 in the Penal Code that punishes the act of rape, except when the act falls on the wife, and is perpetrated by the husband. This implicitly sanctions the use of force by the husband, and to coercing his wife into sexual intercourse.

In addition, article 562 “excuses” a husband, his brothers or sons from killing his wife or sister if he catches her either in a blatant adulterous act or in an illegitimate sexual relation. This clearly holds an implicit encouragement to act violently against a wife, mother, daughter or sister, if caught in a sexual act. The perpetrator, in such a situation benefits, according to the article, from a reduced sentence; whereas the same does not apply to a woman if she catches her husband, father, son or brother in an adulterous act.

2-2 The Legal Framework

The Lebanese legal system does not address domestic violence (or any kind of violence against women) in an explicit text. In the previous chapter we discussed the dire impact of violence on the fate of the marital bond in the light of the regulations and laws stipulated by the Personal Status Code, particularly in the case of annulment or divorce.

2-2-1 In the Civil Law

The legal approach to the issue of violence against women is governed by the general laws of the civil responsibility incurred by a personal act of violence. This falls under article 122 and the ensuing articles of the Contract and Obligation Law.

Article 122 stipulates that “any act perpetrated by a person that results in illicit damage to others imposes restitution in favor of the other”. This article constitutes the general legal framework and basis for the civil suits and restitution claims. This, in principle, includes the damages suffered by the wife as a result of her husband’s or father or brother’s abusive behavior. It is worthy to note that article 122 does not specify the type or category of action suits that allows the wife to claim restitution, it is general to all kinds of illicit damages.

In summary:

-The material damages that can befall a woman as a result of violent

acts (fees incurred by treatment or hospitalization, tests, medical reports or others) perpetrated by her husband fall under the provisions of article 122 in the Law of Contracts and Obligations.

-The psychological and moral damages resulting from the abusive behavior that include virulent cursing, insults, pain and disfigurement are also subject to a civil suit under article 122.

2-2-2 the Penal Code

The Lebanese Penal Code does not include any particular text that forbids violence perpetrated against women. The legal description of such acts and the relevant sanctions are governed by the provisions of general texts and laws applicable to all, regardless of the gender of both perpetrator or victim.

Moral violence such as incurred by virulent cursing or insults falls under the crime of ‘slander’, in articles 385-389 Of the Penal Code. Article 385 defines slander as ‘ascribing to a person, even in doubt, something offensive to his honor or dignity’ to which it added ‘any utterance of contempt or vile words’ whereas the sentence of a perpetrator of slander in general is commensurate with the method used and the character of the preparator in general without a specific rule related to slander between spouses.

In parallel, physical violence is basically governed by articles 554-559 in the Penal Code when it results in physical harm. The provisions of these articles impose sanctions concomitantly with the extent of the harm sustained by the victim.

Article 554 addresses harm that does not result in neither illness nor incapacity to work for more than 10 days and sentences the perpetrator to 6 months in jail or a suspended sentence with/or to a fine. It also stipulates the reduction of the sentence to half the required time in the event of the plaintiff renouncing his/her claim which also abrogates the common right.

Article 555 addresses harm that results in the illness of the victim and his/her incapacitation for a period of 11 to 20 days. The perpetrator is sentenced to a year or more with/or to a fine. The article also stipulates a reduction in sentence to half, if the plaintiff renounces his/her claim (but not the common right).

Article 556 addresses the harm that results in the illness of the victim and subsequent incapacitation for more than 20 days; and punishes the perpetrator with a 3 year sentence and a fine with no possibility of reducing the sentence in case the plaintiff drops the claim. Article 557 stipulates a 10 year sentence with hard labour in case of a loss of limb or one of the senses or permanent disability, while article 558 stipulates the same sentence for harm that leads to miscarriage if the perpetrator is aware of the pregnancy.

As for sexual violence, it is addressed in articles 503-506 of the Penal Code. However the provisions are applicable to sexual perpetrators other than the husband who cannot be accused of forcing his wife. Article 504 states ‘‘whoever forces someone other than his wife through the use of threat or force into a sexual act will be sentenced to 5 years in prison.’’ Article 504 also states that ‘any person who coerces into a sexual act another- not his wife- who is incapable of resisting because of physical or psychological incapacity or because of the use of other

deceitful means shall be sentenced to temporary hard labor'. Articles 505 and 506 address the forbidden act of sex with a minor.

It is worthy to note that paragraph 4 of article 133 of the Penal Code stipulates the automatic drop of the common right if the plaintiff drops his/her claim in all misdemeanors involving a husband and wife before their legal separation or between relatives of the first degree and between the father and the mother and even the adopted children.

In summary:

- The Lebanese penal laws (article 385-389) regarding slander are applicable to violence of a moral nature and degradation sustained by women.
- Article 554-58 of the Penal Code are applicable to the physical violence perpetrated against women.
- The perpetrator cannot be pursued unless the plaintiff files a claim, whereby the renouncement of this claim leads to an automatic drop of all charges.
- The texts regarding rape in the Penal Code are inapplicable to the wife.

2-3 the Samples

2-3-1 Janet married without her parents' consent and had three children. It was shortly after the marriage that the beating started, and with time her husband became more violent and the beatings more vicious. She later discovered that he was molesting both her 9 year old daughter and 7 year old son, in addition to having sex with her in front of them.

Janet lodged several penal complaints against her husband but would later recant fearing from scandal and for her children, knowing that her husband would take it out on them. Janet has no material means that can allow her to leave her house and take her children, she also cannot ask for her parents' help as she married against their will.

2-3-2 Nidal has long suffered from her husband's moral and physical abuse. He forces her sexually and makes her do perverted things against her will. He also mentions the names of his mistresses, describing what he does with them during sex and forces her to do the same.

Nidal complained several times against her husband but would always go back despite his behavior because she needs his financial support and is afraid to lose her three children if she leaves him.

2-3-3 Dania was regularly beaten by her husband. The beatings were so heavy at times that neighbors had to interfere to save her from near death. She had several medical reports following these attacks giving her a month and half leave of absence from work.

Dania filed a legal complaint but later dropped it in return for her husband's promise to never hitting her again. The latter reneged on his promise and started hitting her again so badly that one time she was issued a three month work leave by the medical examiner.

She filed a penal complaint on the basis of the above mentioned report, and the husband was arrested as a result for a period of time until he offered conciliation, promising not to hit her again. Dania dropped the charges.

2-3-4 Khadija was sexually abused as a young child by a cousin. When she came to realize what he did to her, she was so traumatized that she needed psychiatric treatment'. After intense and long treatment she was informed of the legal mean available to punish the perpetrator. She refused fearing scandal and retribution from her family.

2-3-5 Ahlam had an affair with a man who promised marriage, then left her. When her parents found out, they forced them to marry. Soon afterwards, that husband started hitting Ahlam, forcing himself on her and making her perform perverted acts, as well as sleep with his friends for money. She was also raped by her father-in-law when they once stayed in his house and her brother-in-law would molest her in front of her children.

Ahlam left the house and went back to her parents. Despite the horrible things that she was subjected to, she refused to file a penal suit, fearing scandal and bad reputation, as society will end up blaming her.

2-3-6 Huda was subjected to physical abuse since the on start of her marriage from a husband, who not only hit her but humiliated and cursed her and forced himself on her violently. He refused to let her work despite his limited income.

Huda, who came from a socially prominent family, hid her abuse, fearing for her family's reputation. She also never filed a complaint as she was unaware of the procedures to be followed and lacked the financial means to do so.

2-3-7 Mirna married against her parents' consent and had a girl. Her husband started hitting her early on in the marriage. She only complained to the police once, when he changed the locks and kept her outside.

2-3-8 Aida married a man who obliged her to leave work after marriage to serve his father. Later on, she discovered that the husband suffered from psychological diseases, sexual perverseness, and took drugs. From the first day of marriage, he hit, hurt her and prohibited her from seeking medical help. As a result of the severe beating, she miscarried.

2-3-9 Joumana married against her parents will, who objected to the bad reputation of her husband. The latter started hitting her a month after the marriage, she bore the violence until she found out he was cheating on her.

Joumana tried to seek her parents' help, who refused because they had warned her. Joumana could not obtain a medical report to prove the beating as her husband was careful not to leave any marks.

When he found out that she intended to leave him, he kept close watch on her and she could find no legal recourse to end her suffering.

2-3-10 Salam was molested by her father at fifteen. She never told anyone fearing retribution and the blame of society. This caused her intense psychological problems and she later turned into a neurotic. Her father's despotic treatment did not help as he would not let her leave the house nor have friends.

2-3-11 Samar changed her religion to marry a Christian and they had three children. Her husband had started hitting her early in their marriage, cursing and humiliating her until one day he adopted Islam, married another woman and kicked her out of the house.

Samar had to move in with her in laws, with her husband visiting once a week to threaten her if she ever told about his second marriage. Once after being hit, Samar went to the YMCA and with their help got from the medical examiner which allowed her to lodge a complaint with the police.

At the police station she was kept waiting, and when she sought help from a lawyer volunteer at the YMCA, she was advised to wait. After several hours, she was surprised by her husband who came to get her. Apparently, he was a good friend of the chief of police.

2-3-12 A wife caught her husband in bed with another woman in the matrimonial house and left to her parents' house. Before she could take action against him, the husband filed an action suit against her for adultery which was later rejected.

The wife filed a divorce action before the Druze Confessional Court, demanding compensation for the dissolution of marriage, the judge ruled for divorce, giving the wife all the financial rights without determining any additional indemnity resulting from the responsibility of the husband, despite the provisions in the laws of the Druze Community.

2-3-13 A Lebanese couple (Shiite) fought a lot due to differences in their educational level. The dispute turned into violence against the wife. The latter filed an action suit before the Jaafari Religious Court requesting that the husband performs his religious obligation and treat her well.

2-3-14 Two Lebanese persons concluded their marriage before the Jaafari Religious Court, then moved to live in Denmark. After settling in this country, the husband started to hit his wife; she turned to the legal authorities and filed for divorce in the Danish courts which judged in her favor. The wife returned to Lebanon and tried to execute the divorce judgment. The Jaafari Religious Court, however, refused to acknowledge any effect of the mentioned judgment as the wife has no right to ask for divorce in Jaafari rites.

The wife tried recourse to the Shiite Higher Council to find a solution. The husband proposed a compromise stipulating her renouncement of her legal rights and turning over the deeds of an apartment bought with her own money in return for his consent of the divorce. The wife was obliged to accept the offer due to the absence of any other solution.

2-3-15 A woman was subjected to physical violence by her husband from her first months of pregnancy. She gave him several chances to change his behavior, seeking the counsel and advice of a specialist in family affairs but to no avail. She then sought divorce in the Muslim courts without filing any penal complaint.

2-3-16 A woman suffered four years of domestic violence before she filed for divorce in the Muslim Sunni courts. She was granted the divorce without filing any penal suit for the physical harm that her husband caused her.

2-3-17 Soon after her marriage, Sahar's husband started abusing her physically and morally. He often hit and blamed her until one day he tried to stab her with a knife. She obtained a report from the medical examiner confirming the corporal violence and filed criminal charges as well as a claim for separation before the religious courts.

2-3-18 A wife suffers from physical violence. She only files for divorce at the Jaaferi Religious Court.

2-3-19 A wife discovers her husband's addiction to drugs and recurrent cheating. She files for divorce in the Syriac Orthodox Religious Court but does not sue her husband for adultery.

2-3-20 Shortly after their marriage Sahar's husband started hitting, cursing and humiliating her; one day he even attacked her with a knife. The violence only increased until The medical examiner gave her a report proving physical harm and she filed criminal charges against her husband. She also filed no divorce.

2-3-21 "Fadwa" suffered from physical violence. She filed for separation but did not charge her husband with violence.

2-4 Analysis of the Samples

2.4.1 The general analysis of the materialities and facts related to the problems suffered by battered women and presented in this report, shows the following results;

-Around 85.6% of the women suffered physical violence (hitting and bodily harm); 14.4% suffered from sexual harassment.

-Around 28.5 % suffered moral violence (insults and degradation), 14.28% suffered from sexual and physical violence, and 9.5 % from the effects of the three combined.

-Around 28.5 % suffered from sexual violence and from sexual violence, half of these cases were perpetrated by the husband and the rest by relatives of the victim (father or brother).

2-4-2 On how the women/victims in the samples dealt with the problems facing them, the analysis shows that:

-Around 33.3 % lodged a complaint against the perpetrator of violence, 9.5% filed two separate suits on the grounds of two unrelated violent acts; whereas 66.7% did nothing.

-62.5% of the complaints filed ended with the woman/plaintiff dropping the charges, 25% of the complaints did not end with favorable results, while only 12.5% reached the desired results.

-No suits were filed on the ground of moral abuse or degradation nor even sexual harassment.

-No complaint ever reached the courts or ended in a ruling condemning the perpetrator.

-Not one of the battered women ever filed a civil claim suit against her husband.

2-4-3 On the reasons for not filling complains or for not reaching expected results, the facts show that the main reasons that:

- Fear from scandal and bad reputation
- Fear of the husband's reprisal
- Lack of means
- Fear of abuse from the competent police officials in charge of such cases
- Inability to obtain medical reports or other means or proof.

- On the main reasons that made battered women drop their charges:

- Fear of scandal
- Fear of the husbands retaliation
- Pressure from family
- Conciliation
- Financial dependency on the husband

-On the main reasons that circumvented complaints from reaching the expected results:

- The withdrawal of the complaint by the woman/plaintiff
- The non-importance given to the complaints by the concerned authorities.

2-5 Legal Analysis

2-5-1 The Lebanese Penal Code is characterized by its laxness towards misdemeanors committed within the realm of the family. This is clearly embodied in article 133/4 which stipulates the automatic end to common right when the plaintiff drops the charges. The underlying justification is the importance of family and the need to safeguard its unity and cohesiveness.

The issue of violence against women needs to be first addressed by renouncing the tolerant way of dealing with perpetrators, for the following reasons:

-The proliferation of violence against women (42% in the cases presented in this report) proves that tolerance with perpetrators of violence has in practice only led those prone to beating their wives to do so with no fear of reprisal, particularly if the wife drops her complaint. The analytical study of the samples shows that 62.5% of the complaints filed by battered women ended in conciliation, with the suit dropped.

-The rise in the phenomenon of violence against women has a dire impact on family life, its coherence and unity. If the tolerance in dealing with perpetrators of violence is for the purpose of protecting families, the rise in domestic violence (85.6% in the cases exposed by this report) proves the contrary.

-Laxness in enforcing the law and reduced sentences for crimes involving family members are not the only means to protect families. Strict enforcement of the law may be more effective in achieving the desired outcome. A good example is article 549 of the Penal Code that stipulates a rigorous sentence for premeditated murders that involve family members, justified by the need to protect the family.

-The violence perpetrated against women is not an issue restricted to the private space anymore; its negative repercussions affect the ethics and values of the society as a whole.

As for the legal procedures involved in filing suits, it is worthy to note the high percentage of battered women who did not file complaints (66.7% of the battered women) or of plaintiffs who dropped their complaints (62.5% of complaints). This requires addressing the reasons that preclude battered women from finding recourse in the law, which are in part social and require raising the social awareness of both women who are victims of physical violence and society at large concerning the need to speak up; and in part legal, related to the complicated procedures that women have to go through to secure their rights.

2-5-2 It is worthy to note the high percentage of battered women who did not file any charges against their husbands (66,7% of the samples in this chapter), as well as the high percentage of charges dropped after being filed (62,5% of complaints). The reasons for that are, in part of a purely social nature (fear of bad reputation in the community) and are such outside of the scope of this study, and in need of increased social awareness; they are also of a legal nature related to real problems that preclude the woman/plaintiff from exercising her right to file a complaint and to follow- up on the judicial procedures with the judiciary security.

It is also important to note that one of the reasons to address in this regard are the components of the litigation involved in lodging a complaint. The analysis of the samples has proven that battered women do not file complaints or they drop them mainly because they feel weak as litigants; this feeling is caused by either fear from scandal, the husband's retaliation, family pressure or because of the financial costs.

One way of solving this gap is by adding a "judicial person" to the litigation allowing "it" to redress the balance of power. This "person" can be an association, syndicate or women organization (an example is the National Commissions for Lebanese Women formed by virtue of law n 720\1998), that has the right to sue on behalf of battered women.

2-6 Recommendations

1-The amendment of articles 385-389 of the Lebanese Penal code related to slander and articles 554-558 related to bodily harm, in order to ensure the public defender's right to prosecution without the need of formal complaint from the victim. Also, the amendment of paragraph 4 of article 133 to ensure the continuity of public prosecu-tional right even after the victim\plaintiff drops the suit.

2-The amendment of articles 503 and 504 of the Penal Code to abrogate the exception of " the husband" in wife related rape.

3-The creation of women associations that can, by virtue of law, file suits on behalf of battered women (both civil and penal), and represent the woman/plaintiff in all the legal procedures involved.

4-The establishment of legal centers with qualified lawyers or the creation of commit-tees by women organizations which would offer legal advice to battered women who do not have the financial means to appoint a lawyer.

5-The enactment of a comprehensive code of law on domestic violence applicable to all the crimes that ensue from the practice of moral, physical and sexual violence between spouses and\or by one of them or on their children.

6-The creation of a specialized center to monitor and document cases of family- re-lated violence, study the causes and ways for addressing them, and issue periodical reports.

7-The creation of a specialized center for the treatment and rehabilitation of victims of family violence, whether physical or moral.

8-The development of a legal and social guidance plan to address the phenomenon of domestic violence and issue periodic reports and studies on the issue.

9-The development of a legal aid program in the judicial system in collaboration with the Bar Association and local women NGO's and the creation of committees or legal departments with experienced lawyers, in view of helping and advising women, victims of violence, and who don't have the financial means to do that themselves.

Chapter 3
Child Custody and Visitation Rights

3-1- Introduction

“Al Hadana”: custody, in its original linguistic meaning, is embracing someone close to the bosom. It is a natural act performed when the mother embraces her child. Child custody therefore refers in its widest meaning to raising and caring for all the child’s needs from birth until an age at which, he/she is able to dispense with his/ her mother services. Custody till such time is a mother’s right unless she is unable perform that role.

Custody is not a problem as the upbringing and education of the child constitute part of the parents’ responsibility. However, it becomes problematic when the marriage dissolves because of annulment, separation, divorce or the death of one of the parents, i.e. when it becomes essential to determine the person who secures the custodial right of the children.

Custody is not only limited to determining the person who has the right to the child but also raises the question about the rights of the other party who has lost custody, and his/her natural right to keeping in contact with his/her children and interact with them periodically according to the rights of visitation accorded to him/her.

Thus, child custody and visitation rights should be discussed concomitantly within the framework of the effects of the dissolution of marriage, as they constitute a source of contentions between the spouses or among their families. These disputes in Lebanon are subordinated to the religious Personal Status Laws which are specific to each community and to the competency of their religious courts.

3-2 The Legal Framework

The legal term “custody” has a different connotation than its linguistic meaning. Originally, custody means the upbringing of the minor until he reaches an age where he can take care of his primary needs and which is often set at seven years. On this basis, “custody” is restricted linguistically to an age group below seven, while the legal term is not limited to the mentioned period; but is generally used to indicate the link between the right to live with and protect the minor whatever his/ her age might be.

3-2-1 Provisions in Islam

The provisions of Islamic rites are different in determining the custodial duration and the standards and mechanisms applied in appointing the custodian.

The Hanafi rite applied by the Sunni Religious Courts in Lebanon considers the age of custody to be seven for boys and nine for girls. Accordingly, it grants the custodial right to the mother until the mentioned age; then, it is given to the father or his parents if he dies without allowing the child the right to choose between staying with his/ her mother or joining his/ her father or his paternal grand-parents.

The jurists of the mentioned rite estimate that the boy in custody does not need the services of his mother after reaching seven because at this age he is able to perform his primary needs i.e. feeding, clothing and

cleaning. According to them, at seven he is in need of discipline, education and learning of men's ethics. In addition, they consider the girl able to dispense with her mother care at this age, but is still in need of supervision to learn housework and women's ethics. It is when she reaches puberty, that she needs to be protected and men are more capable than women in ensuring that⁵.

As for the Jaafari Religious Courts, they apply the Jaafari Fiqh which determines the end of maternal right to custody at two for the boys -the end of the breastfeeding period-and seven for the girls⁶.

In addition, there are rules imposed on the woman/custodian who should be an adult, able to take care and nurture the minor and protect him/her. She should be well disciplined, not married to a man who is a stranger to the guarded child; while the male custodian should only be able to take care and nurture the guarded child and should be endowed with good morals¹. Furthermore, according to the Jaafari Fiqh, the woman custodian should not be married even to a man "mahram" to the minor⁷. The woman custodian can be non Moslem but not an apostate⁸ while the man custodian should be Moslem.

The Personal Status Law of the Druze community organizes child custody issues in articles 54 to 66; giving the custodial right to the mother until the boy reaches seven years and the girl nine years. In addition, article 55 stipulates that the woman custodian should be an adult, reasonable, trusty, healthy, able to raise and maintain the child and should not be married to someone not related to the child.

In summary:

-The custody of the mother ends when the boy reaches the age of seven and the girl the age of nine, according to both the Sunni and Druze communities, while in the Shiite community the age is two and seven respectively.

-Apostasy of Islam and remarriage are the two major reasons for losing custodial right. Sunni and Druze communities impose waiving the custodial right in the event of remarriage to a stranger, while in the Shiite community the right of custody is waived in case of re-marriage even to a relative, whatever the degree of kinship between the new husband and the minor.

-Upon the end of the custodial period or its loss due to one of the legal reasons mentioned above, the child should be "delivered" to the father, or to the paternal grandparents in case of the death of the latter.

3-2-2 Provisions in the Christian Communities

In principle, child custody in the Catholic community is the right of the mother. The laws in the Christian communities do not stipulate a duration for custody but leave the issue to the discretion of the religious courts.

Article 57 of the Personal Status Law and the Code of Proceedings in the Greek Orthodox Church stipulates that the mother has the right to

⁵ Ibid p. 762

⁶ Ahmad. M. (1996) Lecture on Personal Status. p.81

⁷ Chalabi M. M op.cit., p. 745

⁸ Ibid., p. 745

custody until the boy reaches 14 years of age and the girl 15. In addition, they stipulate giving the custodial right to the mother when the father is responsible for the marriage dissolution or because of legal reasons disallowing the father from raising the children. According to article 58, the loss of custodial right occurs in four cases: inability and negligence of the man/custodian in the education and upbringing of the child; marriage of the custodian man if it causes damages to the minor; adoption by the custodian man of another religion; misbehavior of the man /custodian that has a negative psychological and moral impact on the minor.

The Personal Status Law for the Armenian Orthodox community organizes custody issues. Article 130 stipulates that the custodial duration begins at birth and remains until the boy reaches seven years and the girl nine years. In addition, the religious courts allow for the extension or reduction of this period according to the conditions and interests of the minor. Article 131 gives the mother custodial right if she is not married to a man other than the father of the guarded child, provided she is well disciplined, with good morals and has the means to raise him/her.

Article 61 of the Personal Status of the Syriac Orthodox Church sets the custodial age at seven years for the boy and nine for the girl. Article 63 gives custodial right to the mother if she is not held responsible for the dissolution of the marriage or if she is not orthodox.

Furthermore, article 101 of the Personal Status Law of the Eastern Assyrian community gives the mother custodial right. Article 102 stipulates that the woman custodian should be over 16 years of age, a Christian, reasonable, trustworthy, able to raise a child and not responsible for the dissolution of the marriage. In addition, article 111 of the mentioned law stipulates that custodial right over a boy remains until he reaches seven years and over a girl until she is nine, at which time the minor is “delivered” to his/ her father or to the natural guardian in case of absence of the father.

Article 74 of the law of the Evangelical community sets the custodial period at seven years (indiscriminability between boys and girls) and article 75 gives the mother custodial right on condition that she does not marry a man other than the father of the child, is able to raise children, and maintains good conduct and morals.

In summary:

- The custody right of the mother remains until the boy reaches 14 years of age and the girl 15 years, according to the Greek Orthodox community; seven years for the boy and nine years for the girl according to the Armenian Orthodox, Syriac Orthodox and Eastern Assyrian communities; seven years for both boys and girls according to the Evangelical community; while the determination of custodial age is left to the discretion of the court according to the Catholic communities.

- Changing one's religion and responsibility for marriage dissolution are the major causes for losing custody of a child. The majority of Christian communities agree on these two reasons, while they disagree on the remarriage of the woman custodian. Some consider it cause for loss of custody while other communities do not.

-The child is “delivered” to the father (or to his parents if he is dead) upon the end of the custodial duration or upon loss of the right due to one of the legal reasons, mentioned above.

3-3 The Samples

3-3-1 “M. H.” was married to a Lebanese man residing in the United States of America and she bore him a child. She came with him to Lebanon once to visit his parents, when he filed a complaint before the Jaafari Religious Court pretending that she had left the matrimonial house without his consent. He obtained a court order prohibiting her from travel, then took her passport and that of the child and went back to the United States, leaving them behind.

His attorney and brother then filed an obedience action on his behalf, demanding her forceful return to the “legitimate home”, a modest house in his village. When she refused to reside there, he considered her to be disobedient and waived her right to alimony. When the child reached two years of age, his father took him and traveled back to the United States.

3-3-2 A Belgian woman (Christian) married a Lebanese (Shiite) who had sought asylum in Belgium. When the husband acquired the Belgian nationality, he came back to Lebanon with his wife and two children and refused to return there. He also submitted a false legal marriage contract before the Jaafari Religious Court and obtained a decision to prohibit the travel of the children. He then took them to an unknown place and disappeared.

The wife resorted to the civil courts in Lebanon, their marriage being a civil one. The judges gave her the right to custody; the judgment was presented for execution and a sentence of imprisonment was pronounced against the father in absentia and until the delivery of the two children. The decision could not, however, be enforced, due to the husband’s presence in a region difficult for the Lebanese security forces to enter.

3-3-3 A Swiss woman (Christian) was married to a Palestinian (Shiite) who asked for right of asylum in Switzerland, using forged papers. The authorities discovered the forgery and he was expelled from Switzerland to Lebanon when the woman was in her first months of pregnancy. The husband sent a compassionate letter to his wife asking her to join him in Lebanon. She accepted and they concluded a marriage contract before the Jaafari Religious Court. After a brief period, disputes started between the spouses due to the differences in culture and education; these disputes increased after the birth of the child and until he was kidnapped by the husband.

The woman filed a visitation action suit before the Jaafari Religious Court. The husband agreed, provided that visitation occurs at the domicile of his legal attorney in one of Lebanon’s remote villages.

3-3-4 “Kh. F.”, a divorced woman, remarried in 1989 and had both a girl and a boy. The husband treated the family badly. The marriage ended with divorce when the girl was 15 years and the boy 8.

“Kh. F.” filed an action suit before the religious courts asking to give her the custodial right; a judgment of the first instance court approved her

request. However, the Court of Appeal revoked the judgment, considering that the divorcee has no right to custody but only to visitation, the custodial right of the mother being 9 years for girls and 7 years for boys. The court did not take into consideration the conditions of the two children who suffered from the mistreatment of the father who obliged his daughter to marry a man she did not want and his son to leave school and work.

3-3-5 “H. Sh.” was divorced after giving birth to a child. When she married another man, her ex-husband deprived her of the right to visit her son.

She filed an action suit before the religious courts asking the judge to allow her to see her son at the house of one of the husband’s relatives. The court granted her visitation rights but determined the place of visitation to be the house of the husband’s parents and not a neutral place, considering that it cannot oblige a third party to provide such a facility. The wife could not visit with her child because she felt embarrassed to go to her divorced husband’s house, having married another man.

3-3-6 Two (Sunni) spouses agreed to a friendly divorce. They have two children: a boy of seven and a girl of nine; legally the husband took the custody of the children and the wife did not object, considering that the Hanafi Fiqh applied in the Sunni Religious Courts does not give her custodial right after the boy reaches seven years and the girl nine years.

3-3-7 Two Lebanese (who also have the French nationality) were married in France, a civil marriage confirmed later before the religious courts in Lebanon. Due to disputes and mistreatment, the wife filed an action suit before the French courts. The judge held the husband responsible for the divorce and gave the custodial right to the wife.

The husband resorted to the religious courts in Lebanon without showing the ruling of the French court. The Religious Court granted him divorce and custody and obliged the wife to “deliver” the child to him.

3-3-8 “Khalida” was living happily with her husband and her two children, until one day her husband was discovered killed and she was accused of his death. She was incarcerated during the entire investigation and hearing period, for about one year and a half. She was then freed after being declared innocent. During the whole period of her arrest, Khalida could not see her children due to the refusal of the husband family who was granted custody and her inability to secure a judicial decision obliging them to allow her to do so. After her release from prison, she filed an action suit before the Religious Court that allowed her to see her two children two hours per week but did not give her the right to recover custody, despite the confirmation of her innocence.

3-3-9 “Ahlam” had a relationship with a man who promised to marry her, then left her. When her parents found out, they obliged them to marry. The husband subjected Ahlam to physical and sexual violence; she left the matrimonial house and returned to her parents. Her husband did not allow her to see her children.

She filed an action before the competent religious court to obtain divorce and visitation rights. She did not ask for custody, her parents' house being small and their financial means limited. The length of the hearing period and the delay in the publication of the legal decision allowing her to see her children, led her to ask her lawyer to reach an agreement with her husband to get her a divorce (Mukhalaa) against which she gave up her financial rights.

3-3-10 A wife was subjected to corporal violence from her husband since her first months of pregnancy. She tried to give him a chance to change his behavior and asked for guidance and advice from experts in family guidance; but the husband's attitude remained the same. When the wife resorted to the Jaafari Religious Courts, she found out that she could not file for separation on the basis of disputes (irreconcilable differences). The husband abused of this situation; he forced her to cede all her legal rights including her custodial right to the newborn in return for divorcing her.

3-3-11 A wife suffers from physical abuse. She starts by hiding it, then resorts to her parents asking for help. The husband agrees to divorce her against her resignation of custodial right to her minor children.

3-4 Analysis of the Samples

3-4-1 The general analysis of the data and facts presented in the samples above reveals the following:

-In 54.5% of the samples the issues of custody and visitation were raised as a result of the child's (or children) forcible abduction from the mother and/or denying her right by force, "*de facto*", to custody. In 45.5% these two issues were a direct consequence of the dissolution of the matrimonial link without the husband resorting to abduction or prohibition.

-50% of the child abduction cases from their mother's custody were a result of a plot by the husband to bring the wife from a foreign country to Lebanon to achieve his ends.

-72.7% of the samples include a legal dispute over custody, while 27.3% of dispute cases did not reach the courts.

-75% of the legal disputes were settled in religious courts and 25% in civil ones.

3-4-2 Concerning the results that were linked to disputes over custody and visitation, the general analysis of data and facts showed the following results:

- 18.2% of the samples include the publication of judicial judgments giving the custodial right to the mother, and 27.3% organizing her visitation right.

- All the judicial judgments that gave custody to the mother were issued from civil courts.

- 60% of the judgments issued in the interest of the mother were not executed.

- According to 18.3% of the samples, the husband imposed his conditions in organizing custody and visitation.

- In 45.5% of the cases, the wife suffered from restrictions on her right to custody.

- The wife ceded her custodial right in 27.3% of the cases in order to obtain divorce.

3-5 Legal analysis

It is evident that custodial issues constitute one of the most discriminatory subjects related to gender in the Lebanese judicial system. As part of the Personal Status Code, it was one of the reservations made by the Lebanese Republic to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

3-5-1 Perspective of Custodial Right

The majority of the legal rules applied by the religious courts in Lebanon acknowledge, implicitly and indirectly, the father's right to the upbringing and raising of the child; the residence of the child with his mother is considered to be temporary because of the child's need for a type of care that the father cannot provide. Therefore, when the child reaches the age that allows him to dispense from that care or when this right is waived, the child is returned to the father.

It is evident that this view, limiting the mother's role to fulfilling the natural needs of the child, constitutes a blatant discrimination against women. The principle of Equality acknowledges a woman's right to raise the child in all the childhood stages until adulthood, in ways equal to that of a man. If the natural needs of the child at the infant stage require a quality of care in harmony with the mother's nature; the upbringing of the child after that period is equally the responsibility of both parents and the competent court should put in force a mechanism for raising the child in a way that allows a role for both the mother and the father in a parallel way.

This theoretical principle acknowledged by the precepts applied by religious courts is faced with the results of the samples and in which the data analysis confirms that none of the women got a judicial judgment from the religious courts consecrating their right to custody. All the judgments giving the custodial right to women were issued by civil courts.

We should mention that the principle adopted by the majority of the religious courts in Lebanon regarding custody issues does not constitute a sacred religious ruling that could not be analyzed, developed or criticized.

It should also be noted concerning the Islamic religion that the Koranic texts and the Hadith do not restrict guardianship to the father without the mother, this issue is a subject of controversy between the religious jurists. For example, the Chafii rite considers that the child should remain with his/her mother until the age of seven; then, he/she will decide with whom he/she will reside. In the Maliki rite, the girl remains with her mother until

her remarriage and the child can then choose between the mother or father⁹.

In Christianity, the Catholic legislation left the determination of the custodial duration, and namely the guardian, to the discretion of the religious courts. In addition, the legislations applied by the Greek Orthodox community stipulates that the duration of the mother custodial right is 14 years for the boy and 15 for the girl; with the possibility of extension by the court according to the circumstances and characteristics of the parents.

Therefore, the discriminatory views against women regarding custody and the rules applied by the Lebanese religious courts are not in harmony with the spirit of both religions, Islam and Christianity. Therefore, the custodial rights, as well as the education and upbringing of the children should be organized in order to become concomitant with the spirit of religion on one hand and ensure equality and non-discrimination between men and women on the other.

3-5-2 On the Loss of Custodial Right

The majority of the religious legal systems applied in Lebanon waive the mother's right to custody when she remarries a man other than the father of the child, while they do not impose such a restriction on the father; thus constituting discrimination against women.

If the court waives the custody due to remarriage because the latter might adversely affect the feelings and interests of the minor as well the child's need for care and welfare, it should take into account that this applies to both the father and the mother. In other words adopting such a reasoning should deprive the party that concludes another marriage, of the custody of the child from the first marriage. However, its prevalent application, lacks clear reasons and constitutes an unjustifiable discrimination against women, noting that the data analysis of the samples showed that 45.5% of the women suffered from restrictions on their custodial right.

It should be noted that article 58 of the Personal Status Law and the Procedural Code of the Greek Orthodox Church does not discriminate in this context; it stipulates the loss of custodial right upon marriage of the guardian (regardless of gender), with an essential contingent condition: the effects of the marriage on the guarded child. On this basis, if the guardian (male or female) concluded another marriage without jeopardizing the minor's rights, the marriage is not contingent with the loss of the custodial right.

3-5-3 Concession of the Custodial Right

The data analysis of the samples confirms that women in 27.3% of the cases were obliged to cede their right to custody in order to obtain their divorce; such an act constitutes a violation of their rights to custody in favor of the man and shows another form of discrimination against women in custody issues.

Some religious legal systems accept the dissolution of marriage by agreement of the spouses, as a result of which one concedes some rights in return for the approbation of the dissolution. This should not affect custodial rights which in such a case turn into bargaining chips. If the religious

⁹ Ibrahim, F. *Provisions of Family in al-Jahiliya and in Islam*, Dar Al Nahda, p. 85

texts do not include an express clause prohibiting the renouncement of custodial right or classification of this right in the category of non-assignable rights; the nature of custody right and its position in the religious legislations, having as objective to fulfill the natural and essential needs of the child and ensure his/ her sentimental and psychological well-being, should prohibit the possibility of conceding this right, as it is an issue that relates to the child's right more than the woman's.

3-5-4 On the Efficiency of Legal Means in Protecting Custodial Right

The insufficient legal means available to women to protect their custodial right constitute another facet of discrimination in favor of men:

- In 54.5% of the samples, the mother suffered from the abduction of her child or was prevented from her visitation rights.
- 60% of the judicial judgments giving the mother custodial and visitation rights were not executed.
- In 18.3% of the samples, the husband imposed his conditions regarding custody and visitation.

If the mother's right to custody and/or visitation cannot be executed effectively before the publication of a judicial judgment, it is imperative to:

- Hasten the trial procedures related to custody and visitation.
- Take temporary measures during the trial, allowing the mother to take custody of the child or visit him/her temporarily until the official publication of the final judgment.
- Impose on the husband the payment of a sum of money as compensation for depriving the mother of her children, in case of the use of force or deceitful means.

In addition, the ability of the husband to impose his conditions regarding custody and visitation is a phenomenon that could be addressed through facilitating the access of the wife to the competent courts to claim her rights and warning the judges about the weakness of the woman/plaintiff due to her feelings of deprivation of her children, that could lead her to renounce her claim and accept the conditions imposed by the husband in order to get them back.

Escaping from the execution of judicial judgments either through fleeing out of the Lebanese territory or seeking refuge in a geographical area which is not accessible to the security forces is not specific to custodial issues, but is a general problem related to the execution of all judicial rulings. Addressing this phenomenon and its effects on the level of custodial rights requires wit from the judge and the person in charge of the execution of the judgment to foresee the means that could be resorted to by the incriminated individual to escape from this execution.

3-5 Recommendations

1-Amend the judgments and laws applied in the religious courts in harmony with the spirit prevailing in Christianity and Islam that do not discriminate between men and women in the custody and upbringing of the minor child.

2-Separate between the custodial period in which the child needs the af-

fection and care of his/her mother and the subsequent period of childhood where guardianship should be determined on the basis of the competency of the parents in raising the child. Another alternative could be dividing guardianship between the two parties according to the interest of the minor without any discrimination between the mother and the father and particularly without assuming that the guardianship is automatically the father's upon the expiry of the custodial period.

3-Consider the custodial right as one of the essential rights of the minor as well as the mother; thus, the renouncement of the latter of her custodial right should not be accepted nor can it be waived for any reason other than the incapacity of the mother.

4-Hasten the legislative procedures in judicial actions related to custody and adopt temporary and provisional procedures during the trial to avoid the separation of a child from his/her mother or reduce this separation to a minimum.

5-Adopt the principle of compensation for the damages resulting from the separation of the child from his/ her mother and impose this compensation on each person or party whose contribution to the separation is proven by all acceptable means.

6-Encourage women to resort to the courts to claim their custody and visitation rights, even when they agree to amicably resolve the issue with their spouse.

7-Judges should be aware of the weakness felt by women deprived from their children, which might lead them to withdraw their claims and accept conditions imposed by the husband in order to end their deprivation.

8-Sitting-judges in the related courts should be aware of all the means that husbands against whom judgements are issued, might resort to in order to elude execution of sentences related to custody and visitation.

9-Enactment of a comprehensive code of law on custody and visitation rights applicable to all.

The new code will address the meaning of custody, the different cases, procedures and related legal responsibility, this will be based on the premise that it is not a sacrilege to address the issue of custody.

10-Develop means and measures for execution that will ensure the sound application of rulings related to custody and visitation rights.

11-Establishing custody right as non-assignable and thus cannot be ceded for any reason as it contradicts the rules of family order.



Chapter 4 Alimony

4-1 Introduction

Marriage imposes mutual rights and obligations on the spouses. Among these rights is the right of both spouses to good conduct and cooperation in all living aspects and loyalty (noting that polygamy is a right in Islamic Sharia¹⁰). The marriage contract also imposes obligations of a financial nature on the husband such as alimony and dowry.

Dowry is the money that a woman brings to her husband in return for the marriage contract. This money can include any asset other than cash such as real estate, jewelry or other gifts of fiduciary value.

Alimony, however, is an obligation established by law to provide for living expenses: domicile, clothes, nursing and education¹⁰. This obligation is made in favor of the wife as result of the marriage contract because the head of the family is responsible for providing a decent life for his wife and children in accordance with his financial situation.

In a healthy matrimonial life, financial rights do not raise any problem; such kinds of problems occur upon disagreement between the spouses and in the event of legal contentions.

4-2 The Legal Framework

4-2-1 The Provisions in Christianity

The Bible mentions the necessity of spousal alimony “Men should love their wives as their bodies.” Thus, if the body needs food and clothes, then in principle the husband should provide the spousal alimony.

Article 153 of the Personal Status Law of the Catholic communities imposes spousal alimony on the husband from the incept of the marriage contract whether the wife is poor or affluent, living with the husband or separated from him for no fault of hers. Article 155/2 stipulates an exception to the mentioned principle: if the wife is affluent and the husband insolvent, unable to gain money. In this case, the mentioned paragraph imposes alimony on the wife in favor of the husband until his financial situation improves. Alimony is also waived according to article 160 and 161 if the wife is disloyal or is accountable for the separation from the husband.

The Personal Status Law and Codes of Procedures of the Greek Orthodox Church hold similar provisions. Article 52 mentions the principle of alimony due in favor of the wife as long as the marriage lasts, while article 53/a stipulates that alimony is a must on the rich husband even if the wife is rich.

Article 56 stipulates that alimony is waived when the wife is disloyal. The Personal Status Law of the Assyrian Orthodox sect holds similar provisions. Article 126 stipulates that alimony is a must to the wife and article 131 mentions that alimony is a must to the husband in case he is

¹⁰ Malek, H. *Civil Status and Provisions*, Dar El Nahar for Publication, P. 132

incapable of gaining money and the wife can provide it. In addition, article 127 mentions that the wife's right to alimony is waived if she leaves the matrimonial house or refuses to travel with him to the place where he moves, without legitimate reasons in both cases.

The Personal Status Law of the Syriac Orthodox Community stipulates that alimony is a must from the husband to the wife (article 34) and does not mention any exception; while article 37 mentions different provisions confirming that the disability of the husband does not exempt him from alimony and allows the wife, in this case, to borrow from her own money or spend from her money until the husband's financial problem is solved.

Article 51 mentions that the wife's right to alimony is waived upon the publication of a separation judgment for which she assumes responsibility; while article 52 stipulates that the wife could be made to pay a monthly alimony to the husband in case of confirmation of her disloyalty.

Furthermore, the Personal Status Law of the Evangelical Community stipulates in article 30 the obligation of the husband to support his wife and does not include any obligation on the wife to support her husband if she is wealthy.

Article 47 mentions that alimony persists if the husband causes the separation and is waived if the wife is responsible for the separation.

4-2-2 The Provisions in Islam

Spousal alimony is an obligation established by marriage and the subsequent life- in- common shared by the spouses.

Alimony is a necessity according to the Koranic text: "Love Allah in your wives because they are your helpers. You took them according to Allah rules and they should not allow anyone to sleep in your bed and you should provide them with food and clothes."

Alimony is a must for the wife in the "Uddah" period, whether the "Uddah" results from divorce or separation ruled by the judge or "Mukhalaa" in case the wife does not absolve her husband from the mentioned alimony.

Alimony is waived upon the expiry of the "Uddah" period after the marriage dissolution. The disloyal woman i.e. the one who leaves the matrimonial house without legitimate cause or who does not allow her husband to enter this house, also loses her right to alimony.

The woman prisoner serving a judicial sentence or the woman who travels without her husband's permission is considered disloyal¹¹.

In summary:

- All legal provisions applied by the religious courts in Lebanon stipulate the obligation of the husband to pay his wife's alimony.

¹¹ Mustapha, A. Lectures on Civil Status, p. 41

- The majority of the provisions applied by the Christian religious courts mention an exception from the general principle, which is the wife spending on the husband in case he is poor and she is rich; while laws of Islam and the Syriac Orthodox and Evangelical communities do not include such an exception.

- The reasons for loss of alimony in all mentioned laws and provisions are because of the wife's disloyalty and a legal separation for which she is responsible (in the Christian communities).

4-3 Samples

4-3-1 A divorcee with a child of five lives with her sister's family in the house of the latter. She files for alimony for her and her child before the religious courts. Despite the fact that the husband makes a decent living, the court ruled the sum of one hundred fifty thousand Lebanese pounds per month as reasonable alimony (i.e. equivalent to half of the minimum salary at the time) after a trial of six months.

The husband appealed the judgment, but the Court of Appeal suspended execution and approved the ruling of the first instance court after four months.

4-3-2 Itab married her cousin, and discovered after the marriage that he was unemployed and lived at his parents' expense. He treated her and her children badly and left them without resources.

Itab filed an alimony action suit for her and her children before the religious court and obtained a ruling forcing the husband to pay the required support.

When the husband did not pay, she filed for execution of the judgment and a ruling was pronounced for his imprisonment, preventing him from leaving the country. She did not obtain any sum from him despite all these procedures and the husband escaped.

4-3-3 "H.S." was married to a man who convinced her that he was affluent and promised to buy her a house in Oman where he worked. After the marriage, she discovered that he is a miser which caused disputes between them. These disputes became flagrant after the birth of their daughter. Under the pressure of the parents of H.S., the husband accepted to divorce her in return for her renouncement of her legal rights including child custody; the financial situation of the wife and her parents did not allow them to support her. H.S. did not consider retaining the custody of her daughter, in spite of the fact that she has the right to oblige the husband to pay for child support.

4-3-4 A Lebanese couple (Shiite community) fought constantly because of the difference in their educational background. The dispute turned into violence against the wife. The latter filed an action suit before the Jaafari Religious Court asking the husband to perform his religious obligation and treat her well. The court attempted to conciliate between the two and the conciliators spared no effort to solve the conflict amicably. The Mukhalaa

(divorce) occurred in return for exempting the husband from his financial obligation towards the wife.

4-3-5 Two Lebanese concluded their marriage before the Jaafari Religious Court, then moved to live in Denmark. After settling in the mentioned country, the husband started to hit his wife; she turned to legal venues and filed in the Danish courts which ruled in her favor.

The wife returned to Lebanon and tried to execute the divorce judgment. The Jaafari Religious Court, however, refused to acknowledge any effect of the mentioned judgment as the wife has no right to ask for divorce in Jaafari rites.

The wife tried recourse to the Shiite Higher Council to find a solution. The husband proposed a compromise, stipulating the renouncement of the wife's legal rights and turning over the deeds of an apartment bought from her own money in return for his approval of the divorce. The wife was obliged to accept the offer due to the lack of any other solution.

4-3-6 "H.M." married at the age of 24 when she was still at the university. After six months of marriage and because of her studies, she neglected her obligations towards the husband, which led to disputes between them. Friends (among whom was a clergyman) tried to conciliate between them to no avail. They agreed to divorce against the wife renouncing half of her financial rights.

4-3-7 A wife suffering from domestic violence tried recourse to the Jaafari Religious Court asking for divorce which the husband refused because of the increase in the value of her dowry. As a result of the slowness in the judicial procedures and despite the confirmation of violence, the wife agreed to relieve her husband from all financial rights in return for the divorce.

4-3-8 Soon after her marriage, Sahar's husband subjected her to physical and moral violence. She obtained a report from the medical examiner confirming the corporal violence and filed a penal action suit as well as a claim for separation before the religious court. Due to the lengthy period of the trial, Sahar dropped the separation claim and filed for divorce where she ceded all her rights and gave up her private belongings at the matrimonial house in order to secure it.

4-3-9 Fadwa suffered from domestic violence, asked for separation and her visitation rights before the religious court after taking shelter in her parents' house, leaving her children in the matrimonial house because she had no financial means and her parents' house was small.

As a result of the lengthy period of the trial and despite the confirmation of the violence, Fadwa accepted a conciliatory divorce obtaining only part of her dowry (and renouncing the remaining part) for an agreement to see her children once a week.

4-3-10 Mirna married without the approval of her parents and gave birth to a daughter. From the first day, the husband started hitting her blaming her for his violence. Every once in a while he would change the lock of

the house leaving her outside; and she could not enter without the help of the police.

The husband submitted a demand before the Maronite Spiritual Court asking for annulment. Despite the violence she was subjected to, Mirna asked the court not to annul the marriage but to proclaim separation because the marriage contract allowed her to benefit from her husband's health insurance and the alimony imposed on him to support her and her daughter.

4-3-11 "M.H." married a Lebanese living in the United States of America and gave birth to a child. She came with him to visit their parents in Lebanon, where he filed a complaint before the Jaafari Religious Court pretending that she had left the matrimonial house without his consent; he obtained a decision to prohibit her from travel. He then stole her passport and that of the child and traveled to the United States, leaving them behind.

After that, he filed an obedience action through his brother and attorney demanding that she come live in their "legitimate house", a modest house in a village. When she refused, he considered her disloyal and waived her right to alimony. When the child reached two years of age, his father took him and traveled to the United States.

4-4 Data analysis

4-4-1 The facts presented in the samples above reveal the following results:

-36.4% of the samples raise the issue of child support in addition to spousal alimony, while 54.5% raise the issue of dowry along with spousal alimony.

-In 9% of the cases, the wife did not know her rights or that of her children concerning alimony.

-In 9% of the cases, the wife tried to keep the matrimonial link despite the violence she was subjected to, because she needed her husband's financial support.

4-4-2 Concerning the legal approach in dealing with the facts and their consequences, a general analysis shows the following:

-In 81.8% of the cases, petitions were originally filed to claim alimony as the primary demand or in the course of an action aimed at dissolving the matrimonial link; while 18.2% of the cases did not make it to court.

-Around 22% of the cases that came before the competent courts witnessed the issuance of a sentence in favor of the wife; while 44% did not result in any sentence.

-50% of the judgments issued in favor of the wife were not executed.

-In 54.5% of the cases, the wife renounced her financial rights in return for divorce.

- In 44% of the cases which made it to court, the wife suffered from the lengthy period of the trial and its procedures and in 11% of these cases she was made to waive her right to alimony as a result of the deceitful manipulation of the husband.

- In 50% of the judgments issued in favor of the wife, the latter obtained a pitiful sum of money.

4-5 Legal analysis

4-5-1 In analyzing the legal “problematic” related to the financial rights resulting from marriage, we should first underline that both spouses should be aware of the laws and obligations that are incumbent upon them once they marry and also when they decide to break this link. As is evident in case 4-3-3 for example, the woman in question renounced the custody of her daughter because she did not know that the husband bears the responsibility of supporting them.

If legal education is related to a given educational and cultural level and is not available to everyone, the spouses knowledge of the basic rights and obligations incumbent upon them in marriage is a must and a necessary condition.

This legal culture can be provided practically by the religious courts which are competent in performing marriage contracts. They can oblige the fiancés to attend a certain number of sessions related to these issues and which would be run by the staff belonging to the mentioned courts. These can also be organized by non-governmental organizations active in the social and legal fields or in women rights where one person or more can work with the religious courts to educate the fiancés and provide them with help and advice. The Juvenile Protection Union or the Association of Juvenile Protection in Lebanon does similar work where two delegates are attached to different penal courts in order to pursue the procedures in the trials of juveniles.

4-5-2 The most important problem contributing to the disequilibrium and inequality in the treatment of men and women is the lengthy period of the trial and the slowness of its procedures. Action suits related to alimony and other financial rights that result from marriage or its dissolution are by their nature, characterized as “urgent”, underlying the need for hasty decisions from judges. The alimony claims (in all the samples exposed in this chapter) are vital because they aim to provide living essentials such as food, clothes and education to a person deprived from financial means. This is why it is unconceivable that procedures drag.

The acceleration of these actions and the simplification of their procedures constitute the two essential means to solve the above exposed problems. These are not always possible either because of the requirements of the procedural legal texts (namely related to notifications and terms) or the heavy work load of the courts. Thus, other means should be thought of to reduce the negative consequences (on the level of women’s rights) resulting from the slowness in the work of the judicial system. the measures that could be adopted, is the possibility of assigning a

temporary sum as alimony during the trial and before the publication of a definitive judgment. The laws applied in the Lebanese Christian religious courts expressly stipulate a temporary alimony. Although this is not case in the Islamic religious courts, one can adopt this principle based on articles 20 to 23 of the Law governing the organization of religious jurisdiction, allowing religious judges to take quick, temporary and provisional measures.

One can also limit damages resulting from the slowness of the jurisdictional procedures by creating a fund that can pay the claims such as dowry and/or alimony to the woman-plaintiff, as the legal beneficiary from the judgment. This fund can be a «public» person (a branch of the National Security Fund) or a person of private law (non governmental organizations active in the women's rights field) where a cooperative fund dedicated to the mentioned mission can be created. This fund can be managed by a mixed body to which the state or the concerned persons of the general law (municipalities, National Security Fund) and individuals of the private law, contribute.

4-5-3 The financial rights that result from the marriage contract or its dissolution adversely affect also the results of the trial. We saw in the data analysis of the samples that 44% of the cases that filed alimony claims before the courts were not settled and no judgment was issued; and 54.5% of cases ended with the wife renouncing her financial rights in return for divorce.

The solution to the problem can be found first, in a legal text establishing both a period for reflection and the right to change one's mind. The term given for reflection can be mandatory and is granted to the concerned persons to think over, in a suitable environment, all the aspects involved in the issue of resigning their financial rights, with the court not legalizing the renouncement before the expiry of this term. Concerning the right to change one's mind, it is given to the plaintiff when the latter, after registering her renouncement before the competent courts, decides to change her mind within a determined period of time, rendering the renouncement null and void.

Second, this problem requires special care from the competent judges who deal with the financial rights resulting from the marriage and/or its dissolution. The disputes around financial rights are often linked or contingent with a dispute around the matrimonial link; it is rare that an action of alimony is filed in a stable matrimonial relationship. Therefore, the judges should not accept to register the wife's abnegation of her financial rights in return for her divorce (before courts with laws allowing this agreement). When the husband is responsible for the marriage dissolution, the judgment should underline his responsibility and force him to honor the financial rights on the basis of the legal and religious provisions and not exempt him according the wife's renouncement of her rights.

Thirdly, this problem needs the attention of a legal attorney capable of representing the wife in the trial. The attorney should warn his/her client not to renounce her financial rights, especially if the dissolution of the marriage is the husband's responsibility. He/she should confirm this responsibility and obtain a judicial judgment ensuring divorce for the woman

when necessary, without sacrificing the financial rights due to her according to the legal and religious provisions of her community.

In this context, we should mention the role of the non-governmental organizations concerned with defending women's rights. If the woman/plaintiff does not have an attorney at law (because of lack of financial means), these organizations could provide legal assistance for advice and consultation through a private legal team dedicated to this purpose. This assistance can fill the gap resulting from the incapacity of the woman to retain a competent attorney at law to represent her in the trial.

4-5-4 Finally, a careful reading of the results of the data analysis of samples show that 50% of the judgments issued in favor of the wife were not effectively executed.

We mentioned that the problem of non-execution of judgments is a general problem faced by the holders of rights in many domains and not limited to cases related to women's rights. If the majority of cases of non-execution of judgments (generally) are due to the escape of the defendant or his insolvency, the most effective means to avoid the damages resulting from this, is the creation of the fund mentioned above on condition that this fund provides the woman/plaintiff with the sum to be judged in her favor at the end of the trial against her legal claim. We should note here that the legal means currently available to execute the alimony provisions and financial rights (essentially the seizure of the debtor funds, prohibition of his travel and the imprisonment) are all nullified with the escape of the defendant, his disappearance or insolvency.

4-6 Recommendations

1-The religious courts that conclude marriage contracts should seek to educate the fiancés about the legal rights and obligations imposed by their respective religious codes (besides the social one), namely concerning the financial and non-financial obligations resulting from the matrimonial link and its dissolution.

2-Hasten the judicial procedures in action suits related to financial rights resulting from the marriage and/or its dissolution and simplify their procedures.

3-Determine temporary alimony during the trial and before the publication of the definitive judgment, as a quick and temporary measure to reduce the damages resulting from a long trial.

4-Create a fund with a public, private or mixed legal character to settle the financial rights of the woman/plaintiff against her claim as the primary beneficiary.

5-Enact legal texts to organize the issue of abnegation of financial rights resulting from the marriage or its dissolution in which the concerned party is given a mandatory period for thinking before registering the abnegation. The party in question is also given the right to

change his/her mind after registration on condition that the execution of this right is restricted to a determined period of time.

6-Lawyers who represent the women/plaintiffs should warn their clients, not to renounce their rights when they can prove the husband's responsibility for the marriage dissolution.

7-The creation by the non-governmental organizations concerned with Human Rights in general and Women's Rights in particular, to educate engaged couples on their rights and prepare for marriage, as well presenting advice and legal counsel for women who cannot retain an attorney at law due to their financial situation.

Chapter 5 Nationality

5-1 Introduction

Nationality is the legal bond of belonging between the individual and the state, as defined by the scholar Niboyet¹²:

« La nationalité est le lien politique en vertu duquel un individu fait partie des éléments constitutifs de l'Etat » .

The Lebanese nationality was born on 30/8/1924, the day the Treaty of Lausanne came into effect. By virtue of the treaty, the inhabitants of the land of Lebanon lost the Ottoman nationality and those that complied with the conditions stipulated in article 30 of the Treaty became Lebanese¹³. The French High Commissioner issued on that day decree no. 2825 which set the conditions for losing the Ottoman nationality and acquiring the Lebanese, followed by decree no.15 dated 19/1/1925 completing the legal texts related to the Lebanese nationality¹⁴.

5-2 The Legal Framework

5-2-1 Acquisition of the Lebanese nationality by law

Article 1 of the Nationality Law (decree no 15, dated 19-1-1925) stipulates the following:

Is Lebanese:

1. Every person born of a Lebanese father
2. Every person born on the territory of Greater Lebanon who did not acquire by parenthood the nationality of his foreign father
3. Every person, born on the territory of Greater Lebanon from unknown parents or parents of unknown nationality.

The article above adopts two criteria for the acquisition of the Lebanese nationality, one essential, the other a corollary. The first criteria is essential as it represents blood ties (*jus sanguinis*), which considers every child born of a Lebanese father as being Lebanese by law. The second criterion, is a consequence, as it is the result of the land (*jus solis*), granting the Lebanese Nationality to a new born on Lebanese soil, if no other nationality is available to the child or if the parents are unknown and their nationality unknown.

It is worthwhile to note that the blood tie applies to the father and not the mother, according to the letter of the first paragraph. Thus a newborn from a Lebanese mother and a non-Lebanese father cannot acquire the Lebanese nationality but still retains the possibility by virtue of the corollary criteria, if the child is born on Lebanese soil and can prove that he has no other nationality.

As for the 2nd article of the above mentioned law concerning the nationality of an illegitimate child, it stipulates that “an illegitimate child, whose parenthood is proven while still a minor, can acquire the Lebanese nationality if either of his parents can prove his parenthood by first looking at him.

¹² Niboyet, *Traité de droit international privé français*, Tome I, p.77, n.68

¹³ Article 3 of Treaty Of Lausane

¹⁴ Bakkar.Abdel-Menem, “Qadaya el-AHWAL CHAKHSIYA”< second edition, p135

5-2-2 Acquisition of Lebanese Nationality by Nationalization decree

Article 4 of the Nationality Law stipulates the following: "A woman married to a Lebanese, the adult children of a foreigner who has acquired the Lebanese nationality; can ask for that nationality without any condition, whether by virtue of the decree that grants the husband or the father or the mother that nationality or by virtue of a special decree. Also, the under-age children of a father who has acquired the Lebanese nationality or a mother who has acquired it and has survived the father can become Lebanese unless they refuse the nationality a year after they become of age."

Article 5 also stipulates that: "A foreign woman who marries a Lebanese becomes one, a year after his formal registration of the marriage in the competent registry".

It is clear from the above two articles that:

- A Lebanese man (whether by virtue of law or nationalization) who marries a foreigner can give his wife the right to the Lebanese Nationality.
- The Lebanese man grants his children, whether under age or adults, (born at a date prior to his acquiring of the nationality), the right to the Lebanese Nationality.
- A Lebanese woman who marries a foreigner cannot grant her husband the right to that nationality.
- A Lebanese woman married to a foreigner can give her under-age children the Lebanese nationality on condition that her husband dies and she survives him.
- A Lebanese woman, who marries a foreigner of her own free will, cannot grant her children the right to the Lebanese nationality.

5-3 The Samples

5-3-1 A Lebanese woman married an Iraqi living in Lebanon, who was later deported by the Surete Generale for illegal stay. Given that the wife could not give her husband the Lebanese nationality and the complications of the residency procedures, they found no recourse but to employ devious means to evade the Law by filing an alimony suit against the husband and prevent his travel.

5-3-2 A Lebanese woman marries an Egyptian living in Lebanon and gives birth to two children without registering the marriage contract or the birth of the children with the proper Egyptian authorities. They later divorced, with the courts giving the woman custody and imposing alimony on the husband. The latter refused to pay and his wife preferred not take the necessary legal procedures against him, fearing that she would draw attention to the illegitimate residency of the children which might lead to deporting them, given her inability to pay the high costs required to regularize their residence permit.

5-3-3 Nuha married an Algerian national living in Lebanon since his birth, and they had a daughter. The husband acquired a residence permit because of his marriage but a work permit needed other procedures at a cost the couple could not afford.

The Surete Generale refused to renew the husband's residence permit and rather than risk getting deported, he applied for a work permit as a servant working for his wife. The couple declared that they will not have another child, not wanting to risk getting a male child because their daughter will eventually marry a Lebanese and get the nationality.

5-3-4 Sana married a Palestinian and had children. She had to accept her husband moving to Australia and marrying an Australian in the hope of getting that Nationality and consequently giving it to the children to secure their future, as Palestinians are not allowed to work in Lebanon and also because of the hardship of living as non-Lebanese in the country.

5-3-5 "Nahida" marries an Egyptian living in Lebanon and has two children. The marriage was never registered with the proper Egyptian authorities and when they divorced the court gave Nahida custody and imposed alimony on the husband.

5-4 Analysis of the Samples

The analysis of the facts in the samples shows the following results:

- All the samples related to women who married non-Lebanese and had children.
- None of the women concerned were able to give their husband or children the Lebanese nationality.
- 60% of the samples ended with the family breaking up, because of legal problems resulting from the inability of the husband (non-Lebanese) or the children to obtain the Lebanese Nationality.
- In all the cases that did not end in the break up of the family for the reason stated above, legal deviousness was used to avoid dire results of not obtaining nationality.

5-5 The Legal Analysis

The Lebanese Nationality Law holds clear discrimination between men and women concerning the right of transferring the nationality to their spouse and children, particularly in articles 1,2,4,5.

A Lebanese man transfers his nationality to his children by virtue of Law (article 1 of the Nationality Law) and to his foreign wife (article 5). While a Lebanese woman can never give her husband or her children her nationality, unless, and as an exception, they have no other nationality at birth (article 2/1) or in the case of the illegitimate child, on the condition that parenthood is proven unequivocally before proving it through physical similarities with the father (article 2).

The man who is nationalized and granted the Lebanese nationality allows his children whether under age or adults the same right as well as his wife (article 4). Whereas the woman who is nationalized and granted the Lebanese nationality cannot give that right to her children except under three conditions:

- that the children be under age,
- that their father is dead
- that the wife survives him.

The legislative conditions of the Lebanese Nationality Law clearly contradict paragraph (e) of the Preamble to the Constitution, as well as article 7,

that consecrate equality between the citizens in civil and political rights without bias or discrimination. It is also one of the reservations registered by the Lebanese authorities on article 9 of the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) that imposes on signatories granting women the same rights as men regarding the nationality of the children.

The main (undeclared) reason behind not granting women the same rights as men regarding nationality rights is the particularities presented by the Palestinian refugee situation in Lebanon and the fear of the possibility – even if indirect- of their permanent settlement through marriage to Lebanese women. If this is so, then this can be dealt with in a different manner which preserves the equal rights of women on one hand and the particularities of the Palestinian case on the other.

The principle of not allowing the settlement of Palestinian refugees has acquired a constitutional character, after it was stipulated in paragraph (p) in the Preamble amended by the Constitutional Law no 18/1990. The legal character of this principle was earlier consecrated by the Constitutional Council, in its decree no2/2001 issued on the 10/5/2001.

It is also worthwhile to note that the legislative conditions related to the Lebanese nationality and depriving Lebanese women from the right to pass their nationality to their spouses and children, in addition to contradicting the principle of equality, is also contrary to the contemporary trend adopted by modern legislation that grant equal rights to men and women in this domain and which promotes the elimination of all forms of discrimination between them in their rights regarding nationality. This contemporary approach has been adopted by some Arab countries, like Egypt and Morocco.

5-6 Recommendations

1-Abrogation of the reservation made by the Lebanese state on provision 2 of article 9 in the CEDAW Convention, and which Lebanon has ratified by virtue of Law 572/1996

2-Amendment of articles 1,2,4,5 of the Lebanese Nationality Law issued by virtue of decree no 15 on 19/2/1925, to ensure equal rights for men and women in the transfer of nationality to their children.

3-Inclusion of a special text that excludes Palestinian refugees from the possibility of acquiring the Lebanese nationality giving the specificity of their status.



Chapter 6 Inheritance

6-1 Introduction

Death, aside from the bereavement and the deep sense of loss it generates, has very important effects mainly the end of the «legal» personality and consequently the expiry of the financial liability related to it, as well as the transfer of the elements of this liability to other persons. This phenomenon and its legal implications have been a central preoccupation for the legal authorities and before it, religions because of the need, to organize the transfer of the financial liability of the deceased, with provisions differing from one law to another and from one religion to another, and to determine the persons who stand to inherit and the shares due to each.

Inheritance in Lebanon was subordinated for a long time to the provisions of Islamic Sharia' (particularly the Hanafi Rite). It was the Ottoman Empire that imposed the application of these provisions on all its citizens, regardless of their religion and everyone was subject to them until the inheritance law for non-Muslims was issued in Lebanon on 23/6/1959.

On 27/1/1926, decree no. 2503 was promulgated, acknowledging the Jaafari Rite and establishing the Jaafari Religious Courts. The inheritance of the Shiites thus became governed by the stipulations of the Jaafari Jurisprudence.

On 24/2/1948 the Personal Status Code of the Druze community was issued and included some special provisions; with article 169 of that Code stipulating the application of the Hanafi Rite, where it does not contradict its own.

On 23/6/1959, the inheritance law for non-Muslims was issued and has been in application since its effect, on the inheritance of all Lebanese, except for Lebanese Muslims who abide by the Islamic Sharia' provisions according to their respective sects.

6-2 The Legal Framework

The provisions that regulate inheritance in Lebanon are subordinated to five different legal systems in accordance with the community of the deceased. The Sunni Community is subject to the provisions of Islamic Sharia' according to the Hanafi rite; while the Shiite and Alawi communities follow the provisions of Islamic Sharia' according to the Jaafari rite. The Druze community is subordinated to the Hanafi Islamic Sharia, with some special provisions as stipulated its Personal Status Law. As for non-Muslims, they abide by a civil law which is the Inheritance Law for non-Muslims. The fifth system is the law that governs the transfer of deeds related to «Emiri» (Ottoman appellation) and "Waqf" land (religious appellation) issued on 12 February 1912 and applied to Muslims concerning exclusively public estates.

6-2-1 Inheritance in the Sunni Community (Hanafi Rite)

Before the advent of Islam, inheritance provisions for Arabs were based on two rules: it was limited to males exclusively and to the person closest to the deceased, often his eldest son. The Islamic Sharia' brought a different approach to inheritance and all provisions became subject to three principles:

- The elimination of the rule, limiting inheritance to males. This principle is mentioned in the Holy Koran: "There is a share for men and a share for women from what is left by parents and those nearest related, whether the property is small or large—a legal share"¹⁵.

- The preference of men over women. According to the text of the Holy Koran: "Allah commands you as regards your children's: to the male, a portion equal to that of two females; if there are only daughters, two or more, their share is two thirds of the inheritance; if only one her share is a half."¹⁶

- The maintenance of tutelage between the heirs, in such a way that the closest to the deceased disinherits the farthest and becomes sole heir. This principle is mentioned in some of the Koranic verses such as: "Relations through the uterus are worthier in the Book of Allah than other believers and the Muhajiruns except in the kindness you accord them. This is written in the lines"¹⁷.

Concerning the determination of the heirs, the Islamic Sharia' adopts three criteria for inheritance:

- Marriage: the husband and the wife inherit each other (even if death occurs before copulation)

- Kinship or lineage: allow the inheritance for three categories of heirs: legal heirs (mother, daughter, brother from the mother's side), consanguineous heirs (brother, his son, uncle) and uterine heirs (paternal uncles and aunts, maternal uncles and aunts)

- Loyalty, these criteria are related to slaves in one's care and persons.

6-2-2 Inheritance in the Shiite and Alawi Communities (Jaafari Rite)

The Jaafari rite is similar to the Hanafi rite in the majority of issues and inheritance provisions with some differences concerning the following:

- Jaafari jurisprudence divides the entitled heirs into categories and classes, with each class disinheriting the subsequent one. The first class includes the parents, descendants and ascendants; the second class grandparents and brothers; the third class includes the paternal uncles and aunts and the maternal uncles and aunts and their descendants

- The Jaafari jurisprudence does not differentiate between paternal or maternal heirs of either uterine or consanguineous groups

- The Jaafari jurisprudence considers the child, whether male or female, as entitled heirs, eliminating all the subsequent classes or ranks

¹⁵ Surat al Nisaa, verse 7

¹⁶ Ibid, verse 11

¹⁷ Surat Al-Ahzab, verse 6

- The Jaafari jurisprudence does not acknowledge marriage as a criterion for inheritance unless the marriage is consummated.
- Sect differences constitute a prohibition to inheritance in some cases, according to the Jaafari jurisprudence
- The Jaafari jurisprudence does not allow women to inherit estates and her right is limited to transferable assets and profit from the estates.

6-2-3 Inheritance in the Druze Community

The personal status of the Druze community is subordinated to the Law issued on 24/2/1948 which stipulates the application of the Islamic Sharia' with some different provisions. These provisions are the following:

- The Islamic Sharia' does not acknowledge the succession principle in its provisions, while the personal status law of the Druze community stipulates in its article 169 the principle of succession limiting it to one category, that of the sons and daughters of the deceased.
- Article 148 of the above mentioned law allows a person to bequeath the whole testament or some of it to a legitimate or non- legitimate heir, while the provisions of the Islamic Sharia' prohibits such an act and stipulates a determined share which cannot be violated.

6-2-4 Inheritance in the non- Muslim Communities

The inheritance law for non-Muslims includes many principles adopted from the French civil law. The most important, among them are:

- Equality between males and females regarding inheritance rights and shares
- Adoption of the principle of succession if the heir dies before the legator; in which case he is replaced by the first descendants
- Division of the inheritance into three classes with the lowest disinheriting the upper. The first class includes the children and their descendants, the second the parents and their descendants, and the third the grandparents and their descendants.

6-2-5 Inheritance of "Emiri" Estates

It is subordinated to special provisions stipulated in the law governing Emiri and Waqf land for Muslims issued on 12 February 1912. This law came into effect on the date of its issuance, and was applicable to all citizens under Ottoman rule, regardless of their religion. It was later amended by virtue of the Law of Inheritance for non- Muslims, applicable to all non-muslims while the Ottoman Law remains applicable even to muslims only the inheritance of « Emiri »estates.

The most important points in the law of public land transfers is its conformity with Western laws and the law of inheritance for non- Muslims, namely concerning the gender- based equality of inheritance rights, the adoption of the succession principle and of classes in a way similar to the inheritance law of non- Muslims.

6-3 The samples

6-3-1 The husband of a Shiite woman dies. She submits before the Jaafari religious court an application for succession limitation. The Jaafari court judges her share which is the eighth; but this share is limited to the transferable assets without the estates because it is forbidden for women, according to Jaafari jurisprudence, to inherit estates.

6-3-2 The father of a Druze Lebanese woman with children dies; she finds out after his death that he bequeathed all what he owned to her male brother, leaving her nothing.

She consulted a lawyer about what could be done to get her inheritance rights and was informed that she cannot do anything because the testament provisions in the personal status law of the Druze community gives the legator the freedom to bequeath all to a legitimate or non-legitimate heir.

6-4 Analysis of the Samples

The analysis of the two samples show the following results:

- The first sample includes discrimination against women due to the provisions that are imposed by the religious sect of the woman in question.
- The second sample includes discrimination against women on two grounds: first, the legal text which is specific to the community of the woman in question; second the act of the legator who bequeathed voluntarily his whole estate to his male son.

6-5 Legal analysis

The inheritance law of non-Muslims does not raise any significant problems over the rights of women and expressly acknowledges the principle of equality. As for the provisions applied by the Islamic communities in Lebanon, they still raise problems on three grounds:

- Gender-based inequality. is applied by all Muslim communities as the testament of the deceased is divided among the children and the male gets double of the female's share.

- If the descendant is a lone female child, she does not inherit according to rules applied by the Hanafi Rites (not the Jaafari jurisprudence) while an only male son inherits alone, disallowing all other legitimate heirs from uterine and consanguineous ties from doing so

- Land cannot be inherited by women heirs, according to Jaafari jurisprudence.

The difference in Islamic rites is mainly a difference in interpreting the Koran and the Hadith and in establishing a link between the meaning of

verses and their sequence. The jurisprudence of legists (fiqaha') has always facilitated the application of the religious provisions; thus, jurisprudence should evolve in a way that limits the discrimination imposed on women's rights in general and more specifically inheritance.

Individuals should also be able to choose the legal system that governs their inheritance, in other words they should be free, to choose between the religious provisions and the provisions of the civil law regarding the determination of heirs and the distribution of inheritance shares. It should be noted that the law of public land transfer constitutes a civil law issued by the Ottoman authorities. Its provisions somewhat oppose those of the Islamic Sharia' and constitute proof that civil laws can be applied in parallel with religious ones in inheritance issues with no negative impact neither on religion nor its provisions.

Furthermore, even if the personal status law of the Druze community does not include discrimination against women as to the testament provisions, it allows anyone to make such a discrimination, by resorting to article 148. We show in sample, 6-3-2 that the woman in question was totally deprived from her inheritance because her father decided to give all his inheritance to her brother. If the mentioned article 148 stipulates the validity of the testament and allows the legator to give the sum that he deems necessary to anyone he wants this freedom should be restricted by the principle of non abuse or misuse of the right by creating a text revoking the testament when it totally deprives one of the heirs, considering that this deprivation constitutes an abuse of right.

6-6 Recommendations

1-The need for the jurisprudence of legists (fuqaha') of Islamic religion to limit discrimination against women in the different interpretations of some Koranic texts

2-The adoption of a uniform civil law applicable to all Lebanese

3-The amendment of article 148 of the Personal Status Law of the Druze community and restricting the freedom of bequeathal to a determined share of the inheritance or revoking the testament in case it totally deprives one of the heirs.