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Lamia Rustum Shehadeh

THE LEGAL STATUS OF MARRIED WOMEN IN LEBANON

Law plays a vital role in establishing not only regulations but actual thoughts and behavior in defining what is acceptable by society and what is to be considered natural or unnatural. Thus, as the laws dealt with here become symbols of what society believes to be natural or unnatural, they assume far more serious implications than their strictly legal context; hence, the significance of this study. The law is the arena where different views or philosophies are contested. Thus, Rosemary Coombe maintains that "law concludes or limits everyday struggles, authoritatively determines the qualities of individuals or groups, the social identities which people can lay claim to, and the ways in which personhood and experiences of self can be legitimately represented." Furthermore, by legitimizing certain conceptions of the self, the law by default suppresses alternative conceptions.

By mirroring and supporting ideologies and popular precepts that originate from numerous cultural and social sources, the law becomes the vehicle through which such ideologies are disseminated, limiting thereby the possibility of expressing a multi-faceted view of the self. Zillah Eisenstein maintains that "The law constructs and mirrors... social relations through its interpretations of truth... [It] names reality at the same time that it mystifies reality." Thus, according to Eisenstein, "males and females are not biologically the same, yet they are not as different as the law assumes. Men and women are not the same, given nature and culture, yet they are not as different as the law makes them. Sex and gender are not as similar as the law assumes, yet they are connected." Furthermore, according to Robert Gordon, the law or ideas about it are at the source "of some of the most commonplace aspects of social reality that ordinary people carry around with them and use in ordering their lives," since the power of the law resides "in [its] capacity to persuade people that the world described in its images and categories is the only attainable world in which a sane person would want to live." Gordon goes on to say that "One never has more power than when one has so successfully appropriated the symbols of authority that one's actions are not seen as exercises of power at all, but simply as expressions of sound pragmatic common sense." The law thus exercises its power through its simultaneous claim to such a truth. Hence, the law should be objective and the lawmaker(s) impartial in the interest of justice. For it is the law that specifies the

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right and wrong; the true and false. It is the law that “presents power as rational and just and even neutral.” The law, according to Eisenstein, “is both real and ideal; it is both determined and determining. Law is a collection of symbols and signs that structure and effect choices, options, consequences.”

The above excursus underlines the importance of the law both in shaping society and being shaped by it; hence, the significance of the study of Lebanese law governing the legal standing of married women. There are those, however, who claim that changes in the laws are not necessary since they are open to judicial interpretations that reflect current social trends. However, most judges dealing with gendered law in Lebanon are men, and the handful of women judges operate from within the traditional gendered formulations of society. Therefore, they will arrive at decisions similar to those of their male colleagues, for, according to Evelyn Fox Keller, “It is understood how readily women, or any ‘outsiders’ for that matter, come to internalize the concerns and values of a world to which they aspire to belong.”

Furthermore, the subject of gender equality is still emotionally charged such that judicial thought will inevitably be colored by the ideologies of the different judges. And since impartiality under these conditions requires an enlightened attitude on the part of judges, which is certainly not extant especially in a society where traditional sex roles are deeply ingrained—and since judicial decisions cannot leave an effective imprint on society unless there is a clear policy to implement them—it therefore becomes imperative to repeal existing sex-discriminatory laws and issue new ones emphasizing sex equality.

This paper examines the position of married women in the Lebanese legislation both in the Personal Status Code and in the secular or civil law. It will show that although the Lebanese constitution does not discriminate between the sexes, the law does at different levels. What stands out, however, is that this discrimination is aimed mainly at married women. Hence, one is left with the impression that upon marriage, a Lebanese woman forfeits most of her rights as an individual and citizen. Thus, while the Lebanese constitution and civil law treat single women as equal to men in most matters, women are relegated to second-class status in civil law once they are married and become the wards of their husbands.

The Lebanese legislation governing the status of women does not necessarily reflect their actual condition in society. However, should they have recourse to the law, they then discover it to be highly discriminatory, and, therefore, one direct cause of women's predicament. This is made clearer by some public officials who unilaterally take action against women by denying them their rights to act as witnesses or to renew their passports without the permission of their husbands. In recent years, social pressure (human-rights activists and the Lebanese Council for Women) has resulted in the repeal of two discriminatory laws: the commercial law which stipulated that wives had to secure their husband's permission to engage in any business venture, a permission that could be withdrawn at will; and the Law of Obligations and Contracts, which prohibited women from acting as witnesses in real-estate matters. However, a number of laws and statutes which discriminate flagrantly against women, and at times even categorize them in the same legal class as the mentally retarded, the senile, and the legally underage, still exist. The personal-status codes of some religious sects also allow husbands to subjugate their wives and deprive
them of their children after the age of two or seven for boys, and seven or nine for girls, in cases of divorce or widowhood.

The purpose of this paper then is to show how coverture is still extant in Lebanon due to the ossified personal-status codes and the civil or secular law, and the desperate need for legal reform to ensure gender equality.

I

Like most Arab countries as well as Pakistan, Greece, and Israel, Lebanon relegates authority in matters relating to what is referred to as “personal status” to religious courts. The approximately 4 million Lebanese residing in Lebanon belong to eighteen religious sects. To date, however, there are only fifteen personal-status codes.13 They include the Christian, divided into Catholic (Maronite, Melkite, Armenian, Syriac, Roman Catholic, and Chaldean), Orthodox (Greek, Armenian, Syriac Orthodox, and Nestorian), and Protestant; the Muslim, divided into Sunni, Ja‘fari (Shi‘i), and Druze; and the Israelite (Jews).14 These sects were recognized officially by the French High Commissioner during the French Mandate on 30 March 1936 in Legislative Act No. 36. The personal-status codes of the Christian and Jewish sects were finally confirmed on 2 April 1951. On 24 February 1948, the Druze sect issued its own personal-status code, and on 16 July 1962, the final version of the personal-status codes of the Sunni and Ja‘fari sects were adopted.15 These legislative acts allowed each religious sect the right not only to administer its own affairs but to legislate, judge, and carry out sentences in matters pertaining to their respective congregations. All such stipulations are to conform to the Lebanese constitution, civil laws, and the rules and regulations which ensure law and order.16

The purpose of this paper, as mentioned earlier, is to demonstrate how the Lebanese civil law as well as the fifteen personal-status codes discriminate against married women. It does not attempt to study the disparity between the law and the actual condition of women, or the actual application of the law. These, together with a study of the relationship between the condition of women and society, will be subjects for future research. Therefore, only some of the instances where the Lebanese law discriminates against married women will be described.

The focus of this study will be the status of married women, since all the legal injunctions of the personal-status codes and most of the secular law deal with them. Marriage emerges as a contract between two unequal parties: the husband, who provides for the material needs of the family and therefore becomes its “head of state,” and the obedient wife, who provides pleasure, children, and housekeeping. This contract is guaranteed by law.

Since the personal-status codes are an essential part of this paper, an excursion into their history becomes necessary. Personal status, or “statut personnel,” originated in Europe in the Middle Ages. Although some states at the time preferred to continue following Roman law, others preferred their own based on tradition and custom. In order to avoid any problems that might have arisen due to trade and travel between the different states or provinces, it was agreed to have two sets of rules and regulations: Real Status, or statuts réels, derived from Latin res, which dealt with material matters, les biens; and Personal Status, or statuts personnels, which dealt with
personal concerns. It was further agreed that since individuals traveled frequently, the personal-status code of their place of origin would be applied everywhere.\(^\text{17}\)  

This concept is still practiced today in international law when it has to deal with individuals outside their own countries, and by countries whose subjects belong to different religious or ethnic groups, such as Lebanon. Each sect, religious or ethnic, would therefore follow its own laws (personal status). Thus, we find that in international law, the place of origin of the individual is the determining factor. In domestic law, however, it is the religious sect. In both cases, the international and the domestic, or internal, “personal status” refers to the social conditions that distinguish individuals from one another. In Lebanon, however, “personal status” refers not only to one’s social conditions but to his or her religious laws, as well. This is stipulated in Article 9 of the Lebanese constitution, which guarantees absolute freedom of belief and worship as well as respect for the different personal-status codes.\(^\text{18}\)

Each of the fifteen religious sects mentioned earlier had to submit its own personal-status code dealing with marriage, divorce, guardianship and custody of children, adoption of children, and inheritance to the government. The Sunni and Ja’fari personal-status codes were issued on 4 November 1942 and later modified in 1946 and 1962. They were based on the Ottoman Family Law enacted by the Ottoman Sultan Mehmed Rashad on 25 October 1917 and the laws of the Hanafi and Ja’fari schools, respectively. The Druzes submitted their own personal-status code on 24 February 1948, based in part on the school of Abu Hanifa.\(^\text{19}\)

The personal-status codes of Christians and Jews were issued on 2 April 1951. But the government has not ratified these laws to this day due to the demonstrations and strikes carried out against them at the time. The lawyers were the first group to object; they claimed that the new law extended the jurisdiction of the religious authorities beyond the limits of acceptability. The second group consisted of the clergy, who wanted to extend their jurisdiction even further.\(^\text{20}\)

Marriage

Marriage is defined by law as a bilateral contract concluded in public, whereby the couple agree to live together for the sake of procreation and cooperation. Christian sects, with the exception of the Protestants, consider marriage a holy sacrament, and a number of Muslim jurists regard it as a form of worship (\(\text{\textcircled{I}}\text{b\d{a}}\text{a}\)), falling fourth in priority after the duties of prayer, fasting, and jihad (holy war), while Jews consider the act of marriage a form of sanctification of both man and woman.\(^\text{21}\)

Christian sects do not allow any conditional attachments to the marriage contract except for the *mah\text{\textd{r}}*, dowry, and other financial arrangements. More concretely, the Catholic sects, according to Article 83, refuse any kind of conditional marriage. Their legislators distinguish among three kinds of conditions. The first are conditions that run counter to the basic rules of marriage, such as dissolution of marriage, limiting marriage to a specific and finite period of time, and refusal to have children. The second are conditions that run counter to existing laws or public decorum, such as forcing a wife to help her husband in criminal activities. The third, conditions that do not directly contradict any previous legal stipulation, such as virginity of the wife and the severance of all premarital relations of the husband, however, are allowed.\(^\text{22}\)
The Hanafi school of law prohibits the stipulation of conditions in the marriage contract except those giving the wife the right to divorce. The Ottoman Family Law, however, allows a wife in addition to make such stipulations in the marriage contract as to forbid the husband to have a second wife and to consider herself or the other woman divorced if a second marriage takes place.23

The Ja'fari law stipulates two types of conditions: admissible conditions, which do not contradict the shari'a (Divine Law), and non-admissible conditions, which are in direct contradiction to the shari'a in their nature, such as monogamy, denial of divorce, or freedom of the wife to leave the house without the husband's permission.

**Age at Marriage**

I shall now attempt to demonstrate how a woman, born free according to Lebanese law, gradually forfeits her freedom and independence once she marries. Although according to the personal-status codes of the different sects, the minimum age for a girl's marriage varies from puberty (Ja'fari) or twelve years (Jews) to seventeen and eighteen (all the rest), religious courts can override and allow marriage for girls from the moment of birth (Jews), nine years (Ja'fari), and thirteen to fifteen years (all the rest).24

Thus, we see that although in theory the woman's consent is required by all religious sects, this right is automatically forfeited when marriage is arranged from the moment of birth (Jews) or at age nine (Ja'fari) or thirteen to fifteen (the rest). Clearly, girls at such ages are not mature enough to give consent.

**Mahr**

Further, the marriage contract is finalized in all sects by the specification of an amount of money to be paid by the prospective husband, called *mahr*, or by the bride (Christians and Jews), called dowry (*bā'ina*). This automatically turns marriage into a business transaction in which the woman, the commodity in question (body services), is bought or sold. The offer is always made in writing and duly witnessed, and the *mahr* is the woman's to dispense with as she pleases, according to the Sunni, Ja'fari, and Druze sects. The convention is to deliver half the *mahr* upon marriage and the other half upon repudiation, divorce, or widowhood. Should repudiation occur before consummation of marriage, the wife retains the first half, indicating further still the role of the wife in the marriage contract. The *mahr* for the Catholic sects, however, is optional. If it consists of immovable property, it is administered and invested by the husband, the profit going to the family. In case of separation due to wrongdoing of the wife, she loses the *mahr*, which then reverts to the husband. The *mahr* for the Orthodox sects comprises whatever the man gives the woman during the period of engagement, and becomes her property after marriage.25

**Head of Family**

According to the personal-status codes of all sects, once the woman joins her husband in his domicile, she becomes subservient to him. The husband is considered
the head of the family. The woman is to live in the domicile of her husband and follow him wherever he may go and should carry his name even after his death (according to the Christian sects). Further, according to the Sunni and Ja'fari sects, the husband has the right to admonish and discipline, as well as inflict physical punishment, when the wife is recalcitrant. The husband, in exchange, has to pay all the expenses of the wife (food, clothing, housing) unless she is recalcitrant. A wife, according to the Muslim sects, should not leave her husband's home without his permission. If she leaves her husband's domicile permanently, he has the right to bring her back to the “house of obedience” (bayt al-tā'a). The recalcitrant and the separated (due to her own fault), according to the Catholic sects, must reimburse her husband for the expenses incurred due to her absence. If the Catholic husband is incapable of providing for his wife, her relatives are required to do so, and the Orthodox sects require a financially well-off wife to assist her husband if he is needy. Yet he is still considered legally the head of the family. A wife has to obey her husband in all matters unless they go against the law or decorum. Thus, the personal-status code of the Protestant sects considers the wife a “housekeeper” who pays household expenses from the budget assigned her by the husband. According to the Armenian Orthodox sect, a woman cannot work outside the home or practice a profession without the approval of her husband.

The subservience and subjugation of women to their husbands are best illustrated by the personal-status code of the Israelite (Jewish) sect. In addition to total obedience, the wife has to serve her husband personally even if she is financially well off, and should acquiesce to his sexual needs without demurring. Further, should she work outside the home, her husband has the right to her earnings; and if she is financially well off, she is not free to dispense with her money without the approval of her husband. The husband has the right to oblige her to serve at home unless he is well off or she is independently wealthy. If the wife is divorced while underaged, her husband has the right to be reimbursed for all expenses incurred by her during marriage. If a wife is divorced through a fault of her own, she loses her right to any stipulations made in the marriage contract. If she suffers a long-term illness, her husband may give her the option of taking what is due her so she can continue her treatment or divorce. The expenses of the burial of a widow are to be paid by her own heirs, not her husband's. Finally, the position of a wife becomes even more precarious when a husband, according to Jews and Muslims, may marry up to two or four wives, respectively, provided they can be treated equally and fairly.

Separation

The law is unequal not only before and during marriage but also at its termination. All of the personal-status codes help the husband to tighten his grip on his wife even further. Thus, although divorce is prohibited in principle by all Christian sects, the Greek Orthodox sect allows a couple to divorce provided that the husband can prove in court that his wife was not a virgin when he married her. This confirms the allegation made earlier that a wife is regarded as a commodity and thus property of the husband—whence the importance of virginity, which guarantees the undamaged nature of the merchandise. The husband can also obtain a divorce if he can prove
that his wife destroyed his seed willfully—either by means of a variety of contraceptive methods or through actual abortion—thus implying that the body of the wife is the property of the husband. Further, if a husband forbids his wife to frequent a certain house or associate with certain people of ill repute and she disobeys, or if she stays overnight in a suspicious place without his knowledge, he has the right to divorce her. If the court orders the wife to follow her husband to his new dwelling place or her marital home and she refuses without a legitimate excuse, the husband is then absolved of all marital duties and granted a divorce. This further implies that a wife is considered by the husband and the religious courts a minor requiring guidance in all matters. A woman, on the other hand, can divorce her husband only if he encourages her to commit adultery and she refuses, if he practices sodomy with her, or if he accuses her of adultery without being able to prove it. The Syriac Orthodox sect rules that if the wife is the offender, then she is not entitled to alimony, and if she is recalcitrant, she will be ordered to pay her husband by way of compensation a monthly sum equivalent to the monthly salary of a maid. A husband may also divorce his wife if she gets pregnant while he is away or if he is impotent. A guilty wife is entitled neither to her mahr nor to her jewelry, clothing, and presents given her before marriage. Finally, she loses her mahr and trousseau if she knew before the wedding of her husband's impotence, severance of his organ, or castration and still asks for a divorce. If the divorce is due to something the wife did before marriage and the couple has children, her dowry goes to her children. If they are underage, the father invests it for them.

All Catholic sects believe in the indissolubility of marriage. However, should living together prove impossible for one reason or another, a compromise is reached through what is referred to as "separation," the French séparation de corps. This means that the couple maintains separate dwelling places while remaining married. The most important cause leading to separation is adultery.

Divorce, according to the Jewish and Muslim sects, is an abomination and therefore should not take place unless absolutely necessary. Divorce is the right of the husband, and the wife's consent is not necessary, confirming once again the unequal nature of the marriage contract. Since convention in Lebanon has ruled that repudiation should take place before the religious authority, there is no longer any difference between repudiation and divorce. A man can, however, divorce his wife in absentia without her knowledge. If she refuses to receive the notification of divorce, the court, according to the Jewish sect, will appoint a proxy on her behalf. Although many conditions necessitating divorce are listed in the Jewish personal-status code, the husband can still divorce his wife without any legitimate reason. The subjugation of the wife, however, is paramount in divorce proceedings. The husband can divorce his wife upon his claim that she was not a virgin on the wedding night, or if the wife has not menstruated by the age of eighteen or has not developed breasts. The assumption here is that the girl must have married before puberty. A wife can be divorced if she is sterile or if she has three miscarriages in a row or if she does not allow the husband sex because she hates him.

The prejudice of the Jewish personal-status code and its uneven treatment of men and women attains its zenith when a man is ordered by court to divorce his wife in case of adultery, with no option available to remarry her. Moreover, due to fear that
a wife might claim adultery to obtain a divorce, the court will not honor her claim unless her husband testifies to that effect. A husband may divorce his wife if he finds her alone with a man he is jealous of or with a man he has forbidden her to talk to, “for a period long enough to boil an egg and drink it,” and she is not allowed to marry the man she was alone with. Her husband can also forbid her to see her parents except once a month or whenever she is sick or delivering a baby. A woman, on the other hand, can divorce her husband only if he is epileptic or his sickness prevents him from being able to provide for her. It would be good of a man, however, to divorce his wife if he is impotent and has treated himself for a period of three years to no avail. But even this is entirely optional.40

Divorce is also considered an abomination among the Muslim sects and is generally referred to as ʿtalāq, meaning “repudiation.” ʿTalāq comes from the verb tallaqta, meaning to release a human being from any obligation incumbent upon him. ʿTalāq proper is the husband's right to divorce his wife by making a pronouncement that the marriage is dissolved. Many Qur'anic verses, however, make clear that divorce is undesirable and those who exceed the limits set by God will be punished (LXV: 1). The shari'a, however, does not translate these teachings into legal restrictions on the husband's right to divorce in order to guard against abuses. Since conditional, contingent, or qualified pronouncements of divorce are permitted in Hanafi law, a divorce may, for example, be pronounced to take place at the occurrence of a future event or at some future period of time, further confirming the commodity nature of women. This, however, is not permitted by Ja'fari law.

A husband's act of divorce in Hanafi law is unencumbered. Thus, a Sunni who has attained puberty and is of sound mind has the right to divorce his wife whenever he wishes, without citing a cause. The fact that the wife has no part in the procedure is further indicated by the fact that the husband generally does not have to be present. The divorce can be either revocable, which gives the man an opportunity to reconsider, or not. The pronouncement is revocable (by words or conduct, such as resumed cohabitation) during the whole period of ʿidda (three months after the divorce) without the approval of the wife. Since there has been only one pronouncement of divorce, there is no prohibition against remarriage of the couple. The divorce is irrevocable if the pronouncement is made three times consecutively. The husband, in this case, may not remarry his previous wife unless she has married another man during the intervening period and has been divorced or widowed.41

A Muslim wife has the power of divorce only when her husband agrees to grant her that power and stipulates it in the marriage contract. This is referred to as ʿismā (bond of marriage). A wife may also have the power of divorce if it is delegated to her by her husband when he says “choose” or “divorce yourself.” This is referred to as ṣalāq al-tafwid (delegated divorce). A husband may delegate the power of divorce to a third party, as well.

A Khulʿ, or mutual divorce, comes about through the common consent of the wife and the husband. This mutual consent, however, stipulates that the wife compensate her husband financially, demonstrating once again the business nature of marriage, where the woman has to buy her freedom.42

Dissolution of a Muslim marriage may also be brought about by juridical process (although juridical process is not applicable according to Ja'fari law). This comprises liʿān (mutual oath swearing) and faskh (judicial recision). The first type is in force
when a husband alleges, without proof, that his wife has committed adultery. The wife is then entitled to file suit to force her husband to retract his allegation or to swear an oath that she is guilty of adultery. After the oaths of both husband and wife have been made, the husband should divorce his wife; if he refuses, the court will dissolve the marriage. The second form refers to the power of the Muslim judge to annul a marriage on the petition of the wife. The grounds available to women for divorce, however, are both limited in number and difficult to prove. In contrast, the husband is not required by law to cite any grounds for divorce.\(^4\)

A Muslim wife can sue for divorce if the form of the marriage is irregular—if the parties are prohibited from marriage due to fosterage or other reasons; if the marriage was contracted by non-Muslims who subsequently adopted Islam or vice versa. According to the Ottoman Family Law (but not according to Ja'fari law), a wife may divorce her husband if he is unable to consummate the marriage; if he is missing; if he refuses to pay her expenses; if there is fear of bodily harm; if the husband is in prison; if he suffers from venereal diseases or leprosy or any other similar infectious disease; if he goes insane after marriage; or if there is continuous fighting at home. The wife, however, has to file suit for divorce, and the court has to be convinced of her complaint's legitimacy.\(^4\)

As for the Druze sect, a man may divorce his wife without a legitimate reason, but must do so in court. All the judge can do in such cases is force the husband to pay the wife a specified sum in compensation for moral and financial damages. Divorce should be announced publicly in court in the presence of two witnesses. All acts of divorce are irrevocable. A wife may sue for divorce according to conditions specified by Hanafi law and in case of a husband's adultery.\(^4\)

\(^{c}Idda\)

All Muslim sects, along with the Jewish and some Christian sects, prohibit a woman from remarrying for a specified period of time, called the \(^{c}Idda\) (waiting period), when her previous marriage has been terminated by divorce or the death of her husband. \(^{c}Idda\) is defined as the term by the completion of which a new marriage, if contracted, would be lawful. This is to guarantee the parenthood of children born after separation. The duration of \(^{c}Idda\) varies from three months if not pregnant (all Muslim sects, Greek Orthodox, and Jews) to ten months (Syriac Orthodox), and until delivery if she is pregnant. According to the Jewish sect, a pregnant woman may not remarry until delivery, and if she is nursing, until twenty-four months have elapsed.\(^4\) Although this regulation may seem beneficial for women and children, it does reflect once again the contractual nature of marriage, in which the husband has total control over his wife's body, as well as the subordinate position of the wife in the contract. The husband provides financial security in return for pleasure, procreation, and housework.

**Guardianship and Custody of Children**

This subordinate nature of wives in all religious sects in Lebanon is further accentuated in matters of guardianship and custody of children. Whereas motherhood is extolled by all religious sects, the minute a wife is widowed or divorced, she loses
all rights to her children. Thus, according to all religious sects, guardianship of children normally goes to the father. Should the father in the Catholic sects prove unworthy, however, guardianship is awarded to the mother. In case of death, the wife automatically becomes the guardian in contradistinction to all other sects; and in case of separation, the children are awarded to the more worthy of the parents. According to all other sects, and unless there is a written statement by the father approved by the religious court (Orthodox sects), the guardianship of the children after the father's death normally goes to the paternal family, unless such a ruling is contested. In case of divorce, the children normally stay in the custody of the mother until the age of seven for boys (Ja`fari law until the age of two) and nine for girls (Ja`fari law until the age of seven). During this time, the father, who is legally considered to be the children's natural guardian and provider, continues in his supervision of the children, and when they reach age seven or nine he or his parental relatives receive custody of them. Further, if the mother remarries, custody of her children, regardless of their age, reverts to the first husband. A woman loses custody of her children at any age if her behavior is deemed immoral or if her care of the children is poor.

Guardianship in all sects, with the exception of the Israelite, comes to an end with the death of the underaged person or his or her reaching adulthood unless he or she is legally incapacitated due to insanity, idiocy, or mental retardation. The Israelite sect gives the father guardianship of a daughter until she marries. This guardianship is of her person and her money (salary, mahr, indemnity, and anything that may come her way accidentally).

All religious sects in Lebanon can legally force a mother to breast feed her child until the age of two years, confirming once again the subordinate position of a married woman and the fact that her body, once she is married, is the property of the husband to do with as he pleases.

Inheritance

Finally, we come to the subject of inheritance, where non-Muslim Lebanese, males and females, subject to the non-Islamic law of inheritance issued on 23 June 1959 have equal rights. The Muslim sects, however, differentiate between male and female categories. The Muslim sects, following the Qur’an, divide the heirs into two: ‘ahl al-farā’id (pertaining to obligations), whose rights were established by divine revelation, and the ‘asaba (agnates). ‘Ahl al-farā’id (mostly women) have been called “shareholders” because they receive a precise fractional share prescribed by the Qur’an (IV: 11–12, 176). Although these relatives inherit first, they take only a portion of the estate. The residue, usually the bulk of the inheritance, reverts to the male agnates (’asaba). This is not true, however, with regard to Ja’fari law: If the deceased is succeeded by male and female children, the males inherit twice the share of the females. But if the children are all female, contrary to Sunni practice, they can inherit equally without any inheritance reverting to male relatives. Further, the husband inherits one-fourth of his wife’s estate in the presence of living children or children of a son, and one-half in case of their absence, while the wife inherits one-eighth and one-fourth, respectively. In the case of a polygamous union, the wives
share the one-eighth or one-fourth equally. A Muslim, contrary to the Christian and Druze sects, cannot will any of his estate to his legal heirs.\textsuperscript{52}

The precarious and subordinate position of married women is best illustrated by the Israeliite sect regarding inheritance. Thus, whereas a husband inherits all his wife’s estate in case of her death, the widow inherits only what the marriage contract stipulates. A man cannot even will anything to his wife. If he wills her cash not already in her possession, the heirs are entitled to it even if it is to cover her daily expenses. If the widow should save from her due expenses, the savings automatically become the property of the heirs. The widow is demeaned even further when she is required to swear before the court and in the presence of the heirs that she did not embezzle or secrete any of her husband’s money, for only then will she receive her due. It is the right of the heirs to deduct from her inheritance any sum spent by the husband for her clothing. Further, the heirs are not legally bound to pay for her medical treatment, funeral, or burial, or even to release her in case she is taken captive. Finally, should her husband’s business partner claim he had sold the business to pay debts and cannot, therefore, pay the widow’s dues, he is to be believed. The funeral and burial expenses of the husband have to be deducted before the widow is paid her share.\textsuperscript{53}

Thus, having studied the fifteen Lebanese personal-status codes in all their categories of marriage, divorce, guardianship, and custody of children, as well as inheritance, it becomes clear that once a woman gets married, she loses most of her natural and legal rights and the marriage contract emerges as a contract between two unequal parties, the husband who is head of the family and the wife who is his ward. As a matter of fact, the word for husband in Arabic is \textit{baql}, which means “lord and master.” All personal-status codes, with the exception of that of the Jews, are based mainly on the doctrines of Islamic shari‘a, probably because both Muslims and Christians followed them exclusively during the prolonged period of Muslim hegemony. It is interesting to note here that the personal-status codes of the Christian sects, issued in 1951 under a secular government that allowed complete freedom in the formulation of these laws, are to a great extent in agreement with the shari‘a stipulations, departing from them only in matters of inheritance and dogma. Thus we find that such practices as a \textit{mah\textsuperscript{r}}, guardianship and custody of children, and the waiting period called \textit{id\textsuperscript{d}a} are borrowed from the shari‘a in toto. This adherence to the shari‘a could be attributed to a variety of reasons, including custom, acquired over centuries of Islamic rule, and fear of alienating the Lebanese Muslim community. Yet such practices as requiring a dowry (\textit{b\textsuperscript{a}\textsuperscript{in}a}) of the bride, or requiring a wife or her family to help her husband financially, or requiring a wife separated from her husband to reimburse him a monthly sum equivalent to the salary of a maid run counter to the shari‘a and Christian dogma. The only explanation extant is the direct influence of French law, which at the time was full of instances of discrimination against women.\textsuperscript{54}

Discrimination against married women is further observed in secular law in matters relating to legal capacity, work benefits, employment opportunities, abortion, crimes
of honor and adultery, and the right and capacity to grant one's nationality to her children.

**Citizenship**

While the Lebanese constitution guarantees equal rights to all citizens, Lebanese law gives the husband legal support to control his wife even further. Thus, while a foreign woman married to a Lebanese man is granted Lebanese citizenship after a period of one year and at her request, with all the rights and duties applicable to all Lebanese citizens by birth, a Lebanese woman married to a foreigner is prohibited from giving Lebanese citizenship to her husband and children even if they were born and are living in Lebanon. Moreover, Lebanese law grants a foreign woman married to a foreigner and living in Lebanon, who has acquired Lebanese citizenship since the death of her husband, the right to give Lebanese citizenship to her underage children. This privilege is denied a widow who is Lebanese by birth. Further, if a Lebanese woman relinquishes her citizenship upon marriage to a foreigner, she can retrieve it only if her husband is deceased or she is divorced. But, while still married, she can reclaim it only with the approval of her foreign husband and after having spent five consecutive years in Lebanon.

The Lebanese constitution stipulates that all Lebanese are equal before the law and enjoy the same civil and political rights and share the same duties and obligations, including the right to public employment according to merit, without any discrimination, yet we find the law discriminating between the sexes in several areas.

**Employment**

The Ministry of Foreign Affairs stipulates that no married woman is allowed to apply for any vacancy in the diplomatic corps (third category). Should a single woman marry a foreigner while in service, she is to be transferred within a period of not more than three months to the administrative corps. The male employee, however, is not restricted by the nationality of his wife, nor is bachelorhood a prerequisite. The implication here, clearly, is that a married woman is by definition subordinate to her husband and subservient to him and cannot, therefore, be trusted with classified material or national concerns. Her first loyalty would always be to her husband.

While all public employees on tenure are entitled to a pension, which passes on to spouse and children after death, a married woman cannot bequeath her pension to her children and husband unless the husband can prove poverty or physical incapacity. A married woman is discriminated against even after retirement. Thus, while a male retiree is entitled to non-governmental employment while on pension, a married woman is not. Keeping in mind that under normal circumstances a married woman in Lebanon would not work outside the home unless in financial need, a female employee can receive compensation for her spouse and children only if she is the breadwinner of the family due to the death of the husband, his incapacity, or his absence from the country without any communication for a period of not less than a year—or if she is a divorcée and her ex-husband is incapable of paying alimony. This is further compounded by granting a married woman only 50 percent of medical expenses for her children, while her male peer is entitled to 75 percent. Finally,
while a man may ask for an advance from his indemnity in case he is incapacitated and is the head of a family, a married woman may not do so unless she is widowed, divorced, or legally separated, or her husband is incapacitated, under arrest, or in prison. The coup de grâce of the Lebanese law against married working women, however, is dealt when she becomes pregnant. Instead of protecting the rights of pregnant working married women, the law places more obstacles in their way. Thus, while a man has to have worked for at least three months out of the six months prior to the date of delivery of his wife to be eligible for maternal insurance, a woman, in addition to the above, has to have been enrolled in the social-security program for a period of not less than ten months before the date of delivery.

The only plausible reason for this uneven treatment by the law is to help husbands keep their wives at home and under their control. For if a married woman finds work outside the home that is as lucrative and as gratifying as her husband's, the legislators may reason that she would no longer be satisfied in her subordinate position to her husband and would become independent.

**Law of Obligations and Contracts**

The Law of Obligations and Contracts shows even more clearly how a wife is subordinate to her husband, just as their underage children are. Thus, while the law requires the written approval of the insured for life by a third party, a married woman cannot obtain insurance without the approval of her husband, placing her thereby in the same category as the underaged, the legally insane, the insane, and those in need of custodians. The husband can withdraw his approval whenever he sees fit.

The subordinate position of a wife and her dependence on her husband is further evidenced by holding her liable in case of her husband's bankruptcy. She is entitled only to the property or cash accrued her before marriage or during her marriage from sources other than her husband, subject to proof. Otherwise, all money accrued her during marriage is considered to have originated from the husband and is, therefore, accountable.

**Penal Code**

**Crimes of Honor** The worst instances of discrimination, however, are to be found in the Penal Code, which plays the role of custodian of the rights of men vis-à-vis their wives. Thus, while a man is absolved of all guilt in crimes of passion and honor entailed by surprising his wife in the act of adultery, and receives a reduced sentence in similar cases based solely on suspicion, a woman under similar circumstances is accused of and tried for first-degree murder.

**Adultery** The Penal Code's inequality becomes clearer in matters of adultery. A married woman is considered an adulteress if caught in the act and receives a sentence of imprisonment for a period ranging from three months to two years—unless, of course, the husband forgives her, whereupon she is immediately released. If, however, a husband is caught under similar circumstances, other conditions are required before he can be arrested, such as committing the act in his marital home or declaring his mistress publicly. For his conviction, the only evidence acceptable
besides his confession is the presence of letters and documents signed by him. Should all of these conditions be met, he will receive a sentence ranging from one month to one year of imprisonment.\textsuperscript{59} What is noteworthy is the fact that this discrimination against women in matters of adultery is contrary to both Christian and Muslim doctrines. Men and women are treated equally in this regard by both religions, and Islam goes even further by requiring four mature adult witnesses to the actual act of coitus, which makes accusation and conviction virtually impossible.

\textit{Abortion} The Penal Code continues to demonstrate its inequality in its treatment of abortion, which is listed under the category of vice.\textsuperscript{70} Abortion, other than for therapeutic reasons, is considered criminal and carries penalties against the abortionist and the woman herself. If abortion, whether with the woman's approval or not, leads to her death, it is considered a crime, and the abortionist is sentenced to hard labor for a mere four to seven years. If, however, the perpetrator of the above-mentioned crimes committed them to preserve family honor, the sentence may be reduced to a mere reprimand.\textsuperscript{71}

In view of the preceding, we witness the emergence of what I would call a new non-political social contract comprising two phases. The first phase begins with the initial marriage contract between the prospective couple. This contract is in fact a sexual contract called by Muslims in Arabic \textit{\textsuperscript{2}aqd nikāh} (sexual contract). It is this contract through which men transform their rights of nature over women into their civil patriarchal rights.\textsuperscript{72} William Thompson maintained that men's artifice and greater physical strength enabled them to subjugate women. It would have been natural for men simply to turn women into mere laborers had it not been for the need to gratify their sexual desire. Thus, the institution of marriage, according to Thompson, is that in which "each man yokes a woman to his establishment, and calls it a contract."\textsuperscript{73} This is reiterated by John Stuart Mill in \textit{The Subjection of Women}, "from the earliest twilight of human society, every woman (owing to the value attached to her by men, combined with her inferiority in muscular strength) was found in a state of bondage to some man."\textsuperscript{74} In fact, Mill rejected the empowerment given him by the law as husband, for, according to him, marriage law “confers upon one of the parties to the contract, legal power and control over the person, property and freedom of action of the other party, independent of her own wishes and will.”\textsuperscript{75}

A contractual relationship, starting with the social contract, implies freedom and equality: freedom to enter the contract and agree to its stipulations, and equality of rights as stipulated by the law of nature. However, we find the marriage contract in Lebanon lacking in both equality (between men and women) and freedom (that of women).\textsuperscript{76} Instead of a marriage contract to the mutual advantage of two equal parties, we find one established on a sexual division of labor, which, according to E. O. Wilson, originated from the fact that "Mothers carry fetuses for nine months and afterward are encumbered by infants and small children who require milk at frequent intervals through the day. It is to the advantage of each woman of the hunter-gatherer band to secure the allegiance of men who will contribute meat and hides.
while sharing the labor of child-rearing. It is to the reciprocal advantage of each man to obtain sexual rights to women and to monopolize their economic activity.77 While this explains how the marriage contract originated, it does not justify the unequal relationship between husband and wife. The marriage contract has developed more into a labor contract where the wife works for her husband in the marital home.78 Her work, however, is not limited to housework but includes sexual gratification of the husband, childbirth, and child-rearing.

The marriage contract in Lebanon seems more like that of coverture where a certain amount of money (mahr) is paid either to the bride or her family, and a dwelling place is insured together with food and clothing. In return, the wife becomes her husband's sexual property and bears his children and rears them. As such, the man assumes control of the woman's body, which he has literally bought. Thus we find the Greek Orthodox sect granting divorce to a man whose wife was not a virgin on the wedding night or who "destroyed his seed," and the civil courts imprisoning women for abortion or adultery and allowing men who commit crimes of honor to go with impunity. The body of the wife has to be perfect—that is, untouched by another man, as evidenced by virginity, and fertile to insure the continuity of his line. If the wife is discovered not to have been a virgin on the wedding night, her rights or favors are either reduced by one-half or she is returned to her parents. To insure virginity, all sects in Lebanon favor early marriages, ranging from the moment of birth among the Jews to nine years among the Shi'is and thirteen to fifteen years among the rest. Once a sum of money is paid, the object paid for (the wife) becomes the property of the buyer (the husband), and thus rape, which originally was a violation of a father's or husband's property right, could not be attributed to a husband, for how could he rape his own property? Rape is legally defined, in Lebanon, as sexual intercourse by a male with a female other than his wife, without the consent of the woman and effected by force or intimidation.79 Thus, a husband cannot be guilty of raping his wife even if he forces himself upon her, the implication being that rape is illegal sex and excludes unwanted or violent sex within the marital relationship. In other words, violence in legal sex is not punishable by law because the wife is viewed as the property of the husband, as further evidenced by the marriage contract, which stipulates sex and procreation to be the duties of the wife.80 This indicates the loss of control of the married woman over her own body. Another such indication involves the mother being forced by law to nurse her newborn until the age of two years.

Although housework is her duty, a wife not only is not paid a wage for her work at home, as feminists have continuously reiterated, but is actually described by some sects (Evangelical) as "housekeeper" and required by others (Catholics) to reimburse her husband for expenses incurred during her absence or even, in case of separation (Syriac Orthodox), to pay her husband the monthly salary of a maid. She is not allowed to leave the house without the permission of her husband, and if she leaves permanently, she can be brought back to the house of obedience by force. A wife can thus be excluded from all intellectual and social interactions as well as prevented from forming her own friendships. As Christine Delphy rightly maintains, no husband can rid himself of the power invested in him through marriage: "the particular individual man [may] not play a personal role in this general oppression, which
occurs before his appearance on the scene: but, reciprocally, no personal initiative on his part can undo or mitigate what exists before and outside his entrance."81

The second phase of this new social contract is realized when civil, as opposed to religious, law undertakes to safeguard the dominance of men in the family and society at large. It is pertinent at this point to remember that Thomas Hobbes, in the 17th century, acknowledged that government was set up by men for their own protection. Thus, the civil law has always acted in the interest of men rather than women.82 Hence, married women, as mentioned earlier, are at times classified in the same category as children, the insane, and the retarded. Labor law has a special section dedicated to women and children specifying the type of work and the working hours they may engage in. By discriminating against women in the labor market (as mentioned earlier), Lebanese civil law ensures that women will remain submissive and subservient to men. Further, women are prevented from taking their children abroad or having bank accounts in their children's names without the approval of their husbands. Such practices reflect an inherent distrust of women paralleling a similar distrust seen in the personal-status codes. This is further amplified by the penal code, especially in matters of abortion, adultery, and crimes of honor, where women are clearly considered the private property of men to be dispensed with as they see fit.

Many would object, at this point, that the described discrimination against women in Lebanese law does not reflect the true status of women, who currently enjoy a great deal of freedom and are treated well by their husbands. Although this might be true in many cases, women remain dependent on the benevolence and goodwill of their husbands and must constantly please and satisfy them to ensure their physical and material well-being. Also, laws are made to be imposed not on "good" loving men but on the "bad" or abusive ones. Men are not and cannot be required, before the marriage ceremony, to prove their fitness to be trusted with absolute power to exercise as they see fit. Thus it is possible for a particular husband to commit any atrocity against his wife, including murder in the name of honor, without the danger of any legal reprisal.

Repealing discriminatory laws may not be enough to change the actual status of women, but it may constitute a major first step to be followed by changes in the existing educational, cultural, social, and economic conditions to make that end possible. However, should it prove difficult to abolish the existing multi-sectarian personal-status system, a viable alternative would be to make it optional by providing a secular system for those who prefer it.

NOTES


3Ibid.
The Feminist of code.

The Feminist Jurisprudence, 148.


The three sects recognized by the government but with no distinct personal-status codes are the ‘Alawites, the Isma’ili, and the Orthodox Copts. The Orthodox Copts were the last to be recognized, according to Decree No. 553 issued on 24 July 1996. All three follow the personal-status codes closest to them—that is, the Ja’fari and Orthodox codes, respectively.

Although many Jews left Lebanon during the war, a sizable community still resides in Lebanon. But the law in Lebanon is such that even if one family remains, it has to abide by its own personal-status code. This justifies the study of the Jewish personal code, which is still part and parcel of the official Personal Status Code.


The Government shall respect all creeds and safeguard and protect the free exercise of all forms of worship on the condition that there is no interference with the public order. It also guarantees that the personal status and religious interests of the peoples, whatever their creed, shall be respected”: El-Gemayel, The Lebanese Legal System, 1:24.

Bilānī, Personal Status Codes, 19.

For more information, cf. ibid., 41–43.

“Personal Status Code of the Catholic Church (hereafter PSC [Catholic]), Art. 57 (Q1067); Personal Status Code of the Syriac Orthodox Church (hereafter PSC [Syriac]), Art. 4, 5:1; Personal Status Code of the Evangelical Church (hereafter PSC [Evangelical]), Art. 13:b, 22:g; Personal Status Code of the Armenian Orthodox Church (hereafter PSC [Armenian]), Art. 3:a, 15, 21; Personal Status Code of the Greek Orthodox Church (hereafter PSC [Greek Orthodox]), Art. 5:3, 18:2; Personal Status Code of the Israeliite Sect (hereafter PSC [Israeliite]), Art. 2, 44, cf. also Art. 45–47; Personal Status Code of the Druze Sect (hereafter PSC [Druze]), Art. 1–6; Personal Status Code of the Sunni Sect (hereafter PSC [Sunni]), Art. 4–6; Personal Status Code of the Ja’fari Sect (hereafter PSC [Ja’fari]), Art. 7–8.

PSC (Catholic), Art. 39, 40, 43, 45–47, 58–59, 63:1; PSC (Syriac), Art. 42–45, 48; PSC (Greek Orthodox), Art. 40, 49, 52; PSC (Israeliite), Art. 150, 156–58, 161–64, 171–72, also 127; PSC (Druze), Art. 20–22, 24–25; PSC (Armenian), Art. 79, 90, 92–93; Ottoman Family Law, Art. 80–91.
518 Lamia Rustum Shehadeh

26PSC (Catholic), Art. 160, 162; PSC (Syriac), Art. 33; PSC (Evangelical), Art. 31–32; PSC (Armenian), Art. 46–47; PSC (Greek Orthodox), Art. 28–29; PSC (Israelite), Art. 134. Cf. also Bilani, Personal Status Codes, 113.

27Ibid., 119.
28Ibid.
29PSC (Catholic), Art. 162.
30Ibid., Art. 163; PSC (Greek Orthodox), Art. 31.
31PSC (Armenian), Art. 47.
32PSC (Evangelical), Art. 33.
33PSC (Armenian), Art. 48.
35Bilani, Personal Status Codes, 68. See also, PSC (Israelite), Art. 101.
36PSC (Greek Orthodox), Art. 71.
37Ibid., Art. 72.
38PSC (Syriac), Art. 51–52, 56, 60.
40Ibid.
41For a good discussion of divorce in Hanafi law, see John Esposito, Women in Muslim Family Law (Syracuse, N.Y.: Syracuse University Press, 1982).
42Bilani, Personal Status Codes, 136–37.
43Ibid., 130–43.
45PSC (Druze), Art. 37–49.
46PSC (Greek Orthodox), Art. 79; PSC (Syriac), Art. 11:4; PSC (Israelite), Art. 661–62; Ottoman Family Law, Art. 139–49; PSC (Druze), Art. 50–53.
47PSC (Catholic), Art. 123.
48PSC (Greek Orthodox), Art. 100–101; PSC (Syriac), Art. 80–82; PSC (Armenian), Art. 166; PSC (Evangelical), Art. 81–83, 85, 100.
49Bilani, Personal Status Codes, 155–58; PSC (Greek Orthodox), Art. 64; PSC (Syriac), Art. 61, 63; PSC (Armenian), Art. 130; PSC (Evangelical), Art. 74–76, 79–80.
51Bilani, Personal Status Codes, 154; PSC (Evangelical), Art. 71; PSC (Armenian), Art. 128; PSC (Catholic), Art. 124.
52For a full discussion, cf. S. Mahmasani, Legal Principles.
54Since determining the causes of the legal discrimination against women is not within the scope of this paper, no further discussion will be attempted.
56Ibid.
57Art. 7 of decree no. 15 and modified by the law of 1 November 1960; Art. 5 of the law of 1 November 1960.
58Legislative decree no. 94/83 as of 11 April 1983, Art. 6, para. d; Art. 43, para. 2.
59Legislative decree no. 47/83.
60Ibid., Art. 46.
61Decree no. 3950—Compensations and Benefits—issued on 27 April 1960 and modified by decree no. 1602, issued on 27 December 1978, Art. 6.
63Law of Indemnity, no. 9, issued on 8 April 1965 by the Social Security Fund, Art. 24.
64Social Security, Art. 16, para. 2.
65In a public debate, the Minister of Environment conceded that female engineers paid lower salaries were a "good bargain," since they tend to be the secondary breadwinners.
The Legal Status of Women

67Commercial Law, Art. 625, para. 1, 2, 626.
69Penal Code, Art. 488; ibid., Art. 487, para. 1; ibid., Art. 487, para. 1; ibid., Art. 487, para. 2; ibid., Art. 487, last para.; and ibid., Art. 489, last para.
70Ibid., part 7, chap. 3.
71Ibid., Art. 542, para. 2; ibid., Art. 545; ibid., Art. 39, 251.
73Cited in ibid., 119.
76Ibid., 228–29.
77Cited by Pateman, Sexual Contract, 119.
78Cf. ibid., 116; Nicholas et al., Rights and Wrongs, 30.
81Cited by Pateman, Sexual Contract, 158.