

Women of the Jordan: Life, Labor and Law

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## Glossary of Terms

<u>'adabi</u>	literature
<u>°afifa</u>	chaste
<u>ahliyya qanuniyya, ahliyya kamila</u>	complete legal competency
<u>`ala al-barr</u> "	"on the shore", not yet embarked
<u>`alim</u>	clergyman
<u>`allaq</u>	conditioned
<u>`amil</u>	worker
<u>amir</u>	prince
<u>ansab</u>	posterity
<u>`aql</u>	rational behavior
<u>`aqa'id</u>	central beliefs, faith
<u>`awra</u>	genitals, usually hidden sexual areas of the body
<u>ayas</u>	verses of the Qur'an
<u>bay`a</u>	oath of allegiance
<u>baya`a</u>	woman seller
<u>baya°u</u>	swore allegiance to
<u>bi'a</u>	environment
<u>bikr</u>	virgin
<u>bulugh</u>	puberty
<u>dalala</u>	mobile or door-to-door salesperson, vendor
<u>diyya</u>	blood-price

<u>dukhla</u>	or the actual consummation of a marriage
<u>dukan hiyaka</u>	a shop for sewing clothes
<u>fatawi</u>	theological opinions
<u>faskh</u>	annulment
<u>fida'iyyin</u>	freedom fighters
<u>fiqh</u>	Islamic theological
<u>fuqaha'</u>	legist, Islamic thinker
<u>furu'</u>	branches
<u>ghazwas</u>	raids
<u>ghayr ma'mun</u>	not to be trusted
<u>Hadana</u>	custody of infants
<u>hadd</u>	which is a crime defined as against God and therefore punishable according to the words of the Qur'an
<u>hal</u>	dowry which is due before the consummation of the marriage
<u>Hal al-talabus</u>	being caught in the act
<u>hakim al-Shar`I</u>	judge on a legal council
<u>Hamams</u>	baths
<u>Hatk `ird</u>	to disgrace, rape
<u>haykal `asha'iri</u>	tribal makeup
<u>hurma</u>	woman
<u>hijab</u>	veil
<u>`ibadat`</u>	creed or rituals guiding man's relationship with God

<u>ibra`</u>	act by which a wife absolves her husband of all financial obligations in return for divorce
<u>`idda</u> during	three month period following divorce or a husband's death which the wife cannot be married to another
<u>`iffa</u>	chastity, purity
<u>ightisab</u>	rape
<u>ihtibas</u>	confine her
<u>ijab wa qubul</u>	exchange of vows
<u>ijzas</u>	certificates of competence in a particular science
<u>ijtihad</u>	speculative thinking, rational thought
<u>`ilmi</u>	scientific
<u>ishhar</u>	public
<u>`isma</u>	marital knot
<u>jins</u>	race or sex
<u>jumud</u>	rigidity
<u>kabira</u>	major sin
<u>kafa'a</u>	social parity
<u>kafil</u>	sponsor
<u>kahala</u>	pseudo-oculist who uses <u>kuhl</u> as cure
<u>katb al-kitab</u>	marriage signing
<u>khalila</u>	mistress
<u>khul`</u>	divorce in which wife compensates husband in return for divorce
<u>khurgs</u>	covering placed under saddles of horses and donkeys

<u>al-kimaj</u>	type of bread
<u>kuttab</u>	mosque school for children
<u>madhahib</u>	schools of law
<u>madhhab</u>	school of law
<u>ma`dhun</u>	cleric who officiates in a marriage or a divorce
<u>madrasas</u>	mosque schools
<u>maghazi</u>	campaigns
<u>maghribis</u>	people originating from North Africa
<u>maharim</u>	unmarriageable relation: sister or daughter or niece
<u>mahr</u>	dowry
<u>mar`a</u>	woman
<u>maristans</u>	hospitals
<u>masafat al-qasr</u>	distance that can be traveled in one day
<u>ma`sara</u>	olive oil juicers
<u>mashata</u>	hairdresser, beautician
<u>mawlana al-hakim</u>	the judge, head of judiciary council
<u>mihna</u>	crisis, revolt
<u>mu`amalat</u>	relation of man to man, or laws pertaining to human relations
<u>mu`ajjal</u>	dowry paid immediately at the time of betrothal
<u>mu`amalat</u>	relations of man to man, or laws pertaining to human relations
<u>mu`akhkhar</u>	advanced dowry paid at the time of the marriage
<u>Muhajirun</u>	migrants who left Mecca to Medina with the Prophet

<u>muftis</u>	Muslim scholars, jurisconsults
<u>mukalaf</u>	free legally competent individual
<u>multazims</u>	tax-farmers
<u>muṛuwa</u>	chivalrous
<u>mut`a</u>	compensation supplies/enjoyment
<u>mutabiqā</u>	corresponding, exactly like
<u>mutahim</u>	defendant
<u>muqaddam</u>	delayed dowry to be paid at the time of divorce or the husband's death
<u>nafaqa</u>	financial support
<u>nafs</u>	life
<u>nazir, nazira</u>	male, female supervisor/guardian
<u>nubuwwa</u>	Prophethood
<u>Odabashi</u>	head of an Ottoman army unit
<u>Qadi</u>	<u>shari`a</u> court judge
<u>Qiwama</u>	guardianship or support
<u>qadi al-quda</u>	chief justice of <u>shari`a</u> courts
<u>ratls</u>	approximately 21/2 kilos
<u>ribat al-nisa`</u>	women in the school
<u>rushd</u>	majority
<u>sabils</u>	buildings housing water-wells and areas for ablution and prayer
<u>saddaq</u>	dowry
<u>sahabi</u>	male Companion

<u>sahabiyyat</u>	women Companions
<u>sanad</u>	credit bill
<u>sheikhs</u>	Muslim clergymen
<u>sheikhas</u>	female sheikhs
<u>shiqaq and niza`</u>	“discord and conflict”, family dispute court or irreconcilable differences court
<u>simsara</u>	agent, sales on commission
<u>sira</u>	Prophet’s history and traditions
<u>sufis</u>	mystics
<u>ta`a</u>	obedience
<u>tabaqat literature</u>	biographical dictionaries
<u>tabi`un</u>	followers
<u>tahil lahu shar`an</u>	a woman who is legal to him
<u>talabus</u>	being caught in the act
<u>talaq</u>	husband’s unlimited right to repudiate his wife
<u>talfiq</u>	patching
<u>taqlid</u>	imitation
<u>tasari</u>	taking a slave-concubine
<u>tawabi` mahr</u>	furniture and furnishings expected from the husband according to traditions and agreement
<u>tawhid</u>	Oneness of God
<u>ta`warikh</u>	chronicles
<u>thayib</u>	previously married woman
<u>thawbs</u>	long shirt worn by men

<u>tahmish</u>	peripheralize
<u>turath</u>	heritage
<u>`ulama'</u>	Islamic clergy
<u>umm al-walad</u>	mother of the boy
<u>`urf</u>	customary or traditional law
<u>`urfi</u>	common law, for example common law wife
<u>'usul</u>	consanguine relatives
<u>al-`uthr fi al-qatl</u>	excuse for murder
<u>`uthr muhallil</u>	legitimising excuse/absolution
<u>al-`uthr al-mukhafaf</u>	an excuse allowing for reduced sentence
<u>`uthri</u>	platonic
<u>wa'd al-banat</u>	female genocide
<u>wakil</u>	agent, proxy, person with a power of attorney
<u>waliyy</u>	legal guardian
<u>waqfs</u>	religious endowments
<u>waqf dhurri</u>	endowment to benefit heirs
<u>waqf khayri</u> particular	religious endowment to benefit the community through a service like a mosque, water-fountain, school
<u>wasis</u>	guardian with power over property of minor orphan
<u>wilayat al-ijbar</u>	the right to force
<u>yafaga'</u>	surprise
<u>zawaj</u>	marriage
<u>zawiyas</u>	hospices for mystics

zina

adultery

## Chapter 1

## Introduction: Women in Jordan Today

The village of Samma, made up of 55 houses and a population of 300 people and located near Irbid, is typical of the other 900 plus villages in Jordan. Samma's first school was opened in 1952 by the United Nations Relief Organization to accommodate Palestinian refugees who moved to Samma. Since then education continued to grow in importance to Samma's residents with the state's national educational project. In 1997 Samma had six schools, three for girls and three for boys, covering the various levels of education from primary to high school.<sup>1</sup> A study of the town written by one of its residents, Sheikh Samih al-`Azm lists the names of all school graduates who went on to a university education and the various professions they entered which included engineering, teaching, law, journalism, accounting, and public service. Names of those who remained in Samma to become merchants, craftsmen, and local administrators are also included as are the names of school-graduates who left Jordan and migrated to different countries of the world including the United States, Europe, Australia and Arab countries. The problem with this picture of success for a village like Samma is the fact that not a single woman was listed among the school graduates who went on to receive university degrees or pursued careers either inside or outside of the village, despite the fact that Samma had a girl's school at every level of education: primary, secondary and high school.

Perhaps the results of Sheikh al-`Azm's study would not have been so surprising if not for the universally accepted belief that extending educational opportunities was the

most important step toward achieving greater gender equality and a greater economic role for women. As societies move from the more traditional to the more modern, women are expected to gain greater freedoms as their expectations change. This however does not seem to have been the case in Samma. What makes this even more serious is that boys who graduated from Samma's schools went on to receive university and higher degrees in numbers and specializations that show Samma to be an upwardly mobile community. Over the years, Samma seemed to modernize its infrastructure, implemented modern health for its people, and enjoyed greater wealth through its graduates.<sup>2</sup> Yet women do not seem to have participated or contributed to this picture of growth and development. The reasons for the non-inclusion of women among Samma's professional and working graduates may be due to the fact that girls dropped out of school early to help in housework or to get married. It could also be that they married and moved away and were therefore no longer considered Samma residents. But, the author does include the names of men who moved outside the town and he also presents a long list of "firsts", i.e. those who were the first from the village to advance in particular professions. There are also the names of all those who took up government positions in the town, those who were elected for various administrative positions, and so on, and none were women. The only employed women mentioned by the book were two female nurses who were part of an otherwise all-male staff at the local health center. There is no mention of a woman doctor even though the center had a program for "motherhood" and pre- and post-natal care which seemed to be a great pride to the community.<sup>3</sup> This picture, however, could not be totally accurate, the three girl schools must have been staffed by women and women must have helped in running family businesses, in agriculture and other activities. Still the

basic impression of educated men going to work and girl graduates not pursuing further education or taking jobs seems to be accurate.

Given the efforts spent on education in Jordan and the significant results in female literacy which places Jordan at the top of all Arab states, it is rather disappointing to see the difference in expectations and results based on gender among school graduates. A 1980 study of Arab women and education summarized three conditions for Arab women to have greater access to higher education without which effective participation in economic development and achievements of greater rights would be practically impossible.

In the first place, primary and secondary education had to have made sufficient progress. Secondly, attitudes towards the role of Arab women in society had to have changed. The third condition was the materialization of the need for educated women in the professions and other occupations.<sup>4</sup>

Even though the study concluded that these conditions were actually met “at different periods in the various countries of the Arab world”, the three conditions continue to be valid today. While Jordan has taken great strides in regards to the first condition, much more still needs to be accomplished. Jordan’s primary and secondary schools for women are without doubt better equipped and staffed than most other Arab countries and the literacy rate among Jordanian women is the highest in the Arab world. Still, the number of women school graduates who pursue higher degrees and careers continues to fall short of expectations particularly given Jordan’s efforts in that direction. This books tries to find answers to this dilemma. Having started quite early and at an

impressive rate in building an educational infrastructure for women, Jordan should have also witnessed at minimum an equivalent growth in women's participation in the economy. That has however not happened. One important reason for this is that even though Jordan, like other Arab and Islamic countries, has planned equal educational facilities and opportunities to boys and girls, the school curriculum and expectations upon graduation continue to be gendered. The same goes for the third condition, the market for women's labor may have become larger but large sectors of the economy remain closed to women and other sectors that are normal areas of employment for women, like tourism, remain poorly developed.

It is in the second condition regarding attitudes toward the role of women in society that Jordan continues to face its greatest challenge. Without a change in social attitudes and reciprocal changes in Jordan's gendered laws that these attitudes extended and continue to strengthen, the results from women's education or other forms of investments in women's development, will have but little impact on generating greater gender equality, human rights or greater participation of women in economic, political and intellectual life. The life-experience of three women who represent different levels of Jordan's business classes will help illustrate the contradictions under which women live in Jordan and the necessity of tackling legal and social issues if change is to be achieved.

Sitt Sobhiyya al-Ma`ni is one of Jordan's most recognizable business persons. She is chief executive and part-owner of various industries and enterprises. Having started her life as a teacher, she entered the world of business with her husband very early in their marriage and continued to work with him to build what has become one of the most respected businesses in Jordan. With two sons, several houses, businesses and factories

behind them, Sitt Sobhiyya continued to work beside her husband; as he traveled to create greater business opportunities and clinch deals, she was the actual force behind the success of their enterprises at home. Yet the day came when she stood to lose all she had worked for, the day when her husband suddenly died and with the pain of losing her lifetime companion and spouse was added the worry of the power that Islamic laws of inheritance would have over her life. According to these laws, a wife could only inherit one-eighth of her husband's estate because they have children (in a childless marriage she would get one-quarter). Since the husband was survived by his parents, they stood to inherit one-third of all he owned which was in turn inheritable by their other sons and daughters once the parents died. Like most Arab women, the businesses, homes and all assets were in the husband's name.

Ending up with one-eighth of what would be considered "communal property" in other parts of the world, is the fate of all wives who do not do something about the situation while their husbands are alive. Luckily, Sitt Sobhiyya had become increasingly worried about the future some years earlier seeing her husband traveling all over the world and so she had asked him to write a half share in her name instead of a 20% share in some of the businesses. He was reluctant and only agreed after she threatened to walk out and leave him to run the businesses alone. Even then, he did not write anything outright in her name, rather he chose a house and one business and sold them in the form of a mortgage to her. Had she not done so she would have come out with very little. As it is she had to deal with his parents' share by buying them off to be able to go on administering the companies she had co-built but from most of which she inherited a mere one eighth share.

The second story takes us to a Palestinian refugee camp. Like her neighbors, Umm `Umar lives in a modest brick and mortar home made of several rooms to accommodate her large family. When we met, she had recently suffered a stroke that left a slight effect on her right hand and side of her face. Yet, her primary concern from the meeting was to discuss the loan she was receiving from a microfinance NGO whose capable representative, `Arub al-Khayyat, was my very appreciated guide. Negotiating a new loan, Umm `Umar explained the problems with the old loan, her needs to expand her trade and grocery business, and the loan her daughter needed to expand the grocery that Umm `Umar opened for her. As the main breadwinner of her family, Umm `Umar seemed to be a law on to herself. She travels to buy her goods, to negotiate sales agreements, and finds no problems to move and deal outside her home although she was not particularly enthusiastic at having to do so. Her husband of 30 years actually works in her grocery shop which she considers to be a family enterprise although it is registered in her name and the loans she has taken are in her name. The NGO will not give loans to women except if the business is registered in their name. Married before reaching the age of 15, Umm `Umar gave birth to eighteen children—boys and girls—who have married and left home except for the youngest who still lives with her. It is in regards to this daughter, aged twenty, that the contradictions of women's life becomes most obvious. Umm `Umar is absolutely unwilling to let her out of the house. She did finish school and trained in baby-care and handicrafts, but not for the purpose of taking a job, that idea was not one even contemplated by the family. Rather the daughter has taken out her own loan guaranteed by the mother, and is now working by-the-piece embroidering costumes that are distributed in a cottage-industry scheme that allows the girl to earn about three dollars

per week. When I asked Umm `Umar why she does not allow her daughter to leave the house except accompanied by father or brother, she indicated that her father and brothers forbid her from doing so and that today's society is a failed society and does not protect the innocent to begin with. The family could do without her daughter's income even if it meant her earning a hundred dinars a month. In other words, Umm `Umar's sharp entrepreneurial mind was not confused when it comes to the old image of home industry where women worked and earned money for the family finances as long as this work was from within the home. Umm `Umar is not aware that she is living a life of social contradictions as viewed by outsiders. Her priorities are clear and protecting her family name and her children from the uncertainties of life today are on top of her list even while earning a living and improving the living standard of her family are as high a priority.

The third example is a mother of four, two girls and two boys. She is married to her cousin who has two other wives and is about to take the fourth. When I asked her why she accepted to marry someone already married to another, her answer was that "he's my cousin and I had greater right to him" (ibn `ami wana awla bih). But she did admit that the marriage was a mistake. A hard worker with a sharp entrepreneurial mind, she buys used imported clothes by the bundle and sells them by-the-piece to her local customers. She nets about a hundred dinars per month that she uses to support her family almost alone since her husband hardly gives them two to three dinars a day for all expenses including the children's pocket money. At present she is focused on getting her husband married to a fourth wife so she can get rid of him since she seems to be his favorite and although she does love him and has a fulfilling intimate life with him, he

beats her and the children for the least cause and the beatings are continuous and severe and she has little recourse to stop him.

The above cases may not present the great diversity of circumstances in Jordan but they are representative of some of the more serious problems that women in Jordan face in regards to becoming involved in the country's economy and productive activity. Inheritance laws do not favor women and at the same time property accumulated during the marriage is almost always registered under the husband's name. Umm Muhammad who owns a grocery shop and wanted to borrow money to pay off a debt caused by her brother-in-law's mismanagement, could not do so because the grocery was in her husband's name. She was not willing to ask her husband to change title to her name because he had already lost his teaching job in Saudi Arabia after the 1990 Gulf War and has been jobless since. Now she is the primary breadwinner, except for a few hours a day when she rests and the husband stands in the shop, it is she who does the wholesale buying, the retail-selling and the accounting. It is interesting that the husband does not voluntarily move to include his wife's name as co-owner especially given the fact that he has already faced the adverse effects of inheritance laws. As a school-teacher in Saudi Arabia for over twenty years he earned good money and was sending it home to his father to support the family and for the father to build him a house to which he could return with his wife and children once his work in Saudi Arabia was terminated. The father build the house but registered it under his name for expediency. Unfortunately the father died before Umm Muhammad's husband was able to register the house in his name and he had to share the house built out of his life-savings with his mother and siblings. Having learned the lesson, one would imagine that he would consider his wife in case something

happened to him particularly since he is fifteen years her senior, but that has not happened. Family affiliation is based on tribalism and relationship by blood rather than on loyalty to the nuclear family. In other words, there are social constraints in regards to opening and owning businesses that may deny a woman her life-labor and could leave her destitute in the case of a husband's death. There is awareness of what could happen, but reluctance to challenge traditions particularly in regards to the power of a husband or father, and hence tribal patriarchy, underscores the whole system.

The same attitude is at the heart of the protection of women and girls. Most of the women of poorer classes who have started their own small businesses are either older married women with children who use their income to supplement the family's finances and save for a rainy day or they are the daughters of such families following in their mothers' footsteps from within the family structure. Widows and single women constitute another important sector of women with small enterprises. However, participation in public enterprises, office jobs or any position that would mean interaction with men is not acceptable even to those mothers who would allow their daughters to work outside the home. Facing a husband's anger and possible domestic abuse is a reality in the Arab home as it is all over the world, a fact that has been taken into consideration by the United Nations and its agencies. The recourse of a wife or children against spousal abuse is very limited where tribalism recognizes the father's absolute right over his children. The power of a father over his daughters continues after marriage and it is often the father who refuses to allow the wife to take a job even when her husband agrees and encourages her. The constraints faced by women who want to extend their years of study, who have the ambition to go to college, who want to take jobs and who want to open their own

businesses is severely controlled by the legal system which reflects and enforces social traditions limiting the right of a girl's movement and placing her within the custody of her male relatives whether said male relatives are the actual financial supporters or not.

A central point made in this book is that legal change and building an educational infrastructure are vital for transforming the situation of Jordanian women today. Equally important are encouraging them to go for higher education, to open their own businesses and become more active in public life. But as long as `urf (traditions) discourse is gendered and Jordan's laws support contradictions between expectations and realities, real change will be very slow. This does not mean that traditions have not been changing in Jordan, far from it, Jordan has experienced revolutionary and structural changes that have seen a near end of a way of life among Jordan's tribes and their way of life, witnessed urban growth in the form of cities and towns active in trade and moving increasingly toward modernity. But change itself has been gendered by holding on to traditional patriarchal relations and a state-controlled legal system that continues to reflect tribal patriarchy. As this book details, while encouraging women to go to work, Jordanian laws have at the same time encouraged women--if indirectly--to take early retirement and to consider their work transitory. Simultaneously, personal status laws make women into adjuncts of fathers and husbands with limited legal competence under the control of male "guardians". As the lawyer activist Rihab al-Qaddumi impressed on me, the main problem inhibiting women's participation in Jordan's economy and political life today is its tribal makeup (haykal `asha'iri) which not only guides the country's laws but molds the characters of its people and the relations between them.

Gendered attitudes typical of an ethnic tribal state encompass a woman's life almost completely, setting up the basis for women's expectations from their society, the rules guiding their marriage and family life, and which provide a security cocoon on the one hand and a form of insecurity through cultural fears that keep women under patriarchal control even when laws are intended to liberate women from such controls. Areas in which the law has helped support and consolidate women's passivity and helplessness include in particular the handling of honor crimes. Notwithstanding how dishonorable men may act vis-à-vis their community, family and nation, it is only women who suffer from "honor crimes" and Jordan's laws do little to prevent such crimes but in fact can be said to encourage them. Hence the contradictions in Jordan's legal system and surprising differences between Jordanian laws and the actual application of these laws by Jordan's courts and police. Jordan's laws do not to a large extent discriminate against women, the Jordanian constitution declares the equality of all citizens and labor laws basically enforce the general principles laid out by the Constitution. This is the general understanding of most women lawyers I spoke to who stress the basic equality of the laws particularly in regards to work and business. A close analysis of the laws and of legal procedures however shows deep discrepancies and contradictions between declarations and declared intentions and the fine lines putting the laws into effect, the philosophy of the legal system and judicial interpretation of laws concerning women whether in the work place or the home, and illustrates the continued adherence to tribal and traditional laws even when the code itself is presented as modern and civil.

What is even more critical is the fact that gender relations codified through personal status laws are said to be, or justified as being, dictated by the Islamic Shari`a.

As Islamic Shari`a law gains “holy” authority and becomes unquestionable to those who enforce it as well as to whom it is applied. The power of such a discourse makes it extremely hard to even touch these laws let alone change them. Yet, a close reading of Jordan’s personal status laws and labor laws dealing with gender shows that the shari`a referred to in these laws is really a patchwork of fiqh (Islamic theological) interpretations from various Muslim schools of law particularly the Hanafi and Maliki, molded together with a doze of imported pre-World War Western gender philosophy to form a strict patriarchal attitude enforcing tribal gender laws and attitudes even though tribal courts have been abolished in Jordan. The inability of a doctor to bring effective action against a father when there is suspicion of child-abuse or the necessity of the holder of a right to a victim’s compensation to bring complaint against his killer before the state would prosecute, or the right of a victim’s family to exonerate a person who hurt or killed its dependent in return for diyya (blood-price), are but examples of tribalism recognized by Jordanian laws. So on the one hand Jordan honors “rule of law”, on the other “rule of law” means laws acceptable to civil society and reflective of its traditions even while presenting modern codes universally applicable when it comes to business, commerce and property rights.

The book focuses on women in Jordan, their history, communities, participation in the country’s economy, the role they play as wives, daughters and mothers, and the contradictions they face in their everyday life given the realities and discourses that are intimately intertwined with their existence. Jordanian women today enjoy social and economic conditions well above those of many other Muslim and Arab countries. While the literacy rate among women falls far short of male literacy in most Arab countries, that

is not the case in Jordan where literacy was estimated at 86.6% in 1998, male literacy being 93.4% and female placed at 79.4% of a population of four and half million.

Compare this to Egypt's 1995 literacy rates among its population of sixty million people, 52.4% could read and write, among them 63.6% were males and 38.8% female or Syria, with nearly seventeen million people, a 70.8% literacy rate of which the males constitute 85.7% and females only 55.8% in 1997. The figures for Saudi Arabia are close to those of Syria, with a population of about twenty-one million, a literacy rate of 70.8%, male literacy estimated at 85.7% and female literacy at 55.8%.<sup>5</sup> Furthermore, Jordanian laws today guarantee equal rights to women and jobs are open to women in almost all spheres except for night work or jobs that are deemed dangerous like mining. Yet, while Islamic law guarantees the right of women to own property and administer their own businesses, when compared to other developing nations, Jordanian women constitute a very low percentage of Jordan's labor-force today. Jordan's government may be implementing programs for economic growth and stimulating investments, however women's participation in the economy continues to be resistant to these efforts. At the same time, while the laws guarantee women rights and freedoms including the right to a decent life protected by law, the rate of gender violence and honor crimes is on the increase and perpetrators of such crimes seem to go without punishment.

Since one goal of this book is to investigate women's poor participation in the economy by raising questions and researching the reasons why the situation remains inflexible given the efforts being exerted, the book will be concerned specifically with legal questions and constraints facing women in Jordan today. The book will place this interest within its historical context with the purpose of showing the roots of the legal

system and the construction of patriarchy that underlines the social and legal systems. To begin with, the sources of Jordan's contemporary legal codes will be discussed, in particular Shari`a, tribal and modern laws. The life of women before the modernization of law will be presented at various points in the book so as to show the impact of new legal codes on women and to point out where we can find answers to problems facing women today from within Jordanian and Islamic traditions. A woman's life within her family and her community, what is expected of her and the responsibilities of society toward her will take up an important part of this book. Finally, the accomplishments of Jordanian women in private and public life will be of particular interest because of the successes and failures of efforts to improve the life of women.

The breakdown of the chapters is meant to focus on each aspect of women's life and pertinent Jordanian laws. Chapter 2 covers the legal background and is titled "Background: Qadis, `Asha'ir and Modern Law." It presents the most important aspects of modern legal changes. The modern period witnessed reform of law worldwide; the Napoleonic Code seemed to have set a model for legal reforms globally. This included the Arab world, which came under the colonial rule of European powers. Jordan, like Palestine, Egypt and Iraq came under British rule. A large dose of British laws became integrated in the formulation of modern laws and legal procedures in these colonies. At the same time, like in Syria, Lebanon and North Africa, French civil law applied throughout Europe, became an important model for legal reforms. The result of the reforms was the construction of a multiple legal system of various courts of law and legal codes. The basic model divided courts into 1) national courts to supervise property, commercial and criminal disputes; 2) family and personal status courts to deal with

family disputes, marriage, divorce, inheritance, child custody and religious endowments for different religious groups; 3) emergency, military, or government executive courts to deal with issues of national security. Tribal courts were allowed to exist for some time in countries like Jordan with important Bedouin populations, but these were eliminated with time and their jurisdiction and laws were integrated into the wider legal system. Still, tribal councils are still held throughout the Arab world to deal with important legal issues.

Given the changes experienced by the legal system, the multiple origins of Jordanian laws will be examined in this chapter to deconstruct the origins of the legal constraints against women. Defining the origins of these laws would be the first step toward proposing and enacting changes. As explained above, because reformers defined personal status laws as being religious laws, it is almost impossible to budge them. In reality a multiple of legal systems and legal philosophies have entered into Jordan's contemporary legal codes. This chapter will discuss the genesis of personal status laws. Here the focus will be on shari`a as interpreted by personal status laws and in comparison to original sources of Islamic law like the Holy Qur'an, Hadith, and Fiqh. Local `urf (traditions) constitute an important source of law as do tribal laws which gave a particular patriarchal twist to personal status laws. Modern European codes are another source of personal and family laws in Jordan. The latter is unrecognized as a source even though important laws dealing with crimes of rape and honor are in fact based on French executive laws rather than the shari`a. The very concept of "family law" is itself based on European codes and a conceptualization of social relations which is not reflected in shari`a laws.

To be able to discuss the genesis of these laws, it becomes necessary to study the legal system before the modernization of laws. Here the intent is not only to look into fiqh interpretations of the law before the modern period, but also to study the application of laws particularly as it pertains to women's work, owning and controlling personal property, investments by women in income-producing activity, and the legal maneuverability of women. Records of premodern shari`a courts housed at University of Jordan library in Amman, will form the core of this research. There are recorded daily transactions of buying, selling, partnerships, commercial disputes, market disputes, quarrels of a personal nature, death and property/inheritance records, and so on. It is through these extensive records constituting seven centuries (14<sup>th</sup> to 20<sup>th</sup>) of history, that the life of men and women can be studied. So far this life has been studied through religious treatises and exegetics who were more concerned with morality and therefore are only an indirect source for understanding social life, a source that is slanted through the eyes of critics who presented moral discourses they considered better suited to Islamic society.

By learning how people lived, what laws were applied and how they were applied in court, we would begin to see a changing shari`a, one that is subject to time and place. We would also see a knowledgeable clerical class that is able to interpret the shari`a to fit with these changes, a dynamic shari`a rather than the passive backward one that seems to comfort those who do not want to allow Muslim women to enter the twenty-first century. Unlike shari`a court judges today who are given government selected codes to apply, premodern court judges resorted to precedence of what can be called common law or `urf since it constituted shari`a in cumulative practice. To them the shari`a was a process for

reaching legal decisions rather than a collection of laws to be applied. It is important to show this so as to illustrate the role shari`a court judges play in Jordanian courts today. As keepers of an unchanging shari`a, they practice jumud (rigidity) and resist change that could question their function or their powers. Deconstructing the legal system is important to illustrate the connections between law, courts, gender, the state and power.

Having established the nature of the legal process in Jordan and discussed the actual realities of women's lives before the modernization of law, the book will then focus on the issue of women and work. Chapter 3 is therefore titled "Women's History and Work." This chapter begins with the presumption that nothing in Islam forbids women from working or from owning property. Islamic principles laid down by the Qur'an will be important here. For example the Qur'an admonishes that women have a right to a share of what they earned as much as men have a right to share of what they earned. Furthermore, The Islamic shari`a encourages women to be educated and to serve their communities. Rewards after death would be based on these accomplishments and how worthy a person's life has been. Towards this end, Islam guarantees a woman's right to own her own property, to invest it and earn a living from it. She inherits the same as men even though the interpretation of inheritance laws allows her half what men inherit at the same degree of relationship with the deceased. The early formative period of Islam, considered a model for Muslim communities by Muslims, presents extensive evidence of the role Islam intended for women. Khadija, the Prophet Muhammad's first wife was a wealthy merchant in Mecca, while his youngest wife `Aisha was renowned for her knowledge of prophetic traditions and was sought after for her opinion on religious matters. Court records tell us that women were often chosen as waqf executors by court

judges and were resorted to as creditable and expert witnesses in court notwithstanding the accepted fiqh paradigm that the witness of one woman was not acceptable and that of two women had to be corroborated by that of a man.

Using court records from the Ottoman period, it will be made clear that women's work was not something questionable but to the contrary it was taken for-granted. The disputes brought to court illustrate the multiplicity of roles played by women in crafts, lending, selling, and manufacturing. Women were also and continue to be vital in agricultural and animal farming. The peripheralization and control of women's work becomes established with the modern period with the creation of new industries and a different job-market than what existed before. The new nation-state needed employees of a different kind who would be suited to a modern centralized state and economy. New educational structures were built to form this new white collar or blue-collar worker. Like elsewhere and because men were the usual employees of governments in the Islamic world, men became the preferred employees. New jobs and businesses were identified as male jobs and while traditional crafts began to die and become replaced by modern "male" professions, women were increasingly peripheralized from the job market. Midwives represent one good example, at one time they provided the only available gynecological and obstetrical services to women, the modern period saw them completely replaced by male physicians who made obstetrics and gynecology into "male" sciences. Today, women have to struggle to be admitted into these very lucrative professions, gender competition for jobs especially where they relate to fifty percent of the available market for these professions—i.e. women--, have to be seen as an important part of the struggle for women's rights. The right of women to work, the control by a husband of his

wife's right to work or of a guardian to his ward's right to control her own property, all of which are sanctioned by law, cannot be taken out of the wider picture of gender struggle. While we are focused on class struggle, we have undermined gender struggle over jobs, wealth, market-share, education and position. While we look at Islamic revivalism as necessarily veiling and obstructing the progress of women, actually by delineating jobs that only women could extend to other women by forbidding gender mixing, Muslim fundamentalist women are very much engaged in a struggle for jobs that have all but been taken over by men.

By discussing the connections between law, gender and society from both a historical and contemporary perspective, the causes of gender tensions will be made clear. Similar tensions existed in gender relations in other parts of the world, and it is only with greater economic and political change that other societies were able to resolve these tensions. The same can be said to be happening in Jordan today, as the economy grows, jobs become more widely available and opportunities show a need for both male and female expertise and experience, the process can only lead to greater openness and gender conflict resolution. It is social disparities dividing Jordanian society that form the biggest obstacles in that direction.

Chapter 4, "Women and Work in Jordan Today" discusses, according to Jordan's laws, a woman cannot work without her husband's permission. The same laws make it a requirement that her male guardian approve her marriage and even though she can appeal to a judge to marry her in case the guardian refuses, the judge has to determine the suitability of the groom and usually defers to the guardian's wishes. In other words, Jordanian laws make it very hard for a woman to act independently of her male relation's

approval. Even after reaching majority and legal competency, women are still bound by the authority of male guardians. The philosophy behind guardianship is that women are in need of protection and therefore family and state must provide this protection. Jordan's laws therefore define work possibilities available to women on the basis of how safe the jobs are and the physical ability of women to perform a particular job. The result of this approach is that women are denied access to many jobs that they could perform and that could increase their income. They provide no competition for men in these areas. Yet the laws allow businesses to employ women in these jobs and at hours designated as non-work for women when particular business conditions require it. The contradictions [discussed in Chapter 4] between what the Jordanian Constitution proclaims as equal rights to job and opportunity and equal treatment of all Jordanians are contradicted by specific laws—particularly executive and ministerial actions—and by the whole concept of guardianship which is applied at marital, family and state levels.

Within her home and family, a woman is expected to be “queen” answerable only to her husband. That is what society has told her, what religious leaders tell her and even the law makes that clear. As a good Muslim or good Christian she expects to receive good treatment at the hands of father, brother, and husband. In fact, as she is told, as long as she is obedient, she should expect to be treated according to Scriptural guarantees that demand that a husband be a good provider, a source of comfort, a protector and a gentle lover. As Chapter 5, “Laws of Guardianship and the Construction of Gender” details, a little girl is told that her future is defined by marriage, that she will be a wife and a mother and should expect to be protected and cherished. No wonder when asked,

schoolgirls see marriage as the primary and even the only future option for them.

Working or not working is secondary if even a viable or welcome option.

The life of most Jordanian women can be said to fit more or less within these parameters and, like women elsewhere, realities of life never catch up with expectations. Yet the divorce rate in Jordan constitutes roughly fifty percent of Jordanian marriages. The non-ending stream of cases brought to Jordanian courts reflect a much different picture than what the laws say women have the right to expect or society indicates that they are experiencing. Rather than living in her own home as the law and Islam require, she finds that it is her mother-in-law who is “queen” in her son’s home. The bride finds herself the target of family abuse and a weak husband’s inability to protect his wife from inter-female disputes over territoriality. The law stands by his side in these disputes and she often finds herself thrown out with little money, work experience or family to take her in. This chapter asks the question of the contradictions in women’s lives because it traces these contradictions at various levels of family, school, workplace, society, marital relations and personal happiness and expectations.

As Chapter 5 also illustrates, laws of guardianship applied in Jordan’s courts today are based on shari`a law as interpreted and applied through tribal law. In other words, the interpretation and selection of the codes applied today reflect the historical process which saw the genesis of modern law in Jordan. While the law is officially based on the Hanafi madhhab (school of law) as applied earlier through the 1917 Ottoman Family Code, in fact the philosophy and particular interpretation of the law have roots in Maliki and tribal laws which consider the guardianship of females to continue throughout her life because of clan ties and tribal honor. Guardianship also has roots in modern legal

codes, for example the age of majority determined at 18 or 21 have no place in shari`a law but are directly imported from European laws. This chapter will discuss the origins of these laws and detail the origins of the laws of guardianship with the purpose of showing how they have a direct bearing on the life of women in Jordan today.

In Chapter 6, “Marriage, Obedience and Work”, the discussion will become more focused on issues of marriage and divorce. The Islamic marriage contract defines the relationship and mutual obligations of husband and wife. The contract as applied in Jordan allows husband and wife to include conditions that they consider of particular importance for the success of their marriage and their willingness to remain in it. As long as these conditions are within the bounds of what is acceptable to the shari`a, courts find them to be legitimate and either party can sue for divorce if the other breaks the condition and is therefore in a situation of breach of contract. In regards to marriage contracts, Jordan’s laws are more woman-friendly than similar contracts in other Islamic countries that do not recognize the right to of parties to a marriage to include any conditions in marriage contracts. Since including conditions are more beneficial to wives who could include conditions allowing them to get out of unwanted marriages without losing financial rights, not allowing the inclusion of conditions closes the door to the wife’s ability to control her marriage and life. Men and not women have an absolute right to abrogate a marriage at will. Interestingly, even though inclusion of conditions in marriage is of vital importance to wives, this fact is little known among Jordanian women who do not make adequate use of it.

At the heart of marriage are a number of assumptions that are not written out in the contract but that are socially accepted and legally recognized by the law and courts.

Most importantly is the responsibility of a husband to support his wife financially. Schools of law have differed on exactly what constitutes support, for example does it include medical expenses? Notwithstanding differences, all agree that by becoming married, a wife expects to be supported by a husband and that this support should be according to the social level that she was used to while still in her father's home. As for a woman's own money which she received from inheritance, investment of her dowry, or any other means, this money is considered hers and not the household's or family's. In actual practice today however, particularly given socioeconomic conditions, a wife's income becomes an important attraction in the marriage market, and she is expected to carry her own weight in supporting her family. While Christians have a different form of marriage and marriage contract, nevertheless the same expectations regarding the husband's responsibility for the financial support of his wife apply.

What does the wife owe in return for the husband's support? Here the law is interpreted differently, but it is generally acceptable that the wife's obedience to her husband is expected in return for his financial support. When she is disobedient, then he has the right to withdraw his financial support or to divorce her without compensation or payment of the agreed upon financial rights defined by their marriage contract. What constitutes disobedience is problematic and, according to contemporary court records, very often contradicts Jordanian laws. One of the disputes brought often to court involves the wife's right to work against her husband's wishes. Courts have upheld a husband's right to forbid his wife from working even though he had given prior agreement to her work according to legal requirements. Furthermore, husbands whose wives work question their responsibility for supporting the wife and others claim the wife's income as a family

income to be spent by the husband as the financial supporter of the family. Women have left jobs because of these reasons. Others are discouraged from opening their own businesses since ultimately they have no control over their own income or ability to continue in the endeavor if the husband changes his mind.

This chapter will detail these problems and draw upon actual court cases and Hot-Line records of the Business and Professional Woman's Club of Amman, Jordan, to show the dilemmas faced today by young men and women whose needs no longer conform with what personal status laws require. Rather greater numbers are moving to a joint-decision type of marriage in which both work, bring income home and spend it together for mutual needs. While this is a positive move, the laws do not protect the woman once the marriage begins to fall apart. A woman who works is regarded by the law as not fulfilling her full marital obligations defined within the parameters of the conjugal home. A wife who wants out of a marriage has a very hard time getting divorced and almost always loses all financial rights—often including property she and her husband bought together—in return to being free.

The existence of honor crimes in Jordan has been a matter of particular concern to Jordan's government which began to take legal steps to control it. However, as Chapter 7, "Honor Crimes" discusses, honor crimes in Jordan like elsewhere in the Arab world continue to be on the rise and more is needed to stop them. Honor crimes constitute one of the most important reasons for women's resistance to enter the labor force or to leave home. The increase in honor crimes--which today are as often perpetrated by teenage brothers as they are by fathers or older brothers and uncles--is a reflection of the growth in social frustrations experienced by youth with little prospect. Not only are family ties

becoming less of an assurance of a secure future where young men could be supported in finding jobs or getting married, because of the leniency of laws toward juveniles, families actually recruit younger males to punish “disobedient” sisters.

This chapter discusses honor crimes and the laws that continue to make it possible for the courts to deal leniently with their perpetrators. The chapter also draws connections between family relationships and contrasts gender and class in regards to family. Most importantly, as chapter 5 shows, this chapter also suggests that upbringing and education the individual receives rather than Jordanian law or shari`a law constitute important basis for social and family relations including questions of honor. Education at the school and university level continue patterns begun within the family and with today’s rise of fundamentalism, the trends seem to be reinforced.

Chapter 8, “Creating the Modern Jordanian Woman”, focuses on continuing efforts undertaken by Jordan to change the life of its women and children. It begins by discussing dominant discourses on women and work in Jordan and other Arab countries. The purpose is to show that only a minority of thinkers today really view women as having no role to play in their communities’ development and public life. Even conservative elements view women’s work as essential and inevitable. It is really in areas involving morals, politics, and power that there is the greatest resistance. While discourses of morality emphasize the Islamic requirement that men and women be segregated, there is a close connection between the moral discourse and the wish to keep women out of areas of power. Conversations with women in various professions lead to the conclusion that as long as women are not empowered within the family, then there is little hope of their playing a role outside of the sphere determined and dominated by male

authority. Without leverage women would be effectively kept peripheralized and subservient to a patriarchal society and patriarchal state.

There is a deep contradiction here, because Jordan's recent history shows the dynamic capability of women leaders who have been playing important leadership roles as individuals and from within organizations trying to improve their society and developing their country. While the existence of "hidden" contributions by women covering large sectors of the economy is discussed in the book, the wide-ranging and well-publicized activities of modern Jordanian women cries out against the laws and traditions that constrain them. Even though gender constraints are described as dictated by Islam and the shari`a, it is really a continued acceptance of discrimination by the state and its laws that strengthen and emphasize such ideas. As earlier chapters of the book demonstrate, it is not Islam that discriminates any more than any other religion, what discriminates are the laws enforced by the state and traditions that have been made into law thereby becoming recognized legal urf. This chapter discusses individuals and organizations that are active in areas pertaining to the advancement of women as well as their hopes and achievements. It is important to do so because not only does Jordan present a serious model for other Islamic countries to follow, what Jordan has already been achieved is rather remarkable and yet very little known. Hopefully this chapter will remedy the latter and help push toward greater action on the part of Jordanian women and government.

The conclusion draws together the various issues and ideas presented in the book. It will also provide an agenda of work for the future. The agenda will make suggestions

for Jordanian women active in women's issues in Jordan as well as for the Islamic and Arab World as a whole.

About the format and organization of the book, while the book is designed to stand together as a study of women, work, and law in Jordan, the various chapters are also intended to stand as separate comprehensive studies of the particular issue with which the chapter deals. This is important because the book is also designed as an effort to stimulate discussions on changing laws and hopefully pushing for other changes in attitudes toward gender particularly as it involves efforts in schools, by the media and the government. Various Jordanian organizations may be interested in particular issues of concern to them, and the format is meant to help them do so.

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<sup>1</sup> Samih `Ali Khalid al-`Azm (al-Shaikh), Samma: Qariya min biladi (Amman: Matba`at al-`Azm, 1997), pp. 11-14 & 45-49.

<sup>2</sup>The book names 175 men who graduated with a B.A. from university and 87 who received a diploma from a higher educational institution. Forty-two men who received degrees in Qur'anic and shari`a studies, 14 of them received an M.A. and another 5 a Ph.D. Ten became doctors and another 18 engineers. Sixty-three were teachers and 3 were university professors. Fifteen graduates lived in the USA, 19 in Germany, 6 in Romania, 3 in Bahrain, one in Canada, 5 in Austria, 2 in Belgium, 13 in Saudi Arabia, 12 in the Emirates and so on. Again none were women. Ibid., pp. 50-64 & 206-214.

<sup>3</sup> Ibid., pp. 90-91.

<sup>4</sup> Arab Women and Education (Beirut, Lebanon: Monographs of the Institute for Women's Studies in the Arab World, Beirut University College, 1980), p. 13.

<sup>5</sup> Internet: AME Info. and Arabian Middle East Business Information: The countries and Peoples of Arabia, Jordan: "Middle East Country Facts."

## Chapter 2

## Background: Qadis, `Asha'ir and Modern Law

Jordan's legal system takes many issues about women for granted. The necessity of a male guardian to stand by a woman in her marriage and in court is but one aspect of a philosophy underlying the legal system which denies women full legal competence and limits the law's ability to protect her even though Jordan's Constitution guarantees equality and the rule of law for all citizens. It is in the genesis of Jordan's modern legal system that the roots of legal contradictions facing women today are to be found.

Representing an amalgam of shari`a codes, tribal laws and modern western codes, Jordan's laws and the philosophy molding them have contributed to seeing women as lesser individuals and peripheralized dependents of male relatives with custodial power over women. By deconstructing the origins of Jordanian laws that deal with gender—including personal status, labor, property and criminal codes—it may be possible to challenge presumptions of the religious authenticity of these laws and thereby raise questions in the minds of both legislators and the public as to their validity to Jordanian society today. As long as gender relations are conceived as being part of an unchanging shari`a, it will be very difficult to question let alone change them.

To begin with the diffusion of law referred to above did not take place with the express intent of creating a modern patriarchal order but took place as part of the normal evolution of Jordan's legal history and transformations experienced by the Arab world as

a whole during two centuries which witnessed reform of law worldwide and touched directly upon areas that were part of the Ottoman Empire. It is therefore no wonder that there are great similarities between legal transformations experienced by Jordan and those experienced by its Arab neighbors who went through similar historical changes. Whether we are talking about Syria, Egypt, Lebanon, Iraq or North African countries like Tunis, Algeria and Morocco, similar if not identical legal changes took place. In fact, with minor adjustments, the Jordanian civil code was originally copied from that of Egypt as were the Syrian, Palestinian and Iraqi civil codes. It should also be pointed out that the world as a whole experienced legal transformations related to basic and continual infrastructural adjustments given the modern revolutions in industrialization, commerce, communication, and technology. The diffusion of law from one area of the globe to the other was inevitable with greater exchange and the need to regulate law to facilitate trade and other forms of exchange while at the same time ensuring the power of nation-states over their people and territories. International laws, movements of population, nationality and citizenship regulations all grew and diffused as centralized nation-states became established as basic political entities of the modern period.

Today's Kingdom of Jordan was until 1918 part of the Ottoman Empire. Like other provinces of the Empire, the legal system was formed of shari`a courts which applied various madhahib and whose interpretation of the law was greatly influenced by local traditions. Because of the importance of the tribes inhabiting the area known then as East Jordan, tribal law was also recognized and tribes relied on their own legal traditions. Shari`a courts were sensitive to tribal laws and made allowances for tribal `urf (traditional law) as they did elsewhere in the Ottoman Empire. When the Ottoman

Empire began to introduce its Tanzimat reforms during the nineteenth century, its provinces were expected to follow suite. This took place at differing degrees in different provinces. In the case of East Jordan, which was basically administered as part of Syria until 1920, this meant the introduction of the Ottoman Mejelle containing the first separate civil law in the Empire. The Mejelle was the result of the work of a committee of Ottoman legists known as “Jam`iyyat al-Majalla” which collected laws in effect in the Empire, organized and rationalized them according to updated modern categories and placed them in one volume “Containing shari`a laws and `adliyya laws corresponding (mutabiq) to books of fiqh” according to the madhhab of Abu Hanifa al-Nu`man. Once completed, the Ottoman Porte recognized the Mejelle as a constitution to be applied in its Empire.<sup>1</sup> The 1917 Ottoman Family Code was also applied in Jordan and later became the basis of modern Jordanian personal status laws.

After its separation from Syria, East Jordan was ruled by various decentralized local powers until its unification as the Emirate of Transjordan under King Abdullah in 1921. As a centralized nation-state was being built, the legal system was molded to fit with its needs and similar to what occurred elsewhere, standardization and homogenization of law became the basic approach to structuring legal codes and legal systems. As the world-order changed, so did the shape of national hegemonies. Thus Jordan was not only faced with increasing centralization needs but also with legal requirements for self-definition, international relations and the imperative of protecting its territory and citizens; issues common to other modern nations in formation. Tribal and shari`a courts continued to function as basic elements of the legal system in Jordan. At the same time, in other areas of the Ottoman Empire with large communities of

foreigners and foreign businesses, the older privileges enjoyed by foreigners under Ottoman capitulations were integrated into new types of courts allowing for mixed international jurisdiction and national courts that applied European legal codes to handle crimes, trade, and property. These new legal jurisdictions implemented interests of new wealthy elite and bourgeois classes who saw in European law an administratively more rational and efficient way for doing business in a world in which international commerce and dependency were becoming essential.

British presence as mandatory power had a direct impact on the legal situation in Trans-Jordan. The French mandate in Syria and Lebanon had a similar impact on their laws. The British protectorate over Egypt also had a similar impact as did the mandate over Jordan although socioeconomic conditions and the political natures of the two countries brought about different results. While Egypt had a relatively culturally homogenous population to deal with, the people living in the northern parts of the Emirate of Trans-Jordan were traditionally attached to greater Syria which included Northern Palestine, a good example being the close affinity and trade relations between Nablus, Irbid and Aleppo. Jordan's southern population was more tribal and oriented toward tribal life in Palestine, Sinai and the Arabian-peninsula with whom they were interrelated. After 1948 and the creation of Israel, the area of the West Bank, inhabited by close to half a million Palestinian refugees was added to the population of Jordan, plus another half a million Arabs inhabiting the West Bank all came under the rule of Jordan. The culture and legal traditions of these areas of which Jordan was formed, all brought their own socio-legal traditions into Jordan's legal system and social mores. Because of the diversity in cultural background of Jordan's population, its government followed a

policy of standardizing laws and narrowing differences in the legal system. At the same time, as mentioned earlier, tribal law was at first recognized in the form of a separate tribal court system where tribal urf was applied, and later after these courts were abolished, Jordan's laws integrated certain tribal laws so as to allow for state-hegemony without disturbances from one of its most important elements.

By 1946, the mandate over Jordan came to an end and Jordan was declared the Hashemite Kingdom of Jordan in April 1949 with a Constitution that concentrated a high degree of executive and legislative powers in the hands of the King. A Prime Minister heading a Cabinet was to be chosen by the King and primarily answerable to him. A National Assembly formed of a 30-member upper Senate appointed by the King and an 80 member lower Chamber of Deputies elected for four year-terms completed the political picture. Since being founded, Jordan has depended largely on members of East Bank families with strong loyalties to the royal family for political and administrative leadership and Jordan's army has continued to be dependent on tribal elements. The international orientation of Jordan has been toward the West with close relations with its Arab neighbors.

Like other countries of the Middle East, during the last decade, Jordan has witnessed a growth in urbanization as peasants and tribesmen became attracted by towns offering employment in the military, industry, service sector, and trade. The loss of agricultural land through capitalist production and introduction of new property laws and other methods provided an important push factor toward urbanization. A rough estimate puts Jordan's urban population at 70% of the total today, almost 40% being residents of Amman. Because of Jordan's advanced education system, university graduates have

constituted an important labor export particularly to Gulf countries where many Jordanians traveled or migrated to live and work. Inter-marriage between Jordanians and non-Jordanians, particularly Palestinians, whether in Jordan or outside of Jordan, meant constant pressure in regards to laws concerning immigration and nationality. Similarly the growth in Jordan's labor force in various sectors--including the government which employs about 40% of those who work today--has meant the elaboration of legal codes to guide labor employment, social security, retirement, benefits and other laws that are the prerogative of welfare nation-states.

This chapter discusses the major sources of Jordanian laws, namely Islamic law, tribal law, urf (traditional or common law), European laws, and to a lesser extent international law. Specific legal codes will be discussed at the appropriate points in other chapters of the book. The approach here will be to detail the basic nature of each type of law and the evolution of the laws given changes in the historical process. Since laws diffuse from one type to the other, overlapping and repetition will be essential to the discussion from one section and chapter to the other. The goal here is to understand the genesis of laws pertaining to women and work in Jordan today. Women's access to work, i.e. their freedom to leave the home and work outside, is of immediate importance. While Jordan's laws today promise women equal work opportunities, personal status laws make it impossible for them to do so without the approval of husband, father, or waliyy (guardian) as the case may be. Economic push factors have played a dramatic role in bringing women into the workforce, but when a woman works it is still under the eye and with the approval of husband and family. These laws also mean that male members of the family have ultimate control over the woman's salary/income notwithstanding the

shari`a's admonition that her money is hers and the husband is the actual provider for his wife and children. Control over a wife's income acts, in many cases, as a deterrent for the willingness of wives to enter employment or be involved in business. Furthermore, the continued prioritizing given to principles of honor which leave the door for honor crimes open, also inhibit women from leaving their homes and go to work or open their own businesses. In all of the above it is not labor laws that are in question but rather personal status laws and criminal laws in the case of honor crimes. Since the moral and legal discourse, based on government decrees and clerical support, is that personal status laws are in fact dictated by God in his shari`a, it will be important to study the genesis of the laws in the books today to determine the actual origins of these laws and to deconstruct the discourse so as to make suggestions, based on concrete evidence, as to how these laws could be changed. Shari`a, legal practice in shari`a courts in the Ottoman Empire, and the changes experienced by both laws and courts as a result of state centralization and nation-building will be discussed.

Islamic Law (shari`a):

Water quenches thirst and purifies, and shari`a is running water; it is also the road leading to the watering-place.<sup>2</sup>

This is how Arab linguists define shari`a law, considering it as important to society as water is to living beings. Not only does the shari`a answer legal questions, it also provides the road or method by which to reach these answers. That has been the approach to law, courts and justice in the Islamic world since the founding of Islam in seventh

century Arabia and even earlier in Middle Eastern civilizations of Ancient Egypt, Babylonia and others.

That justice was an important service expected of Muslim rulers, is a well-studied subject. Qadis (judges in Islamic courts), independent of theologians, served in courts of law to render decisions regarding disputes brought before them. For consultation, they went back to the learned fuqaha' (legist, Islamic thinker) and quite often faqih and qadi were one and the same. Since the Caliph was expected to be a fountain of Islamic knowledge, the earlier caliphs having been companions of the Prophet Muhammad, they were often consulted by qadis when difficult questions were brought to court. But, at least theoretically, there was no direct control by the state or its muftis (Muslim scholars, juriconsults) over court-decisions of judges.<sup>3</sup> The same basic principles remained essential to the Islamic legal system all through the medieval and early modern periods of Islamic history even though caliphs or sultans were no longer the great fountains of knowledge that their earlier counterparts had been and more elaborate fiqh (theology) and madhahib (schools of law) were formulated.

Shari`a is taken by scholars to mean Islamic law which is studied as a body of laws formulated by fuqaha' during the early centuries of Islam until the closing of the door of ijtihad (speculative thinking, rational thought). This event is supposed to have taken place in the tenth century when fuqaha' became satisfied that all questions have been answered and that their formulas were good for all time and all situations. As a rule then, the unchanging nature of the Islamic shari`a is accepted by almost all and in particular today's Islamic theologians who hold onto that principle of an unchanging shari`a, give it a holy nature and are inflexible in regards to changing it. Yet, reading fiqh

from different periods in Islamic history shows that interpretations and legal formulations were constantly debated among `ulama` all the way until today. Usually, shari`a laws are divided among `ibadat` (creed or rituals guiding man's relationship with God) and mu`amalat (relations of man to man, or laws pertaining to human relations). If we were to look at `aqa'id (central beliefs, faith) separately from the rest of `ibadat, and see how fugha` dealt with these different areas of law, we would find that the closed door of ijtihad was really about `aqa'id, the central Islamic principles of faith, that are more specifically based on the Qur'an than any other area of Islam. `Aqa'id were the subject of speculative debates during the Abassid period, particularly by the Mu`tazila under the sponsorship of the Abbasid Caliph al-Ma'mun. Closing the door on these debates was a necessary part of establishing Islamic Orthodoxy which was considered formulated by the tenth century and about which no further discussion was to be allowed. The Imam Ahmad b. Hanbal's mihna (crisis, revolt) was about issues regarding the Oneness of God (tawhid), the nature of the Qur'an, Prophethood (nubuwwa) and the Day of Judgment (mi`ad) and was not about marriage and divorce or which hand to wash first while performing ablutions. If anything, his fatawi (theological opinions) show an effort to deal with day-to-day problems brought by questioners to his attention. His answers were in the best spirit of Islam but from within the particular conditions of his age.<sup>4</sup> The existence of several legal schools and large numbers of fiqh collections dating from various periods of Islamic history and from all over the Islamic world show that matters pertaining to human relations have been the subject of constant discussion and debate among theologians and exegetes. None however discuss the basics of the Islamic faith, the Shi`a may add to them but the basics remain the same.

When it comes to gender relations, there are certain principles based primarily on Qur'an and Sunna that are consistent in the debates among the fukahā'. But these debates are dealt with as mu`amalat and not as questions of faith or creed. Here we can include the unquestioned principle that a woman cannot have more than one husband at any one time and must wait a three month `idda period before taking another husband—sometimes defined as three menstrual cycles—to insure she is not pregnant and to allow a period of possible reconciliation with her husband. Only after the three-month `idda period is concluded following divorce or widowhood can a wife take another husband. Legal availability and limits on who could marry who, which is based on degrees of consanguinity, are dictated by the Qur'an. Most rules regarding gender that are considered today to be “Islamic” are actually based on fiqh and are practiced differently over time and place. For example, reaching the age of majority for girls differs widely from one madhhab to the other; for example the Shafis and Malikis do not consider a woman as having reached majority except if she has become experienced through marriage but the Hanafis do not see this as a requirement for a girl to reach adulthood.<sup>5</sup> The payment of the dowry by the bridegroom to his bride or her family is considered an “Islamic” obligation and the “Islamic” way of paying the dowry is said to be in the form of an advanced dowry paid at the time of marriage and a delayed dowry to be paid to the wife if she is divorced or becomes a widow. Yet, shari`a court records show that very often no dowry was paid, the wife sometimes declared that she had already received it, it was often paid in installments over many years depending on social conditions and more often than not the wife lost these installments, her delayed dowry or even the dowry as a whole in divorce settlements. Besides, qadis recording marriages did not object when no

dowry was exchanged nor did the legality of the marriage depend on such a payment having been made. In many cases the qadi simply referred to a dowry as “named between them” (sadaq musama baynahum). In short, legal practices differed according to legal interpretation and there was a great diversity in interpretations of the shari`a among legal schools and from one country or town to the other.

Many scholars today are moving to understand the shari`a in different ways than as an unchanging backward-looking structure which continues to be the normative view accepted by Western Orientalists and conservative Islamic theologians. Taking issue with the normative view that looks at shari`a as a collection of laws that has been emulated through a system of taqlid (imitation), Haifaa Khallafallah has shown how learned fuqaha' conceptualized shari`a as a “method” and used its principles and resources to think the problems of particular periods—political, social or religious—to formulate responses to them.<sup>6</sup> Using the collective works of the important twentieth century figure Sheikh Muhammad al-Ghazali [1917-1996], Khallafallah shows the shari`a's “commotion and dynamism in the present ... debate over Islamic legal principles and their applications [and how]...Sheikh Muhammad al-Ghazali argued for and applied the ‘Islamic legal method’ to argue for radical changes in both the law and norms governing society.” While a young al-Ghazali originally described women’s role as primarily in the home and believed in the necessity of veiling, an older and wiser al-Ghazali, using shari`a and its sources as an “Islamic legal method” rather than a finalized collection of decisions and interpretations, accepted that women were capable of being political leaders and court judges.<sup>7</sup>

It seems that definitions of such legal terms as shari`a, like other issues tied with human society, are highly dependent on the particular sources privileged in interpreting meaning. In the case of Islamic law, high dependence on fiqh by modern states for interpreting law and the almost total disregard of legal practice in premodern courts as precedent, has strengthened that impression, challenged by Khallafallah, of shari`a as a collection of laws formulated way back that have survived unchanged and applied throughout Islamic history. Different approaches and using different and more diverse sources of knowledge produce different conclusions. Ideally, all possible sources should be used to try to understand social institutions. However, that has proven to be difficult for practical reasons such as linguistic abilities of researchers and the difficulty of getting to particular sources. When it comes to language, it is not only the ability to know or master Arabic, the language of the Qur'an, Hadith and Arab fiqh. The matter is more complicated because language itself changes from age to age and the meanings of words differ from place to place and over time in the same location. There is early Qur'anic Arabic and modern theological Arabic and the two differ notwithstanding the refusal of theologians or society to conceptualize this. Medieval Arabic is very different from modern Arabic; each is directly connected with its cultural and socioeconomic context.

Another problem with sources--which is at the heart of the normative picture of women in Islamic societies past and present--has to do with over-privileging the religious literature produced by exegetes and theologians, all of whom were and continue to be men. There has been too much dependence on the writings of theologians who are seen as representing the actual condition of women and gender relations during the premodern period when they were really painting a picture of what they considered an ideal "moral

order” that conservatives wish to establish today. Denise Spellberg explains the impact of this approach on Islamic societies and law.

Sources for the study of gender in Islamic society, whether found in the Qur'an, sacred commentaries, hadith, biographical dictionaries (tabaqat), or chronicles (ta'warikh) represent a central repository of medieval male definitions about the differences between the sexes, differences that underscore relationships of power in the preservation and creation of a presumably shared Muslim past... These ostensibly religious sources are thus central to the development of a medieval male interpretive discourse about women and their meaning. They are at the heart of Islamic gender definitions and the emergence of a unique historiography. This medieval male conversation about women, often brilliantly argued, utilizes the Qur'an and its interpretation, along with the prophetic utterances and actions found in hadith, but often takes these precedents into new venues and refines them with distinct authorial intent and intertextual results.<sup>8</sup>

That is the same method used by Muslim intellectuals and 'ulama' today in their effort to control change within their societies by emphasizing their power over the moral discourse through legitimating selections of medieval thesis that were originally intended to create moral discourses addressing their authors' dissatisfaction—personal or otherwise—with the specific period in which they lived. It is this formula that is today being used to deny women the freedom to act independently, to choose to go to college,

to work, or even to decide on a future husband. Gender is confined within a medieval discourse that is repeated and perpetrated not only by conservative religious elements today, but also by those espousing patriarchal control over women. It is rather curious that patriarchal elements do not refer to medieval fiqh to question society's application of new laws of obvious foreign origin like banking, insurance, crimes, nationality, but only question any efforts that touch on patriarchal controls over women and children. As Botiveau concludes,

...in their application of Islamic laws to family law, fiqh was conceptualized as being synonymous to Islamic law and yet fiqh was not applied to other types of law but rather foreign European sources were preferred even though fiqh is as involved in these other types of laws—criminal, contracts, property, etc.—as it is in regards to family law.<sup>9</sup>

Even within Jordanian legal codes modeled after Western ones a tribal patriarchal outlook continues to be present. For example Jordan's criminal laws and procedures are largely imported from Europe with exceptions. Modern criminal laws regarding rape have introduced the principle of "intent" which could work against the victim especially if she is an adult woman and could be said to have enticed the rapist. Proving that rape has taken place is no longer enough in Jordanian courts as it was in shari`a courts before the modernization of courts and law. Yet, at the same time as rape laws have made it more difficult to prosecute rapists, Jordan's laws have bent over backwards to give men the right to kill a daughter, sister, or wife whom they suspect of illicit sexual conduct by allowing reduced sentencing based on European "crimes of passion" laws to apply in

Jordan without the strict application of rules of evidence that crimes of passion require. In both cases the male gets away with minor prison sentences and the woman victim seems to have little significance except for the amount of diyya that a rapist's family may have to pay to hers.

Part of the reason why fiqh is today accepted as being what Islam dictated is that while medieval fiqh has been studied and researched to formulate codes of honor, theologians and legists have paid little attention to investigating the realities of human and social relations and the nature of the legal order that preceded the modern period. One can take this point a step further by pointing out that there is a general lack of acceptance that pre-modern Jordan was guided by the rule of law. While archival sources, particularly legal records of shari`a courts and awqaf records, provide extensive knowledge of actual legal practices and social relations in pre-modern society, little attention has been given to them. Rather the attention of scholars and legists has been directed toward what a particular `alim (clergyman) or mufti had to say about a particular point and they conceptualized what were in reality no more than legal opinions as being actual legal and social practices. At the same time, scholars who did make use of shari`a court records, may have contributed toward our understanding of Islamic society, unfortunately such studies have not made enough use of exegetic and legal interpretations from various periods in Islamic history. This book tries to combine the two sources in an effort to understand gender relations and legal practices before the modern period. Without this background, challenging modern gender laws would be difficult because of the Islamic discourse that defines existing gendered laws in Jordan as God's unchanging

word through his shari`a. Therefore, exegetic and juridical literary production constitutes an important background to my research.

Muhammad Fadel's article "Two Women, One Man: Knowledge, Power, and Gender in Medieval Sunni Legal Thought," presents a good opportunity to illustrate the importance of rereading fiqh from a different perspective. Fiqh's approach to the witness of women is often used as evidence to Islam's view of women are meant to be adjunct to men, that they are "more prone to error" and are less equipped intellectually and religiously ("al-nisa' naqisun `aqlan wa dinan"). This image is accepted by conservative Muslims and Western thinkers who believe in the essential misogynistic nature of Islam. According to this popular image, evidence given in court by two women is considered equal to that of one man and women's legal testimony is not acceptable in Islamic courts without the corroborative witness of a male. This image is based on the Qur'an (al-Baqara: 282): "Get two witnesses out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her." Here the Qur'an was discussing a specific situation dealing with finances in which women would not have been likely present or would have had little involvement in the proceedings. Unfortunately, this specific situation with which the Qur'an dealt was generalized into an absolute Islamic requirement by fiqh and hence became a popular belief and developed further into the generalization that women need to be reminded because their memory is faulty, and that they are unreliable and less competent than men.

Principles and procedures regarding giving witness in shari`a courts dating from the Ottoman period raise serious questions about these types of presumptions. The

procedures followed in these courts were quite sophisticated and based on strict rules of evidence and not on discourses detailed by fiqh. In fact, Fadel shows that fuqaha' actually present a more complicated analysis of the question of women's witness than is generally accepted. He does so by showing how certain fuqaha' came pretty close to admitting the equal validity of a woman's witness to that of men. Included among these are the important figures of Ibn Qiyam al-Jawziyya and Ahmad Ibn Taymiyya, two widely quoted fuqaha' today.<sup>10</sup> So, through a close reading of exegetic literature Fadel was able to show that not all fuqaha' agreed with the idea that a woman's witness must be corroborated by another witness and that there must be a man corroborating the witness of both. Another important point here, is that in discussing matters of witnessing, the fuqaha' were really concerned with issues of morality and were trying to establish public/private divides defining the parameters of women's domain as separate from the public domain. To ascertain public morality women had to be secluded at home and not go out, their seclusion therefore lessened their ability to function as witnesses. Following from this then, according to these fuqaha', since a woman is expected to stay home to "avoid social corruption and disorder," she should not be expected to go to court to render witness, and could not really render witness except in matters limited to the household which is within her experience. Therefore, women's witness regarding public matters could not be reliable since they could not have been present in public situations. Their witness could also not be reliable in regards to marriage, divorce and other issues pertaining to the human body because their seclusion prohibits them from having knowledge about these matters. The Aristotelian logic, an absolute truth leading to another then back to the original absolute truth, is clear in this method. Unfortunately,

this has been the basic formula applied in regards to gender philosophies calling for confinement of women and using such confinement as reason to keep her peripheralized, dependant on and controlled by male relatives. Today even though the law speaks about equality and individual competency, it is this discourse of confinement /incompetence that continues to predominate and because it is reinforced by certain aspects of the civil code and by personal status law, it remains the most important hindrance facing a public role for women in Jordan and other Islamic countries.

But how realistic is this discourse when faced with actual legal practices? In other words, what light do actual legal practices throw on the gender equation? Did qadis presiding over shari`a courts before the modern period take the findings of fuqaha' and apply it as law in their courts? Did qadis rule according to what fiqh or muftis of their period told them was Islamic or not Islamic, or was the purpose of courts to settle disputes and render justice? While Chapters 3 and 4 will focus on the life of women and work during the pre-modern and modern periods respectively, the following court case from sixteenth century Jerusalem will help illustrate what I mean. A man came to court to inform that while he and his wife slept the night before, the roof caved in and the debris had fallen on his wife. He removed her from under the debris but found her dead. Four women had examined the body and gave their witness in court that they found her head and face swollen from the falling debris and saw no signs of foul-play on the part of the husband.<sup>11</sup> Here confirmation by a man was not required but the witness of the women sufficed even though the matter involved financial compensation since the parents of the deceased woman were in court to see if any compensation was due to them from the

husband for the daughter's death. On the basis of the witnesses, the court found the husband with no responsibility in his wife's death.

It is important to point out here the discrepancies between what fiqh discourses tell us about public/private divides and actual legal practice in courts of law. This is important because it would illustrate that shari`a law changes with time and place and that it is not synonymous to fiqh. What I am suggesting is to deconstruct the dominant picture presented by fiqh discourse which underlines the social and legal outlook in Jordan today. Since fiqh has become almost synonymous to shari`a in people's understanding and the application of law in Jordan's shari`a courts, it is important to show that fiqh presents a moral discourse rather than a holy unchanging shari`a designed by God that all Muslims are expected to follow. One way of doing this is presented by Fadel and that is to show that not all fuqaha' agreed on the same thing or that the very same faqih changed his stand on issues with changes in the social conditions of his age as Khallafalah has shown. Still another is by looking into legal practice to show that legal practice and fiqh were regarded as two separate things, one as a moral discourse and the other as legal practice based on cumulative laws that change given time and place. So the question to ask here in an effort to see shari`a in theory and practice, and following up on the issue of women's witness as example is, how valid are fiqh arguments pertaining to public/private divides and the legal witness of women before the modern reform of courts and law? Is it true that a woman's single witness was not acceptable and that the corroboration of a man was necessary? After spending sometime reading records of Ottoman courts of law it becomes obvious that the existence of a private/public divide in Islamic communities is fiction at best, at least among the working urban classes. The

more you read, the more alive the tableau of the pre-modern period becomes. If coming to court was a possible cause of immorality as some fuqaha' wrote, then Islamic society must have been very corrupt. While many chose to be represented by a male relative or acquaintance as wakil (proxy, person with a power of attorney), women appeared in court routinely, daily. Every second or third entry involved women. Buying, selling, marrying, divorcing, reporting violence, demanding compensation, custody of children, what have you. This is in great contrast to the modern period where almost all except very poor women, do not make an appearance in court but are represented by lawyers, brothers, fathers, or husbands. Accessibility of justice was one of the strongest assets of the Ottoman period in comparison to the modern state which codified laws, centralized court-houses, and required legal representation making the price of law prohibitive to many.

As for veiling as a form of public/private-divide, courts of law required the identification of litigants. There are recorded cases in which a clerk admired the woman in front of him and therefore went on to record how she looked as a seventeenth century clerk did. "The wife is the woman (al-hurma) Hikam. Of her good looks (hilyyatiha) is that she is fair (qamhiyya) in color, has strong eyebrows (aghdaqat al-hajibayn), shawla' (meaning strong contrast between the whites and blacks of the eyes) in eyes. Arab face with green tattoos, one on her lower lip and the others on her cheeks. Graceful (malfufat) in face and tall in body..."<sup>12</sup> Here clearly the whole face was unveiled and the woman's body could also be discerned. When a woman was veiled, as was the case among tribal women who came to urban courts, she was expected to bring witnesses to her identity with her to court.

But there is more, and the question of women's work is essential if we are to understand gender relations. Did women work? If so what jobs did they perform? The picture regarding women and work is very interesting. Suraiya Faruqi has shown that women were involved and constituted an important part of silk manufacturing, weaving, etc. in the Ottoman Empire. But here she was mainly discussing secluded practices, i.e. women not in a working place but rather involved in a take-out system by which they produced their product at home. Interestingly, according to Suraiya Faruqi, women did become organized into pressure groups showing greater labor awareness. However, we do not see women outside the all-women secluded area of labor. What do Ottoman archives show? They give us pretty much the same picture as Faruqi, i.e. women doing work at home and having access to the market in various forms to sell their products. We are also given detailed evidence of the retail part of women's activities in the form of various types of references perhaps the most important being disputes between women or between women and men. After all courts were a place to lodge and solve disputes. The most common dispute has to do with physical clashes. Two women beating-up each other, or a number of them ganging up on one of them. Often it is a man who is beating-up a woman to usurp her place in the market. In court, each claimed rights to that particular spot in the market and accused the other of encroaching on it. Witnesses were brought in front of the judge, these included men and women and there is no indication that the judge gave more credibility to the men's witness than that of the women. It was their presence on the scene and the credibility and consistency of their testimony that interested him.<sup>13</sup>

Other common cases of women quarreling in the marketplace involved violence leading to forced termination of a pregnancy a crime which involved heavy compensation even if unintentional. A number of important points are involved here. Often the claim was that another woman caused the quarrel leading to miscarriage. But it is often a man who is pointed to as having caused the victim to miscarry her unborn child by beating her, sometimes instigated by his wife out of vendetta or because she was encroaching on his spot in the marketplace. So much for the seclusion of women if strange men can actually beat them and cause them to miscarry! There are other cases where it is a wife claiming that a second wife had caused the abortion. The demand for witnesses here is extremely intricate given the fact that forced abortion was a crime and that commercial competition was very often involved and not just personal feelings and animosities.

When a complaint is brought by a woman to court that she suffered an injury and aborted an unborn fetus, she first had to prove to the court that the abortion had in fact taken place. Quite often the woman claiming forced abortion brought in the aborted fetus to court. Since courts were usually close by and accessible, this was feasible even in warm weather conditions that accelerate putrefaction. The fetus brought to court was often recognized for what it was right away, i.e. that it was a piece of liver, and the woman was punished accordingly for bringing a false claim. But very often the court called upon the local daya (midwife) to come and testify. And here the testimony of one daya seemed to be all that was required unlike rape cases when the court almost always assigned two dayas for the purpose.<sup>14</sup> Quite often, a rape victim brought in the daya who examined her as her witness, and usually one daya sufficed. We are not told whether this is the daya who is normally chosen by the court or not, but a daya's witness seemed to

suffice and the court seemed satisfied with the daya's witness without calling for corroboration. That was probably because she was familiar to the court and could have been employed by the court as an expert witness.

While “women and work” will be central to Chapter 3 of this book, one should mention here that dayas were considered professional experts recognized as such by the community. It was also normal for women to bring goods and sell them in the marketplace, a fact corroborated by travelers to the Levant who described the kinds of foods sold by vendors, many of whom were women. Certainly women were very involved in what we can call “petty capitalism” at that time, working as washer-women, cooking at home for vendors, acting as mashtas (beauticians) or as dalalas (saleswomen who went from house to house). Furthermore, women owned shops and were involved in their day-to-day management. Women also administered waqfs and were very often assigned as executors by qadis. As executors they were responsible for collecting income and even when this job is delegated, it involved contact with strangers including men.

To conclude, Jordan's personal status laws like other Muslim countries today are said to be based on the shari`a. Since shari`a is viewed as an unchanging body of laws representing the Qur'an and Prophetic Hadiths, it is very hard to change laws dealing with gender. As the above discussion has shown, shari`a has been studied differently by scholars who see it as a method by which fuqaha' of different periods found answers to problems of their age. Much of what is considered shari`a is in fact the ijtihad (interpretations) of theologians during the medieval period which was presented more as a moral discourse and theological opinion than as a representation of the actual application of law in shari`a courts. It is in comparing the actual life of women to what

fiqh dictates their life should be that the dialectic between thought and practice becomes obvious as a process in which the ijtihad of theologians becomes more of a mental and intellectual exercise than the reality of women's life. In other words, what is described today as being shari`a according to which gender relations are molded is an intellectual product rather than the unchanging word of God.

Put differently, even though Islamic law was followed by qadis, legal procedures did not follow fiqh or Classical Islamic law as we understand it. Perhaps we make a serious error when reading sources of Islam, Islamic history, or Islamic law from a position that looks at Islam as a system which enframes, confines, sets limits to what is possible according to very clear lines of what is acceptable or non-acceptable, halal or haram, what is preferred for society and community, istihsan or istihbab. Gender has always been studied that way, through limits set for it by the Qur'an as interpreted by fuqaha'. Modern interpretations have implicitly accepted this discourse of confinement or restriction, and Islam itself is seen from within such parameters. Archival records show a very different picture, what the fuqaha' say is more a commentary on legal procedures than the other way around, their commentary is intended to restrict what they believe to be more Islamic or moral. In contradistinction, court cases do not speak of the good of the community, rather it is the right of the individual that they are concerned with. The individual could be male or female. For example, a victim of rape is usually given the choice as to how to deal with her rapist, she could marry him and be paid the dowry of her equal; she could have him pay her diyya /and or to have him punished. There may be other choices, but I did not come across them. In short, we are not looking at a legal system built on the confining discourses of fuqaha'. How fiqh defined the role of women

and how women actually lived in Islamic society are different. That is to be expected because fiqh is an intellectual product representing particular opinions about how society should be, the concerns of the thinker with the world around him.

Having established the discrepancy between theory and application in regards to pre-modern laws, I will move to discuss the modernization of courts and law that begins with the nineteenth century. First, the court system as it moved from pre-modern structures to modern structures will be discussed and then the changes experienced by the laws dealing with gender will follow. The intent will be to illustrate the genesis of the laws on Jordanian books today.

#### Modern Law and Modern Courts: A New Shari`a

The Islamic shari`a is a recognized part of Jordanian laws. It is applied in particular to personal status laws that handle marriage, divorce, child custody, inheritance and awqaf (religious endowments). Before the nineteenth century, shari`a courts were the main courts handling legal disputes between members of the public. People took all sorts of personal disputes in front of the qadi who rendered his judgment according to the specifics of the case guided by the particular madhhab (juridical school) to which he belonged. There were four such schools recognized in the Ottoman Empire namely, the Maliki, Hanafi, Shafi and Hanbali. While the Ottomans deferred to the Hanafi code, populations from Syria down to Egypt preferred the Maliki and Shafi, with large percentages of Syrians adhering to the Hanafi and North Africans to the Maliki. Without going into too much detail, it should be pointed out that while the Maliki was preferred in areas where tribal and kinship ties predominated, the Shafi was preferred in settled, urban

and agricultural areas. As for the Hanafi, it was preferred among the richer capitalist and merchant classes and those related to or in service of the Ottoman government.

In that system, it was up to the individual to choose the qadi of the particular madhhab and courthouses usually had muftis and qadis if not of the four schools, then of the schools to which most of the residents of the town or area belonged. The qadi in turn applied Islamic law from his particular school as well as the `urf (traditions) acceptable to the population of the particular district. More often than not, the judge himself originated or was of long residence in that area. So there was a certain extent of maneuverability among the population and in the hands of the judges to pick and choose the laws to be applied. Shari`a courts did not serve Muslims alone but they also served non-Muslims who came to court to register land, document inheritance, solve property and business disputes and even marry and divorce against their churches' orders. Ottoman archives illustrate that Christians and Jews often came to court to divorce husbands or wives, to take a second wife or to buy slave-women.<sup>15</sup>

In majlis al-Shar`i... in front of mawlana (his honor)... the Christian woman named Maryam bint `Abdel-Ahhad al-Siryani, vouched for by her father, asked her husband `Ibriyan wild Habiyan the Copt who is present with her in court, to divorce her (an yakhla`ha) from his `isma and marriage knot (`uqdat nikahi) in return for her relinquishing her mu'akhkhar sadaq (delayed dowry) amounting to ten qurush and from her nafaqat al-`idda (alimony for period of `idda) and housing expenses [during the `idda] and from fifteen qurush leftover from her previous nafaqa according to this

earlier document...He accepted and khala`ha (removed/divorced) her so she is divorced from him and cannot go back to him except with a new marriage contract and new dowry...<sup>16</sup>

This sixteenth century document ended with the signatures of the judges and members of the majlis (council) all of whom were Muslim sheikhs. The wording and expectations from this divorce document show that Muslims and non-Muslims lived very similar social lives, their marriages being transacted the same with the same requirements.

Modern reforms divided the court system into various types and each was provided with a legal code that judges were required by the state to apply in reaching their decisions. This happened by stages with the Jordanian Constitution of 1928 which recognized the existing Ottoman codes as applicable in Jordan until such time as they are changed. In the 1952 Constitution, the legal system was reconstructed and the court system was divided between mahakim nizamiyya (national courts), mahakim diniyya (religious courts), and mahakim khassa (special courts). The first were given the responsibility of looking into all civil and criminal cases, disputes involving trade, exchange, property, and crimes including cases brought by or against the government. The second, religious courts, were to serve Muslims and non-Muslims; Shari`a Courts were to look into personal affairs of Muslims, while Milla councils of different non-Muslim sects would each determine personal affairs of its constituency. As in National courts, Shari`a court judges were given a code compiled by state committees and lawyers which they were asked to enforce in all marital, inheritance and child custody disputes. So even though the personal status law applied in Jordan today is based on the Islamic Shari`a as represented by the massive collection of books of fiqh, actually personal status

laws are really a selective reading of these sources, specific laws preferred while others discarded. The philosophy applied in this selection took state interest into consideration and brought a modern conceptualization of gender (late nineteenth and early twentieth century) as a binding discourse for these laws. In other words, one can call the laws Shari`a but the particular laws themselves, the application of the laws, the philosophy behind the laws, and the execution of the laws were in many ways different from what was applied earlier. Finally, religious endowments (awqaf) of the various communities were also made the domain of these religious courts.

In 1951 the first Jordanian law organizing shari`a courts was passed. It stayed in effect until 1972 when several amendments were introduced to it during 1973, 1978, 1979, and 1983. Decree 41 for 1951 defines:

First degree Shari`a courts are to be formed in the Hashemite Kingdom of Jordan: first degree primarily, then one or more second degree courts (isti`naf) according to needs and what the chief judge (qadi al-qudat) decided from time to time, according to an organization accepted by His Majesty the King.<sup>17</sup>

The functions of these courts were described as follows:

...Shari`a courts assume responsibility for adjudicating personal status among Muslims and to look into disputes involving the establishment and internal administration of waqfs in the benefit of Muslims... and what [problems] may entail from a marriage contract registered at the Shari`a court or any of its ma`dhuns (officials licensed to contract marriages and divorces) and that in

accordance to what is most widely accepted from the madhab of Abu Hanifa with the exceptions of any of its special laws.<sup>18</sup>

By “personal status” was meant not only marriage and divorce, but also child custody and guardianship (wisaya, wilaya), their appointment and removal, inheritance, payment of blood-price (diyya), family disputes over such matters as dowry or spousal support (nafaqa), “anything that takes place between husband and wife as result of a marriage contract.”

All other matters that were earlier the domain of shari`a courts were placed under the jurisdiction of various forms of national courts of different degrees. This was in itself a continuation of the split that had taken place during the nineteenth century under the auspices of Ottoman reforms with the introduction of the Mejelle, which took its final form by 1877. The Mejelle was based on the Hanafi madhhab, which was the dominant madhhab in Ottoman Turkey if not in other parts of the Empire. It allowed for great government authoritarianism and was much more friendly toward capitalism. For example, when it came to loans, the Hanafi madhhab required that a loan be paid in a similar value in bullion allowing for market fluctuations, while the other madhahib allowed its payment in the exact same monetary value notwithstanding devaluation. Another example concerns rentals. While the Hanbali madhhab recognizes the inheritance of a deed of rent for waqf land and keeps the value of rent as determined at the time the original contract was signed, the Hanafi madhhab does not allow the inheritance of rental deeds to waqf property and allows for raising rent according to market forces. Also, the Hanafi madhhab is quite elitist. For example, Hanafis allow a

father to have the courts annul his adult daughter's marriage if she married herself to a man whom the father considers less than her equal and therefore not befitting the family.

Jordanian laws declared that shari`a law applied in Jordan would be based on the Hanafi madhhab, yet when it came to laws of guardianship (wilaya) they mixed between the Hanafi and Maliki madhahib. Hanafi law required rationality (ʿaql) and puberty (bulugh) as a basis for reaching majority, while Maliki law added experience gained through marriage as a requirement for a girl to reach majority. Until then she was under the power of her waliyy. Modern law established the minimum age for the marriage of girls to be fifteen and determined that to be according to the Hanafi code since at fifteen a girl would have reached both rationality and puberty. At the same time, however, unlike Hanafi requirements, a Jordanian girl who reached majority is not allowed to contract her own marriage but has to receive her father or guardian's approval before a marriage of her choice can take place. This is so even if she has passed the age of legal competency recognized by Jordanian laws: eighteen for partial competency and twenty-one for full individual competency. It is the Malikis rather than Hanafis who demand the approval of a waliyy (guardian who could be the judge replacing the guardian for an adult woman) for a previously unmarried girl notwithstanding how old she is because she has yet to gain experience. Furthermore, Jordanian laws use the Hanafi interpretation of kafa'a (social parity) which gives the father the right to ask the judge to annul a marriage entered into by his adult daughter when he considers her bridegroom is not her social equal. In other words, Jordan's guardianship laws are a patchwork of Hanafi and Maliki laws by which the more patriarchal aspects of the two were patched together to form a modernized code allowing for greater control of women than was practiced before the

introduction of these laws. These details are important because they explain the genesis of personal status laws. A system of talfiq (patchwork), quite orthodox to the Islamic legal method, was applied by which laws from different sources and legal philosophies emphasizing more “controlling” attitudes toward gender were amalgamated together to establish what became known as Personal Status Law.

The point I am making here is that the Shari`a applied in modern Jordanian courts may be described as Muslim Jurisprudence, but a jurisprudence which is in fact the result of a methodology in which laws were compiled, picked and chosen by state-assigned committees under the auspices of jurists selected by the government. The qadi’s discretion in choosing the particular law or `urf (tradition) to apply in a particular case and the individual’s choice in going in front of the qadi of the madhhab of his choice practiced in Ottoman courts was replaced by a government code that was selectively extracted from the Hanafi code and to a lesser extent the Maliki code. There was only one law, selected and compiled by the state, to be uniformly applied to all citizens and this code became the instrument for constructing gender, family, and all other personal relations. Furthermore, notwithstanding the belief that the shari`a continued to be the basis for personal and family laws, laws applied in reformed shari`a courts were in the form of new statutes rather than a continuation of previous practices. Ironically, even though shari`a court records dating from the pre-modern period presented an important source of legal precedent, a common law with consistency of application, this legal precedent was not taken into consideration in the construction of the new shari`a courts and provides no basis for court decisions today. Rather, new statutes were handed to the qadis of shari`a courts who sat in court and applied them, finding justifications for them

in the fiqh of various schools, but accepting them as the way things have always been. It is in these new statutes that can be found the legal basis for the subjection of woman in the modern state.

European codes:

European laws made their way into the court and legal systems of Jordan and other Arab countries in different ways. First as part of Ottoman nineteenth century reforms which adopted European systems sometimes willingly and other times under duress. Given world transformations the Ottoman Empire was forced to introduce changes to its legal system. While the system already allowed for different types of courts (e.g. non-Muslims had their own sectarian courts and foreigners were judged in their own embassies according to the Capitulations), there were brand new issues that had to be handled. Perhaps the most important has to do with citizenship and nationality. The Ottoman Civil Code of 1867-1877 modeled after European—French and Belgian Code Civil—formed the basis of the Egyptian Civil Code that was later adopted by Syria and Jordan as the prototype for their civil codes. The legal system departed from what had been practiced in Ottoman courts before. Where there were no reciprocal laws, European codes were applied directly. Furthermore, European precedents from European courts, particularly French courts, were used as precedents for legal decisions in new Arab courts.

European laws were also introduced indirectly to personal status matters. For example the Ottoman Family Code became the first step toward modern personal status laws that continue in power in Jordan until today. The Ottoman Family code brought in a new outlook toward gender with grids of conceptualization reflecting Europe's new

industrial society and its legal needs. The idea of family became the central construct of the new society, rather than the individual, clan or tribe as was previously the case. While “family” plays little role in Islamic legal thought, modern laws conceptualized society as a construct of family units in which various individuals play clearly defined roles. The Hanafi code may have been the basis for new personal status laws, but a new form of patriarchy based on the concept of the “family” became the basis of the law and the state became an effective participant in enforcing personal matters that were not its business before.

Another set of important laws the Ottomans finally accepted but under duress were nationality laws that continue to be the basis of citizenship discrimination in Jordan today. According to Ottoman laws (Firman, 1869), and following legal practices in Europe at that time, a woman’s nationality was defined as “following that of her husband.” Children from a mixed-nationality marriage were defined accordingly, i.e. following the nationality of the father. In other words, faced with new questions like nationality, moot issues to the Ottoman world as they were to Europe before the nineteenth century, gender became the focus for defining nationality rather than domicile, allegiance, interest, birth, or any other factor that could be used to allow children to take their mother’s nationality. For example, shari`a court records refer to an individual by his name and address. If he is from out of town, then his town is included in the record. He would not be referred to as a Syrian but as a Salti, Qudsi, Himsi, Halabi, Maghribi, and so on in reference to the location he originated from or where his permanent residence is to be found. Other ways of referring to an individual in Ottoman court records was through his craft or profession, for example as `attar (herbalist), tabib (doctor) and so on. The

same is to be found in European court records dating into the nineteenth century. An individual was referred to by his address or the particular town he originated from and his particular profession. So we are talking about international transformations that were diffusing from nineteenth century Europe to other parts of the world with the growth in trade and population movements. The Ottoman Empire had no choice but to follow given international pressures.

Nationality laws confronting Jordanian women today by which a wife can take her Jordanian husband's nationality while a Jordanian woman's husband and children are forbidden it, have their roots in these nineteenth century legal shifts. This situation is not unique to Jordanian women since it is applicable to other countries that were colonies of the Ottoman Empire. A Jordanian woman married to a foreigner may wish to return home to her family for various reasons including loss of job by her or her husband, her divorce or widowhood. Even if her Jordanian family could provide her and her children with the only support open to her, she cannot acquire a residency for her children or her husband. The same situation exists in Egypt, Syria, Iraq and so on. Ironically the justification used for these laws is the idea that the child belongs to the father according to Islamic fiqh which states that "the child belongs to the marital bed" (al-wild lil-firash) meaning that he belongs to those who conceived him. There is no masculine attribute to the statement, yet it is taken to mean that without dispute.

In other words Islam is used as an excuse to justify a situation that had no bearing on Muslims before the creation of the present nation-state system. While states have existed in the Middle East since early history, the nation-state as a centralized geographical entity with definite borders and citizenship requirements is quite new to

the Islamic world and is in fact organically linked to European historical developments and experiences. Roots of the system are usually traced back to Europe's seventeenth-century Religious Wars and the 1646 Peace of Westphalia when the roots of the system began to be recognized and culminating with the end of the Napoleonic wars and the Peace of Vienna of 1815 when Europe was divided into sovereign nation states, kingdoms mostly. But while after the First World War one European country after the other recognized the nationality rights of women in regards to spouses and children, remnants of European laws have yet to be changed in the Arab world. Needless to say, today nationality laws are closely connected to the basic outlook toward women as having incomplete legal competency. Today, nationality and residency problems have become critical and are expected to grow in importance given the greater movement of populations and intermarriage between groups. For Jordan, marriages between Jordanians and Palestinians and the unwillingness to change nationality laws continue to constitute real hardship when the wife and not the husband is Jordanian.

Another interesting case of the application of modern law has to do with crimes. Here again the intermixing of law between the modern, traditional and Islamic worlds put women at a disadvantage. For example, Islamic law divides crimes into three types, namely hudud which are considered crimes against God whose punishments are clearly defined in the Qur'an. Here are included adultery (zina), defamation, drinking alcohol, forced robbery, immorality/perversion, and apostasy. Qisas are crimes involving murder and other forms of physical harm due compensation through the payment of diyya (blood-price) to the victim or his family. Ta`zir involves other crimes than those defined by hudud and qisas and whose punishment is determined by the judge, for

example cheating and usury. Perpetrators of ta`zir and hudud crimes usually received corporeal punishment. Criminal laws in contemporary Jordan do not apply these categories. Rather modern western procedures are applied in to crimes. This came about because of the rationalization and organization of the legal and court systems following European patterns. Crimes and criminal justice were placed under the jurisdiction of National courts, to be investigated by the police and only prosecutable if the state's district attorneys bring them to the attention of judges. Here the idea was to introduce a system with greater probity and not leave crimes to be handled by individuals. Since the state was responsible for individual safety, then it was up to the state to assure security, control crimes and punish offenders. It would be a system built on correcting the offender rather than punishing him, it would be civilized and not include corporeal punishment. The ideals of the Enlightenment with its enthusiasm to reform so as to allow progress are at the heart of the nation-state with its welfare system of controls. And who could doubt that it is better to put a person in prison for a particular period rather than have his hand cut off making him into an eternal state- and social-dependent unable to feed himself or his family? What is curious, however, is that Jordanian laws kept the payment of diyya on its books, a system by which the life of an individual is compensated by his killer in the form of cash payment. Furthermore, in capital crimes and crimes where a victim sustains often serious bodily injury or involving questions of honor—like rape—it is the victim's family which determines whether the perpetrator is to be punished or not. The courts may pass judgment on the offender but the family could choose to drop their rights in lieu of payment of diyya and the legal system has no more recourse against him.

The combination of Western criminal law and procedures together with remnants of tribal law like diyya explain the genesis of Jordan's laws combining the foreign with the traditional which transfers the rights of the victim into rights for his family or guardian. But it is in regards to honor crimes pertaining to women that criminal laws applied in Jordan today, representing a combination of the old and the new, mostly fall short. If the state's primary function is to protect its citizens, why is it that even when a perpetrator of an honor crime is caught and prosecuted, he is able to get away with a very short prison sentence often a mere two or three months? There are two separate issues here that allow for the continuation of such practices. On the one hand, a philosophy regarding honor that at heart considers women dispensable once the question touches on clan or tribal honor whether she was participant or victim. This philosophy is behind the laws and judges' decisions in honor crimes; it is not the letter of the law that is applied and therefore deterrence measures or at least principles of reforming the perpetrator of the crime are applied, rather it is the diffusion of tribal ideals into national laws. As a judge in Jordan's high court of appeals (mahkama `ulya) explained to me, "we can't simply let the women run free to do what they want," a theme repeated by those who defeated governmental efforts to abolish law 340 allowing for reduced sentencing for committers of honor crime.

The second point has to do with the nature of the modern criminal system which actually enables the judges to act patriarchally rather than observe strict principles regarding the rule of law. Here we can mention contradictions in the laws and applications of such issues as "intent" and "crimes of passion." If a person kills another under the influence of irrational anger but without previous intent to kill, he/she receives

a reduced sentence. Therefore, even if honor crimes are treated with force by Jordan's courts and laws allowing for reduced sentencing are changed, the very existence of the principle of crime of passion in Jordanian laws would make it possible for judges to hand down reduced sentences to perpetrators of honor crimes. Moreover, these laws directly discriminate against women while French criminal laws of "intent" and "passion" do not differentiate between a wife who discovers her husband while committing adultery and a man discovering his wife doing so, the way the borrowed laws are applied in Jordan today the law privileges men alone. A woman who commits an "honor crime" is not even eligible for reduced sentencing as the males are. Given the seriousness of these crimes and the lack of real action against them, it is no wonder that Jordanian girls are afraid to leave their homes or go against a father or young brother—most killers in honor crimes are juvenile males. How can such a situation help in promoting the participation of Jordanian women in the country's economy?

This discussion on "honor laws" which will be covered in greater details in chapter 7, illustrates how the combination of laws from different sources and categorized in different legal codes (personal status, civil, or criminal) has been an important method followed in legislating modern legal codes in Jordan and other Arab countries. An example of a different nature is presented by banking. Whereas Islam frowns on interest taking, banks in Jordan pay out interest to depositors and that is quiet acceptable to the population. It is therefore curious as to the reasons why Jordanian courts continued to accept legal practices like reduced sentences for honor crimes in which a father or brother kills a daughter or sister because they suspected her of immoral actions yet Islamic laws regarding interest taking are simply bypassed! The answer lies in the fact that the right of

the male to “punish” or prevent the female member of his clan from any act touching on the clan’s name is based on tribal common law, `urf. Here lies one contradiction of Jordan’s laws where modern methods are used liberally in the case of commerce while conservatism is the preferred philosophy in the case of social relations. Consistency in the application of law would be a good start in allowing for gender equality based on principles of human rights.

Tribal law (qada’ `asha’iri):

The predominant social structure in pre-modern Jordan was the tribe formed of numerous related clans. In such societies the protection of the tribe with its animal and agricultural wealth was paramount. Battles against attackers, or attacks against other tribes for defensive or raiding purposes, were part of daily existence. Hence it is not surprising to find that certain characteristics were expected from members of a tribe particularly chivalry, courage, generosity, strength of character, physical strength, endurance, agility, loyalty, and functionality. Tribal societies are quite patriarchal to a large extent due to man's primary function as protector. Yet there is also a sense of equality among members of the tribe whose fate was dependent on one another, this equality translated into gender relations. Thus, most of the work is shared by the two sexes who contribute their share in herding the tribe’s herds of camels, sheep and goats, in the upkeep of dwellings made of tents or other materials, or in agriculture if this was part of the activity of the particular tribe.<sup>19</sup> Recreation included story-telling and poetry recitation recounting the great days of the tribe and its famous individual members in the past and present.<sup>20</sup> Living close

together and being highly dependent on each other meant greater tribal unity cemented by possessive pride in tribal honor, the tribal name, and an inter-tribal clan hierarchy built on loyalty and respect. At the same time, because of this great dependency on one another and the close proximity in which tribesmen lived, it was clearly impossible to separate the sexes even though chastity and purity of blood were critical for tribal loyalty without which people could not survive in a desert environment. Moral discourses that made any sort of tribal misconduct punishable by extreme measures, death in the case of adultery, allowed for "legal" mixing. It also allowed for a tribal justice system that handled offenses against the tribes' honor whose approach was to make such crimes ultimately the responsibility of the perpetrators' clansmen—father, brothers, male cousins—referred to as the akhmas (fifths) in reference to the degree of consanguinity between the perpetrators and those who would be ultimately held responsible for the crime committed.

Tribal honor today has been placed almost exclusively on the shoulders of women. At one time stealing, discourtesy or even gossip about another clan or clan-member were considered offenses against the tribe requiring immediate and usually violent action to alleviate the dishonor placed at the door of the clan or tribe. With the changes faced by tribes during the modern period, their sedentarization and integration within nation-states, issues of honor have become more narrowly family oriented and pinned on the actions or potential actions of its female membership rather than its males. A male's dishonorable act, for example committing rape or murder, can be negotiated with the victim's clan and a diyya paid. Here we see both the remnants of tribalism and at the same time tribal structures in retreat. The inordinate impact of tribalism when

compared to the reduced numbers of Jordanians who continue to live within tribal structures is due to the important role that tribes have played in the Jordanian army and in supporting the hegemonic order, making tribalism a powerful element in the fabric of Jordanian sociopolitical alliances.

Lingering tribal traditions constitute a formidable part of `urf which molds the whole legal system and philosophy behind decision-making in court. Here we can point to practices that go all the way back to the early Islamic period and even pre-Islamic discourses and behavior. While some scholars have emphasized the idea that pre-Islamic society was less patriarchal and allowed for greater empowerment of women and for sexual mixing, in fact sexual "purity" and fidelity was required and expected of a woman. Ensuring descent was essential for clan-solidarity and hence the requirement that women be chaste before and after marriage. `Uthri love relationships are a perfect example of the expected pure nature of love among pre-Islamic Arabs. In such poetry, a man addresses his words of love to a woman whom he places on a pedestal and whose praises invariably revolve around her unavailability to him as a sexual partner. In fact that very unavailability becomes the reason for his unrequited love and admiration. A famous poem sung by Hakam al-Wadi about his neighbor on her wedding night tells of his uthri love for her, a love mingled with pride for the long night she spent with her new husband, a night from which she came out having proven that she was the "noblest of her race."<sup>21</sup> Besides, mingling between the sexes took place under the supervision of the whole tribe and the woman's father or husband was aware of what was taking place. The story of Buthaynah's association with Jamil is representative, not only were her husband and brother worried that there was more to their friendship than what was morally acceptable,

Jamil himself began to have his doubts, so he put her to the test. "Would you like to do as men and women do for the quenching of love's thirst and the extinguishing of passion's fire?" 'No', said she. 'Why?' He asked. 'Because', she replied, 'true love is spoiled when one has sexual intercourse'. Then Jamil produced a sword which he had hidden under his garment, saying, 'Had you granted the favor I asked, I would have plunged this into you'.<sup>22</sup> Thus a woman was admired for her strength of character and physical beauty, but was even more desirable for being untouched, untouchable (ʿafifa), and hard to get ("muhasana, saʿbat al-manal").<sup>23</sup>

Women taken into captivity by raiding tribes exemplified the importance of loyalty. Among tribes who were often raiding or going to war, captured men were usually put to death but the women were made into the slaves of their captors who often married them. Yet, however long the woman stayed with her captor, her loyalty remained with her tribe, and if the situation presented itself for her return to her tribe, she was expected to take it however unwillingly. Loyalty to the tribe was equated with the tribe's honor and the honor of each of its members. A woman was often glorified for committing suicide rather than succumbing to her capturer, no matter how notable the latter may be.<sup>24</sup> A famous story involved a woman named Um Salama from the Kinana tribe who married her captor, ʿUrwa b. al-Warda, and lived with him for eleven happy years during which she bore him many children. When the chance presented itself she tricked him into returning her to her own tribe, even though leaving him and her children broke her heart.<sup>25</sup> The first case of girl-infanticide (wa'd al-banat) is said to have been undertaken by a leader of the Kinda tribe whose daughter refused to leave her captor husband and return to her former husband before captivity. Her father was enraged, he fought,

defeated and killed her captor then killed her. Later he committed female infanticide by burying the ten female children subsequently born to him.<sup>26</sup>

Since loyalty to tribe was paramount to both men and women, marriage was contracted in accordance to the larger needs of the tribe, which could entail marrying a cousin or discouraging cousin-marriage depending on the need to form alliances with other tribes. Interestingly, the tradition of cousin marriage was quite widespread even though there was awareness of the possible ill-effects from inner-breeding: "I did not marry my paternal cousin who is my beloved, for fear of being disgraced by my progeny", sung a poet.<sup>27</sup> One reason for cousin marriage is that tribal honor necessitated that members marry only those who are equal to them. Inter-tribal power relations based on tribal alliances made this a necessity. Therefore marriage could not be left to the feelings of either the man or the woman, although such marriages did take place. Arab marriages, before and after Islam, were based on comparableness (kafa'a) in religion, ethnicity, nobility, and freedom. °Antar b. Shadad's love for his cousin °Abla of the tribe of °Abs exemplifies this kafa'a in the Arab cumulative mythology. `Antar is always seen as the ideal knight, taking on whole armies and defeating them single-handedly. His loyalty, pride and valor were legendary. But because he was a slave born of an African mother, his uncle refused him the hand of his daughter `Abla.<sup>28</sup> `Abla herself saw nothing wrong with `Antar, but her father's objection added to that of `Antar's father—leader of the tribe—because of the lack of social equity between them was a formidable obstruction to the marriage. This did not mean that a girl's opinion regarding her marriage was not taken into consideration by Arab tribes, far from it,<sup>29</sup> when the girl concerned was an adult (rashida), her decision was crucial in marriage decisions. For

example, given al-Khansa's attributes as a wise intellectual and healer, her refusal of a suitor was honored even though he was considered eminently suitable by her father.<sup>30</sup> Majority and personal ability continued to form the basis of traditions (urf) in regards to gender relations, at the same time kafa'a based on tribal pride to give their daughters only to those who are equal to them, was integrated into Islamic laws and are the basis today of the Jordanian law allowing a father to divorce his daughter if she marries a man the father does not consider to be her social equal.

Tribal laws are a recognized part of Jordanian laws. But just as in the case of Shari`a law, tribal law is applied selectively and according to modern urf much more than according to actual tribal practices. It should be noted that tribal laws constitute a major part of laws in the Arab world even though this fact is not readily recognized. The laws are sometimes overt but most of the time they are integrated in the selectivity of actual laws included in personal status laws. Selectivity of laws has worked toward greater patriarchy perhaps because moral concerns in a tribal context where a woman is between her people and clan and hence under their direct protection and support, is very different than an urban context where women could be in daily contact with strangers. Furthermore, in the rural context certain freedoms and functions that women enjoyed were curtailed under more male-dominated systems. Here important examples illustrate how integrated a woman is within her clan or tribe and how her individual actions enhance or hurt the clan. For example, in diyya settlements involving killing—intentional or accidental—the sister or daughter of the killer, or another woman closely associated to the clan, was used to be sent to a close male relative of the victim to marry him and serve him until she bears him a son to replace the member of the clan who was killed. She then

leaves her son and returns to her tribe having fulfilled her duty. She could remain with him if that is her wish. In other words a woman was expected to be part of fulfilling the obligation of her tribe toward a victim of one of its members.

It is perhaps in the philosophy and traditions behind tribal law that we see the hegemonic power of tribalism even with the changes in the legal and court systems.

...in Bedouin society the supreme authority is represented by the tribal chiefs and judges, and that compulsion derives from the consent of individual members of this society to abide by the penalties imposed by customary law in the case of deviation from these laws or from the principles of fairness.<sup>31</sup>

This means that members of a clan are bound by the decisions of the clan's elders whether this is legally sanctioned by the government or not. In other words, the power of tribal law continues within social and cultural hegemony and unless the state takes very effective actions to enforce its laws then the power of tribal law, beyond the state's laws, will remain a living fact in Jordan. This is problematic because of the nature of the hegemonic order in Jordan and the historical alliance between the state and its tribal population. As Laurie Brand points out,

The role of the military in the evolution of the Jordanian state takes on additional importance if one considers the patterns of armed forces' recruitment. The basis for the earliest forces established by the British were the powerful Bedouin tribes of the southern part of the country. Such recruitment filled the ranks of the military and security apparatus and provided a key means by which these tribes

were incorporated into the state. This cooptation, or establishment of patron-client ties between the tribes and the leadership, was a central element in building a legitimacy formula for [King] `Abdullah [I].<sup>32</sup>

Tribal laws and courts were an actual reality in Jordan until their cancellation in May 1976. Even after the cancellation of tribal courts, certain aspects of these laws were codified into law for Jordan as a whole. Diyya laws (blood-price as compensation for harm caused to another) were codified into law in 1989. These laws itemized the crimes-- assumed to be unintentional crimes—that can be compensated by the payment of diyya to the victim or his/her family by the perpetrator. The amount to be paid as compensation for each specific crime, was also stated. For example, the diyya for unintentional death was established at ten thousand Jordanian dinars in 1989. The law also took into consideration other forms of homicide not itemized and added an extra third of the diyya for death. Here the method in establishing the diyya for various crimes closely followed shari`a practices, determining estimates for each crime at a certain percentage of the full diyya for death. For example, the diyya for violence leading to miscarrying a fetus was one-tenth of the diyya for loss of life.<sup>33</sup>

More importantly, the tribal outlook toward gender continued to form the basic philosophy toward gender in Jordanian society and is therefore a basic part of `urf practices. Tribal laws therefore constitute an important basis to the way judges rule in Jordanian courts. That there is a constant need for a waliyy to directly or indirectly approve the marriage of his adult daughter, is based on the assumption that a daughter belongs to her people and carries family honor with her. The same logic underlines

reduced sentences for honor crimes allowed by court judges even though most of the victims were quite innocent of the crimes for which they were killed. Allowing reduced sentencing only encourages others to commit honor crimes and judges give credibility to the act by legitimizing it. The same logic applies to a husband's absolute power over his wife, her movements and her work. Without doubt, the continued influence of tribal laws on Jordanian society and its legal system, is at the heart of discrimination against women. As with shari`a law, tribal law seems to be focused today on the control of women and family issues and it is in this form that it has become an integral part of the legal system in Jordan. While tribal law originally applied to all aspects of a tribe's life including handling brigandage, theft, kidnapping, control of tribal land and so on, today national law and courts have taken over authority over these diverse issues and it is in regards to issues pertaining in particular to women and to committing murder that tribal law have in fact become the basis of the law in Jordan. As long as the legal system and its judges continue to view the individual as belonging to his larger clan and give the clan the right to "handle" its women, we cannot talk about the rule of law since law is ultimately intended to protect the weak and not to ensure that the weak is a victim of the system handed over to those who intend him/her harm while the perpetrator of a crime is exonerated through the payment of compensation.

#### `urf or traditional law

The Jordanian Civil Code is explicit about the importance of traditional law and traditional usage in Jordan's legal system. For example, Article 173-ii dealing with

contractual consent states: “Silence means granting permission if it [i.e. said silence] is considered consent according to `urf.” This is particularly important for women since her vocal consent can be bypassed in important transactions like contracting a marriage or selling property. `urf can also bind the actions of a court judge since he is expected to apply tradition as part of his decision-making. Article 177 of the Civil Code details: “In contracts which are open to faskh (annulment) ...if [the parties to the contract] do not agree on a specific period, the judge is permitted to decide it according to `urf.” The Civil Code adds another level to traditional law based on the “nature of the tasaruf (right to administer or to dispose of).” Article 202-ii states: “the contract does not limit the contractor’s responsibility to what it states, but it also entails what is determined according to the law, `urf and the nature of the transaction (tabi`at al-tasarruf).”

While `urf is considered to be local traditions appearing mostly as practice and not in a written form, social practices and norms are only one type of `urf. Therefore we really should be talking about a`raf (plural) rather than `urf. For example there are certain expectations from the government that are not written in law but that are considered to be “Islamic” because they have always been expected of rulers. Here we can include the building and upkeep of Mosques. It is not written in the law that this is a government’s duty, but it is one of the most important expectations of the public from those who rule. It is also expected that rich people should somehow benefit the communities among which they live. This used to take place in the shape of awqaf khayriyya through which schools, water-fountains (sabils), sufi hospices (zawiya), hospitals (maristans) and mosques could be built and supported. At one time it was also expected that villages, towns and town-quarters, would be responsible for their own cleanliness, payment of taxes and running

their internal affairs. With the introduction of government centralization, `urf changed and it is the central or municipal government which is now considered to have the responsibility for all this. Since awqaf property, donations to mosques and zakat, is collected by a Ministry of Awqaf today to be spent on its projects throughout the country as well as pay the salaries of its employees, one result has been the relatively unclean environment in many Muslim cities today whose inhabitants no longer feel responsible for undertaking the cleaning as before. Another important form of `urf is fiqh. Even though fiqh is a part of Islamic law, because of the role played by fuqaha' and muftis and the implications that the writings of theologians and fatawi have over the general public, I am including fiqh and fatawi under the rubric of traditional law. One reason for this is to differentiate between what theologians say and what actual laws and qadis practice in courts. A cautionary point is perhaps necessary about fatawi. Scholars have tended to equate fatawis with actual social practices and this is not the case. They have also tended to consider fatawi as paralleling settlement of disputes by qadis in court. Qadis did take findings of muftis into consideration and often referred to a particular fatwa to support the decision they arrived at, but a qadi is not bound by what the mufti determines any more than he is bound by any other legal interpretation.

One of the ways by which fiqh is perpetuated and renewed as `urf is through republication. Yearly large numbers of books of fiqh are published throughout the Islamic world. The growth of Islamic revivalism brought about a virtual avalanche in fiqh collection republication. Some are subsidized by governments with particular Islamic hegemonic intentions in mind, others by Islamic groups of various types, and still others are for profit purposes by publishing houses that can see the demand and move to fulfill

it. Books of fiqh are sold at all sorts of prices depending on the subsidies involved and on the quality of the publication. Some are abbreviated and present only the ideological parts of interest to the subsidizer or publisher. Others are published in complete form and are usually hard-back and could be colored or gold-leafed. In fact, the actual selections of fuqaha' can tell us a lot about the press responsible or the group or country subsidizing. The appearance of particular subjects or titles is itself an indication of the particular movement behind it. For example, the appearance of profusions of books about the Prophet Muhammad's family and in particular his cousin `Ali b. Abi-Talib, his sons and wife Fatima, as well as Shi`I fuqaha' with Persian names of little significance to Sunnism, is an indication of Iranian Shi`I influences. The same can be said about the appearance of books by Ibn al-Taymiyya and other Salafi writers, an indication of active Salafism. When it comes to anti-gender's equality conservative elements, we find a profusion of literature on Islamic veiling rules, the right of a husband to marry four wives or emphasis on the Prophet as a polygamist.<sup>34</sup> Other titles emphasize the role of women in the family and home, the evils of the workplace and the duties of a wife towards her husband which includes everything from feeding him, obeying him unquestioningly, and sexual rights of the husband. Other books offer advice to couples who want to live the Islamic life and so on. The point is that they all offer some form of fiqh and fatwa and support their arguments from old fiqh works by famous medieval fuqaha'. The significance here is that people take what is published under the banner or symbol of what is Islamic to be what God requires, as the moral way of life by which they could enter paradise. In other words new ideas of confinement are spread through a discourse using religious arguments.

One of the reasons for the success of such discourses is the fact that people look at muftis for answers to their daily questions, i.e. for guidance regarding matters pertaining to their everyday life. It is therefore part of the traditions in Islamic societies to refer questions to an imam or a faqih. This is similar to people asking their local priest what to do in regards to personal problems and decisions regarding family in Christian communities. The difference is that a Muslim cleric does not have any power to absolve sin as is the belief in priests and the role they play in confession. The fact that the state recognized the Muslim clerics as the “keepers” of Islamic laws pertaining to gender and family through the division of courts into what is “religious” and what is “civic” or national, has emphasized further the power of the moral discourse and the prestige of the fatawi delivered daily in answer to questions from the general public. That was the tradition in Islam, in fact one of the most important ways of learning about the moral discourse in earlier Islamic centuries is by reading the questions addressed to muftis and faqihs and their responses. Today, book collections with these fatawi are published all over the Islamic world and are helping propagate and universalize ideas that in many cases are pseudo-Islam at best.

Given the power of the religious discourse, it is surprising that the state has not introduced moral discourses to counteract the conservative elements that refuse to budge on gender issues. While governments in the Islamic world use mosques and the pulpit to voice their opinion regarding political and economic matters, there is a clear reluctance to touch on cultural matters that are left to conservative elements perhaps as a measure of balance and hegemony building. With the power in the state’s hands in the form of an army of `ulama’ who are employees of the state and working directly under the auspices

of the Ministry of Awqaf, and who have a virtual captive and believing audience at the minimum every Friday during communal prayers, it is rather strange that their media power is not used to introduce a different outlook toward such matters as gender equality, honor crimes or women's work. If knowledge is power, then the best medium to get ideas across must be utilized to disseminate this knowledge. Why is the state reluctant to use the most important method to disseminate ideas and correct presumptions which is readily available to it if in fact the state is interested in seeing a greater role for women in the economy and politics of Jordan? As old a`raf were set up, so could new ones, and what better way than through a religious discourse which is still the most acceptable to Jordanian society.

#### International laws:

Jordan is signatory to various agreements at the International level with direct relevance to women. Here the most important is the Convention for the Elimination of Discrimination Against Women ratified with reservations by Jordan at the beginning of July 1992. This agreement involves basic human rights and demands that such rights be equally enjoyed by both men and women. The agreement stresses in particular fundamental economic, political and social equality, and demands that women be given equal opportunity in all these areas. To assure that such equal rights become fact, the convention calls upon its signatories to create the legal and executive instruments by which equal rights become a reality and not mere rhetoric.

The reservations that Jordan declared as part of its signing this convention tell us a great deal about the outlook toward women and legal rights in Jordan. While there was

total acceptance of equal job opportunity and other declarations regarding women and work, the reservations made by Jordan emphasize the patriarchal character of Jordanian laws and illustrate how women, their work and their freedom of choice are controlled by other aspects of the law. Interestingly, the shari`a is used as the reason for the reservations. The main reservation involves Article 9-ii concerning nationality rights which demand that children of mothers receive the nationality of the mother as they do the nationality of the father. Article 9 of the Convention was meant to address the severe global problems experienced by women and children who face dislocation and homelessness because of nationality laws. Jordan's laws do not grant a woman's children the Jordanian nationality or even residency unless the father is also a Jordanian. I was told by one feminist leader in Jordan that she was granted a residency for her Philippine domestic servant but was denied a residence permit for her unmarried daughter whose deceased father was a Palestinian-American. Jordan also made reservations to the wording in Article 16, i-c, d, g of the Convention which called for equality between men and women regarding contracting marriage, rights during marriage and equal rights and responsibilities in regards to divorce. Equal rights would have impeached on the prerogative of the husband to divorce at will and the control of a wife's ability to get out of a marriage that is abusive to her. It would also mean that men could no longer call their wives to obedience (ta`a), and forbid them from taking a job as a condition of being married. Jordan did commit itself to changing its laws to fit with the requirements of the Convention but that has yet to happen and given the reservations made, is probably not to be fully implemented. Still, a newly formed Royal Committee on Human Rights headed by the Ahmad `Ubaydat, a previous highly respected Prime Minister, is today studying

the issues and putting forth some serious considerations particularly directed toward changing laws pertaining to women, work and the family.

Even though Personal Status Laws are said to be based on the Islamic shari`a, which makes it almost impossible to touch these laws or ask for their amendment, the realities are different as can be seen from the above discussion on the sources of law in Jordan. The basics of gender laws are shari`a laws, but shari`a applied selectively and subject to a historical process during which different types of laws and the philosophy behind them diffused to create the laws practiced in Jordan and applied in Jordanian courts today. If there is any hope of changing these laws, the legal codes in practice today need to be deconstructed before alternatives can be suggested.

By alternatives is first of all legal consistency. One philosophy and one approach to law should underline all Jordan's codes and courts. When it comes to personal status laws, there is a strong need to turn to Jordan's own legal traditions as represented in premodern shari`a courts. Two points need to be emphasized: a) Shari`a legal practices were different then from shari`a practices today, and b) Shari`a is flexible fitting with different times. Once this is established then it would be made clear that the shari`a codes in practice today are based more on the Ottoman Family Code and should therefore not be seen as a permanent and unquestionable shari`a in the sense of being God's words that cannot be touched. This should give women groups fighting for this issue an edge in several ways. First, the job of studying the past is a big one and needs great efforts. Deconstructing laws is not a simple matter but a necessary one if they are to be challenged. This is a job that Jordanian women, highly intellectual and aggressive

lawyers, are more than capable of performing given guidance, assistance and financial help. This study tries to show them some of the ways this can be done, but it is by no means comprehensive. That will be up to women's groups or individual women. The method is complicated and time consuming but should be productive. Second, the process of studying the question of changing law from this different perspective should outline new lines of action for activists and women's groups. While lobbying would be extremely important here, there has to be a media campaign to inform people of the realities of the laws and the past. It is unfortunate that the archives remain so inaccessible, choosing particular court cases and presenting them to the public would be the best way to influence society as a whole and actually change urf. The reading material available today to the public is mostly in the form of Islamic moral literature which readers take to be the actual truth of life under Islam, at least the idealized picture of that life. References to History in the media are also based on this moral discourse, a discourse which was written by men in a different context and as a form of moral preaching. Third, contradictions between one legal code and the other need to become a focus of women activists. Not only the codes themselves but the philosophy behind them. For example while personal status laws emphasize the good of society and the family, the civil and criminal codes take the rights of the individual into consideration. Yet honor crimes deny individual rights. This works against women since human rights, which are the philosophical basis of "individualism", are not taken into consideration in personal status laws. This dual philosophy is at the heart of situations in which a woman could aspire to be a prime minister or a court judge and yet could face being declared nashaz if she refuses to accept her husband's demands that she stop working. Civil laws encourage

property, work, and economic independence, while personal status laws encourage a woman's dependence on a male relative and economic peripheralization.

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- <sup>1</sup> Selim Rustum Baz al-Libnani, Sharh al-majala (Beirut: Dar al-Kutub al-`Ilmiyya, 1904), p. 7.
- <sup>2</sup> Bernard Botiveau, al-Shari`a al-islamiyya wal-qanun fil-mujtama` at al-`aabiyya translated by Fuad al-Dahhan (Cairo: Sina lil-Nashr, 1997), p. 59.
- <sup>3</sup> `Ali al-Tantawi, al-Qada` fil-islam (Jeddah, Saudi Arabia: Dar al-Manara, 1988), pp. 6-8.
- <sup>4</sup> Susan A. Spector (Translator). Chapters on Marriage and Divorce: Respsnes of Ibn Hanbal and Ibn Rahwayh. Austin: Univesity of Texas Press, 1993.
- <sup>5</sup> Amira Sonbol, "Adults and Minors in Ottoman Sharia Courts and Modern Law" in Women, the Family and Divorce Law in Islamic History edited by Amira Sonbol (Syracuse, New York: Syracuse University Press, 1996).
- <sup>6</sup> Haifaa Khalafallah, "Rethinking Islamic Law: Genesis and Evolution in the Islamic Legal Method and Structures. The Case of a 20<sup>th</sup> Century `Alim's Journey into his Legal Traditions. Muahmmad al-Ghazali (1917-1996)", Ph.D. Dissertation, Georgetown University, 1999.
- <sup>7</sup> Hafaa Kahlafallah, "Reclaiming the Islamic Legal Method," unpublished paper. In a paper presented at the American Research Center in Egypt conference held at the University of California Berkeley during April 2000.
- <sup>8</sup> Denise Spellberg, "History then, History now: The Role of Medieval Islamic Religio-Political Sources in Shaping Modern Debate on Gender," in Amira Sonbol, ed. A History of Her Own: Deconstructing Women in Islamic Societies (Syracuse, New York: Syracuse University Press, n.d.).
- <sup>9</sup> Botiveau, al-Shari`a al-islamiyya wal-qanun, p. 32.
- <sup>10</sup> Mohammad Fadel, "Two Women, One Man: Knowledge, Power, and Gender in Medieval Suni Legal Thought", International Journal of Middle East Studies 29(1997), 185-204.
- <sup>11</sup> Al-Quds Shari`a Court, 1057[1647], 28-140:53-2. (film number-sijill number:page number-case number)
- <sup>12</sup> Dumyat Shari`a Court 1011 [1602], 43:84-182.
- <sup>13</sup> For example Al-Quds Shari`a Court, 1058 [1648], 28-141:15-2. Here the woman's husband brought the complaint to court describing the quarrel as follows: "...the named Ibrahim hit [her] with a stone on the right cheek then pulled her from her hair and dragged her..." The court asked him to produce witnesses which he did and they confirmed her story.
- <sup>14</sup> Al-Bab al-`Ali Shari`a Court, 1152[1602], 221:283-429.
- <sup>15</sup> Christian churches found such practices unacceptable, but shari`a courts functioned more as civil courts than they did as religious courts and provided services to anyone who came there.
- <sup>16</sup> Al-Quds Shari`a Court, 1054[1604], 27-134:324-1.
- <sup>17</sup> Law number 41 for 1951, "Qanun tashkil al-Mahakim al-Shari`iyya", Glossary 2, p. 3.
- <sup>18</sup> Law 19 for 1972.
- <sup>19</sup> Laila Sabagh, Al-Mar'a fi'l-Tarikh al-`Arabi Qabl al Islam (Damascus: Manshurat Wizarat al-Thaqafa wa'l-Irshad, 1975), pp. 43-46.
- <sup>20</sup> Sabbagh, Al-Mar'a fi'l-Tarikh al-`Arabi Qabl al Islam, p. 136
- <sup>21</sup> Ibn Abi Rabfa, Al-`Iqd al-Farid, p. 61.
- <sup>22</sup> Abu `Uthman Al-Jahiz, The Epistle on Sinbing-Girls of Jahiz, trans. by A.F.L. Beeston (Warmister, England: Aris & Phillips Lyd, 1980), p. 16.
- <sup>23</sup> Seoufi, p. 25.
- <sup>24</sup> Sabbagh, Al-Mar'a fi'l-Tarikh al-`Arabi Qabl al Islam, p. 150.
- <sup>25</sup> Al-Qasimi, Al-Hayat al-Ijtima`iya `Ind al-`Arab, pp. 24-25.
- <sup>26</sup> Sabbagh, Al-Mar'a fi'l-Tarikh al-`Arabi Qabl al Islam, p. 151.

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<sup>27</sup>Ibid., p. 139.

<sup>28</sup>Diana Richmond, Antar and Abla : A Bedouin Romance (London: Quarter Books, 1978) and Muhammad Farid Abu Hadid, Abu'l-Fawaris Antara b. Shadad (Cairo: Matabi' al-Akhbar, 1970).

<sup>29</sup>Muhammad Farid Abu Hadid, Abu'l-Fawaris Antara b. Shadad (Cairo: Ministry of Education, 1979), p. 6.

<sup>30</sup>Zafer al-Qasimi, Al-hayat al-ijtima'iya ind al-arab (Beirut: Dar al-Nafa'is, 1981), p. 12.

<sup>31</sup>Kamal Abdallah al-Hilw and Said Mumtaz Darwish, Customary Law in Northern Sinai (Cairo: The Printshop of the American University in Cairo: 1989), p. xxi.

<sup>32</sup>Laurie Brand, "Women and the State in Jordan: Inclusion or Exclusion?" in Yvonne Haddad and John Esposito, Islam, Gender and Social Change (New York: Oxford University Press, 1998), p. 101.

<sup>33</sup>Ibid., pp. 93-96.

<sup>34</sup>The examples here are too many to mention. But an interesting title which appeared both in Arabic and English, i.e. addressed to an international Muslim audience is by Abdel Ghany Abdel Rahman Muhammad, Wives of Muhammad: The Prophet and Wisdom of Polygamy (Beirut: Dar al-Massira, 1991).

## Chapter 3

## Women's History and Work

This chapter begins with the presumption that nothing in Islam forbids women from working or from owning property, from investing in income-producing undertakings or from administering a business. Islamic principles laid down by the Qur'an support this contention. For example, the Qur'an admonishes that women have a right to a share of what they earned as much as men have a right to a share of what they earned. Furthermore, the Qur'an calls upon the Prophet to "let-go" of wives who want to live a life of idleness (Qur'an 33:28), it guarantees a woman's inheritance and the right for her to own property. The purpose of this chapter is to put "women and work" within a historical perspective. It begins with women in early Islamic history and discusses issues pertaining to seclusion, "going-out" of the spousal home, gender mixing, and women's participation in their communities' activities. Since the early Islamic period is considered by Muslims to be a founding and idyllic period of Islamic history, it is important to understand its gender practices. The chapter will then present empirical data from shari'a court records dating from before the modernization of courts and law in the areas of Trans-Jordan and Palestine as well as other areas of the territories that once constituted the Ottoman Empire dating from the medieval period into the twentieth century. Records from al-Salt, Irbid, Amman, Nablus and Jerusalem will be used together with archival records of important centers from other parts of the Ottoman Empire to give a picture of how women actually lived and the types of work they performed before the modernization of law. Since the nineteenth and twentieth centuries were a period of deep

structural change for Jordan, it will be important to show conditions before the introduction of modern capitalism, nation-state systems, colonialism, and new class structures.

The purpose of the chapter is to demonstrate that the work of women is nothing new for Islamic societies, that in fact their working was taken for-granted, and to appreciate the role and contribution that women played in the economy. Reading early books of fiqh supports this contention; fuqaha' did not debate women's participation in the economy, rather the questions they discussed involved what obedience to a husband meant, how far that obedience extended and what were a husband's responsibilities toward his wife when she did not obey him. Did she lose her nafaqa? Nafaqa was the primary concern to the fuqaha' who looked at the husband's financial support as being in return for the wife's fulfillment of her duties. What these duties were, however, was another matter. Early Islamic marriage contracts illustrate the negotiability of marriage between husband and wife and how marital relations following the contract were decided at the time of the marriage and that included what she expected of him and what he expected of her (Islamic marriage contracts will be discussed in Chapter 6). Fuqaha' were mainly concerned with what constituted a good wife. "A woman is a shepherd in her husband's home" ("al-mar'a ra`iyya fi bayt zawjiha") and "your husband has a right over you" ("li-zawjig `alayki haqq"), are widely accepted metaphors among fuqaha' regarding marital relations. They are reciprocated by similar words defining the husband's responsibilities toward his wife.<sup>1</sup> But disobedience leading to denial of nafaqa was mostly defined as a wife's refusal to live with her husband, having sex with him and other inter-home issues. There did not seem to be any particular concern regarding her pursuit of a

craft or investing her wealth in some business venture, nor was there a concept that her place was in the home first. These issues become quite important in modern debates on women, the role of women and how Islam would interpret women's work which makes sense since it was bound to be an issue with the mobilization of women into government and business employment, a fact that did not exist before the modern period.

It is true that fiqh discusses ihtibas on a wife's part in return for her husband's nafaqa, but the word ihtibas had a different meaning before than it does today, i.e. a husband's right to "lock up" his wife. Rather, the legal urf of the word ihtibas as used by fuqaha' concerned a husband's exclusive sexual rights to his wife. In other words, she kept herself sexually for him and him alone. Obedience was in return for nafaqa and the nature of the marital relationship was set in the marriage contract. This will be the subject of chapter 6 of this book, it is important to make clear at this point that neither the shari`a nor shari`a courts found anything wrong with women working. Neither did fiqh for that matter, the concerns of fuqaha' focused on the importance of protecting women and harmony between husband and wife.

### Women in Islamic Turath

Islamic history tells us that the Prophet Muhammad's first wife, Khadija bint Khuwaylid, was at one time his employer, "known for her exceptional morals, characterized by decisiveness, wisdom, and chastity; her people nicknamed her 'the Pure' (al-tahira). She was a woman of means who hired men to undertake trade for her, and her business was active and lucrative."<sup>2</sup> `Aisha, daughter of Abu Bakr, was a known Islamic scholar whose abilities as narrator of Hadith was recognized and acceptance of her fatawi surpassed

most of the Prophet's male companions. The Caliphs Abu Bakr and `Umar often asked her opinion about important issues.<sup>3</sup> Zaynab b. Jahsh was skilled with handicrafts and fashioned leather items and sold them. In his interpretation of Qur'anic aya 33:28, Yusuf `Ali highlighted the role of the Prophet Muhammad's wives as ideal examples for Muslim women to emulate. That example was not one of idleness but of service to their community.

`A'isha, daughter of Abu Bakr, was clever and learned, and in Hadith she is an important authority on the life of the Prophet. Zaynab, daughter of Khusayman, was specially devoted to the poor; she was called the "Mother of the Poor." The other Zaynab, daughter of Jahsh, also worked for the poor, for whom she provided from the proceeds of her manual work... All the [Prophet's] Consorts... had to work and assist as Mothers of the Ummah. Theirs were not idle lives, like those of Odalisques, either for their own pleasure or the pleasure of their husband... [Qur'anic Surah] 33:28 tells that they had no place in the sacred Household if they merely wished for ease or worldly glitter. If such were the case, they could be divorced and amply provided for.<sup>4</sup>

Islamic history paints a vivid picture of the contributions of early generations of Muslim women who fought beside Muslim troops, nursed and treated the wounded during the Islamic wars of expansion, took over the reigns of power when necessary and whose oaths of allegiance were a normal part of the community's hegemonic structure. Islamic turath (traditions, heritage, myths) is full of its heroes and heroines; however,

only a few heroines are known by name today. Perhaps due to ignorance of the facts, the media in the Islamic world does not emphasize the stories of these women. When women are featured in story, film, television or schoolbooks, it is the chastity, sacrifices, or religiousness of these women that are emphasized rather than their significant intellectual, economic and political contributions. Here the examples are many. Al-Khansa' has been made famous for her recitation of poetry and her religious stand on Islamic principles. But al-Khansa' was well known to her community for her veterinary skills and was sought as a healer of horses and camels. It is said that a potential suitor was attracted to al-Khansa' after seeing her treating a camel of dermatitis and noted her skills as a healer.<sup>5</sup> In other words, not only were women skilled and active, their abilities were recognized and admired. The historical discourse that presents a one-dimensional picture of women's role and contributions in the past and present badly needs correction.

Stories of heroism in war and generosity in early Islam are today reserved to the male companions of the Prophet. While Jordanian schools teach pre- and early-Islamic Arabic poetry, it is the accomplishments of tribes and clans as represented by their men that are selected for reading and recitation. Yet women went to war during the Jahiliyya and early Islam and this is illustrated in the poetry of the period as illustrated by the ideals of feminine beauty that pre-Islamic and early Muslim Arab poets sang about. Interestingly, such ideals reflected the same tribal standards expected of the ideal tribal "man." The "looks" of the woman described seemed to be less important than her personal traits which were judged on ideals of morality, physical strength, courage and generosity. <sup>c</sup>Amru b. Kulthum's description of his beloved is representative:

There she is tilting with the knights, her face glowing with

determination, riding her horse, taming the [men] with her charismatic presence, and intoxicating their souls with her beauty and [their] love.<sup>6</sup>

Another example is that of Al-Sulayk b. al-Sulka who tells of a day when his enemies attacked him intending to kill him. He asked refuge from his neighbor Fukayka who brandished her sword and fought to protect him.<sup>7</sup> Here we see beauty admired in a strong woman of courage who provides help and support. She is strong, chivalrous (murūwa), practical yet feminine.

While women in early Islam generally stood back during battle and acted as adjuncts and assistants, bringing water to warriors and helping remove the wounded from the battlefields and then nursing them—traditions shared by nomadic women all over the world—Muslim women also took up arms when forced to do so. An early example is that of Safiyya bint `Abd al-Muttalib who witnessed the battle of Badr (624) and was wounded at Uhud (625) where she shielded the Prophet Muhammad by placing herself between him and the attacking Meccans and took a wound meant for him. She is also known to have attacked and killed a male spy who had infiltrated into a stronghold in which the wives of the Prophet and his Companions were shielded during the Battle of al-Khandaq.<sup>8</sup> Another example is that of Nusayba bint Ka`b al-Ansariyya, a famous Companion of the Prophet who acted as a missionary for Islam and who followed the Muslim troops since the very early ghazwas (raids) launched by the Muhajirun (early converts to Islam who went on Hijra from Mecca to Medina with the Prophet) when they were still fighting for their very existence against the power of the Meccan Qurayshites (enemies of early Islam). As a recognized leader of her community, she gave her bay`a

(oath of allegiance) to the Prophet at `Aqaba, saw battle at Badr and during the Ridda Wars.<sup>9</sup> Rendering the bay`a by women was an expected tradition in Arabia and exemplified the political power they enjoyed in early Islam.

Fighting to protect one's community was not confined to early Islam as an extension of early Islamic traditions stemming from pre-Islamic tribal Arabian traditions; the same phenomenon repeated itself in urban communities under siege by invaders. A good example is the 1798 scene recorded by `Abd al-Rahman al-Jabarti of the French invasion of Alexandria against a brave but futile effort of its population armed with rifles against Napoleon's cannons and troops. After the battle was over, the bodies of women and men were found on the town's rooftops still clutching rifles with which they were shooting at the French troops. The modern examples of Jamila Buhrid, Jamila Bubasha, and the other women fida'iyin (freedom fighters) who fought for Algerian independence against French occupation make one pause to reflect on women's participation in Arab history. The same must be said about Palestinian women of the Intifadah and the sacrifices they continue to make in their refusal to surrender to Israeli occupation, and their will to make the world take note of their struggle for human dignity and national rights.

Fatma Mernissi's work The Forgotten Queens of Islam,<sup>10</sup> reminds us of women who ruled in their actual right, minted their own coins, and were recognized as leaders of their people. Her study is a history of the important political role played by women particularly at times when there was a vacuum in leadership that left their societies vulnerable to outside invasion and internal chaos. The great Muslim medieval traveler Ibn Battuta, witnessed the power of women in various parts of the Islamic world.

“Among the Turks and the Tatars,” wrote Ibn Battuta, “their wives enjoy a very high position; indeed, when they issue an order they say in it ‘By command of the Sultan and the Khātūns.’ Each khatun possesses several towns and districts and vast revenues, and when she travels with the sultan she has her own separate camp.”<sup>11</sup> The power of women in the harems of Sultans has been studied extensively but the usual approach has been to repeat the myth of oriental despotism this time in the form of a power-hungry woman standing behind the throne.<sup>12</sup> A more recent work by Leslie Peirce has redrawn the picture of life in court, dismissed the oriental despot model and showed how in actuality power was diffused rather than centralized in the Ottoman court. While Leslie Peirce’s work on the Ottoman imperial harem called for a rereading of the harem as an institution, it also showed the actual political power played by women not “behind the throne influence” as presented by the normative picture, but as direct holders of power and participants in decisions making.<sup>13</sup> Another important study is Farhad Daftary’s article on Sayyida Ilurra who ruled over Yemen as representative of the Fatimid Caliphate in Egypt during the eleventh and twelfth centuries.<sup>14</sup> There was also Sultana Radiyya who ruled the Sultanate of Delhi in place of her father during the thirteenth-century and was finally overthrown by princes who resented her power.<sup>15</sup> The same fate was met by Shajar al-Durr who hid news of her Ayyubid husband’s death to allow his son to return and lead Egypt’s malukid troops against the Crusaders. Marrying Aybak, the leader of the mamluks, allowed Shajar to rule until a plot did away with her. Mamlukid houses became the power in Egypt and greater Syria after that and were from then on consolidated through the marriage of the widow of the deceased chief mamluk to his military heir who could only succeed if his predecessor’s widow chose and married him. The power held

by women head of mamlukid households was therefore quite impressive which is evidenced by the wealth they controlled, much of which they bequeathed as waqfs (religious endowments) benefiting people from Damascus to Jerusalem to Cairo.<sup>16</sup>

The best-studied contributions by elite women concern the wives of sultans, mamluks, and amirs (princes). Here the activities were directed mainly toward providing services and institutions of importance to Islamic societies. Using their wealth, elite women spent outright on projects benefiting their communities, the contribution often being in the form of a waqf. The early Islamic period saw women contributing their money to help the poor, to arm Islamic warriors in their fight against Quraysh, in buying and freeing slaves. They were called upon by the umma (Islamic nation) to donate their wealth and jewelry whenever there was a need as during times of war, national causes, earthquakes or other disasters. The first such recorded case happened at the time of the Prophet when women attending Friday prayers in the mosque in Medina were asked to donate their jewelry and Bilal, the first man to call to prayers in Islamic history, was said to have gone around and collected these donations.<sup>17</sup> Modern elite women continue to carry on their share of responsibility in providing services, institutional assistance and feminist activism.

Islamic architectural turath (heritage) owes a lot to the building activity and endowments left by the Muslim elite. Structures like mosques, schools, sabils (buildings housing water-wells and areas for ablution and prayer), water-fountains, hospitals (maristans), and beautiful tombs and mausoleums commemorating beloved ones and important rulers, all figure in this rich Islamic heritage which extends from Central Asia all the way to Morocco and the Atlantic ocean. Women contributed their share of these

endowments and building activity and their accomplishments in these areas are rather stunning if relatively unknown and therefore unrecognized. Recently, scholars began to focus on building activities of women, the extent of which according to Gavin Hambly, “contradict the notion of the invisibility of women with indubitable evidence that women were lavish patrons of architecture, and therefore agents in the spatial organization of urban centers.”<sup>18</sup> Hambly’s edited volume, Women in the Medieval Islamic World, presents a number of important articles challenging the persistent view of women’s “invisibility” in the history of the Islamic world. Covering various areas of the Muslim world—from India, Syria, Anatolia, Afghanistan and Egypt--, the volume details the many activities in which women were involved particularly “building construction” which included palaces, gardens, mosques and mausoleums. Building patterns of mausoleums are especially interesting, for as Hambly points out mausoleums were built by women to entomb and commemorate members of their families. At the same time mausoleums were built in “commemoration of individual women...[who] were sufficiently esteemed to warrant commemoration after their deaths.”<sup>19</sup> Some of the examples he used included a mausoleum built by Shah Janan for her niece in Agra and a tomb tower built for Muhammad Jahan Pahlavan by his mother, wife of the Seljukid Sultan Tughril b. Muhammad in Narchivan.<sup>20</sup> Describing the extent of women’s building contribution in the Safavid and Mughal empires, Stephen P. Blake made the following comment that speaks to the role played by elite women builders in various parts of the Islamic world. “The kind, size, and location of the buildings the women constructed reveals a great deal about their freedom, the resources they controlled, and their impact

on the larger world.”<sup>21</sup> His words speak for the contributions made by women in Islamic history, a role that seemed to be natural and expected by the community.

### Education and Theology

From the above we learn that women had an important role in building what today is cherished as the Islamic heritage in the form of palaces, tombs, hospitals and schools. Yet little is known about this among Muslims today. As to women’s professional and business pursuits, that is not given due attention which is surprising given the availability of the information and the national pride to be gained from showing women’s active role in Islamic civilization putting it at par with other civilizations which have claimed their women and consequently improved their global image.

A more complicated picture has to do with the theological role played by women. It is commonplace to accept that Islamic law has been the exclusive product of males with very little input by women. This is accepted tacitly by Muslim communities today that delegate religious issues almost exclusively to men, a fact that has kept feminists from shunning the Islamic discourse as a route for changing the situation of women today and of introducing a different outlook toward Islamic culture. Shunning or keeping out of theological debates pertaining to gender has hurt the cause of women’s rights because Islamic discourses continue to be the most familiar among the very people feminists want to influence. It is also the dominant legitimizing instrument used by conservative elements to confine women’s empowerment and participation.

Women's role in formulating theology can be seen in two different ways. First, notwithstanding who renders the formal opinion, society is made up of men and women and therefore women are an important part of `urf formation. Their opinions are heard, they are consulted, and their actions are central to social norms. In other words, women figure strongly in determining the laws of their societies whether or not they are actively involved in the formal formulation of the word. This becomes evident at times of change when new gender laws are discussed and activists are surprised that women seem to be as unwilling to accept change as are men even when it concerns giving women greater freedoms. What is forgotten is that women are integral to civil society and that is where legal `urf is formed, conserved, or changed. It is therefore imperative that discourses followed by civil societies be challenged and from within the very references that are used if there is a chance to change attitudes toward gender issues.

Second, historical research tells us that women were in fact active in formulating laws particularly through transmission and interpretation of Hadith. But to be able to make this point one has to first challenge the normative view of Muslim women's essential seclusion, for how can she be a participant in the intellectual and theological life of her community if she was secluded in harems and largely uneducated? Here again a return to the formative "ideal" period of Islam will help in fighting this type of stereotypical image. It may be true that the Prophet's sira (history and traditions) informs us that Muslim men were told to address the Prophet's wives from behind a hijab (veil); yet, as shown earlier in this chapter, women were quite active in public life. Without debating what the Qur'anic ayas regarding the hijab meant—already successfully confronted by Fatma Marnissi<sup>22</sup>—or discussing how universal this admonition of the

hijab was intended, a separation should be made between women's actual everyday life and the matter of clothing. Wearing a veil does not reduce a woman's capabilities as a professional anymore than not wearing a veil reduces her abilities as a mother and respected member of her community. Symbols of oppression used by women's movements today are of little validity to understanding a past where such clothing were the norm to begin with depending on time and place. Here the sira helps us out. Numerous stories are related about meetings between the Prophet and women Companions (sahabiyyat) and wives of male Companions (sahabi). Examples include Hadiths recorded by Bukhari and Muslim about the Prophet going into a woman's house to ask about her health, "I feel compassion for her since her brother was killed while he was with me." Or the story related by a Companion, "the Prophet, God's Peace be upon him, visited us and asked my mother, my aunt Umm Haram, and I to rise to pray with him." There is also the story of the Prophet's offer to Asma' bint Abi Bakr to ride behind him out of compassion since she was carrying dates from a long distance and Asma's refusal because her husband was too jealous.<sup>23</sup> There are also many stories about the Prophet's wives meeting with other men, for example when they were asked to quote a Hadith. There are also stories about the Prophet's first women Companions and the wives of his male Companions meeting together openly at particular locations and events without being segregated. Besides, women attended Friday prayers, sat with the Prophet to receive his wisdom as well as listened to his Companions at well-known times like during their bay`a rendering.<sup>24</sup> It seemed natural in these stories that women be present and no explanation seemed to be necessary for why they were outside their homes.

The historical evidence from Hadith and Sira refute the particularistic interpretations and/or generalization of selected Qur'anic ayas that are used misogynistically and applied to all women at all times and all places. One Islamic thinker correctly asks, "if the meeting [between men and women] was forbidden what are the proofs?" The Qur'anic words "waqarin fi buyutakun" seems to be the usual evidence used to generalize about Islam's requiring women's seclusion. Yet neither the Prophet's wives nor those of his Companions stayed secluded at home. The answer then is that such admonition depends on time and place, particular conditions may require such seclusion and particularistic Qur'anic words should not be generalized. One logical conclusion would be "that it was khuluwwa and not meetings that were forbidden" and by khuluwwa is meant the secluded meeting between a man and a woman which could result in sexual misconduct.<sup>25</sup> Therefore it is not surprising that archival records dating from the pre-modern Ottoman period paint a picture of a very active and complex Arab society. People were quite litigious and women came to court with their problem and disputes over personal quarrels<sup>26</sup>, property and money disputes<sup>27</sup>, contracting marriage, suing for divorce, asking a husband for financial support, fights over particular advantageous spots in marketplaces, asking for payment of fees for jobs done, receiving certificates as waqf administrators, making declarations of the property they owned and that they owed no one any debts, and so on. Pretty complex society, very noisy, active, people who debated and quarreled, who knew what was theirs and went about getting it. Far from being secluded to the "private" sphere, women found it very natural to come to court, sell produce and goods in the marketplace, act as head of guilds, were very often assigned by court as waqf executors and as wasis (guardians) over their children. Furthermore, Court

procedures and legal decisions did not differentiate between men and women, both genders had to appear in person in court or deputize someone, and each had to present evidence and witnesses of corroboration.

Once the idea of women's seclusion is put into question, it becomes easier to conceptualize the important role women played in the formulation of law and legal urf, after all laws are rules agreed upon and enforced in a particular community. At the same time, recent scholarship is contributing to our knowledge of the actual theological contributions of Muslim women in this process of interpretation particularly during the founding period of Islam. Here tabaqat literature (biographical dictionaries) has proven to be most valuable. Tabaqat literature follows a chronological division of important Muslims relative to the time between the period in which they lived and the life of the Prophet Muhammad. The first level consists of the Companions who were part of the founding generation of Islam, who lived, fought and went on Hijra with the Prophet. Within the generation of Companions a division is made between those closest to the Prophet, particularly early converts and those who fought in the early Islamic maghazi (campaigns), at Badr and Uhud. The Prophet's wives, wives of his Companions and women Companions who were early converts to Islam, went on Hijra, gave their bay`a, and fought during the early battles, were also included in this early generation of Companions. This early generation is followed in importance by that which follows it chronologically, that of the tabi`un (followers) and the further away from the time of the Prophet the lesser the rank given to its members because the information they relayed could only have been second hand and not from direct witness as was the case with the sahaba.

As authorities on Hadith, the earliest women Companions of the Prophet, the sahabiyyat, constituted a significant proportion of those reported in bibliographical dictionaries. Figures change from one source to the other. According to Ibn Sa`d the Prophet had 529 sahabiyyat among whom 94 were transmitters of Hadith and Ibn Hibban estimates that 16.5% of early “trustworthy transmitters” were women. With the passage of time however, the number of women transmitters mentioned in biographical literature shrank. Ruth Roded who wrote an important work about the subject, concludes that this shrinking was to a large extent due to state structuralism particularly during the Ottoman period “when formal institutions of learning were established, women were not appointed to teaching positions but continued to study and teach in informal frameworks... [women] scholars...did not hold endowed teaching positions in the madrasa colleges; nor did they hold official posts.”<sup>28</sup> In other words as the scholarly establishment became bureaucratized, women scholars began to lose recognition in biographical collections. As early modern empires, like the Ottomans, depended on bureaucracies to ensure their hold over their provinces, standardization became a requirement and the legal system as a whole, including the religious hierarchy, became more state controlled and streamlined to suit state needs. Just as the Ottoman state made it a legal requirement that all marriages be registered in courts and fees paid to the officiating qadi, so were Muslim scholars, muftis of the law, court judges, and recognized authorities in theology also streamlined. Since women had never been involved with formal institutions as holders of professorships and did most of their teaching privately<sup>29</sup>, the role of women as theologians and educators was bound to lose recognition and significance with greater state-structuralism. In such a situation where an active civil society was giving way to

state-structuralism, women whose power lay within their communities began to lose the position they held in various aspects of public life in which they had enjoyed a degree of power. The process of structuralism and women's loss of agency would grow and become institutionalized with the modern nation-state with its dependence on traditionally male-dominated institutions like the military, `ulama' hierarchy and bureaucracy. Women had not been involved in any of the jobs pertaining to these professions, even though the names of a few women qadis are mentioned.

This does not mean that women ceased to be interested in theology or to be active in intellectual life with the growth of state-structuralism. Their activity became less visible while that on the official level involving only men became visible and all-important and hence became the focus of those who later studied the history of Islamic law and theology. One has to look for women's participation at the local and informal level and in sources that are unusual for the study of theology and theologians. Leslie Peirce's work on `Antab using Ottoman court records illustrates this point by showing the existence of circles of women faqihat, who met together regularly to discuss theological issues and who also invited male theologians to come and discuss these issues with them. Such circles were organized and led by women faqihs. Most of these sheikhas, as they were known, continued a long-standing tradition of apprenticeship at the hands of a father or uncle who was himself a theologian. Training female members of a family in learning and theology seemed to be traditional to `ulama' families. Not only did women study with famous `ulama', some very famous Islamic scholars are known to have studied with women teachers and received ijazas (certificates of competence) from them. A good

example is Umm `Umar al-Thaqafiyya with whom Ahmad Ibn Hanbal, the founder of the Hanbali school of jurisprudence, studied.

Around 405 of the 1075 women (38 percent) in al-Sakhawi's biographical collection for the ninth/fifteenth century studied, received licenses attesting to their learning, and taught others. Among these women are 46 of the 68 women from whom the author received an ijaza certifying that he had studied with them, 43 who had taught his teacher and at least 9 with whom his friends had studied. Eleven women were his pupils, and 2 received ijazas from his teacher. In other words, the large number of learned women in this dictionary results partly from the author's personal contacts with them and with their students and their teachers.<sup>30</sup>

How widely were women educated before the appearance of centralized modern-states? The answer is still open for further research but already the picture of an ignorant oppressed female is changing rapidly. Al-Sakhawi's bibliographical dictionary mentions 1,075 biographies of women who received religious education during the medieval period. They are said to have "memorized the Quran, studied with a particular scholar, or received an ijaza."<sup>31</sup>

Studying with a particular scholar was traditional for the medieval period and continued through the early modern period. In the case of women, the student-teacher relationship was usually based on kinship and in most of the cases in which women later taught, they came from middle-class clerical families where learning was an acknowledged part of a family's life. Women were also directly involved in teaching

other female members of their families. A good example is Zaynab al-Tukhiyya (d. 1388) from the village of Mahallat Rih in Lower Egypt who was taught by various members of her family as a child, memorized the Qur'an at the hands of her father with whom she studied important works on Shafi jurisprudence like Qazwini and Isfahani's works.

Fathers were not the only ones who instructed daughters, mothers did too especially when the father was not available. "The mother of Umm al-Husayn bint 'Abd al-Rahman b. 'Abd Allah (d. 1422) herself instructed her daughter in certain basics—writing, particular chapters of the Quran, and al-Nawawis popular collection of forty hadith, the Arba`in."<sup>32</sup>

Husbands instructed their wives once the wife has left the family home and moved in with him. Since clerical families intermarried, education of its female members continued after marriage through direct and indirect instruction given that this was the vocation involving most members of the family. The medieval Bulqini family of theologians is known for its many learned women members whose biographies are to be found in Sakhawi's collection. As Jonathan Berkey notes quoting al-Sakhawi's reference to women scholars "Indeed, so accepted was the education of women among families of learning that al-Sakhawi was able to comment regarding one woman that, although he had no direct knowledge of her education, 'I do not doubt that she had obtained ijazas, as her family was well known [for its learning]."<sup>33</sup>

Husbands and fathers were also known to take their wives or daughters to attend lectures given in local madrasas and mosques. Some women followed regular courses given in these institutions although not on an official basis. Zaynab b. 'Abdal-Hilim ibn al-Hasan al-Iraqi al-Qahiri (d. 1461) is said to have begun to attend with her brother in classes taught by her father while no more than five years of age. Another, Zaynab bint

Abd Allah (d. 1452) is said to have begun even earlier at the age of two. The daughter of Ibn Hajar al-`Asqalini is said to have accompanied him to classes when she was only three years old and the daughter of the famous judge Taqi al-Din al-Subki (d. 1403), is noted for having been a scholar and transmitter of hadith having received licenses “from some of the leading traditionalists of Cairo and Damascus before her fourth birthday.”<sup>34</sup> In other words, women studied theology, acted as transmitters of hadith and were granted ijazas certifying their abilities by the teachers with whom they studied, a number of whom are recognized as important authorities on Islamic jurisprudence until today.

#### Endowing and Administering Waqfs

Religious endowments were an important way of providing services to Islamic communities. Hospitals, schools, marketplaces, hostels, housing, and water-fountains were all built by charitable persons and endowed with property whose income would be spent on the institution endowed. Waqfs were also set up to benefit already existing structures, to renovate them or help with their upkeep. Some waqfs provided scholarships to students of theology or medicine, and a waqf from nineteenth century Nablus illustrates that book collections, being highly prized, were also set up as waqf in libraries for use by scholars.<sup>35</sup>

Philanthropic endowments are called waqf khayri and are directly intended to benefit the Islamic community. They were therefore often in the form of large structures and usually established by members of elite and upper classes. But the middle classes were also active in setting up charitable endowments although most of the waqfs set up by middle and lower classes were in the form of waqf dhurri, established to benefit the

endower while he/she is still alive, his direct family and later his descendents, and ultimately going to benefit a particular institution or service when the line of heirs benefiting from the waqf has run out. The official deed establishing a waqf was normally registered with the qadi in shari`a court and today Jordanian archives contain a wealth of information about this unique system for handling and preserving—even entailing-- property for future generations or of designating property to benefit certain individuals or institutions that donors believed were needy. It is therefore no surprise that even though the majority of waqf dhurri benefited sons and brothers or all members of the family equally or allotted according to Islamic inheritance laws, a substantial percentage were set up for the exclusive benefit of daughters or slave-women attached to the household. Here, it is usually the mother who set up the waqf to benefit the women of her family and insure their welfare after her death when her protection and support ceases.

Substantial information about society and social relations is made available from reading waqf documents. The numbers of endowments, the value of property involved, the type of property that goes into the waqf, the gender of benefactor and who benefits, tell us about power relations and in regards to women, the power that was held by women of wealth within Islamic societies. The question of empowerment was raised by a number of women activists whom I met in Jordan who considered the lack of financial power as the main cause for women's weakness and submissiveness today. As Salway Nasaser, the dynamic NGO Coordinator of The Jordanian National Committee for Women explained to me, women need to be empowered within their families before we can have any hope of seeing them play any effective public role within Jordan. Awqaf records tell us of the financial power enjoyed by women during earlier periods of Islamic history and of their

ability to direct their wealth wherever they wished. The financial power clearly gave them an important status within the family and the extent of property held, inherited and endowed by women, was quite substantial and informative of family-life and the position enjoyed by women within the family.

While income from endowments was divided according to the instructions left by benefactors, the following generation of descendants to those named in the document usually received benefits according to Islamic inheritance laws unless otherwise indicated like for instance if the waqf is specifically left to only the men or only the women of the family in perpetuity; this however is not the usual case. Since benefactors of waqfs were sometimes slaves, the document may indicate that they would receive income while alive but it would not be inherited by their descendants. The same could happen with anyone named in the document, so that while girls could be privileged in the share they received, after their death the income could be divided in any form that the benefactor decided upon and included in the document. In other words, waqf dhurri was a way by which a person could preserve his/her property to be spent in the way they wished at the time they set it up. If there are no instructions or the instructions run out with time, then Islamic inheritance laws kick in and are applied. If there are no more persons to benefit from the waqf as is the case when there are no descendants or heirs, then the waqf reverts to the state or to any charity that may have been chosen by the benefactor in anticipation of such an eventuality.

Waqf documents could be a few lines long or large elaborate documents depending on the assets and property involved. While documents setting up waqf by princes were often beautiful elaborate and sometimes gold-leafed booklets, smaller waqfs

were simple documents in court. Not only were the names of those to benefit from the waqf detailed in the original document establishing the waqf, so were the names of those to administer it also included. Administrators of waqf were chosen by the qadi when the position was vacant. The administrator of the waqf could assign deputies answerable to him/her, but he/she in turn was responsible to a nazir who was something of a guardian over the waqf. While it is believed that women were allowed to administer but never to be the nazirs of waqfs, court records prove this not to be so since women were often assigned as nazirs by court with full authority over the waqf. For example, Saliha bint Hussain al-Jorbaji was assigned by the qadi as nazirat of her father's waqf to replace her father after his death.<sup>36</sup> In short, women figured strongly in all aspects of waqfs, they endowed them, were named as administrators or recipients of income from them, and were assigned by qadis to supervise them.

Al-Hakim al-Shar`i al-Hanafi...whose signature and seal are here fixed...appointed the holder of this legal document...the woman Zahira daughter of...as partner with her aunt, the woman Hajir daughter of...to oversee her grandfather's waqf located inside and outside the town so that she would participate with her aunt in the administration of the waqf regarding building, upkeep, with the good of the waqf in mind, and to collect its income and distribute it to its recipients. They should do this by conferring and acting together...(Glossary 3, Chapter 3)<sup>37</sup>

Since establishing waqfs was normal for Islamic societies and women were recipients of income from them<sup>38</sup> either through inheritance or wages for administering

them, waqfs were a very important source of income for women that allowed them to support themselves and their families, and to later set up endowments of their own. Given the extent of awqaf set up and later taken over by the modern state to administer through a Ministry of awqaf, the financial power held by women before the state took over the awqaf system cannot be over-emphasized. More importantly, these activities were not exclusive to upper-class women who were particularly important in setting up and administering waqfs, this type of activity was shared by women of the middle-classes and even small property owners. Marilee Meriwether gives the following estimates regarding endowments set up in early eighteenth century Aleppo which was experiencing an upswing period in its economy.

A wide spectrum of property owners were now involved in setting up these endowments. Sixty-two percent of them were set up by individuals who were not from upper-class families, most of whom were probably smaller property owners. Endowment activity therefore was not confined to one class, nor was it gender specific. Women were quite active as founders of endowments. Two hundred fifteen endowments were founded by men, 241 by women and 11 jointly...One hundred sixty-five endowments (35 percent of the total) were established by [upper class] families, 86 by men, 77 by women, and 2 jointly...<sup>39</sup>

One interesting reason for setting up a waqf dhurri was as a means of protecting the rights of women and minors from the greed of cousins who may place demands on the property. Waqfs in such cases were then simple agreements between members of the

family to ensure the relative rights they had to a particular home, usually the one they lived in. Joint-properties were therefore common. Al-Ya`qubi concludes his study of the waqfs of Jerusalem with “as for women, they most often willed their waqfs to their daughters alone even when the daughters were married especially when the donor of the waqf is a widow and has no male sons and the intention from the waqf was to provide the daughters with income especially daughters who are not able to work and make a living.”<sup>40</sup> Meriwether recorded two Allepan waqfs set up by a mother and daughter to protect each other’s rights in case one of them died and inheritance laws would allow other family members who do not live with them to dispute their rights to the use of the property. “Zalikha Hamawi and her daughter, Layla Hamawi (Zalikha had married her cousin Muhammad), each owned shares in a house in Frafira.... Zalikha owned sixteen shares of the harem part of the house; Layla owned eight shares of the harem as well as all of the dar al-uta, inherited from her father and brothers. They each set up an endowment, naming each other as primary beneficiaries. After their deaths, the house went to Layla’s husband and their children and descendants.”<sup>41</sup> The second case Meriwether presents from Aleppo shows how property was controlled by women and passed through them to their children by means of waqfs. “The wife and four daughters of Hashim Muqayyid had inherited nineteen shares of their residence in Frafira from him. With this property they set up an endowment to benefit themselves, stating very clearly that no one else would share in it or dispute their arrangements.”<sup>42</sup>

### Property and Extending credit

In his ground-breaking study of the shari`a courts of Ottoman Kayseri in Cyprus, Ronald C. Jennings pointed our attention to the frequency by which women appeared in these records as debtors and creditors, “the latter little more than the former.” Shari`a court records for Jordan and Palestine show the same patterns with women often appearing in court to repay a debt they owed or to clear a debt owed them that had been repaid, to demand the payment of a debt owed them, or to transact a brand new contract in which they are loaning money to another, often a member of her family but mostly the loans made by women were made on a commercial basis and were not exclusive to family members.<sup>43</sup> Examples of such loans from nineteenth century Jerusalem archives include a loan of 500 qirshs from a woman called Sarah to a man called Yusuf Zain<sup>44</sup>, a loan of 1800 qurshs from Amna al-Ja`uni to Anduni al-Shama`<sup>45</sup> and Amuna’s loan of 21,520 to Ibrahim Rizq.<sup>46</sup> Many such loans were made in return for the payment of interest. To get around Islamic laws against the taking of interest, methods resorted to included bay` wafa’i which “entailed that the debtor would sell a piece of property to the lender equal in value to the amount borrowed, for an agreed period of time after which the loan was discharged.”<sup>47</sup> One such case from Haifa reads “Because I owe the woman...the sum of 800 qurush...I have given her for one year as security against the loan a room in a house I own...she may live in it or let it out for the interest (fayiz).”<sup>48</sup>

Women also lent money, goods or property to family members, like brothers, fathers,<sup>49</sup> or husbands and, as court records illustrate, husbands often owed their wives for various types of loans. Matraka bint Sulaiman al-Mu`awwid of Amman was owed by her husband 18 plus Riyals, 14 goats and 4 sheep, which he borrowed from her as registered

in court.<sup>50</sup> Borrowing from a wife did not seem to be a problem with men since the records show that this was quite normal and very often one comes across cases in which husbands are repaying a debt to a wife and a wife indicating that she in fact has been repaid. Sometimes such cases look artificial and are more in the form of assuring that her property would remain with her husband and children and not disputed by any of her family members, but most transactions appear to be genuine especially since a lot of the repayment takes place at the time of divorce when all financial matters between the couple have to be settled. A loan recorded in the shari`a court of al-Salt is perhaps more explicit in its wording in regards to the exchange of money.

Wadha bint Mar`i al-Yasmin pointing to her adversary, her brother Tafish...who is present with her in court, both of whom are...residents of al-Salt, claimed that her brother Tafish here present with her, owed her the amount of 11 majidi riyals representing a loan she extended to him according to this matured sanad (credit bill)...”<sup>51</sup> (Glossary 6 Chapter 3).

As to the source of their money, women inherited money, received it as dowry in cash or kind, earned it through work, trade, profit from investments, or as income from inherited waqf. Court records do not tell us directly the source of the money that women were lending out, but the records give a good indication of the amounts of money women controlled and death records give lists of the property women left behind for their heirs. Inheritance records, marriage, divorce and other records dealing with personal matters, show them to be important sources of money and property for women. Disputes over transactions in the marketplace or over goods illustrate the trade activities of women and

that buying and selling were important areas of occupation for women. Sometimes women inherited debts due to a husband or another member of her family, or she was recipient of a portion of a diyya compensation due to the murder of a member of her family. Findings from Jordanian and Palestinian courts regarding women lending or borrowing money fit with Jennings description of Kayseri.

When contested disputes arose concerning problems of credit, those involving women were considered at court by exactly the same procedure as similar cases involving men. Women could make formal claims against any man, including their fathers, grown sons, and husbands. Although sometimes they named vekils to handle their cases, most often they managed their own affairs at court. Women's place may have been in the home in 17th century Kayseri, but there was a fair chance that she had a little nest egg tucked away, owned some animals, a field, or even her own home. Such a situation is very much in accord with the strictures of Islamic law, even though it differs considerably from the stereotype of Muslim or Ottoman women. The successful participation of women in the business of credit in the city probably depended upon the existence of well-organized credit and business procedures and of a vigorous court.<sup>52</sup>

Declarations of death and property of the deceased was normal for Islamic societies. When a person dies, his or her property is assessed and registered in court so that heirs could receive their legitimate shares. Sometimes a person came to the court to declare all they owned and to indicate that they owed no debts to anyone and declared who their heirs were so there would be no doubt regarding who inherits after the person's

death. Therefore, “death” records are an important way of learning about society, property, and details about how people lived including their material wealth. Death records of women show the same patterns as those of men, some were quite poor<sup>53</sup> leaving hardly anything behind, others belonged to the middle-classes with relative wealth,<sup>54</sup> while others were quite wealthy and lived very well. The death record of the daughter of a fifteenth century Jerusalem goldsmith shows a woman of relative wealth, with an extensive wardrobe which included silks and furs, various types of jewelry and a significant amount of silver and furnishings.<sup>55</sup>

A lot of the property that women held came from inheritance. Like boys, when still minors, control of the property was held by the wasiyy who is expected to guard this property and invest it in safe and profitable ventures. A wasiyy was answerable to the court regarding the property of minors. Once the girl has reached majority, the wasiyy is expected to turn over to her whatever property he is holding in her name and usually accounts for it in court. A typical declaration would read: “On this day the adult virgin, daughter of...received from the hands of her paternal uncle...the amount of five hundred qurush due her from her father’s estate after her declaration that she has now reached majority and can be trusted to care for her property.”<sup>56</sup>

Neighbors debating property lines or building rights in court provide another way of learning about women and property. Such records are very interesting because they tell us about urban laws regarding building, neighbors’ rights as well as the rights of property-owners.<sup>57</sup> In one such case from nineteenth century Nablus, a woman took her neighbor to court because she stopped her from building in a piece of land that stood between their two properties. Since the woman bringing the complaint owned most of the

surrounding area, she asked the court to clear the matter and allow her to build. The defendant, represented by a wakil who did not seem to be related to her, disputed her neighbors right to build since said building would encroach on her property. In Islamic law, maslaha (preference) is taken into consideration in matters of building so that if a building blocks the sun or fresh air from another, the greater harm is taken as a basis in the court's decision. Here however, the court's experts reported that the intended building would stand far away from the neighbor's house and so the court found against the defendant and ordered her to stop bothering the neighbor (Glossary 7 chapter 3).<sup>58</sup> In the details presented by this case we learn of the extent of property owned by women, their understanding of the legal system and systematic use of the court system to dispute their rights. On the other hand, lack of knowledge of the legal system or of documentation went against women as would be expected. For example a woman came to court to sue a man indebted to her deceased husband which she claimed as an inheritance for her and her children. "The woman Fatima bint `Awwad from the village of Bayt Fur Yakka, claimed that `Abdal-Karim Khidr from the same village who was present with her in the Majlis al-Shar`i...that the said defendant mortgaged a piece of land located in the mentioned village...for an amount of six hundred qirsh which the defendant received...in return for one third of its product. He then planted it (hanta?) worth five hundred and thirty qirshs. She demands one third of that amount...the defendant concurs that he planted the land but denies the said mortgage..."<sup>59</sup> In this case the court went against the woman because she did not have the right documentation with her.

How did the courts and society feel about women in the capacity of property holders and creditors? Qadis and courts treated women the same way as they treated men

when it came to all types of transactions. Her word in court did not need corroboration any more than that of a man and in financial disputes she needed to present witnesses the same as men needed to. The greatest number of court records about the economic activities of women involve real estate transactions. They bought, sold, and registered property, rented out houses and even invested in constructing rental units sometimes within their own homes so as to raise funds. “Many women had their houses reconstructed so as to make rooms available for rent, such a profitable way of earning money it had become. One woman spent the quite considerable sum of 1200 qurush to alter the interior of her house so as to be able to rent out three of the five rooms it contained. We learn from the lease that within twenty months she had recouped the investment from the rent she collected.”<sup>60</sup> Sometimes a woman sold a share of a house which she may have bought or inherited and is not living in. When merchants bequeathed their shops or businesses to their daughter, they could manage the shop or appoint someone to do the job and receive the income. The same went with agricultural land, although here we see women investing money to increase the size of their holdings, often investing in plots for growing vegetables close to town and therefore with a ready market or in vineyards, a popular investment among women<sup>61</sup>. Women also invested in houses and businesses, sometimes directly<sup>62</sup> and sometimes through a wakil of their choice who would collect income due to her from her investment or from her deceased husband’s partnership<sup>63</sup> or collecting rent.<sup>64</sup>

The question of who actually controlled property owned by women is not directly answerable through court records. Sometimes the woman is represented by her husband in court and that gives the impression that it is he who is in control and that she follows

his wishes. But the evidence points to the opposite. For one thing, women are quite often represented by their brother or by men not related to them in any way even though they may be married. Also, as indicated earlier, it is quite often a husband who owes the wife money or he is buying property from her or selling to her. Besides, even though the husband acts as wakil for his wife in court, she is usually present with him, following the procedures and presenting her wishes (Glossary Chapter 3)<sup>65</sup>. But women more often acted personally in court. When registering a sale by a woman, the record more often indicates her presence in court without reference to the presence of a husband, a brother or a wakil. In a transaction where a woman was buying from her brother his share of a house they both inherited, she would come to court with him and a document to the transaction would be signed in front of the judge.<sup>66</sup> One should add that women were themselves chosen as wakils to represent others in court (Glossary 9, Chapter 3).<sup>67</sup>

### Crafts and markets

Court records from the Ottoman period show women active in business and crafts. As shown earlier, women owned property, lent and borrowed money, and controlled awqaf. They also acted as multazims (tax-farmers) as `Abdal-Rahman al-Jabarti described in his famous chronicles of eighteenth century Egypt. They were also chosen as heads of women-guilds in crafts where women worked in large numbers. Since we have citations of women having been heads of guilds of physicians, weavers, dalalas, beauticians and entertainers<sup>68</sup>, we know that these were areas in which large numbers of women were employed. Here waqf documents show their importance as a source for social history. A good example is the waqf set up by the Mamluk prince Sayf al-Din Tunkuz (ruled over

Syria three times between 1298 and 1340 (698-740H). in Jerusalem. A known builder with extensive contributions to Jerusalem, he set up diverse properties to endow the Tankaziyya school and to provide it with future income for its upkeep and support of its teachers and students. In the five-page document setting up these properties and detailed instructions for spending the income from them, we learn that an income was to be paid to the sheikha of the women in the school (ribat al-nisa`) as well as to the women who live in that ribat as well as to guests visiting the school like Sufis (mystics) and women.<sup>69</sup>

As Muhammad `Isa Salahiyya informs us in his impressive study of landholdings in Ottoman Palestine-- housed in the ministerial archives in Istanbul and written in old Ottoman Turkish--tax documents contain detailed information vital for the history of people in the Ottoman Empire. Not only do they give details of various types of properties and businesses, but also names of owners of these properties and the income derived from them.<sup>70</sup> According to these records we know, for example, that Saniyya bint Sayf owned a mill for grinding grain in the village of Ra's al-`Ayn near Saffad (978H.); Hamda bint Yusuf from the village of Qariyat Maghar al-Haruz in Tabariyya owned a share of a mill;<sup>71</sup> Fatma bint Muhammad owned 5/24<sup>th</sup> share of a mill in the village of Milaha in Jira (918H). There were also mills owned jointly between husband and wife in nineteenth century Amman court records.<sup>72</sup> This seems to indicate that grain grinding mills were a business in which women invested. Shares in mills could have been inherited, but being a family business, women continued to supervise them and receive income from them rather than sell them.

Olive oil production was another popular business among women. Women inherited orchards of olive trees and fruit, but they also invested their wealth in buying

them. Together with real estate, olive trees and food-bearing trees constitute the most important business in which women invested their money. In a death declaration of a Nabulsi woman are included mulberry trees located in an orchard outside of the town (Glossary 4 Chapter 3).<sup>73</sup> Maryam Ya`qub of Bethlehem invested in an orchard in 1822<sup>74</sup>, as did Qaimiyya bint Radwan of Silwan<sup>75</sup> and `Adiyya al-Liftawi who bought one and half qirat of olive trees.<sup>76</sup> As for Asma' al-Khalidi whose name appears several times in the archival record buying, selling and receiving income, she bought an orchard from Hijaz al-Salawini containing olive trees, grapes, and apricots in 1831.<sup>77</sup> Sometimes women joined together in buying olive tree groves and sometimes went into partnerships with men. "Fatma...who is known in Nablus, owned together with another three women...and one man...trees in four different locations."<sup>78</sup>

Women were also involved in crafts most of which are thought of as being purely male professions. Making soap in soap-factories was one such craft for which Nablus, Jerusalem and other towns were famous. Atika bint Khalil abu Rakhiyya set up a waqf duhri which she endowed with a workshop for producing soap in Bab Dawud, Jerusalem.<sup>79</sup> She must have owned it and received an income from it to wish to protect her right to this income throughout her life and for her children after her death as the waqf duhri entails. Other properties included in waqf duhris—some dating from before the Ottoman period—included village real estate, orchards, rental houses, shops, olive oil juicers (ma`sara), baths (hamams), bakeries, and sale-spots (masatib) in marketplaces, and the income that they produced.<sup>80</sup> Women were also owners of pottery workshops like that owned by Safiyya located in Mahallat al-Sa`idiyya.<sup>81</sup> While goldsmiths were almost always men, there is one nineteenth century Jewish woman identified as Yasmine who

was a goldsmith jeweler by craft and worked in her own shop.<sup>82</sup> The same can be said about bakeries where bread of various types was baked and sold to the public, archival records indicate that women were very much involved in milling and in bakeries.

According to Muhammad al-Ya`qub, who gives a documented survey of Jerusalem's markets in the sixteenth century, Jerusalem had about twenty-five bakers at mid-century, "some of whom were women like Anna bint Ya`qub who baked al-kimaj, a type of bread among the many known then."<sup>83</sup>

Perhaps unexpectedly, women are also recorded to have owned coffeehouses. The waqf dhurri of Salha bint Khalil in Ban Hatta, Jerusalem, included a coffeehouse and the income from a store.<sup>84</sup> An interesting wasiyya by an Odabashi (head of an Ottoman army unit) indicated that all his property should go to his sole heir, his wife Khadija and to his previous master who manumitted him. As part of his property detailed in the document, he includes a coffeehouse in al-Hussayniyya in Cairo which he co-owned with his mother-in-law who was the actual administrator of the coffee-house.<sup>85</sup>

Women also did manual labor although the information is harder to find. They worked as house help besides the large number of slave-women who worked mainly as domestic help whose labor is not taken into consideration in studies of women and work. Palestinian peasant women "often worked in fields and quarries, of course, sometimes even outside the village" according to Zevi Dror.<sup>86</sup> Which means that they were mobile, leaving their village to go to work and in jobs that the modern state has decided were dangerous for women. Women also worked as saqqas (water carrier), an essential service for cities of the Middle East. Huda Lutfi tells us that out of ten water-carriers in medieval Jerusalem, two were women.<sup>87</sup> Public baths could be found all over Islamic cities.

Because of strict sexual segregation, Baths catered to either sex or they were divided into two parts, one for males and another for females. Women served in baths as attendants, masseuse, beauticians and other capacities. Hairdressing (mashata), beautician and similar jobs were all areas of employment for women. A sixteenth century Jerusalem female kahala (pseudo-oculist who uses kuhl as cure) also ran a pawn-business.<sup>88</sup> Again sexual segregation helped here, men had their own hairdressers and women had their own, in other words women almost had a monopoly over particular services to women.<sup>89</sup> Women were also involved in the business of entertainment. They worked at weddings by dancing and singing. The head of the guild of women entertainers was always a woman as is the case with other guilds in which women predominated.<sup>90</sup>

Women also hired themselves out as day labor to do transitory work (Glossary 5 Chapter 3). In one case, a husband and wife hired themselves out to do field labor and had to go to court to sue for non-payment of wages. The nineteenth century document from Nablus reads: “The complaint was submitted by Mas`ud...from Dar Shinwi against Muhammad Sa`id al-`Aqqad and Salih `Anbara and Hassan Abi Radwan from Dar Shinwi. [He is] suing for his pay and his wife’s pay for one hundred and twenty days labor....” The defendants in this case disputed the claim on the bases that they are all partners in daman al-zaitun (trade in olive oil), but that it was a losing project. The matter was settled peacefully with each receiving what was owed to them.<sup>91</sup> Even though the details of how everything was settled is not exactly clear in this case, we learn from it that women hired out their labor on a daily basis.

As they are today, women were quite skilled in sewing and embroidery. In fact, women were involved in many areas of textile and clothing production and sales. Primary

products for this craft were widely available, tribesmen and villagers bred camels, sheep and goats, and their wool and hair went into the production of these goods as did the cotton grown by villagers or imported. A family could already own stock from which wool could be taken and used for production, but women were also keen on buying sheep and goats for wool production as well as dairy products.<sup>92</sup> Traditionally, it was the women who washed the wool, spun it and wove it. In medieval Muslim societies spinning was primarily a female profession, the spindle being part of household furniture. Unlike male craftsmen, female spinners worked at home rather than in workshops, although they began to do so in other areas of the Ottoman Empire during the nineteenth century. While weaving was a predominantly male occupation, there are recorded instances of women weavers, and Lutfi confirms that one eight century Jerusalem woman owned three weaving shuttles and seven women sold ginned cotton or clothing in medieval Jerusalem.<sup>93</sup> She also mentions a twelfth century document informing of a woman falling dead in a dye-house in Jerusalem, an indication that she must have worked there even though dyeing is usually considered a purely male occupation.<sup>94</sup>

Sewing and embroidery were a normal part of women's life, supplying their families and making items for sale in the market. They also sewed and embroidered tablecloths, sheets and even the khurgs (covering placed under saddles of horses and donkeys) as well as sacks for storing food and clothing.<sup>95</sup> Women also owned workshops for sewing clothes and shops for selling them although most of the textile retail businesses were owned and run by men. Qastiyya al-Rumiyya, for example, owned a textile shop in early nineteenth century Jerusalem.<sup>96</sup> A waqf dhurri set up by Janat and Khadija, two maghribis (people originally from North Africa) living in 1181H/1765

Jerusalem, included a house with its kitchen and water-tank. The house was described as containing two apartments on top and three on the bottom besides an old stable that had been converted into a dukan hiyaka (a shop for sewing clothes).<sup>97</sup> Safa bint `Abdal-`Aziz from nineteenth century al-Salt, had her wakil sue three partners for 50 ratls (approximately 21/2 kilos) of ghee for which she had paid them 50 riyals. The amount of ghee bought tells us that she was either intending to resale the ghee retail, probably to customers in her neighborhood or in the marketplace. Safa may have also intended to use the ghee to make food for sale or to bake goods or food to sell. One could also assume that the ghee was for personal use, but both the amount of ghee and the 50 riyals paid would point in a different direction.<sup>98</sup>

Another area of sales in which women were and continue to be very active, is that of dalala (mobile salesperson) or baya`a (seller) and sometimes referred to as simsara (agent, sales on commission) since that is what the job entailed. Dalalas sold goods for other merchants or for individuals and in return received an agreed percentage of the price, usually one percent. The goods they sold could be new or second-hand and included a large variety including clothes and textiles, footwear, headwear, kerchiefs, household goods, sheets and tablecloths, perfumes, household goods, women's clothing, cosmetics, thawbs (long shirt worn by men) and so on. Most dalalas originated from the towns in which they worked, but others came from Egypt or North Africa as was usual for the Ottoman Empire where there was no limitation laid on the movement of people.

Since the job of dalala entailed the handling of money and interaction with the public, the rules of the state required that dalal/dalalas receive certification before being able to practice. This is achieved through letters of guarantee vouching for their honesty

by persons who are already well-established in the trade or another trade, and who are willing to act as kafil (sponsor) taking on the responsibility of repayment of losses to those with whom the dalala transacted business. This sponsor had to appear in court in person and present his sponsorship in front of the qadi, all of which is recorded in the court's records. So sponsorship records in shari`a court archives are an important source for learning about the work of women in the premodern period. For the year 1040[1631] for example, there are recorded two women who received licenses to practice as dalalas after being sponsored by their sons.<sup>99</sup> Several women who wished to practice the same craft could sponsor one another and take responsibility for each other's actions. If one broke the rules, tried to cheat or lost the goods assigned to her, then the other women would have to cover for her. Such a document certifying a group sponsorship among three dalalas reads: "Appearing in the presence of the guild-master of the dalalin were the following Jewish dalalas: Lursiy b. Salem Maghrabi, Saniyya b. Yahya, and Saniyya b. Ishaq, the dalalas, who sponsored one another in the craft of dalala, so that if one of them was defeated [meaning ruined], they would cover one another."<sup>100</sup> Courts also show that women came to court to sue for lack of payment for good they delivered.<sup>101</sup>

The Christian woman named Maryam bint Musa the Armenian from Aleppo, stated that she owes the woman `Aisha bint Mustafa al-Sufa, here present with her in court...seven qurush [which are] the price of a length of linen cloth which she had bought from her...and asked for three days in which to pay them...<sup>102</sup>

Sometimes dalalas were forbidden from practicing by the qadi because of malpractice as happened to a groups of them in 1701 Jerusalem because "they take things

and buy them from their owners with one price then sell them for a higher price.”<sup>103</sup> This probably means that they sold on commission and took for themselves a higher commission than had been agreed upon with the owners and buyers of the goods. It is important to point out that the dalala system that existed during the Ottoman period is very similar to the system that is today applied by microfinance lenders in Jordan. Most of their customers are in fact dalalas working for themselves rather than on commission, although some do, and they are required to form partnerships guaranteeing one another. If one fails the rest have to cover for her and they all lose the right to take loans if one of them falls through and the rest are unable to cover for her notwithstanding how observant of the loan terms they may be. This will be discussed later in Chapter 8.

The Arab world was once famous for its medicine and hospitals. Almost all large towns had at least one Maristan supported through extensive awqaf by rulers and princes. Providing medical help was one of the things people expected from their rulers in the premodern Arab world. Among the famous maristans are included the Bimaristan al-Salihi in Jerusalem--which also had a Jewish Bimaristan--, Maristan Qalawun built in Cairo in 1284, and the one built by Salah al-Din al-Ayyubi in Damascus. Nablus also had a maristan west of the Salahi bank, as did other important towns of the Arab world. Descriptions of maristans when first built speak of the greatness of their structures, excellence of doctors working there and the students they trained. Facilities included both in-house and out- and separate quarters for male and female patients. Sexual segregation meant that there had to be separate quarters for male patients and others for female patients, and in fact that was how these maristans were structured. While male doctors and attendants served in the male section, women doctors and attendants served the

women. When the service of a male specialist was required, it was actually a woman doctor or the midwife (daya or qabila as the records describe them), who undertook the actual examination of the female patient and described the condition for the male doctor to make a diagnosis. Unfortunately, court records do not help us with statistical information, but according to one study there were five qabilat in Jerusalem in 1555.<sup>104</sup> Medical education was also widely available for both men and women and to “all segments of society”<sup>105</sup> provided through medical schools privately run by physicians, or through private apprenticeship, and most importantly, through hospitals which were usually endowed with libraries and lecture halls. Since medical education and facilities were also open to women and maristans were divided according to gender, women doctors trained much the same as did male doctors. Court records frequently mention dayas in various capacities. Most usually it was in regards to cases brought to court by women who claimed they were raped or suffered forced miscarriage. The witness of dayas was vital in such cases and courts used to have their own dayas who were sent out to investigate cases and return to court to act as expert witness.<sup>106</sup> Dayas were and continue to be a very important element in Arab society, although her prestige took a trouncing in the modern period with the introduction of modern Western medicine from within a capitalist structure.

### Conclusions on Women, Work and the State

As this chapter has illustrated, studying sources dating from before the modern period shows a different picture than is generally assumed of the life of Muslim women.

Whether we are talking about the Islamic turath in the form of architecture, awqaf records

or shari`a court archives, they all corroborate the important economic involvement of women and the significance of this involvement to the societies in which they lived. This in no way means that all women worked, but the extent of property they owned and commercial activities in which they participated, as well as their role in agriculture and animal and dairy production, give an idea about what women can accomplish and how their societies benefited. As entrepreneurs they invested in real estate, lent out money, invested in trade and workshops, and accumulated significant amounts of property. Furthermore, even though they often acted through male relatives, they nevertheless undertook their own businesses, signed their own contracts and came to court to sue for their rights. Neither their families nor the courts seemed to consider women as less than fully legal competent with equal rights in business as men. It is intriguing that today women are fighting an uphill battle to achieve pretty much what their sisters already had a hundred years ago. With modernity one would imagine that there would be greater openness for women and greater participation by them in their countries' economy. This is particularly so since Arab governments like Jordan's have pushed seriously for greater freedoms and participation by women in public life. The question then is what could have happened to cause the deterioration of the active economic role enjoyed by women before the modern period.

The answer offered here points to the economic transformations experienced by the countries of the Middle East as they moved from being part of an empire to nation-state hegemonies. We do not see pre-modern fiqh debating whether women should work or not as does the gender discourse in Jordan and elsewhere today. Rather, women's work seems to be a modern problem which presented itself with the appearance and subsequent

mammoth growth in white and blue collar jobs which are the result of economic factors related to an industrialized world dominated by nation-states run by bureaucracies. Centralization invariably brings about a growth in bureaucracy and specialization. Modern states turned first to men for employment in its bureaucracies, armies and industries, only with time and need did they also turn toward women. Employing men in these jobs was simply a continuation of earlier traditions regarding government employment. Thus in all areas that we might call “civil service” in the pre-modern period, men held the jobs and that not only in the Islamic world but globally. Thus throughout Islamic history we hardly see any women officials in such jobs as judges, ministers, court-clerks, muhtassib (marketplace supervisor), mufti and so on. All were men. So what we have was the modern extension of government service to fill its growing needs and it was natural that the extension be to men.

The private sector, as it grew, also became dependent on men particularly for white-collar jobs. That was to be expected since earlier clerks were men. But with time and growing poverty that acted as a push factor for women to enter the workforce, more women began to compete for these jobs. Furthermore, social planning taken up by modernizing governments like Jordan’s and Lebanon’s, or socialist states like Egypt, Syria and Iraq in the fifties, sixties and seventies, moved to actively extend equal educational and job opportunities to women. The socioeconomic situation differed from one country to the other and results differed in regards to extent of success in opening up the workforce to women. Laurie Brand makes a good point in regards to Jordan by pointing out the important relationship between security and military needs of a country which privileges men who are expected to carry the burden of active security. Brand

explains that this has on the one hand retarded other areas of the Jordanian economy, and on the other hurt women who were not as included in governmental plans as were men.

This focus on the state sector had additional import for women, for the lack of attention to developing the private sector has been one factor that has retarded the development of industry. In other regions, such as Latin America, the emergence of industries has been an important step in drawing women into the workforce outside the home.<sup>107</sup>

The same results were experienced in other countries of the world. For example, in Egypt, modernization efforts were begun pretty early by Muhammad `Ali Pasha at the beginning of nineteenth century. His reforms included in large part the military, administration, agriculture, industry, health and education. He turned to men for most of his personnel to staff all government agencies and services and as the army gained in importance, so did other areas pale beside it and the male nature of the modern nation-state seemed to grow with its powers of control and centralization. As Brand argues, “the state has pursued policies of inclusion and exclusion of various types which, whether consciously so constructed or not, have nonetheless served to maintain various forms of patriarchal control.”<sup>108</sup> Afaf Lutfi al-Sayyid Marsot takes this one step further by pointing out that the process of nation-state building with its accompanying structural changes, also created new forms of patriarchy which cut women out of areas in which they were active earlier. Focusing on the eighteenth century, Marsot draws the connections between gender relations and the historical context. “Gender relations are determined by politics, religion, culture, changes in the modes of production, and changes in the

environment.”<sup>109</sup> Because of the decentralized conditions in the Ottoman Empire during the eighteenth century, “women played an active role in the marketplace, corroborating the assumption that they played a more active role in other sectors of society and during other periods...For example, 30 to 40 percent of deeds registered [in court records of Cairo] in the last half of the eighteenth century were made out by women.”<sup>110</sup> A large part of the capital and business undertaken by women during the eighteenth century was related to commerce according to Marsot, this was to change drastically under nation-state control.

The second source of income [for women] was trade and commerce, which were monopolized by the ruler so that no one else could become involved. Women therefore found themselves in consequence of a new patriarchal, centralized system, devoid of participation in any wealth-generating activities. They could eventually inherit land according to Muslim laws, especially after 1858, when the Ottomans passed the land law that simply ratified what had already existed for decades, but then they turned the land over to their male relatives. Which begs the question. The new centralized system also introduced new institutions derived from Europe that militated against women. Banks, stock exchanges, insurance companies, etcetera, in Europe did not recognize the legal existence of women; and so they followed the same strategies in Egypt. Women were not allowed to open bank accounts in their names or to play the stock market or to indulge in other activities

in their own right. Once the male relative became the active partner, even though it may be the woman directing him, he nonetheless became the wielder of power and the retainer of income.<sup>111</sup>

There is a definite gender division in regards to the type of work performed by men or women. One possible pattern that can be discerned involves the power of the state and the nature of the connection between the particular job or function and state-power during various historical epochs. The stronger the connection and the more state-oriented the job, the greater is the male-orientation of the job. At the same time, the more socially-oriented and loosely-controlled the particular business or job, the greater is the participation of women. If this hypothesis is correct it would explain the greater participation of women as Hadith transmitters and interpreters during the early period of Islam and the gradual reduction of their importance as the state becomes more centralized under male hegemonic power. Since the Abbasid period, the state became directly involved in religious discourses, first through speculative thinking sponsored through Mu`tazilism during a period of rapid change and diffusion of cultural input from various parts of the Empire. Then, as the Abbasid state became more settled and administration grew, orthodoxy through Murji`a theology replaced the speculation of the Mu`tazila and the religious discourse became intimately interconnected with state hegemony. Hence the importance of al-Ghazali and his amalgamation of Sunni, i.e. orthodox, Islam with Sufism which had grown in great popularity and had at one point become a reappearing threat to the state. The work of al-Mawardi should be mentioned here, his acceptance of the power of the state and his promotion of acceptance of state-power as long as the state

assures religious practices for its citizens and as long as there is no chaos, must be seen as a theologian's closeness to the state in whose diwan he actually worked. As junior members of Islamic societies' elite classes, intermarried with grand merchants and providing advise and legitimate discourses to often brutal rulers, the `ulama' had a stake in the continuation of various hegemonies throughout Islamic history. Whether as muftis, qadis, or exclusive exegetes, the stability of the state seems to have been a permanent discourse among them, the discourse changing from period to period and place to place. `Ulama' could and often did play a role in opposition to the state and were often punished in retaliation. The case of al-Hallaj is perhaps the most extreme since it unites religious apostasy (kufri) of the dominant orthodox view of Islam together with political belligerence against the state. Another example is that of Sheikh al-Sha`arani who witnessed the invasion of Egypt by the Ottoman Sultan Selim, attacked the Ottomans as infidels at first, and then once their rule was established and his position assured, became malleable and returned to the moral-oriented religious discourses that are usual for his class. In such positions as mamluk, janissary, ojak, police, military or airforce the jobs are almost always male-oriented with a token representation for women as a symbol of a modernizing state. The same can be said for the mufti class, the `ulama' exegetes, and court qadis, all of whom are part of the religious hierarchy which were servants of the state at one level, were independent in rendering theological and legal opinions on another level since they followed their particular schools (madhhab) and the `urf traditions in their fatwas and shari`a court decisions, as much as they fulfilled the basic principles outlined by the Islamic shari`a. Here we can point to one reason why there is a discrepancy between the decisions of qadis in courts and dominant moral discourses. One

example treated earlier has to do with the witness of women about which theologians have set out strict rules that are followed or not followed in shari`a courts depending on the circumstances. As a theologian, exegete or even sociologist/historian—as in the case of Ibn Khaldun—the moral fiber and security of society is the central concern of what they write. But as qadis, their concern is to arrive at justice as the concept is understood by the society they served. In searching for evidence the rules of witness take over, i.e. a reliable witness must be someone trustworthy and must have been on hand to see or hear what happened. The legal system must therefore be looked at as separate from the theological discourses even though muftis and `ulama' played a very important role in presenting the ideal answers to moral dilemmas.

A second hypothesis about gender difference in regards to particular jobs for men and women, has to do with physical power. In fact, the first hypothesis presented above is itself based on this premises. The more physically demanding the job, the greater role to be played by men. Physically demanding does not necessarily mean more important or productive, after all war has always required physical power and notwithstanding how important protection of territory is, this is not a very productive function particularly during times of peace when the military hierarchy becomes a consumer of a disproportionate portion of a country's income. Even in rural areas where men undertake the more physical demanding work like breaking the ground and tilling, it is women and children who undertake or heavily participate in the more labor intensive and continuous work of the land, like weeding, watering, removal of bugs and other form of plant diseases. They participate in harvesting, thrashing the harvest, and collecting the grain. Among Bedouins, it is women who herd sheep and goats, feed them, weave the wool,

make garments, fix the tents and set up the dwelling. All these are intensive occupations requiring perseverance, training and practice rather than physical power. Yet states were built on physical power and as long as armies play major roles in hegemonies, power will continue to gender society. As the following chapter will illustrate, the modern state, notwithstanding its adoption of discourses of modernity emphasizing human rights and women's liberation, have in fact increased the male-orientation of "work" with the increase in the state's administrative and centralizing functions. It is true that women were eventually mobilized to serve the state in Jordan, but as the chapter will illustrate, the laws guiding women's work make their work more token than real by enframing women's work within parameters emphasizing "protection" and "temporariness".

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<sup>1</sup> Ahmad b. Hajar al-`Asqalani, Fath al-Bari bi-Sharh Sahih al-Bukhari vol. 9 (Cairo: Dar al-Rayyan lil-Turath, 1987), pp. 210-211.

<sup>2</sup> Ahmad Suwayyid, Nisa' shahirat min tarikhana (Beirut: Mu'assasat al-Ma`arif, 1990), p. 7.

<sup>3</sup> Ibid., p. 13.

<sup>4</sup> `Abdullah Yusuf `Ali, The Meaning of the Holy Qur'an (Brentwood, Maryland: Amana Corporation, 1993), ft 3706, p. 1065.

<sup>5</sup> Zafer al-Qasimi, Al-hayat al-ijtima'iyah al-`Arab (Beirut: Dar al-Nafa'is, 1981), p. 12.

<sup>6</sup> Isam el-Sioufi, Al-mar'a fi'l-adab al-jahili (Beirut: Dar al-Fikr al-Libnani, 1991), pp. 22-23.

<sup>7</sup> Ibid., p. 19.

<sup>8</sup> Suwayyid, Nisa' shahirat, pp. 28-33.

<sup>9</sup> Ibid., pp. 60-66.

<sup>10</sup> Fatima Mernissi, The Forgotten Queens of Islam (Minneapolis: University of Minnesota Press, 1993).

<sup>11</sup> Ibn Battuta, The Travels of Ibn Battuta, vol. 2: Travels in Asia and Africa 1325-1354, vol. 2, trans. By H.A.R. Gibb (South Asia Books, 1986), p. 340.

<sup>12</sup> See for example Ottaviano Bon, The Sultan's Seraglio: an Intimate Portrait of Life at the Ottoman Court (London: Saqi Books, 1996) published originally in the seventeenth-century and painted an exotic picture of Ottoman courts, with harems and women.

<sup>13</sup> Leslie Peirce, The Imperial Harem: Women and Sovereignty in the Ottoman Empire (Studies in Middle Eastern History) (Princeton: Princeton University Press, 1993).

<sup>14</sup> Farhad Daftary in Gavin G. Hambly, ed., Women in the Medieval Islamic World: Power, Patronage, and Piety (New York: St. Martin's Press, 1999), p.

<sup>15</sup> Peter Jackson in Gavin G. Hambly, ed., Women in the Medieval Islamic World: Power, Patronage, and Piety (New York: St. Martin's Press, 1999).

<sup>16</sup> Mary Ann Fay, "The Ties That Bound: Women and Households in Eighteenth-Century Egypt", in Amira sonbol, Women, the Family and Divorce Laws in Islamic History (Syracuse, NY: Syracuse University Press, 1996), p. 155.

١ صحیح البخاری ٤٥ - تفسیر القرآن حدیث : ٤٥١٦  
 ٤٥١٦ حدثنا محمد بن عبد الرحيم حدثنا هارون بن معروف حدثنا عبد الله بن وهب قال وأخبرني ابن جريج أن الحسن بن مسلم  
 أخبره عن طاوس عن ابن عباس رضي الله عنهما قال شهدت الصلاة يوم الفطر مع رسول الله صلى الله عليه وسلم وأبي بكر وعمر  
 وعثمان فكلهم يصلونها قبل الخطبة ثم يخطب بعد فنزل نبي الله صلى الله عليه وسلم فكأنني أنظر إليه حين يجلس الرجل بيده ثم  
 أقبل يشقهم حتى أتى النساء مع بلال فقال ﴿ يا أيها النبي إذا جاءك المؤمنات يبائعنك على أن لا يشركن بالله شيئاً ولا يسرقن ولا  
 يزنین ولا يقتلن أولادهن ولا يأتين بهتان يفتريته بين أيديهن وأرجلهن ﴾ حتى فرغ من الآية كلها ثم قال حين فرغ أنتن على ذلك  
 فقالت امرأة واحدة لم يجبه غيرها نعم يا رسول الله لا يدري الحسن من هي قال فتصدقن وبسط بلال ثوبه فجعلن يلقين الفتح  
 والخواتيم في ثوب بلال \*

<sup>18</sup> “Becoming Visible: Medieval Islamic Women in Historiography and History,” in Women in the Medieval Islamic World edited by Gavin Hambly (New York: St. Martin’s Press, 1998), p. 18.

<sup>19</sup> Ibid., p. 18.

<sup>20</sup> Ibid., p. 19.

<sup>21</sup> Stephen P. Blake, “Contributions to the Urban Landscape: Women Builders in Safavid Isfahan and Mughal Shahjahanabad,” in Gavin R.G. Hambly, Women in the Medieval Islamic World, p. 409.

<sup>22</sup> Fatima Mernissi, The Veil and the Male Elite: A Feminist Interpretation of Women’s Rights in Islam, (Perseus Press, 1992).

<sup>23</sup> From Bukhari and Muslim quoted in `Abdal-Halim Abu Shaqra, Tahrir al-Mar’a fi `Asr al-Risala, Volume 3 (Kuwait: Dar al-Qalam lil-Nashr wal-Tawzi’, 1990), p. 14.

<sup>24</sup> Please look up Barbara Freyer Stowasser, Women in the Qur’an, Traditions, and Interpretations (Oxford University Press, 1996) for her discussion of the women’s bay`a..

<sup>25</sup> Abu Shaqra, p. 22.

<sup>26</sup> Al-Quds Shari’a Court, 1054[1644], 27-135:181-3 (film, sijill, page, case).. In this dispute a woman complained of another who, together with her daughter, hit her on the head.

<sup>27</sup> Al-Quds Shari’a Court, 1054[1644], 27-135:325-4; 136:3-3.

<sup>28</sup> Ruth Roded, Women in Islamic Biographical Collections: from Ibn Sa’d to Who’s Who (Boulder, Colorado: Lynne Rienner Publishers, 1994), p. 45-46.

<sup>29</sup> Jonathan Berkey, The Transmission of Knowledge in Medieval Cairo: a Social History of Islamic Education (Princeton, N.J.: Princeton University Press, 1992), p. 165.

<sup>30</sup> Roded, Women in Islamic Biographical Collections, p. 68.

<sup>31</sup> Jonathan Berkey, The Transmission of Knowledge in Medieval Cairo.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid., p. 171

<sup>34</sup> Ibid.

<sup>35</sup> Nablus Shari’a court, 1276-1277[1861-1862], 2-13:95-96.

<sup>36</sup> Dumyat Shari’a Court, Ishhadat, 176:252-240.

<sup>37</sup> Nablus Shari’a court 1276-1277[1860-1861], 2-13:183.

<sup>38</sup> Nablus Shari’a Court, 1263-1266[1847-1850], 2-11:105, 113.

<sup>39</sup> Margaret L. Meriwether, The Kin Who Count: Family and Society in Ottoman Aleppo, 1770-1840 (Austin: University of Texas Press, 1999), p. 183.

<sup>40</sup> Al-Quds Shari’a court, 952[1545], 17:4-2, in al-Ya`qubi, Nahiyat al-quds, vol. 1, p. 246.

<sup>41</sup> Meriwether, The Kin Who Count, p. 188.

<sup>42</sup> Ibid., p. 189.

<sup>43</sup> Amman Shari’a court, 1316[1898], 5:71-72, in al-Sawariyya, Amman wa Jiwarha, p. 197 and al-Salt 1316[1898], 3:65-90.

<sup>44</sup> Al-Quds Shari’a court, 1229[1814], 297:94 in al-Madani, p.112.

<sup>45</sup> al-Quds Shari’a court, 1229[1813], 297:61 in al-Madani, p. 114.

- <sup>46</sup> Al-Quds Shari`a court, 1228[1812], 296:26 in al-Madani, p. 115.
- <sup>47</sup> Mahmoud Yazbak, Haifa in the Late Ottoman Period: 1864-1914 (Leiden: E.J. Brill, 1998), p. 185.
- <sup>48</sup> Haifa Shari`a Court, [1903/4], 1321:274-42 quoted in Mahmoud Yazbak, Haifa in the Late Ottoman Period, p. 185.
- <sup>49</sup> Nablus Shari`a Court, 1284-1285 [1866-1867], 2-15:183.
- <sup>50</sup> Amman Shari`a Court, 1320[1902], 2:39-37 in al-Sawariyya, Amman wa Jiwarha, p. 197.
- <sup>51</sup> Al-Salt Shari`a Court, 1328[1912], 16:179-104.
- <sup>52</sup> Jennings, quoted in Hambley, in Women in the Medieval Islamic World, p. 20.
- <sup>53</sup> Nablus Shari`a Court, 1284-1285[ ], 2-15:166. Also see Jerusalem Shari`a Court, 12 Shawwal 793[1394], published in Kamil Jamil al-`Assali, Watha`iq Muqadissiyya Tarikhiyya, Vol. 2 (Amman: Mu`asasat `Abd al-Hamid Shuman, 1985), pp. 46-47..
- <sup>54</sup> Jerusalem Shari`a Court, 15 Jamadi al-Akhira 796[1397], in al-`Assali., pp.44-45.
- <sup>55</sup> Jerusalem, 14 Muharram 797[1398] in al-`Assali, pp. 37-39.
- <sup>56</sup> Nablus Shari`a Court, 1266-1276[1850-1860], 2-12:173.
- <sup>57</sup> Ballas Shari`a Court, 1279 [1862] 24:8-12
- <sup>58</sup> Nablus Shari`a Court, 1282-1284[1864-1866], 2-14:157.
- <sup>59</sup> Nablus Shari`a Court, 1282-1284[1864-1866], 2-14:78.
- <sup>60</sup> Yazbak, Haifa in the Late Ottoman Period, p. 183.
- <sup>61</sup> Al-Quds Shari`a Court, 1231[1816], 290:195 in al-Madani, p. 118.
- <sup>62</sup> Al-Quds Shari`a Court, 1033, 20-107:98-2. In this case the woman is present in court to register the deed by which she bought a house with an orchard containing fruit trees, namely grapes, figs and quince.
- <sup>63</sup> Al-Quds Shari`a Court, 1230[1815], 290:169 in al-Madani, p. 118.
- <sup>64</sup> Al-Quds Shari`a Court, 1222[1807], 290:43 in al-Madani, p. 117.
- <sup>65</sup> Nablus Shari`a Court, 1282-1284[1866], 2-14:166, 317.
- <sup>66</sup> Nablus Shari`a Court, 1282-1284[1866], 2-14:314.
- <sup>67</sup> Nablus Shari`a Court, 1284-1285 [1866-1867], 2-15:183. 9p. 31)
- <sup>68</sup> Al-Quds Shari`a Court, 972[1564], 46:12-2; 939[1532], 3:95-3; 1010[1601], 83:156-6, 235-5; 937[1530], 1:267-2; 939[1532], 3:12-1; 957[1550], 23:585-12 in al-Ya`qubi, Nahiyat al-quds, vol. 1, p. 127.
- <sup>69</sup> Document published in al-`Assali, Watha`iq Muqadissiyya Tarikhiyya, vol. 1, pp. 108-121.
- <sup>70</sup> Muhammad `Isa Salahiya, Sijil aradi alwiya (Safad, Nablus, Ghaza, and qada' al-Ramlah:974H-1556 (Amman: Jami`at Amman al-Ahliya, 1999), p. 15.
- <sup>71</sup> Ibid., p. 43-45.
- <sup>72</sup> Al-Salt Shari`a Court, 1320[1902], 7:97-206.
- <sup>73</sup> Nablus Shari`a Court, 1266-1276[1850-1860], 2-12:199.
- <sup>74</sup> Al-Quds Shari`a Court, 1238[1822], 303:73 in al-Madani, p. 152.
- <sup>75</sup> Al-Quds Shari`a Court, 1228[1813], 296:64 in al-Madani, p. 152
- <sup>76</sup> Al-Quds Shari`a court, 1245[1829], 313:135 in al-Madani, p. 155
- <sup>77</sup> Al-Quds Shari`a Court, 1229[1831], 297:148 in al-Madani, p. 158.
- <sup>78</sup> Salahiyya, Sijil aradi alwiya, p. 58.
- <sup>79</sup> Al-Quds Shari`a Court, 1225[1810], 293:112 in al-Madani, p.172
- <sup>80</sup> Salahiyya, Sijil aradi alwiya, p. 55.
- <sup>81</sup> Al-Quds Shari`a Court, 1221[1806], 288:78. in al-Madani, p. 92.
- <sup>82</sup> Al-Quds Shari`a Court, 1227[1812], 290:93 in al-Madani, p. 93.
- <sup>83</sup> Al-Ya`qubi, Nahiyat al-quds, vol. 1, referring to records of al-Quds Shari`a Court, 974[1566], 47:86-1; 976[1568], 47:181-1; and 978[1570], 53:667-2.
- <sup>84</sup> Al-Quds Shari`a Court, 1223[1808], 295:53 in al-Madani, p. 167.
- <sup>85</sup> Alexandria Shari`a Court(1130), 65:141-247.
- <sup>86</sup> Dror, p. 185
- <sup>87</sup> Huda Lutfi, , A History of Mamlûk Jerusalem Based on the Haram Documents (Berlin: Klaus Schwarz Verlag, 1985), p. 305.
- <sup>88</sup> Al-Quds Shari`a Court, 1058[1648], 28-140:332-5.

- <sup>89</sup> Mahmud `Ali `Atallah, Watha'iq al-tawa'if al-hirafiya fil-Quds fil-qarn al-sabi` `ashar al-miladi, vol 1 (Nablus: Jami`at al-Najah al-Wataniya, Markaz al-Tawthiq wal-Makhtutat wal-Nashr, 1991), p. 9.
- <sup>90</sup> Al-Quds Shari`a Court, 972[1564], 46:12-2; 939[1532], 3:95-3; 1010[1601], 83:156-6, 235-5; 937[1530], 1:267-2; 939[1532], 3:12-1; 957[1550], 23:585-12 in al-Ya`qubi, Nahiyat al-quds, vol. 1, p. 127.
- <sup>91</sup> See Glossary 5 Chapter 3. Nablus Shari`a Court, 1280-1282[1864-1866], 2-13:60.
- <sup>92</sup> Al-Quds Shari`a Court, 1230[1815], 299:88. In Ziyad `Abdal-`Aziz al-Madani, al-Quds wa Jwarha khilal al-fatra 1215-1243/1800-1830 (Amman: Manshurat Bank al-A`mal, 1996), p. 81.
- <sup>93</sup> Lutfi, A History of Mamlúk Jerusalem, p. 294.
- <sup>94</sup> Ibid., p. 300.
- <sup>95</sup> Amman Shari`a Court, 1320[1902], 2:39-49, in al-Sawairy. 350.
- <sup>96</sup> Al-Quds Shari`a Court, 1230[1814], 291:322 in al-Madani, p. 90.
- <sup>97</sup> Ahmad al-`Alami, Waqfiyat al-Maghariba (Amman: Markaz al-Watha'iq wal-Makhtutat, 1981), p. 60-61.
- <sup>98</sup> Al-Salt Shari`a court, 1328[1912], 16:17-16.
- <sup>99</sup> Jerusalem, 1040[1631], 117:282-4 and 117:282-7, published in `Atallah, Watha'iq al-Tawa'if, vol. 1, p. 172.
- <sup>100</sup> Al-Quds Shari`a Court, 1041[1632], 119:121-2, in Ibid., p. 175.
- <sup>101</sup> Al-Quds Shari`a Court, 1054[1644] 27-134:131-6.
- <sup>102</sup> <sup>102</sup> Al-Quds Shari`a Court, 1054[1644] 27-134:131-5.
- <sup>103</sup> Al-Quds Shari`a Court, 1071[1661], 151:603-1.
- <sup>104</sup> Al-Quds Shari`a Court, 973[1555], 31:606-3; 978[1570], 53:520-3; 1010[1601], 83:209-3.
- <sup>105</sup> Hamarnah, Health Sciences in Early Islam, p. 42.
- <sup>106</sup> Al-Bab al-`Ali Shari`a Court 1152 [1736], 221:283-429.
- <sup>107</sup> Laurie A. Brand, "Women and the State in Jordan: Inclusion or Exclusion?", in Yvonne Haddad and John Esposito, eds., Islam, Gender and Social Change (New York: Oxford University Press, 1998), p. 102.
- <sup>108</sup> Ibid., p. 100.
- <sup>109</sup> Afaf Lutfi al-Sayyid Marsot, Women and Men in Lat Eighteenth-Century Egypt (Austin: University of Texas Press, 1995), p. 6.
- <sup>110</sup> Ibid., p. 7.
- <sup>111</sup> Afaf Lutfi al-Sayyid Marsot, "Women and Modernization," in Amira Sonbol, ed., Women, the Family, and Divorce Laws in Islamic History (Syracuse, New York: Syracuse University Press, 1996), p. 46-47.

Chapter 4

## Women and Work in Jordan Today

Jordan was one of earliest countries of the Middle Eastern to undertake serious economic reforms aimed at liberalizing its trade, economic growth, macroeconomic stability, and growth of its financial market. The results of its twenty years' efforts have been impressive given Jordan's small size and its lack of natural resources, its limited arable land measured at just over 10% of its total area, and its limited water supply. The stability of the political scene in Jordan and the consistency in its economic reform efforts are contributing factors to this relative success. Thus, Jordan has enjoyed a higher growth in income and jobs than most of its Arab neighbors. According to the World Bank: "Jordan and Tunisia are exceptional performers on virtually every indicator of human development—life expectancy, enrollment rates, and infant mortality." During 1990-94 for example, Jordan's GDP rate of growth was 0.39% while that of Egypt was -0.72% and Iran -1.0%. Its exports growth rate was 4.3% as compared to Egypt's 0.5% and Iran's -1.04%, and the inflation rate was 5.33 compared to Egypt's 14.80 and Iran's 20.50%. Other statistics speak well for Jordan, thus its literacy rate was measured at 82% in 1992 and the life expectancy of Jordanians is about 70 years.

This optimistic picture however is complicated by various problems facing the Jordanian economy. To begin with, 50% of Jordan's population is quite young, under the age of sixteen, a problem Jordan shares with many other developing countries. At the same time, its high population growth rate, 3.4%, means that the trend would continue.

Jordan will have to provide increasing numbers of jobs and economic opportunities if it is to maintain its standard of living and political stability. Today due to its debt burden, increasing unemployment, loss of trade partners like Iraq since the Gulf War, and greater dependence on foreign aid, Jordan needs to take critical steps to change the direction of its economy. One of the most important areas for economic growth in developing countries has been women's work. Recognizing that women constitute 50% of any country's population representing an important labor reserve, and perhaps even more importantly, vast consumer potential, it has become essential for developing countries to stress women's work, encourage women to seek employment or open their own businesses, and open their markets for the employment of women. Jordan has taken steps in that direction, but so far the results have been rather limited.

Figures concerning women's employment in Jordan differ depending on the criteria used and the particular compilers. According to the Flynn-Oldham report, Women's Economic Activities in Jordan, "12.5 percent of Jordanian women 15 years of age or older are currently working in either short-term/seasonal activities, micro enterprise, agriculture, or salaried employment. Of the above group of currently working women, 12.4 percent are engaged in micro enterprise activities, which is equal to approximately 1.5 percent of the total population of Jordanian women. In 1998 estimates, this is equal to 33,000 women."<sup>1</sup>

Another study estimates that women's participation in the economy did not exceed 16%.<sup>2</sup> The same study also found that the average working years for women did not exceed 3.7 years and only a small percentage ever own their own businesses. This leaves a serious question as to why women do not stay employed. An obvious reason for

leaving a job would be because of marriage even though the Oldham-Flynn study does not give this cause too much importance.<sup>3</sup> The Konrad Adenauer institute study calls attention to this:

More than 90% of young Jordanian women marry, on average, by the age of 24.7 years. If it is the first marriage for both spouses, their husbands will be an average 3.5 years older than them. 42.5% of all married couples are first or second degree cousins or distant relatives. However, consanguineous marriages are declining proportionately with rising education levels amongst women. Many women stop working outside the home once they marry, or after the birth of their first or second child, unless both spouses are forced to work for economic reasons.<sup>4</sup>

These findings are interesting because they tell of the changing social scene. There seems to be a close corollary between education and women marrying later in life. There is also a smaller age disparity between husband and wife in later marriages.

My observations (based on lectures attended in 3 Jordanian girls schools, followed by question/answer sessions) confirm this and indicate a close connection with the particular class to which an individual woman belonged. Poorer women and those living outside of the center of Amman tended to marry earlier. Women who had recently moved to these areas also stopped working to take care of their children and home. Curiously, records of the Business and Professional Women's Club showed another dimension. Better educated women often married lesser educated men—sometimes substantially less educated—and quite often did not work or stopped working because the husband wished it. The records also show that women often opted to leave work after

having given birth. The incentive to stay in work was not one that attracted women and made them see it as essential to their welfare. Push factors, which will be discussed later on and social and marital expectations, to be discussed in Chapter 6 of the report under “Personal Status Laws”, are main causes.

### Equal Right to Work?

Women’s “right to work” is clearly defined in the Constitution<sup>5</sup> of Jordan.

“Work is the right of all citizens (*al-`amal haqq li kul al-muwatinun*)”.

“Jobs are based on capability” (*`ala asas al-kafa'at wal-mu'ahilat*).”

“All Jordanians are equal before the law. There will be no discrimination between [Jordanians] regarding rights and duties based on race, language or religion.” (Article 6 of the Constitution).

Jordan’s labor laws repeat and explain further.

“By Jordanians are meant both men and women.” Article two of 1966 Labor Law still in force in Jordan confirms, “Owner of Business: any person... who employs in any way one person or more in exchange for wages” and the worker/laborer/employee (*`amil*) is defined as “each person, male or female, who performs a job in return for wages....”.

Thus, Jordan’s labor laws define the constitutional words “Jordanians” and “citizens” to mean all Jordanians whether male or female and Article two of the same laws confirms,

“Owner of Business: any person... who employs in any way one person or more in exchange for wages” and the worker/laborer/employee (amīl) is defined as “each person, male or female, who performs a job in return for wages....” These Constitutional Guarantees and Labor Laws are quite impressive in the overt and categorical equal rights they grant women even though the anti-discrimination statement included in Jordan’s Constitution only refers to discrimination based on “race, language or religion” and does not include gender as a category of discrimination.

In other words, Jordan’s laws like the laws of most modern countries, reflect basic principles of right to work and equality for all its citizens. The actual laws and the fine print, however, present a picture of gender difference and patriarchy notwithstanding declarations and intent. It is in the explanatory and executive parts of Jordan’s laws that the patriarchal nature of the legal system becomes evident. Like the laws of other countries—including Arab and Islamic countries--, the intent seems to contradict directly the actual laws and their execution. It is in the contradictions between what the principles set out and the actual laws that can be found some of the basic difficulties and discriminations facing women who want to enter the job market and become economically independent. In Jordan, various legal codes (labor, personal status, citizenship, retirement and criminal) peripheralize (tahamish) women by making them into male dependents and *de facto* deny women full legal competency (ahliyya qanuniyya, ahliyya kamila) even after they have reached the legal age of majority. This ensues through a combination of patriarchal family laws, state standardization and homogenization of law, and the social belief that women need to be protected. The result is that, even while Jordan exerts efforts to allow women greater participation in public

and business life, the laws act as a push factor forcing or encouraging women to leave the workplace.

Here we should turn to a discussion of the philosophical basis of Jordanian labor laws. These laws take into consideration the fact that labor relations are based on both legislature and on urf. Scholars of the law have therefore shifted between emphasizing the relations of production set up by these laws and between the social significance of the laws.<sup>6</sup> This point is important for understanding how the social outlook toward gender is reflected in labor laws notwithstanding the basic declaration of gender equality included in the Jordanian constitution and labor laws. Because of the patriarchal outlook, an outlook based on acceptance of traditions as basis for legislature, labor laws actually differentiate according to gender and that on the basis of the need to protect women and allow a “moral” work environment. As will be discussed later, morality and a “moral” sexually-segregated working situation in which women are protected, represents the most important issue for those who are skeptical about women’s employment. The widely accepted belief that women need protection has also been used by women groups to define “problem areas” and to pressure successfully for benefits for women. While this strategy was important in achieving highly acclaimed “special benefits” for women—some that women all over the world have demanded and others that are special for Jordan—, the philosophical basis of “women need protection” has in fact been at the very heart of continued discrimination against women that has undermined the constitutional guarantees of “equality” and “freedom” to choose, including the freedom to work.

It should be pointed out that many “special benefits” are universally sought by women workers everywhere. Here we can include the right to a ten-week maternity leave

because of the birth of a child for the purpose of childcare—of which six weeks must be immediately following the birth of a child (Article 70 of Labor Law). Also included is the requirement that any employee who employs twenty or more women must provide a childcare facility for the children of working mothers under the age of four, supervised by a qualified woman on condition that there be at least 10 children (Article 71 of Labor Law). While Article 71 makes it easier for mothers who have no other possibilities of childcare, thus allowing them to work, it is nevertheless a two-sided sword since it encourages employers not to employ twenty women at any one time and/or to employ women on a temporary rather than a permanent basis. Such benefits however, should not have been considered “special benefits” for women, rather they are social needs and family needs recognized as such by most countries because a child is a social and family responsibility and according to Islamic law and `urf, he is really the financial responsibility of the father.

The problem with, “special benefit” laws is that they include some intended to lessen the work burden for women and to keep them safe from “dangerous” jobs. These work against equal access to job opportunity. Any denial of access to work opportunity is necessarily a stimulus for keeping women unemployed particularly since the rules are based primarily on the idea that women are weaker biologically and of gentler constitution, therefore in need of protection. Interestingly, it is not only women who are extended “protection” according to the law, but minors/juveniles are “protected” too. Minors in the labor force are defined as “each person, whether male or female, who is seventeen years old and not yet reached his eighteenth year.” In other words, non-adult-males are equated with adult women, both being in need of protection and having

incomplete personal competency. Guarantees of equal job opportunity for women is thus severely undermined by the outlook toward what women can or cannot do, what they would be allowed to do, and the essentialist perception of what it is that they could not possibly be capable of. While the following chapters of this book will take up the social outlook and philosophy toward gender, this chapter focuses on the actual laws controlling women's work in Jordan and discusses in details the impact of these laws in regards to women entering the job market. The chapter will point out particular sensitive areas that need solutions if a greater participation of women in Jordan's economy is to be achieved.

#### A Husband's Prerogative

Perhaps the most glaring contradiction in Jordanian gender and labor laws has to do with the fact that Jordan's laws guarantee women an equal right to work and yet demand that she could not have that access except with her husband's approval. Needless to say, the husband need not receive his wife's approval.

“A woman has the right to work with her husband's approval.”

This means that a wife can only work if she has spousal approval at the time the marriage is contracted, or if the wife was already working at the time the marriage was contracted without the bridegroom specifically forbidding her from working.

The necessity of a husband's approval is due to what is believed to be the requirement of the shari`a that a wife obey (ta`a) her husband, which is interpreted as giving him the right to confine her (ihtibas) at home. Her obedience is in return for his financially supporting (nafaqa) her and for other agreements in their marriage contract including the payment of a dowry, which may or may not include jewelry and home-

furnishings (tawabi` mahr). Jordan's personal status laws and their application by its courts confirm this. The validity of this argument will be taken up in Chapter 6 which will focus on marriage and divorce issues. Here, a number of points regarding the requirement that a husband approve his wife's work will be discussed. Of particular concern is the validity of this law and the basis on which it stands. Does the shari`a require a husband's consent and does it give him the right to forbid his wife from working? What is the outlook of Islamic thinkers about women's work, is it the work of women that they frown upon or issues of gender-mixing and morality? Given that such a book exists in Jordan, what is its impact on marital relations and in particular on the participation of women in the economy?

To begin with, the Islamic shari`a does not discuss the issue of work or the right to work. It does not do so for men and it does not do so for women. Rather the shari`a focuses on matters of honesty, morality and fairness in the work place. In other words, there is no prohibition of the work of women according to the various sources of Islamic law, i.e. the Qur'an and Hadith. To the contrary the Qur'an can be said to have taken the work of both men and women for granted in saying "men have a share of what they have earned and women have a share of what they earned" ("lil rijal nasib mima iktasabu wa lil-nisa' nasib miman iktasabna"). Ratib al-Zahir agrees that this is a clear approval of woman's work. He continues "work is a way of making an income and Islam, which gave justice to women and gave her all the rights that fit with her humanity and pride, would not have stopped her from becoming an effective member in society. She is the sister of man, constitutes half of society and has energies of great use and benefit to her community" (Glossary 2, p. 57).

Even if we were to take the existing collections of fiqh as an accurate interpretation of what God wished, fiqh does not directly involve itself with whether a woman should work or not and as for fiqh and the public/private divide, as shown earlier, this was based on moral concerns of particular fuqaha' which were not discussing women and work but whose chief concern was with morality issues. Besides, qadis were not concerned with a husband's permission when dealing with cases involving a woman's professional or trade practice. Rather, as described in Chapter 3 women worked and contributed to their families' and communities welfare. They litigated in courts, knew their rights, and came in person to present these rights. They sold and bought in the marketplace and were not willing to stay in marriages in which husbands demanded ihtibas, a demand which was usually associated with shopping in the first place. We do not see any court cases in which a husband demands that his wife stop working or in which the divorce was due his request that she stop working even though quite often women are identified through the profession they held such as mashta, daya, dalala, mu`alima and so on.

Even among modern Islamic thinkers, there is no agreement as to the requirements for women's work or for a husband's approval before she could take a job. Rather the discourse on women and work among modern fuqaha' seems to be focused on issues of gender mixing and morality the same as their earlier predecessors. While the dominant discourse among those who oppose the work of women seems to be based on biological nature arguments and other misogynistic ideas that a woman cannot do a job as well as a man, it is not the husband's approval or disapproval that seems to be of particular concern. Misogynistic attitudes consider women's abilities to be inferior to

those of men and dismiss the accomplishments of successful women who could “perform like a man” as exceptional. The Qur’anic lines “wa lil-rijal `alahima daraja” (“and men are favored with a degree over them) (Surat al-Baqara: 228) are used by Arab misogynists to establish man’s inherent superiority over women. `Abbas Mahmud al-`Aqqad, the most influential Arab misogynist opposes the work of women on the basis of women’s biological nature and asks that all jobs be given to men who would then support women<sup>7</sup> whose role is determined by “Her nature including her [physical] capabilities and [inherent limited] ability to serve her kind... Her rights and duties within the family and society... Social relations that are required by custom and public morality most of which are matters of traditions and manners.”<sup>8</sup> `Aqqad’s conclusions continue to influence modern discourses and modern laws pertaining to women and work, that there are types of work they are capable or incapable of performing, that women need protection due to their weaker biological nature, and society’s responsibility to protect its moral standards which is directly related to women in the public space. These issues are all based on principles that take the “nature” of woman as limiting her right to full equality and while assuring her legal competency as an adult, actually limit and frame this legal competency to make her legally dependant.

Interestingly, conservative Muslim clerics do not necessarily stand against women’s work or demand that they must have their husbands’ or guardians’ permission before working. In his book Huquq al-zawjiyya: haqq al-mar’a fil-`ammal, Sheikh Muhammad Mahdi Shams al-Din, the Lebanese Shi`i Ayattollah, emphasizes that Islam does not take a stand against women’s work in public and in the professions. He also delineates the moral issues involved. He begins by attacking those who claim that there

are no rules regarding the work of women in shari`a or those who demand that the shari`a be changed to catch up with the times.

There are those who want to push [women] into the professions and the economy without any shari`a controls or rules because [t]he[y] are not concerned with the shari`a, or because [t]he[y] claim that such rules were not set up by the shari`a, or that these rules were suited for a society that no longer exists, and so we must change the shari`a to fit with the needs of our age, its knowledge and its needs. To those who make such claims, the shari`a is like an attire/dress whose size and style changes according to its wearer's appearance...<sup>9</sup>

The Ayattollah then proceeds to attack those who claim that the shari`a does not allow a woman to leave her home or to work outside of her home, and believe that her only service is to her husband and children at home. "They claim that... allowing women to work is a transgression of the shari`a, and a transgression of God's laws [regarding women], and jeopardizes women toward dangers that threaten her chastity and her role within the family."<sup>10</sup> In answer to these "false" claims, the Sheikh presents his interpretation of the shari`a's outlook toward women's work.

The legality of woman's employment, her right to earn a living and enjoy the income of her work, and her right therefore to earn a salary equal to her contribution is the same as a man's right. Being a woman does not deny her that right. The legality of this has been proven by Islam, it is a God-given right that a woman does not

have to struggle to achieve so as to save herself from the control of men and their power over her, or to prove her humanity and individuality as was the case in Western societies that did not recognize a woman's [inherent] right to work except after the social changes brought about by the Industrial Revolution and the need for working labor... The economic independence of women is legally proven through the Islamic shari`a, she has her full economic competency. The husband, the father or the brother has no custody over her from that aspect.<sup>11</sup>

Finally, asking why work? “[A woman should work] so as to utilize her energies and her time to enrich her community with her productive capacities rather than squandering energy and wasting time in indolence and laziness (tarakhi wa kasal).”<sup>12</sup> Because women have a responsibility toward their society and nation, it becomes the responsibility of the nation to train and prepare them to become partners in building it.

In other words, there are shari`a rules that must be followed but these rules do not include the approval of a father or a husband. This approval is not what the shari`a is all about according to the sheikh whose findings are corroborated by medieval fiqh and by archival records as pointed out earlier. But what are the shari`a concerns that need to be observed and seemed to have been observed in the premodern period? The answer is focused on gender-mixing and morality. If a woman needs protection, it is from a workplace which includes gender-mixing and therefore opens women to moral questions or harassment. Like most Muslim clergymen, Sheikh Shams al-Din does not condone mixing in the work place and demands that women wear what is Islamically prescribed.

He does, however, differentiate between normal modest wear and what is required by extremists that includes covering the face and making it almost impossible for women to function in the work place. In other words, it is not the work of women that is in question, but the moral issues concerned.

A middle position between those who encourage the work of women and those who want to prohibit it is presented by the Jordanian Islamic scholar Ibrahim al-Qisi who begins his study by decrying the condition under which Muslim women live. This situation he attributes to a lack of proper understanding of the words of the Qur'an and Sunna and the wrongful execution of the rules they set out. As part of this criticism he points to wrongful interpretations by fuqaha' and their dependence on weak traditions that are popular among the public, public practices particularly the wrongful treatment of women by men against God's laws, and the wrong that women do unto themselves by not abiding by God's laws and the imitation of Western women. It is only by returning to a true interpretation of Islam and application of its laws, that women could play the role to which they were intended and which would honor their rights and give them an ability to perform their duties.<sup>13</sup> Only if a woman recognizes her nature and abides by Islamic teachings will she live an honorable productive life. Here using the aya of 'waqarin fi buyutakum' (al-Ahzab, 33) discussed earlier, al-Qisi reaches the following conclusions:

1. The husband has the right to stop his wife from leaving the home after having paid her advanced dowry. However, this right like any other right should not be misused by the man.
2. A Muslim woman should not go out too much, leaving her home must be for an important reason.
3. A Muslim woman should

prefer to bear children and raise them, and watch out for her family's needs rather than work outside the home. However, there is nothing against her going out to work if there is a need as when there is no one to support her, but on condition that her work be according to conditions laid down by Islam, i.e. that this work be allowable by the Shari`a, that said work does not take her away from her husband or children and that it not be in a situation where she would work with men.<sup>14</sup>

Al-Qisi completes the picture by allowing women to visit a doctor, preferably a woman doctor; if not, then a decent male doctor and only in her husband's presence and she was not to remove any unnecessary clothes. She could also practice sports but not in the presence of men and she should be covered except for the "face, head, arms and feet."<sup>15</sup>

Al-Qisi's analysis is highly representative of conservative Arab society today and is well-reflected in Jordan's laws. Even though he does not tie a woman's work with her husband's permission, he still requires a husband's permission for his wife to leave the home. Presumably this means that she can take work into her home, for example childcare which al-Zisi approves of, but leaving the home for any reason other than what is legitimate according to the shari`a—to run errands, visit parents, and so on—must necessarily require a husband's permission. Hence the strong connection between a woman's work, her husband's permission for her to work, and her obedience to him.

While thinkers may differ on a husband's approval, all are directly concerned with issues of morality that seem to be completely focused on sexuality. Women, different from men by nature, should not in any way entice men to act indecently nor

should they be placed in a situation where they would be encouraged to act immorally. In other words, both men and women are reduced to their essential nature as potential sinners, an idea which is actually quite alien to an Islam that does not believe in Original Sin nor is Eve blamed for the Fall out of God's grace. The fact that the Prophet's women Companions went out publicly and his wives were active within their communities is usually explained away as being possible because it was an ideal community when sin was the last thing on people's minds. That it is this "ideal community" that is also suggested as the ideal to be emulated by Muslims today seems to be a lost fact in this conservative gender discourse. The whole question on morality seems to be attached to particular urf of certain societies during particular periods and highly dependent on socioeconomic conditions.

There are social and legal repercussions involved in requiring a husband's consent for his wife to work. Personal status laws set a basis of gender difference and discrimination that have become reflected in social attitudes. Confirming that a wife must receive her spouse's approval for all her actions has been solidified into a social and cultural basis of gender in modern Jordanian society. This need not have been so. Spousal approval is by no means unique to Islamic society since it characterized marriage in premodern Europe and its colonial extensions in North and South America, Asia and Africa. Here it was not a question of religion but rather of gender relations and culture. But, it should also be remembered that in premodern Europe women were guided by principles of coverture,<sup>16</sup> a term connoting the wife's being covered by her husband's name and power. Her dowry went to him and he had full legal control of her person—at least theoretically--, her property became his property and he could incarcerate her if he

so wished. That was not the case in Islamic society, no coverture laws applied, a woman expected to be the recipient of a dowry and her property remained her own. Furthermore, her allegiance continued to be toward her family and this was recognized by Islamic law as will be discussed in Chapter 5. As example one only needs to point out to the right of a wife to divorce her husband who moves her away from where her family lives a distance greater than could be traveled in one day (masafat al-qisr) against her wishes or her family's wishes. The powers given to the husband vis-à-vis his wife by modern personal status laws are therefore beyond what he enjoyed earlier.

One of the social repercussions facing women who are believed to be disobedient to their husbands is the onus this places on her sisters and even female cousins. A disobedient wife is declared to be nashiz which in legal terms really means that she no longer deserves his financial support which becomes in itself a basis for her to sue for divorce. But judges almost always take it against the wife and consider her at fault when she sues for divorce on the basis of “discord and conflict” (shiqaq wa niza`) even though this the only legal method by which a wife could sue for divorce and hope to receive partial fulfillment of her financial rights. Who would want to marry into the family of a woman who has brought discord and conflict into her home and her husband's life? Issues like her right to work, her wish to work, and even her family's need for her salary, have little bearing in courts of law and consequently in society at large. The very name used for divorce, i.e. shiqaq wa niza`, and the fact that this is believed to be a wife's divorce even though both husbands and wives have recourse to that method—particularly husbands who do not want to pay alimony--means that a woman and their families would be directly hurt if she is declared a disobedient wife. As

nashiz, a wife is considered a shrew, is denied her right to her husband's financial assistance, and her whole family and especially unmarried sisters and even cousins are placed in a socially unfavorable situation.

As mentioned earlier, according to the shari`a, a wife expects her husband to financially support her as long as she is married to him and during the three-month `idda period following divorce. Specifics of this support differ among the various fuqaha' and Jordanian courts have seen interesting cases in which wives sued husbands or ex-husbands for medical, schooling, or other specific expenses on the basis of their right to spousal support. An important question facing young Jordanians married to working wives or expecting to marry working wives has to do with spousal support for a working wife. According to Jordanian laws (personal status law 68) a wife who works without her husband's approval does not deserve nafaqa from him even though she remain married to him and he cohabits with her as a wife. This is an interesting law because it is not justifiable according to the shari`a. Nafaqa is not paid because the wife has no income to support itself according to Islamic law and `urf, but because she gives holds herself for her husband, sexually speaking. The idea is that working without his agreement means she is not obedient, which makes her nashiz and hence not deserving of his financial support because she is withholding herself from him. That is what nashiz really means in the law. But if they are living together, how could a wife be nashiz? The importance of this law is that it illustrates the legal method employed by legists to deal with a new problem by looking for shari`a justifications which are more like a gruyere cheese full of holes with no answers. In the above case, a way was looked for regarding disputes over the wife's income and the insistence of husbands that this income be integrated into the

family income and the wife's refusal because it is his responsibility to support her notwithstanding how wealthy she is. It should be mentioned that there was always the option open to the couple to include in the contract conditions regarding the question of financial support. But, in this situation favoring patriarchy, not including a condition is not taken against the husband. Compare the case in which the court refused to accept the wife's evidence that her profession was included in the marriage contract and she continued to work after marriage. The court's findings was that she should have included his approval in the conditions in the contract, since she had not, then her evidence did not matter.<sup>17</sup>

What if the husband agrees that his wife could work, does the wife deserve her husband's financial support when she receives an income from a job or a business she owns? Should she contribute to the family budget? According to the shari`a, a woman's income is her own and not to be spent on the household which is the husband's responsibility. Today, with the rising cost of living, such a situation is not even considered, and a working-woman or one with income is usually expected to share expenses with her husband. In fact, it is quite common today among educated young men just starting out, to look for young women who either have an independent income or hold a job. Young men with whom I discussed this issue voiced deep concern regarding the financial burden expected of a husband before and after marriage including the dowry, attachments to the dowry (mainly jewelry and house-furnishings), and the family budget. The latter in particular was a point of contention especially in regards to working-women who tend to wish to keep their own income. Since husbands consider it their right to allow or forbid their wives from working, they also consider it their right to control the

income from that work. Several women who left their jobs because of this reason told me they saw no reason why they should work given the difficulty of transportation, the added burden of family and housework and the fact that they are not left with enough money to buy their own personal needs.

In Jordan like other Arab countries, marital assets do not belong jointly to husband and wife to be divided between them if a divorce should take place. This is based on the separate entities that husband and wife represent which is unlike the situation in Western countries. It is one of the reasons why women consider their income as belonging solely to them and quite often prefer to stop working altogether rather than turn over their salaries to husbands whose responsibility it is to support them in the first place. It is true that among the educated middle and upper class strata of society, married couples seem to be working on the basis of a joint family budget, but even here spouses hold their property separately and there is consciousness among the women that what they buy or bring into the marriage should remain theirs. In Egypt, families of brides actually insist that the bridegroom sign a "list" itemizing all the goods that the bride is bringing into the marriage so if he divorces her he would have to deliver the items included in the "list" intact or else be prosecuted. Abuses of the "list" and how it is being used by brides' families today is proving to be an incentive for changing personal status laws in Egypt.

Personal Status Law gives the impression that once the husband has given his consent to his wife to work, he can no longer deny her. Actually the situation is much more complicated and this law in particular must be considered one of the most important hindrances to the entry of women into the work force or opening their own business since

her continuation in either is dependent on “keeping her husband happy.” The problems here are diverse. A man could refuse to pay his wife any financial support on the basis that he asked her to quit working and she refused and continued to work.<sup>18</sup> A husband could also deny his divorcee her rightful financial compensations due her on divorce because she worked without his permission. When the wife sues for these financial rights, which are often agreed upon at the time the marital contract was signed, the court asks her to prove that she had received his approval that she could work. Since such approval is almost always an oral agreement, it becomes very hard to prove and the wife loses all financial rights even what was agreed upon at the time of marriage and that included in the marriage contract.<sup>19</sup>

Another interesting case took as a basis for its decision the fact that the wife worked in the armed forces and would not be able to resign.<sup>20</sup> Here the husband asked his wife to move with him to live in an area outside of Amman where he had lived continuously for a long time. Her move would have entailed that she quit her job in the armed forces, which she was unwilling to do. In a ta`a case the husband demanded that his wife be made to move and live with him. As the records state, the wife worked in the armed forces before her marriage, the fact that she continued to work after her marriage to him was evidence that he had approved of her working. Interestingly, the court never disputed the husband’s right to demand that his wife quit and come live with him on the basis that he had approved of her working. Rather all the court wanted the husband to prove was that the new home he set up was acceptable as per shari`a requirements (i.e. a legal house of a standard similar to those of her same class). The court was also concerned that the wife worked in the armed forces and did not have the right to resign if

she wished to do so. What this case tells us is that a husband's acceptance of a wife's work did not mean that he could not change his mind. It was because of the wife's inability to resign from the army which ultimately led the court to dismiss the case and not the wife's right to remain in her job now that her husband has changed his mind.

Jordanian law, unlike most other Muslim countries, allows the inclusion of "pre-nuptial" conditions to marriage contracts. For some reason, probably social pressure (to be discussed in Chapter 6), women hardly make use of this instrument to determine the form of their marriage relationship including her freedom to work if she so wishes. The fact that they do not include such conditions when conditions are allowed, weakens their situation once there is a dispute regarding her work. Interestingly, the inclusion of conditions to contracts was not as well-known among women groups I met with as one would have expected given that this was the most important way by which women were able to get out of an unwanted marriage without losing their financial rights or the way to determine their living conditions with their spouses. The unwillingness of husbands to allow such conditions is one reason that this instrument is used by women, another is a social discourse that discourages women from looking in such a direction so as not to limit their attractiveness as potential wives.

It is generally assumed that it is among the lesser educated classes that disputes over a wife's work take place. Actually, this seems to be a general situation throughout Jordanian society. Thus, professional women in professions face the same kind of marital control. A number of court cases indicated that teachers often faced being declared nashiz because they refused to give up their jobs on their husband's demand. It should be pointed out that to be declared nashiz did not mean that a wife would be granted divorce

by her husband, he could keep her in that state indefinitely if he so wished unless she took the case in front of the judge and went through the expenses and hassle of a shiqaq wa niza` court case as discussed earlier even though his non-payment of financial support is enough reason for her to be divorced from him. In a 1980 Tamyiz Court case<sup>21</sup>, the wife, a teacher, was asked to prove that her husband approved that she worked. Given her education and the fact that she was already working at the time of her marriage, logic should have indicated that the husband must have married her knowing that she had a profession. Since he is the one denying that he ever approved of her work, he should have been the one expected to produce evidence that he indicated his refusal that she continue working at the time of the marriage. That, however was not the situation in this and in all of the cases surveyed, the onus of proof was laid on the shoulders of the wife notwithstanding the acknowledged `urf that written conditions in marriage contracts is not acceptable socially and hence not practiced even if the laws allow it. Certainly not acceptable to husbands who could be considered wimps if they succumb to their wives' conditions. So according to `urf such conditions are always oral and the courts should be well aware of that. Obvious evidence, like the wife's education, profession, or inclusion of a wife's profession in the marriage contract, do not seem to make a difference in the court's decisions.

### Work and Private Life

“Despite the fact that, as an often-cited statistic holds, women do two-thirds of the world's work, their achievements are very often invisible. Women work hard, but they often receive little credit for their accomplishments. Still rarely (relative to men) do they

reach high-visibility positions of achievement and leadership.”<sup>22</sup> With these words, Hilary Lips began her keynote address to the National Council of Women of New Zealand in which she discussed the contributions of women to their communities in public and private life that go unrecognized and unappreciated.

The Most important reason for the lack of recognition is due to the nature of the work undertaken by women, which remains in an “invisible” area. Invisibility exists because her work is “expected of her.” Thus a woman’s work at home in a domestic role as house-keeper and mother is looked at as what she is expected to do. Also her role in peasant societies, working in the fields beside her family or her husband and children, or raising chicken and keeping a vegetable garden to supplement their income, or manufacturing boxes/baskets or other take-out items, are not taken into account notwithstanding how important her contributions are to her family or community. The lack of recognition of women’s work because it is associated with family or home is without doubt a basic reason for discriminating against her throughout the economic, political and legal structures.

The lack of recognition also means that when women do take jobs, they are looked at as less capable than men at the same jobs. This is reflected in salary scales which constantly differentiate between the sexes at all levels and professions whether we are talking about peasant labor or university professors. But this becomes a vicious circle, once regarded as lesser than her male colleague, once her contributions are taken for-granted, this leads to lower salary, comparative lack of promotion potential, closing of particular jobs that are open to men, and a basic outlook among men and women that woman’s labor can never be equal to that of a man. This is the case worldwide, even in

the United States where women have achieved great steps toward non-discrimination according to sex. “According to the U.S. Bureau of Labor Statistics women make up two-thirds of all minimum wage-earners, and during 1998, women in the United States earned 76 cents for every dollar earned by men... Asian-American women earned 48 cents, and Hispanic women earned 48 cents.”<sup>23</sup> The reason this is so, according to Lips, is “our long habits of thinking of women and the work they do as less important and impressive than men.”<sup>24</sup>

Jordan is therefore not alone in social discrimination against the work of women. What makes the situation more difficult in Jordan is the moral discourse that associates a woman’s duty at home with her religious duty toward God. Both the law and social discourses take it for granted that a woman’s place is home, that her primary loyalty is to her family, that she has to obey her father and her husband, and it is up to the latter to agree that she take a job or not. This means that without familial approval, she cannot work, and this approval is usually dependent on family needs. Therefore, the social discourse stresses the idea that a woman works only because she needs to support her family or at least to help her husband cover the expenses for her support and her children. The idea that a woman could be involved in a job or a trade for other reasons does not seem to be approved and most women take jobs with the idea that they would not have to work as soon as the husband or family can afford her staying home. It comes as no surprise, therefore, that a number of studies regarding Jordanian women’s work concluded that most unmarried working women plan to stop working after they marry; that 44% of married women intend to leave their jobs after having children; that 41% of women think seriously of stopping working; and that 25% of women with children have a

hard time carrying their responsibilities as mothers and holding a job at the very same time.<sup>25</sup>

Young girls in Jordanian middle and high schools fit within this pattern. Asked about their chosen future professions, only one out of a class of fifty girls said that she hoped to go on to university and become a doctor. The rest intended to get married. When it was pointed out that being married is not a job and then asked what job would they take, a few agreed and indicated various occupations they would like, most importantly beauticians or hairdressers. When asked why having a job could be important for a woman, they seemed to be aware of the importance of financial independence. “So she could be financially independent”, “will not need to ask her husband for money”, or “if he dies then she can support herself and her children” showed a keen awareness of the problems that often face wives. It is the contradiction between this awareness and between the lack of enthusiasm regarding having a career that was surprising. Yet, on reflection, given the school curriculum, mass media, emphasis on the joy of a wedding and the central role the bride plays in it—“it is her night” is the usual saying—it ceases to be so surprising. This will be discussed in a later chapter regarding life and growing up in Jordan.

Class is important here. The three girl schools in which I posed these questions for this research were all located in the more popular areas around Amman and the students lived close to them. Records of the Women’s Business and Professional Club of Amman confirm these findings. While the women who resort to legal assistance at the Club come from various classes of Jordanian society, the large majority originate from the poorer sectors of society who cannot afford legal assistance and whom the Club

advises and sometimes sponsors free of charge. Many women ask the Club to help them find employment and, in most cases, it is because these women no longer have anyone to support them or the alimony they are receiving is inadequate. Faced with supporting themselves and their children, they are willing to take any job even though they may have completed their school education and sometimes vocational school or even university. Having married, they were expected to stop working or not to work. It was only when the marriage fell apart or they were faced with financial need that the women looked for work and began to earn their living.

This is in contrast to middle-class women to whom a job appeared to be an essential part of life, a natural continuation of their education from school to university and then on to a job. Actually, in Jordan as in other fast changing urban centers of the Middle East experiencing significant population growth, increased consumerism and upward mobility, it is becoming a requirement that a bride hold a job and have an income. If she was still a student, then she was expected to work after graduation. Otherwise, she is expected to receive financial support from her family or to have a some other form of income from inheritance or property. This is particularly so among university students and graduates. Young men expect their wives to share in household expenses and work to better their material conditions and their future. As for upper class women, here there is a greater openness and choice. While wealth allows women to stay home, they often opt to enter into business with their families or are made partners by their fathers. They may choose to become socially active in welfare projects and various forms of social and community services; they could enter the professions particularly as doctors and lawyers, and an increasing number are opting to go into trade and open their

own businesses.

No matter which class we are considering however, the philosophical outlook toward women's work remains the same except perhaps for very wealthy families. Women's work is regarded as temporary and essential only because the family needs the money or that her earnings would help buy things for the family that they could otherwise not afford, i.e. for the material well being of the family. One consequence of this is that a woman becomes a "double duty" person, not only does she hold a job with all its responsibilities, once she comes home she still has to cook, clean, take care of the children, shop for household needs, and even do the children's homework with them. Her mother, if alive, helps when she is at work, but once home, she is expected to take over. Husbands of working wives usually help in all these household chores, but the help is considered that, i.e. "help" and not responsibility. The working wife is under constant pressure to be the wife society expects her to be and her husband expects her to be even while holding her job and helping support the family. The psychological impact of this "dual role" and social expectations are of severe impact on working women, yet this fact is not given due consideration and she is placed under even greater scrutiny than a non-working wife. Furthermore, if there is litigation between the husband and wife, it is almost always taken against her that she is holding a job and therefore not fulfilling the duties expected of a wife.

As was shown earlier, there is nothing in Islam that forbids women from work and women have in fact always participated in the economy. The nature of business and the labor market itself has changed, which resulted in women losing out in areas where they competed earlier. As the nuclear family became the predominant form of family in

Jordan as it has in most of the world, society was bound to change its outlook toward the responsibilities of women in her home. Sharing the expenses of living, a responsibility placed solely on the shoulder of husbands according to the shari`a, should be reciprocated by a clear division of labor within the household, not only amicably as is usual between understanding spouses, but also in courts of law and in the philosophy regarding law and women's work.

### Privileging Women

“Difference” lays further basis for discrimination notwithstanding how beneficial the difference is to weaker parties in the system. Jordanian labor laws determine areas of exceptionalism based on gender that continue the basic philosophy of gender discrimination. This is particularly so because the exceptionalism is not meant to be temporary to narrow an educational or social gap between two groups with different advantages or abilities. Here we are talking about permanent differences based on the nature of women and the inability of women to do a man's job. The exceptions made to the law continue the gap and help enlarge it. Other exceptions to the law are based on a woman's fragile and helpless nature and therefore the need to protect her. Such an approach is at once the result of the dominant patriarchal outlook and a force extending that very outlook.

The following are examples of how some benefits work against women and how they strengthen the patriarchal discourse connecting women with marriage and dependency.

1. Night work:

Women cannot work at night jobs nor in dangerous situations like quarries.<sup>26</sup>

Such a law would appear to be beneficial to women who prefer not to work at night and who would be protected from the unhealthy environment of quarries (stone, limestone, phosphates, and so on). But if working at night was so undesirable for women, then why put it in the form of a law? And while women could become abused in providing labor for quarries, such jobs are usually given to men. Protection from night work fits with society's concern with moral issues pointed out earlier. It is not so much the work of women that bothers most fugaha' as the possible moral implications that could be caused by mixing of the sexes in the workplace or women's work in an improper work environment. But if these are legitimate concerns, are women then given an advantage when it comes to working during the day and at jobs that do not include health hazards like the ones she would face in quarries? The answer is no, that no such preference is given even in jobs located at the bottom of the salary scale, like custodians and cleaning-persons, in which situations men are still preferred—unless it is a girl's school or other type of establishment for women—and they are paid a higher salary than women holding the same job.

It is interesting that most of the laws protecting women use the basic arguments that women are the mothers of the future generations and as such their health and welfare should be guaranteed by the state. The argument itself is not a new one nor is it unique to Jordan. In the Western world that was the very argument used to create a situation of exceptionalism for mothers or potential mothers, which in turn allowed for patriarchal

control and discrimination against women. Western labor laws introduced early in the century in non-Western countries under British control, for example, required that an employed woman who married had to resign her job. As for France, until today French women cannot work at night without their husband's approval. Their laws, as explained in Chapter 2, had diffused globally and became part of social urf confused with the larger patriarchal picture.

The contradictions in the laws are another point of concern which put into question the validity of having such laws on the books however worthy the intentions from them. Here I want to point to the exceptions to the law forbidding women from working at night, included in the codes and which are left to the Ministerial Council to mold as it sees fit. It was left up to the Minister of Labor to determine the industries prohibited to women and the hours of work. These rules were to be generalized according to government policy and "individual circumstances" (glossary 3, p. 4). This means that the government recognizes that these laws are not dye-hard and that they are open to change depending on conditions and needs of the country. This is good, because it is possible to change these rules and make labor laws less discriminatory. This is important particularly in the sense of applying a philosophy of equality by ending the conceptualization of law according biological difference.

Exceptions to women's work at night at present include employment in hospitals and clinics, restaurants and tourist establishments, airline and airport staff, personnel employed in industries for transportation of people and goods, women involved in yearly inventories, women involved in preparation for beginning and end of season retail sales, or if there is fear of financial loss (for example, contamination of stored goods). These

exceptions are so broad and diverse that the very law is curious and seems to be oriented toward the needs of the market rather than to the protection of women. When women are needed then they are allowed to work at night and when they are not needed, they are forbidden from working. Thus at time of inventory, sales, or increased tourist activity, women are allowed to work at night, but once the pressure is off, then they are forbidden from doing so. This conclusion is supported by the 30 day a year/10 hour per day limit set as maximum for women's night work. Since extra work is compensated at 125% to 150% of pay according to the law, women who wish to increase their income by working overtime at night are virtually cut out except when job pressure requires it. Without doubt, this works to the advantage of men and the law can be said to limit competition of women with men over limited employment opportunities. The concept that men are the bread-winners and that women only work for financial need, is important here. Paying women less than men is also because of that same belief.

To conclude, whether women prefer not to work at night or in dangerous jobs or not should not be determined by the authorities. Women work in the fields and continue to herd flocks in deserts under the most severe conditions, so it is not as though they are not capable. At any rate, ability should not be the basis of laws whose ultimate goal is equality. The matter should be left open to individual choice. Controlling job choices and setting rules based on biological and socially perceived roles strengthens gender difference and makes women's helplessness and dependency a basis for legal interpretation.

## 2. Social Security

Jordan has comprehensive social security laws, The Jordanian Social Security Law for 1978 (amended in 1979), which are intended to benefit Jordanian and their families. These laws are applicable to all employees to whom Jordan's Labor Law applies as well as public employees in public service. Power over which sectors of society are to be covered by this law is given to the council of ministers, i.e. the executive branch of the government, which can change the beneficiaries and the actual benefits depending on social conditions at any particular time. Inheritance of retirement benefits, however, are guided by the Islamic shari`a rules of inheritance. The law provides for financial assistance in the following situations:

- Injury at work and work-related illnesses.
- Insurance against old-age, incapacity, and death.
- Insurance against temporary incapacity due to sickness or giving birth.
- Health insurance to workers and their dependents.
- Unemployment (Article 3 of Social Security Law).<sup>27</sup>

While the law and coverage is as good as one can find in other countries, there are numerous problems with Jordan's social security laws that discriminate against women. The first problem with social security laws is that they do not cover jobs in which large numbers of women are employed. Thus Social Security laws are not applicable to unregulated and temporary jobs. Women are highly involved in these types of jobs and they do not have social security benefits—including retirement, health, and compensation for job-related injury, all of which are essential in today's society. This means that they are at jeopardy in the work place and have no support if laid off. Given the fact that retirement, health and social security are some of the most important reasons

why people go into public employment, extending social security to areas with a high employment rate of women should act as a pull factor for women to seek employment. As things stand, the incentive to work is that much less for women involved in these types of jobs, yet they are usually those in greatest financial need.

Furthermore, Social Security Laws do not apply to family members working for a family enterprise. This is particularly harmful to women who carry a substantial share of many such enterprises, whether as labor in fields, selling in family-owned shops, making goods to be sold in these shops, and so on. Women's contribution in family enterprises remains "invisible", she is not paid by her family and her labor is not figured into any economic calculations. While sons could draw salaries or at least draw funds from such enterprises, that is not the case with wives or daughters whose financial support by the family is probably all they receive. Ownership of family enterprises usually belongs to the father, husband or brother. If Jordan's laws regarding family ownership of businesses are uniformly enforced, then this would make sense, but what guarantees do women members of a family have and what benefits can they expect in case of injury, unemployment, family disputes or divorce? Clearly there is an inconsistency in the application of these various laws.

Other forms of unregulated employment of particular significance to women include domestic help and "those within the same capacity." Most domestic help are women and today a large percentage of those employed in domestic service, men and women, are non-Jordanians. Social Security Laws do not apply to non-Jordanians and abuses of foreign labor whether Arab or Asian is quiet commonplace. Other countries, e.g. the United States, demand that employees of foreign labor pay social security for

them so that they could receive adequate coverage in case of injury, retirement or unemployment. There is no reason why Jordan's laws cannot take such an initiative to cover both Jordanian and non-Jordanian domestic labor.

### 3. Retirement:

Benefits based on gender difference provide a basic contradiction to Jordanian constitutional laws about the equality of all Jordanians in regards to work opportunity and actual employment. Even though the benefits considered to be a gain for women and for which feminist groups have fought, appear at first glance to be positive, on closer scrutiny they prove quite problematic if the goal is to increase women's participation in the economy. Besides laws that are based on exceptionalism, biological or otherwise, only strengthen patriarchy and discrimination. I will begin by first discussing retirement benefits provided by Jordan's social security and retirement laws, and then proceed to explain the areas that are problematic in these laws.

Funds for the payment of retirement benefits are provided through monthly contributions paid by employers on the basis of 8% of the salaries of his employees; monthly contributions that are taken out at the rate of 5% of an employee's salary on condition that the amount contributed by the employee not be less than 500 fils; the amounts contributed by employees in return for [uncovered] periods worked earlier; and earnings from these contributions. In other words, the social security system of Jordan is funded pretty much the same way as elsewhere, and it is part of the rights of workers when they are employed. Social Security is supposed to cover everyone contributing to the system equally depending on the length of employment and the salary at the time of

retirement. Given the equal contributions made by all employees according to their salaries, gender should not be a basis for paying out benefits particularly since it is not a basis in contributions made by the employees. Yet, gender considerations are central to the system and benefits differ according to gender in regards to:

- Period of employment needed to deserve retirement benefits.
- When benefits can be retrieved.
- Who has the right to benefits.
- Conditions required for providing benefits due to death of the employee.

It is not that regulations were meant to harm women, actually they are mostly intended to make a woman's work easier allowing her earlier retirement than men and facilitating her resignation from work while holding on to her benefits. But while the rules are generally considered to benefit women and were probably intended to make a woman's life and her family's life easier, in fact the differences in retirement benefits based on gender constitute a major form of discrimination against women and are without doubt a serious hindrance working against the sustained employment of women after entering the workforce.

The logic behind extending retirement privileges to women that are not available to men is the belief that women would rather not work if they had the choice and that, since the home is the natural place for women, the only reason women work is to support dependents or help supplement the family income. Once a woman marries, however, she would have her husband's support and unless she needs to contribute to the household income, it is believed that she would then retire. Furthermore, it is also assumed that

getting married, or having a son or daughter get married, was a costly affair and that mothers may prefer to receive early retirement to be able to afford such expenses. So privileges extended to women and not to men are intended as a benefit to women who expect to stay home after marriage or who choose early retirement. Whatever the intention from these “benefits” they constitute a strong push factor for women to retire especially where there is financial need for the family such as marrying a son or daughter, sickness, or other forms of financial difficulty.

According to Article 14 of Jordan’s Labor laws: “Benefit payments deducted from the salary of an employed woman who resigns her job are to be returned to her (tu`ad lil-muwazafa al-mustaqila al-`a`idat alati uqtuti`at min muratabiha)” and “a woman has the right to leave her job and receive her end-of-service bonus at the time of her marriage” (“yahiq l`il-mar`a al-`amila tark al-`ammal wal`husul `ala mukafa`at nihayat al-khidma hal `aqd zawajiha”). This means that if a woman resigns her job she can get back all the money she contributed to her retirement fund. This becomes a push factor encouraging women to stop working at times when her family is facing a financial crunch. If she is getting married, she is further rewarded in the form of an end-of-service bonus that she would normally only receive when she retires. This is problematic because it encourages women to leave their jobs and even more importantly, the connection between marriage and staying home is reinforced through laws that actually financially reward women for quitting their jobs. It is curious why a government should encourage women to work, offers them job equality through its constitutional and labor laws, and at the same time make it rewarding for women to quit their jobs after having employed them.

Needless to say, men do not receive the same options as women when they are getting married. Gender difference is reflected further in retirement laws. According to Article 41 of Social Security Law: “Retirement entitlements are due to the insured man when he reaches the age of sixty and to the insured woman when she reaches the age of 55.” Furthermore Men can retire after 20 years of service while women can retire after 15. Since the amount of retirement is based on the last two years of employment, women tend to retire at much lower pensions than men for the very same job (Article 43b of Social Security Law). If a woman wishes to retire earlier than at the age of 55—which the law allows as indicated above--she would be reimbursed the monthly deductions for retirement and other benefits that were taken out from her monthly salary while employed. Early retirement and early receipt of benefits can be considered a way by which women could save a nest egg through which to begin a business. However, the amount she would receive would be hardly adequate since it is only her contribution to the retirement fund that is in question. In most cases, funds received from early retirement goes to pay for marriage or family emergencies.

Gender difference is also applied in cases of mandatory early retirement. Article 15 of Jordan’s Labor Laws reads: “The Ministerial Council can decide to retire an employee if he has completed 20 years of work and the woman employee if she has completed 15 years of work.” This is further emphasized in Article 17: “Keeping in consideration Article 26 of this law, he is considered retired by decree any employee whose service is terminated without resignation or by losing his job if he completed 20 years and the woman employee if she has completed 15 years...”

Social security and retirement laws can be said to discriminate indirectly and unintentionally, i.e. they were actually meant to assist women and are built on a conception of women as more frail by nature and that they work only because circumstances compel them to. Other forms of legal discrimination, however, are quite overt and direct. An obvious example has to do with the situation in which a woman employee dies while still in service. In such a situation, her pension would go to her family only if the family (children, husband, mother, father) can prove that they are destitute and need the pension or that she was their direct financial provider while alive. Article 52 of Social Security Law concerning beneficiaries states:

In fulfillment of the intent from this law, beneficiaries are those family members of the insured...who fit the following [categories]: a. His widow; b. His children and those of his brothers and sisters whom he supports; c. His widowed and divorced daughters; d. The husband of the deceased insured [woman].<sup>28</sup>

This law equalized widower and widow of deceased employees but places them in two separate categories because the actual treatment of each differs. While a widow and dependents of a deceased employed male need only prove their relationship to him and that he is deceased, the requirements for the family of a deceased woman employee make it almost prohibitive for them to receive any of the retirement due her by law. It must be remembered that the employee—male or female--paid for this privilege through monthly deductions from his/her salary and that contributions by his/her employee were part of the contract according to which she was employed. Therefore, social security benefits are not a “grant” from the government which administers the service and it is not up to the government to differentiate between recipients according to gender of the employee.

But differences also exist when it is the husband or the wife of a deceased employee is receiving the pension of his spouse. Article 56 of Social Security Laws, titled “Conditions for paying retirement pension to the husband” states:

It is a condition for the husband to receive the pension due him because of his deceased insured wife, that he be completely incapacitated, that he have no private income equal to the amount of pension due him [from social security]... if that income is less than what he is due, then he is to be paid the difference and the rest is to be divided among the other beneficiaries.<sup>29</sup>

Add to the above the fact that only those who have no other means of support are deserving of the pension of a deceased insured woman employee could benefit from her pension. Article 34 of Jordan’s Labor law for 1996 states:

... if [a woman employee who has gained a pension] dies, her pension is transferred to her beneficiaries according to this law if their need is proven and if it was also proven that the employee was directly responsible for their support.

This means that unless her family can prove that they have no one to support them and no other means of support, i.e. “she was directly responsible for their support”, they would not receive her pension. In other words it is very hard that the family of a deceased employee get to receive the pension that was due her from the benefits that she was obliged to pay by law throughout her employment. Given this fact, there is no reason for a woman to continue until her age of retirement. These laws are very serious and are at the heart of the perception of women as peripheral to the workplace, limits their promotion, and reduces their incentive to remain employed.

One last point that needs to be raised about laws of retirement has to do with the connection between polygamy and pension. Jordan like other Muslim countries—exceptions include Turkey and Tunis—allow a man to marry up to four wives at any one time. This is his choice and the approval of his existing wife or wives does not come to bear on the validity of his new marriage (this will be discussed in details in Chapter 5). However, even though wives are almost universally against a husband's taking a second wife for emotional, financial and other reasons, it is the wife who has to carry the burden of the husband's actions when it comes to receiving a widow's pension. While a husband does not share the pension of his deceased wife with another man since a wife is only allowed to be married to more than one man at any particular time, the wife has to share her deceased husband's pension with his other wives if he is a polygamist. The same goes to the children of a deceased employee, they have to share his pension with children from his other marriages.

It is in the finer details regarding who deserves pension and the percentages due various members of the family regarding pension from a deceased provider, that this form of discrimination becomes clear. It is also directly connected with personal status laws. This involves wives of deceased employees. It does not apply to a man receiving his own pension or who is beneficiary of his wife's pension. The tables explaining benefits to various beneficiaries of pensions published by the Lawyers' Syndicate show that while percentages due to spouses may differ depending on whether the parents of the deceased insured employee are still alive or not, that in all cases the wives share the same portion that one single wife would have received had the husband not been a polygamist.<sup>30</sup> This means that when a husband has more than one wife the result is that on his death, the

pension that should have been due one wife is divided among two to four as the case may be. The same goes for the children. The more wives the more children and the lesser the amount that each child would receive. Given the fact that social security benefits are pegged to a minimum standard of living and that increases only when the amounts received are not adequate to meet the minimum needs of life, it is obvious that subdividing pensions among wives can only be a source of hardship and harm.

If the right to more than one wife is religiously sanctioned and inheritance laws are based on the Islamic shari`a which gives the man double what the woman receives at every level of the relationship between heir and deceased, this should have little to do with social security benefits by which an employee's family expects to be supported on the basis of at least the minimum required to survive. When a husband takes a second wife he is taking on a financial burden that he feels he can support, why should that be any different in regards to the pension his survivors would receive? Why should his wife and children have to suffer from an act that he took unilaterally particularly when his pension becomes their only source of income and it is pegged to the poverty scale? As a way of not encouraging polygamy and to make sure that widows receive a pension that would allow them a respectful life without having to fall back on charity, why should not husbands who take a second wife be required to contribute more of their salaries into the social security fund? Whether the employers are to contribute as well or the husbands would have to carry the employer's share can be discussed. But this would be fair for wives who had no say in their husband's taking a second wife. An alternative would be that only the first wife would benefit from a deceased employee's pension and except if it is she who initiates the divorce and depending on how long she has lived with him, her

benefits are not cut off because of his repudiation/unilaterally divorcing her. A second wife could then only be covered by social security if the first wife is deceased or if the husband adds to his monthly contributions to the social security fund. This would discourage second marriages and unilateral divorce for no fault of the wife. It would also discourage women from marrying a man with an already existing wife. As important, it would recognize the participation of a wife as homemaker and partner in the Jordanian home. Ironically, Jordanian laws may emphasize family and a wife's primary job as being in the home, but this is not reflected in the laws regarding financial benefits which then reverse the concept to see the wife as an individual and not a member of a family.

#### 4. Laws not on the books:

Missing laws, i.e. laws to regulate important aspects of employment, constitute a major hindrance for women's work, discouraging them from entering the job market. They also constitute an effective push factor for women to leave the job market. Jordanian labor laws are inadequate in these areas. Here some of the laws are implicit, i.e. they don't exist and are not taken into consideration while others are very explicit and even though they may be harmful to both men and women, they are particularly negative to women because women happen to constitute a large percentage of those employed in sectors of the economy that can be described as unregulated. I will first discuss explicit laws and then move on to implicit or non-existing ones.

##### a. Explicit laws:

Jordanian laws explicitly exclude large sectors of the work force. According to Article 3 of labor laws for 1966: “Keeping in mind rules set out in item G of Article 12 of this law [amended by Article 2 of regulatory law 12 for 1977]<sup>31</sup>, this law is to be applied to all workers and owners of business with the exception of:

- Public employees and municipal employees.
- Members of owner’s family who work in his projects without receiving pay.
- Domestic labor (servants), gardeners, cooks, and those in the same capacity.
- Agriculture labor except for those specifically included by the council of ministers/cabinet.”

These unregulated jobs are performed by both men and women. But women constitute a significant majority among domestic labor and those in the same capacity. Furthermore, women constitute a significant portion of agriculture labor and they do so as part of family activity. Here gender ties based on personal status laws (to be discussed later) act to deny women the possibility of independent wealth even though ownership of property is a guarantee for women in Jordan as it is in all Islamic countries. Furthermore, although most civil servants are men, most women who take up white-collar jobs happen to work for the government.

As pointed out in Chapter 2, it is urf which guides the fact that members of a family working for a family business do not get paid for their labor. But here it is the women who end up with nothing since the family business is usually owned by males and inherited by them. A woman who does not “tow the line” would find herself outside the

family business with no supporter. Jordanian laws do take the “family business” into consideration and legislates for it. The problem is that such legislature is not enforced and put into action. Section 1061 of the Jordan Civil Code states:

The members of the same family who have common work or interest may agree in writing to create a family ownership and this ownership shall consist either of an estate to which they succeeded and agree to subject it in all or in part to a family ownership, or of any other property owned by them and they agree to include it in the said ownership.

It is the Ministerial Council which has the authority to regulate and shape the legal definition of groups like family businesses. Therefore, extending the protection of the law to family members involved in family businesses—e.g. health and social security—can be achieved through executive action. This of course is difficult because of the resistance of family members to government regulations of any kind, since the relationship between government and the public appears to be a one-way relationship in which, through regulations of all sorts, members of the public find themselves paying taxes of one type or another, a fact that they resist to the best of their abilities. This is not unique to Jordan, but is to be found throughout the world. Small family businesses in many cases could not survive government regulations, and women and men stand firmly together to withstand any such pressure.

Another explicit law that discriminates against women has to do with taxation. Tax exemptions provided by Jordanian laws benefit men and discriminate against women. Article 13 gives the husband the right to 500 dinars exemption for his wife, for each of his children and parents he supports. The wife does not have the right to

claim the same exemptions even though the law considers a husband and his wife independent taxpayers. Women can claim exemptions only if the husband demanded explicitly for his wife to be granted these exemptions or if the wife is the only supporter of the family (Article 4:c)

b. Missing laws

The most serious law missing from Jordan's labor laws is an explicit law forbidding discrimination against women in job opportunities or in the workplace. Yet Jordan is signatory to international agreements that make equality between women and men explicit. Given the fact that many of the labor laws are designed to benefit women no matter what their results are, a law explicitly forbidding discrimination on the basis of gender would also benefit men who might wish to take advantage of early retirement for example.

The lack of a law stressing equal salaries for men and women who hold the same or equal jobs and a law establishing minimum wages is also problematic. Since women generally hold the least paid jobs and are usually paid less than their male counterparts performing the same job, the lack of such a law clearly works against women. It is estimated that women are paid on average 20% less than men and only receive higher pay in low paying jobs in the service sector or as clerks.<sup>32</sup> At the same time, even though Jordanian laws guarantee equality of promotion on the basis of educational level, training, or capability, only a few women reach higher levels in either public or private sector and men get promoted much faster. A glass ceiling is therefore an impregnable reality in Jordan.

Even though Jordanian ʿurf stresses the need to protect women and this belief is at the heart of many of the laws that discriminate against them, curiously there is no explicit law defining and forbidding sexual harassment in the work place, on university campuses, or other public areas. The assumption is that sexual harassment is part of Western culture and does not exist in Islamic countries. The reality is quite different, a fact recognized by the fuyaha' who see the need for a moral environment for women to work in. The legal record shows that, like other countries, sexual harassment does exist in the workplace in Jordan if presented differently. Records of the Hot Line of the Itihad al-Mar'a al-Urduniyya shows that sexual crimes including sexual harassment in the work place constitutes 5% of the complaints brought to their attention by women who ask for legal assistance. The Itihad's findings indicate that sexual harassment occurs frequently in offices and companies, and that the frequency is particularly high in offices where there is a boss and a secretary. A case handled by the Tamyiz court proves the findings of the Itihad. In this case a male employee took the opportunity of finding a secretary alone, fondled her and would have done more had she not started screaming. In this case he was a much older man and was her superior at work. Unlike most women who suffer sexual harassment in silence the world over, she brought charges against him and proved her case. Unfortunately, the punishment he received was 3 months in prison and expenses. She got no compensation and probably suffered consequences that the case did not report.<sup>33</sup>

While women employees in Jordan and other Islamic countries speak of the continuous harassment they face—a theme often covered on television programs, in soap operas and in novels--, it is only when such a physical attack on their person occurs

that they bring charges. Constant harassment in the form of flirtation and demands that the female employee “go out on a date”, or as in another court case, demands that “she marry him”, is a daily affair. No laws exist in Jordan to stop a constant crime which can easily be placed under the title of “hatk `ird”, i.e. offending modesty. Women, however, find it difficult to raise such issues because it may cause their families to force them to stop working. Besides, given the numerous honor crimes heard about in Jordan at the present time, and the fear that becoming a potential victim of an honor crime for no fault of the victim, causes women to stop working rather than face harassment that may lead to greater problems. It is strange that such matters can continue in Jordan where protection of women is so important and social conservatism frowns on any such actions.

To conclude, Most of the legal points discriminating against women in the work place come under the responsibilities of the executive branch of Jordan’s government. This means that it is not a question of constitutional change, nor does it need congressional action or the approval of the clergy. Rather it needs executive action on the Ministerial level. Excuses for continued discrimination based on Islam or `urf do not stand up to scrutiny. For example, according to Jordan’s Labor Law, Article 69, it is the Minister of Justice, after consultation with the pertinent official departments, who determines:

- The trades and work that forbid the employment of women.
- The hours during which women are not permitted to work and the situations in which an exception to the rule may be applied.
- Pensions, promotions, criteria for hiring, firing and promotions.

As explained in this chapter, all these are areas of particular significance to inequality in the workplace. If it is a ministerial decision that is required to change the jobs forbidden to women or the hours in which she could work, and the pensions, promotion, and so on, then why do these differences remain on the books in Jordan? Changing these rules depends on executive action and do not require passage of laws.

Here I am not suggesting that women be forced to work in all jobs and all times, rather that the option be open to them to do so especially given the financial incentives. Defining job opportunity based on gender and using the state's power to enforce employment-discrimination gives an absolutist philosophy to the whole system defining areas of work in which women could not trespass. Laws do recognize the ability of women to perform during hours and at jobs forbidden to them by allowing exceptions to the rules during times when there is greater need for hands. This contradicts the division of labor envisioned by Jordanian laws, which becomes applicable according to market needs. Such rules and regulations which obviously favor male employees need to be reconsidered.

Jordanian laws actually go further in opening the door for women into areas that other Muslim countries have not allowed, as yet. Here particular mention should be made of Jordan's recognition of women's ability to work as judges in civil courts. There are four women judges serving on the bench in Jordan today, whereas other countries considered to be more advanced in women's rights—e.g. Egypt—have so far refused such recognition.<sup>34</sup> From what I have seen, the number of women judges should be growing in the future although there does not seem to be any effort toward including women in Shari`a Courts which come under the power of the office of the Chief Shari`a

Court Qadi (Qadi al-Quda). This is curious since it is in Shari`a courts that Personal Status Laws are practiced and patriarchy continues to make it an exclusive arena for men.

This is an area of concern that needs to be pointed out.

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<sup>1</sup> "Women in business constraints", Sonbol/Consultancy. Article I.

<sup>2</sup> Jordanian Women's Guide to Participation in Public and Political Life (Amman: Al Kutba Institute for Human Development and The Konrad Adenauer Foundation), p. 23

<sup>3</sup> Oldham

<sup>4</sup> Ibid., p. 23.

<sup>5</sup> Jordanian Constitution of 1952.

<sup>6</sup> Ghalib `Ali al-Dawudi, Sharh Qanun al-`Amal al-Urduni (Jarash: 1999), pp. 5-6.

<sup>7</sup> `Abbas Mahmud al-`Aqqad, al-Mar'a fil-Qur'an (Cairo: Nahdat Misr, 1977), p. 6.

<sup>8</sup> Ibid., p. 3.

<sup>9</sup> Muhammad Mahdi Shams al-Din, al-Sheikh, Huquq al-zawjiyya: haqq al-`ammal lil-mar'a (Beirut: al-Mu`assasa al-Dawliyya lil-Dirasat wal-Nashr, 1996), p. 179.

<sup>10</sup> Ibid., p. 180.

<sup>11</sup> Ibid., p. 182-183.

<sup>12</sup> Ibid., p. 184.

<sup>13</sup> Marwan Ibrahim al-Qisi, al-mar'a al-muslima bayn ijtiadat al-fuqaha' wa mumarasat al-muslimin (Rabat, Morocco: al-Munazama al-Islamiyya lil-Tarbiyya wal-`Ulum wal-Thaqafa, 1991), pp. 9-25.

<sup>14</sup> Ibid., p. 56.

<sup>15</sup> Ibid., p. 57.

<sup>16</sup> Mary Lyndon Shanley, Feminism, Marriage, and the Law in Victorian England (Princeton: Princeton University Press, 1989), p. 8-9.

<sup>17</sup> Tamyiz Court case 21332 dated 12/4/1980.

<sup>18</sup> Tamyiz Court 41157 dated 3/9/1996.

<sup>19</sup> Tamyiz Court case 20876 dated June 1979.

<sup>20</sup> Tamyiz Court 248/92.

<sup>21</sup> Tamyiz Court case 21332 dated 12/4/1980.

<sup>22</sup>

<sup>23</sup> Hilary M. Lips, "Women, Education, and Economic Participation," Keynote address presented at The Northern Regional Seminar, National Council of Women of New Zealand on "Women and Economic Development", Auckland-March, 1999.

<sup>24</sup> Ibid.

<sup>25</sup> "al-Mar'a al-`amila bayn nizam al-khidma al-madaniyya wa qanun al-`amal."

<sup>26</sup> Article 69 of Labor Law

<sup>27</sup> Majmu`at al-Tashri`at al-`umaliya, p. 97.

<sup>28</sup> Majmu`at al-Tashri`at al-`umaliya, p. 122.

<sup>29</sup> Ibid., p.124.

<sup>30</sup> Majmu`at al-Tashri`at al-`umaliya, p. 152.

<sup>31</sup> First published in the Official Gazette number 4192, issued 16/4/1977. Majmu`at al-Tashri`at al-`umaliya (Amman: Niqabat al-Muhamin, 1997), p. 6.

<sup>32</sup> Jordanian Women's Guide, p. 23.

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<sup>33</sup> Tamyiz Jaza', 593/95, published in Majallat Niqabat al-Muhammin, volume IV, 1997, pp 1607-1610.

<sup>34</sup> At present Egyptian courts have been delaying a case brought to court by a woman who has been denied the position of judge. Another case also delayed by the courts involves a woman who was not allowed to take the job of prosecutor.

## Chapter 5

## Laws of Guardianship and the Construction of Gender

`Urf is a recognized source of Islamic law. According to one interpretation, rules of evidence in shari`a law are divisible into “textual evidence” (adila naqliyya) and “derivative evidence” (adila tab`iyya). Textual evidence is defined as:

What is transmitted without any contribution of ijtihad in its transmission or its formulation, such as the Qur’an, Sunna, and ijma` when its supporting evidence is textual. `Urf [is also included] because the formation of `urf is due to repetition of traditions (`adat) so that they gain the quality of moral obligations (al-ilzam al-adabi) inherited from one generation to the other thereby becoming a binding source when used by the judge in rendering a judgment...[legally] `urf is [constituted of] actions and words that are repeated until they gain security in people’s hearts (nufus), acceptance in their minds (`uqul), and consequence (ri`aya) in their behavior (tasarufat).<sup>1</sup>

Anything that does not gain permanency in hearts, minds, and usual practice is labeled “exceptional” and rare and cannot be considered `urf with any legal validity.

Two types of `urf are distinguishable: 1) vocal/oral `urf and 2) legal `urf. The first consists of words and meanings of words that could have had an original meaning that has changed with time. For example the word “walad” linguistically designated both girls and boys but is today used to denote boys only. The word “lahm” which linguistically

includes all flesh is today used to denote animal or chicken meat with the exclusion of fish-meat which is referred to as fish and never as meat. As for legal `urf (`urf qanuni), the term denotes terms which have moved from general practice to become a legal term like the word “crime” (jarima) which has become a legal term usually meaning a murder to be dealt with through particular legal procedures, investigations, police, court and legal codes determining exact punishments. Publicly the word jarima has much wider meanings and connotations that differ from place to place and time to time. In the contemporary world, one has to also include international `urf which may at one time have referred to political matters and imperial relations, but has evolved to include nationality questions, trade protocols, and, as the world becomes smaller and more interrelated, human rights issues particularly concerning religious freedom, freedom to work, freedom of movement, right to life, freedom of thought and security of person and property.<sup>2</sup>

Since security of person and property is ultimately intertwined with trade and international relations, diffusion of national and local `urf from one area of the world to the other, once controllable, has today become a reality causing complications and contradictions within states subjected to the impact of international legal pressures. Because of the new world order that is becoming a reality today and has been evolving for some time, the necessity to homogenize world trade systems to facilitate exchange, has necessitated increased pressure to homogenize legal and political systems worldwide. This need to homogenize, however, is growing at a much faster rate than the ability of societies and communities to move away from what can be called particularistic `urf. By particularistic, I do not mean shari`a law since in fact it has been evolving and changing

with greater structural and cultural adjustments, but the specific traditions that have become the norm for communities and have been today translated into state laws or into demeanor applied by the judge in court as his interpretation of state laws.

This chapter discusses the connection between `urf, shaping the individual Jordanian woman, and the concepts that guide social attitudes in the construction of gender in Jordan. Schools, television, and other forms of communication and media all play an important role in the formation of the individual; the chapter will point out some of the most problematic aspects that create a dependent woman even though Jordan's laws, at least theoretically, are directed toward creating a woman with full legal competency expected to carry her burden in building the nation's economy and society. The chapter will also make suggestions as to what areas could be changed to give a push to transforming both oral and legal `urf. Since creation of `urf entails the transformation of what is really derivative evidence into what becomes acceptable as "textual evidence" thereby gaining the legitimacy of the sacredness of "textual evidence", it is important that `urf be deconstructed to show how patriarchy is actually built through social, educational and other practices. Without changing social practices, there is little hope that a fast resolution to attitudes toward women and work could meet with development ambitions in Jordan today. The chapter begins by detailing the early expectations of young Jordanian girls, their life within the family and relationships with mother, father and siblings, what is expected of them and what they expect in return. It also discusses the contradictions a girl faces during her everyday life and the fears that she grows up with. The chapter then moves to discuss the role of the father in a girl's life. As waliyy his legal powers are significant throughout his daughter's life. When he dies, he is replaced

by another male member of the family who acts as waliyy. That could be a grandfather whose powers are close to those of a father, or an uncle or brother, whose powers are significantly less than those of a father. The important point is that a woman remains under the wilaya of a male member of her family almost throughout her life whether according to the law or to `urf constructed over time on “derivative evidence” which has gained “textual” credibility. She is therefore never completely independent or fully legally competent no matter that Jordan’s Constitution says otherwise. Through a discussion of the issue of wilaya as interpreted by the different Muslim schools of law (madhahib), it will be made clear that even though Personal Status laws are said to be based on the Hanafi code, that in fact Jordan’s personal status laws are a modern product of various Muslim schools, tribal laws and modern Western laws and therefore gender constructs reflected in and applied by Jordan’s laws today are in fact state-laws that could be changed and amended by the state without impinging on Islamic beliefs and laws.

Constructing gender is based largely on discourses of morality and duty, pride and fear. This is no different with Jordanian women. The educational system in Jordan, the curriculums and administration of classrooms in particular and schools in general, as well as the philosophy presented by teachers in the classroom and by government-assigned textbooks, all create gender difference and outline particular functions for women that helps keep them in a position of dependency and obedience to father, brother, family and clan. This is achieved through models of Islamic morality, coupled with pride in heritage, into a potent if contradictory formula, which works effectively. By comparisons between Jordanian laws and legal and educational practices, this chapter shows the commonalities between Jordan and other Arab countries in the past and present, and the differences

which are largely based on `urf. By deconstructing these images, it is hoped that sources of gender discrimination could be made clearer and hence addressed as discourses with the power to create and hold on to power relations unless they are changed.

### Expectations, Contradictions and Fears

Once, it was the foot in modernity that was tentative and hesitant, now it is the traditional way of life, though valued and nostalgic, that has all but disappeared. While in the beginning modernity was viewed with suspicion as perhaps too indulgent, too luxurious, it later became a necessity of life. Life, all around, was changing and in order to compete and survive, the Bedouin had to change. Change or perish.<sup>3</sup>

These words are used to launch a stimulating study of the changes experienced by the Bedouins of Jordan due to the impact of modernization. Once central to the population of Jordan, life in the Badya today constitutes less than one percent of its total population. As the authors explain, "...the nomads, traversing the desert with their goat hair tents, have disappeared, though bedouinism as a cultural identity remains."<sup>4</sup> Similarly, Jordan today has a highly urbanized society with modern amenities and laws that attempt to embrace principles of human equality and rights. Yet, the expectations of life based on its cultural and legal `urf continue to be pretty much what they were before. This is particularly so among poorer classes who have not had exposure or the financial freedom to enjoy greater social equality and political democratic participation. It is less so among the richer and more Westernized classes, the moral code and respect for `urf, however, is the same if actions and extremism are lacking. One can in fact state that `urf in the sense of what is

acceptable to majorities, constitutes the fabric by which society holds itself together and at the same time allows hegemonies to rule. Urf changes with time but only with greater socio-economic transformations that touch upon and open up class structures to greater change and equality.

The expectations of life are pretty much determined by traditions. Roles are determined by both traditions and socio-economic conditions. Changes in the one lead to changes in the other. If at one time middle-class women were educated at home and did not expect to take up white collar work in government civil service, today a university education almost always means an intent or at least a wish to have some sort of job, preferably one guaranteed by the government and ensured of the benefits offered by it. The country's economy had to change to make available such a job, the political system had to change to require a bigger and more efficient civil service and poverty made families more acceptable of having their daughters work in the same offices as men. Furthermore, international conditions and greater homogenization of laws and philosophy of man and human rights, pushed governments to become more interested in the welfare of their citizens and to adopt principles of women's equality of opportunity. To be a viable state in a greater interdependent world, meant to abide by laws established by world institutions without which countries would find it more difficult to guarantee their international trade, receive international assistance, and guarantee the security of their borders as well as recognition of the sovereignty of the ruling class. And so expectations change, with new expectations not necessarily replacing old ones completely, at least not at first, but rather being superimposed on older expectations.

Engendering takes place from the very early days of a boy or girl's life in Jordan. Here it is not a question of who is more beloved to the parents or cultural inequality as much as it is a question of roles and power. From the day of his birth, a boy is treated as holding special importance to his immediate family and his wider clan. Expectations for the future are defined from these early beginnings. What boys and girls expect from their lives as well as what their family, clan and society, expect from them, is constructed pretty early indeed. Realities often conflict with these expectations as boys and girls grow older, living through adjustments, fears and the pains of success and failure in meeting these expectations, experiences normal to children growing up in all societies.

In Jordan, when a boy is born, it is an occasion of great celebration and congratulations to his parents. Popular proverbs repeated by visitors at the time of his birth include, "the boy, even if as tiny as a key, fills the home with joy" (il walad law qad al-muftah by`abi al-dar afrah), or "fly away you are your father's helper" (tih inta mu`in li-abuk). Parents are congratulated with such words as "God willing he will be raised with your glory" (inshallah yitraba bi`izak). In contrast, a newborn girl, particularly if the couple already have one daughter or more, could be met with hushed congratulations and proverbs that present her as a burden in contrast to her brother. "The girl, if as small as a pillow, depresses the home" (al-bint law inaha qad al-makhhada, bitinzil `ala al-dar khamda) contrasts strikingly with proverbs about a boy's birth. To protect a young boy from the evil eye, he is sometimes dressed in a girl's clothes in the belief that no one would jinx a girl-child. Furthermore, the mother of a newborn daughter could be greeted with "thanks be to God for the safe delivery of the mother" (al-hamdu li-Allah `ala salamat al-walida), and if the infant-girl dies, the proverb "a girl's death is a shield [of

honor]” (mawt al-bint satr) could be used.<sup>5</sup> The last proverb illustrates the place tribal `urf places on honor and the ultimate fear of dishonor that could be brought about by the misconduct of a daughter as being worse than death, honor being placed squarely on female shoulders.

This popular picture regarding a family’s attitude toward girls and boys should not be exaggerated however and certainly does not give credit to the importance of the daughter within her family. For one thing, Jordanian proverbs are not exclusively favorable to boys. “A pretty girl rather than a scandalous son” (bint maliha wala walad fidiha) points to the preference of girls to boys, and “a daughter’s house is a house of plenty” (bayt al-bint bayt al-barakat) illustrates that a daughter’s house is always welcoming to her family and having daughters dispenses with the need for sons.<sup>6</sup> Daughters in Jordanian society as well as other Arab ones, have always been dear to parents, particularly mothers who see in the daughter a friend, a companion, loyalty and love. A poem written by a mother lamenting the death of her daughter helps illustrate this special relationship between mother and daughter.

I want my daughter to wash my corpse,  
 To drape my garment and arrange the shroud.  
 I want her to reach my age: she will rest  
 My head on her lap, and she will groom me.  
 I want my daughter to turn  
 My dead body piously toward Mecca;  
 Pain came to me filling my ribs.

My beloved cannot hear my complaint,

She does not know my loss.

I dressed her in red and she exhaled

The fragrance of rose. I made her beautiful.<sup>7</sup>

**When the first-born is a girl, it is a cause for celebration for many reasons.**

**An important one is that an older sister becomes the right hand of the mother, helping in housekeeping and childrearing, sometimes becoming a second mother to her younger siblings. As more children are born--which is traditional in Jordanian society, an ideal number of children being four or five with at least two sons--, older daughters become very important and remain so until they marry and leave the home. The particular relationship she forms with the brother or sister she helped raise continues throughout her life, forming a very strong connection between them. All children, boys and girls alike, are expected to work within the family. Boys would stand in their fathers' shops after school to help in sales. They are sent on errands and entrusted with their sister's supervision and security very early on, a responsibility that could be taken too seriously and lead to violence against a sister when the brother disapproves of her conduct. Girls could be expected to carry their mother's or sister's newborn child and baby-sit as early as the age of four or five and certainly by the age of ten. While children are expected to play and have fun—villages and supervised town-quarters allowing them security and hence relative freedom in comparison to large urban centers--boys and girls are still expected to contribute to the family's economy early on. Once in school, a child's contribution may decrease, but older sisters will be left responsible for the home and her siblings**

**when the mother goes out. As she reaches adolescence, a daughter's contributions to the family become solidified even when she is attending school. These responsibilities are mostly inside the home and she is conditioned to fit within the housekeeping and nurturing needs of the family such as washing clothes, cleaning the house, cooking, and helping to raise children. Since Jordanians tend to have large families, the help of a daughter is almost essential as the mother becomes busy with the birth of one child before the other is fully-grown.**

As for boys, as students they are expected to contribute less to the home so as to focus on schoolwork. A son continues to contribute to the family's economy by helping in the family business if one exists, but even then his primary responsibility is to study and succeed. As he grows older, he may take up his father's craft and follow his footsteps, but if he decides to continue with his schooling, that becomes his primary objective.<sup>8</sup> When the father is a white-collar worker, sons are almost always expected to go on to college. Families short of funds tend to focus their financial abilities on educating their sons rather than their daughters.

Greater weight may be placed on the birth of a son because of the help he could give his family, he could take over the father's craft or business, will bring his wife home and continue to contribute to the family's income. As one Jordanian woman put it to me, "sons bring their wives home and contribute to the family's support but daughters move to their husbands' homes and no longer contribute to their families."<sup>9</sup> As his parents grow older, he would become something of their "social-security" since social security only exists for those who earn a living in government or private businesses covered by social-security laws. The burden placed on the son's shoulders from the day of his birth

continues until his death. If he does not fulfill his family's expectations he disappoints them and is despised by his community. As an emigrant or migrant labor working overseas, the son is still expected to send money home, to contribute to the family's income. Clan reach and responsibilities to the extended family do not recognize borders. This type of solidarity has in fact been an important reason for economic stability where predictions assumed different outcomes in Jordan and other Arab countries. Family needs and solidarity are the basis of the economy rather than profit and consumerism.

Umm Khalid who lives in a mukhayyam (Palestinian refugee camp) outside of Amman was enlightening on social attitudes toward sons and daughters. Having given birth to eighteen children altogether, half being boys, she was very effusive about the importance of her sons. Yet, two of her daughters were living with her and she sponsored them for loans with a microfinance bank; one to do needlework and the other owned her own grocery. The relationship with her daughters was quite close but it is her sons who were a real source of pride. "To know that you have grown sons out there in the world is the greatest of feelings," she assured me. Not that they support her, rather she was the main financial supporter of her family from the grocery store she owned through small microfinance loans. As to her daughters-in-law, she saw them as taking care of her sons' children. When asked are these not the daughters-in-law's children too, Umm Khalid explained that no, children belonged to the man. As for the mother, Umm Khalid likened her to a cooking pot, the food may be cooked in it but the ingredients and the final results did not belong to the pot! She herself found nothing wrong with the picture and saw no reason why she herself, as a "cooking-pot", would not love and be loved by her children. Her attitude reminded me of the sarcasm of a woman-entrepreneur at the Professional and

Business Women's Club of Amman, "we bear them, carry them for nine months, give birth to them and then raise them only to be told that they belong to the husband." In his study of the village of Baytin, Abdulla Lutfiyya explained the attitude toward sons and daughters through the names that parents chose to designate themselves.

Once a child is born to a young couple, the people of the village stop referring to the parents by their first names, as is customary, and begin calling them after the name of their child...even if the first child is a female. But, if a son is born after the first daughter, there is a change. The parents are then called after the first son and drop the identification with their first daughter... Should the first boy die during his father's lifetime, the father is named after the second son. However, if no second son is born, the father retains the name of his deceased son for the rest of his life.<sup>10</sup>

In other words, a first daughter is important but never as important as a son. It is not that having a daughter is not a source of happiness, but real pride is placed on having a son whose name becomes the form of designation of the parents as Umm or Abu so-and-so.

Constructing the modern Jordanian therefore begins very early within the home and fits with the actual conditions and needs of a Jordanian family. The roles played by males and females reinforce social cohesion, aberrations cause confusion and dislocations. But roles change with time and the importance of women as breadwinners in their families is today gaining strength. As member of her tribe she is invaluable not only as wife, mother and homemaker, but also as shepherdess, builder of tent-home, working animal-skins and leather, spinning and weaving wool. As a peasant wife, she is

invaluable in assisting her husband in irrigating, weeding, and other wearying backbreaking jobs without which agriculture would fail. She grows vegetables for the table and for sale in local markets, raises chicken, milks cows and goats and produces milk-products for home-consumption and sale to supplement the family's cash. It is also the wife who runs the household if it is a single household, or becomes an active member of the wider household if she is living with her husband's family. Raising children is entirely a woman's affair with the father interfering when she asks or when discipline is required. This begins to change by the age of three when fathers are brought into the picture and by the age of seven, the father becomes the "important disciplinarian" in a child's life.<sup>11</sup>

**The power of the father over his daughter remains unquestioned throughout her life even after her marriage. In other Arab countries where the work of women is widely accepted and girls work from a very early age, fathers have come to depend on their daughters' income from their work as domestic servants in urban homes, as factory workers, or as day labor on work-shifts in such unexpected labor-intensive jobs like breaking and carrying stones, mixing cement on construction sites, and brick-making. Since fathers are in full legal control of daughters and a father's power to discipline does not raise anyone's eyebrows, young girls have today become a new source of income for their families in countries whose populations are experiencing increasing poverty such as Egypt, Sudan or Iraq. Even in Jordan, fathers will allow a girl to work but will mortgage her wages for years to come by having her sign to a bank loan which the father receives in advance and which the daughter guarantees with her wages. In other cases where girls work,**

**they are kept unmarried for long periods while their brothers are married early and it is the income from the daughters' labor that supports the wider family. This however is not as widespread in Jordan as it is in other poor countries, Jordanian men are still expected to support the family and a woman's labor is expected only if there is no male provider. As economic hardships increase, this situation is changing and more women are becoming the chief and sometimes only breadwinner.**

If at one time middle-class women were educated at home and did not expect to work, today a university education almost always means an intent or at least a wish to have some sort of job, preferably one guaranteed by the government and ensuring benefits like social security, health insurance and retirement. The country's economy had to change to make available such jobs, the political system had to change to require a bigger and more efficient civil service and poverty made families more acceptable to having their daughters work in the same offices as men. Furthermore, international conditions and greater homogenization of laws and philosophical outlook toward human relations and human rights, pushed governments to become more interested in the welfare of their citizens and to adopt principles of women's equality of opportunity. To be a viable state in a greater interdependent world, meant to abide by laws established by world institutions without which countries would find it more difficult to guarantee their international trade, receive international assistance, and guarantee the security of their borders as well as recognition of the sovereignty of the ruling class. Expectations do change, with new expectations not necessarily replacing old ones completely, at least not at first, but rather being superimposed on older expectations.

It is therefore not surprising that young Jordanian girls' expectations continue to

revolve mainly on marriage notwithstanding the existence of compulsory school education and greater job opportunities. Their families' expectations for them also revolve around marriage. Their society's expectations are the same. That has not changed even though today more women are entering universities and working. In fact, if there is one constant fear in the life of a Jordanian girl it is that she never be married.

Spinsterhood seems to represent the worse fate that a young woman can imagine her life to be. It seems to symbolize something wrong with the girl, her family, looks, mental and physical capabilities, or her morals. In the short story "Saya'ti" (He Will Come), a young woman whose bad luck is symbolized by her inheritance of her father's "ugly face", is consumed with jealousy and pain at her continued lack of prospects while her brother marries and her sister is betrothed. "He will come, he will come, to relinquish all my pains, drive away my sorrow, wipe out my lonely fires,"<sup>12</sup> she sings while dreaming of a "dark knight" who will come to her on his white steed. She is faced with her brother's cruel wife who keeps reminding her of her spinsterhood, and her sister's fiancé who "rubs it in" hoping to get rid of her as chaperone so he could be alone with her sister. Similar images and stories can be found in Arabic literature from other countries, in a way marriage continues to be part of expectations of women everywhere if not with this intensity and extremism. To be left behind, notwithstanding how much of an individual choice that may be, is cause for sympathy and pity, at the least it demands an explanation. Only amongst the very educated, wealthy or independent professional and business-women, is there an understanding and acceptance that this may have been a matter of choice and not because a bridegroom was lacking. Even then, the unmarried woman is sensitive about how her family and colleagues look at her.

Social conditioning that makes marriage and family the ultimate goal for a woman begins very early as she plays the role of her mother's helper; it is strengthened at every step of a woman's life. When a man or woman marries, it is not a simple individual act, but it is considered an alliance between clans and families. Because of interdependence of family members, it is very hard for a person to marry against their family's wishes. This is especially so for women who would have no one to fall back on, nowhere to go, if her marriage breaks down. According to Elizabeth Fernea, "The crucial test of allegiance came at the time of marriage, when the man or woman either acceded to or rebelled against the wishes of the family in preparing to extend the family unit into another generation, for marriage in the system was not officially perceived as an emotional attachment between individuals (though this might develop later) but as an economic and social contract between two family groups, a contract that was to benefit both."<sup>13</sup>

To be married, to be well regarded in the community and to live in harmony with the family particularly its male members, modesty is required. Modesty means many things to many people. Basically it points to a need not to stand out in ostentation, not to be dressed vulgarly, to respect the privacy of others and not ogle them hence it is best to keep the eyes lowered. To more conservative elements it means dressing conservatively, longer skirts, looser clothing and arms covered. To the more strictly religious it means wearing the Islamic garb which in Jordan is usually in the form of a coat-style dress covering the body to the ankles and the arms to the wrists. The dress is colorful although more sedate solid colors are expected, and the hair-cover could be of silk, cotton or polyester depending on economic ability. The hair-cover is usually solid in color but could be quite colorful and beautiful. It is really in the area of modesty that the class gap

appears most clearly and the contradictions between discourses and reality becomes most glaring. While wearing jeans and shirts are common among boys who also often use jewelry and wear colorful silky-style shirts and skin-tight skin t-shirts, their actions may be objectionable to parents but nothing much is done about it. The double standard here is obvious, because the same family with a jeans-wearing son will not allow their daughter out with trousers or without a head-cover. It is only among the richer westernized classes that there is no double standard if only in connection with dress. The rest of Jordanian society does not seem to see anything wrong with rich Jordanian girls wearing westernized clothing but forbid their own daughters from wearing the same.

As Chapter 3 of this book has shown, the idea that women were totally secluded in the Islamic past is insupportable by fact. During the early days of Islam, women went to war, they traveled, went to the mosque, and were expected to give their opinion regarding political events by rendering their bay`a. Court records from the medieval period illustrated the activities of women in public, in the marketplace, as midwives, shop-keepers, awqaf administrators, and official witnesses in court. The idea of seclusion was theoretical at best and was more a matter of wishful thinking of certain fuqaha' who had their own ideas regarding moral istihsan which however did not seem to be the commonly accepted view of the people at large but was perhaps fashionable among richer women who were not expected to mingle with the common people as is the case today in most Arab countries where the rich drive cars and shop either abroad or in particular areas. Therefore, modesty has little to do with seclusion, rather it is a state of being expected of women at all times and particularly in public where there is possible interaction with men. Because of this, Islam expected modesty of men as much as it

expected it of women. According to an often-quoted tradition of the Prophet Muhammad, Jarir recounted, "I asked the Prophet what to do if my eyes fell on a woman by chance. The Prophet answered, 'turn your eyes away.'" So it is not only the woman who should be modest and not look at men but men are expected to do the same. This admonition is the subject of Qur'anic ayas (Surat al-Nur, 24:31-32):

Say to the believing men that they should lower their gaze and guard their modesty; that will make for greater purity for them: and Allah is well aware of what they do \* And say to the believing women that they should lower their gaze and guard their modesty, that they should not display their beauty and ornaments except what (usually) appear thereof.<sup>14</sup>

Yet here again, "derivative evidence" has been used to create urf endowed with textual relevance. While the first aya in the above quote is often quoted by those who call upon women to be modest, the second aya is hardly mentioned, rather other forms of evidence is used to supplement the significance of the first aya to come up with an "Islamic" requirement for women to veil as a form of modesty and placing possible immorality on the shoulders of those who do not heed. At the same time a man's immodesty is not really weighed against him, as are suspicions of a girl's immodesty. The contradiction between what the Islamic moral discourse tell women Islam expects of all Muslims and the realities of life form one of the basic confusions of their lives leading to a lack of self-esteem and fear of doing wrong in the eyes of God and society without a clear differentiation between the two.

There are a number of contradictions faced by Jordanian women today in regards to family expectations and expectations from families. On the one hand, love-marriages

occur much more widely today especially in urban centers. A girl could meet with a fellow-student in college, fall in love and wish to marry him but her family refuses. The relationship would have to remain hidden for fear of repercussions if the family was to find out. Before the young man she commits herself to, is able to establish himself and ask her family for her hand in marriage, her marriage could already have been arranged and she has no choice but to accept. It is true that Jordanian laws require the approval of the bride in any marriage, but family pressures of various kinds from physical to mental could be brought to bear on the daughter by mother, father and siblings whom she accepts as having her good at heart and were acting on the basis of that belief, which in fact they usually are.<sup>15</sup> Besides, the approval of a girl's waliyy (guardian) seems to be more important to the authorities than her consent since the transacting official can accept a girl's silence as acquiescence according to the law, but will not perform the marriage if her father is against it.<sup>16</sup>

The most important reason for a girl's acceptance of her family's wishes is that they provide her with perhaps the only support and security system in a culture that gives husbands unlimited right to divorce and patriarchal powers. Today however even if the daughter follows the wishes of her family in regards to marriage and choice of husband, this does not guarantee family support. Perhaps because economic conditions are not what they once were, families are not always able to support their "returned" or divorced daughter as would at one time have been taken for granted. This is particularly so if the patriarch, her father, is deceased and she would have to fall on the assistance of a brother who has his own wife and children to support. Records of the Professional and Business Women's Club in Amman illustrate case after case of women coming to ask for

assistance from the Club's lawyers in pursuit of restitution from husbands who do not pay alimony or child support. Having no place to go once divorced, wives look for any help they could find. Some have school and higher degrees, but have not held a job since graduation or since they were married. They often ask the Club to help them get employment. Insecurity regarding her fate and that of her children constitutes one of the most important contradictions in a woman's life. As Jordanian society changes and the family structure moves further toward the nuclear family, women are caught between what they expect of life, what their families expect of them and changing socioeconomic realities.

There are other important contradictions in women's lives that put question into their expectation to be wife and mother in fulfillment of a woman's role as defined by the social and religious discourse. These contradictions constitute fears with which women have to live, but the type of fears discussed here need to be distinguished from feelings of "guilt" which may provide similar controls and inhibitions in Western societies. A good example here has to do with financial support and marital security. While a woman expects support from her family and her husband as long as she is obedient and follows the moral code expected of her, she could face a situation where her husband may decide to take a second wife. He could also decide to divorce her and "return" her to her family. Her family in turn may take her in willingly or may do so under duress and would make her and her children feel their rancour forcing her to finally leave. Furthermore, while society reinforced by religious discourse tells her that the home is a woman's castle where she can be happy with her husband and children, very often she finds herself living with her mother-in-law who is the actual ruler of the household. So it is not simple

obedience to her husband that is required, she finds she is at the bottom of the scale and she has to satisfy her husband's family if she hopes for the success of the marriage.

This does not mean that all Jordanian women actually face displacement by a new wife or destitution after divorce. Fear of what could happen is in itself a source of instability especially when what is feared or imagined is not only legally possible but occurs frequently to others. These fears are therefore a source of power in the hands of those who could make them a reality. Such power is usually in the hands of husbands who could bring another wife home or a brother at whose hands she could suffer violence if he were to misconstrue her actions. Since the legal system takes these types of motives based on traditional expectations into consideration, the fears are real and creditable, causing women to prefer subservience and peripheralization.

As pointed out earlier, not getting married and remaining a spinster represents a true fear among young women. Students at a girl's middle school in Amman to whom I put the question "what do you hope to do in the future" answered, "get married" and did not seem to differentiate between having a job and marriage. When this was pointed out to them, only two of the girls came forth to indicate that they would also like to take a job as well as be married. Dropping out of school to be married is quite common and unlike other countries where pregnant women are not allowed to come back and continue their education, Jordan did not see anything wrong with allowing them to do so. When an acceptable bridegroom proposed to the family and the daughter was of an age, there was no reason to delay. Cousin marriages and other forms of arranged marriages continue to be common if less so among the educated. Such marriages are something of an agreement between families rather than individuals, at least theoretically since family proximity

allows cousins to get to know and desire each other. “Marriage” is therefore the dominant discourse with which girls live and by the time they finish school, many are already betrothed and were to be married soon after graduation.

Not having children becomes another source of fear following marriage. This is particularly so among popular classes who see a delay in pregnancy as a deep cause for concern. The blame is usually placed at the shoulders of the wife and a husband could be induced to divorce his wife and/or take another one. Rarely and only in the case of enlightened men, do they begin by looking into possible physical problems with themselves. It is almost always the wife who has to get a medical check-up to determine her ability to conceive, and even when it is proven that nothing is wrong with her, she could still be repudiated for not having borne her husband children or he may decide to bring another wife home in the hope or with the excuse that he wants a son. While these actions are to be expected more among popular classes, they exist at all levels of society if in different ways, for example a middle class or rich husband could take a second wife in secret and not announce it until she gives him a son, if he announces it at all. Very often a husband is actually advised to take another wife who could give him sons rather than advised that a child’s gender is a man’s biological responsibility. The mother of girls may defer to amulets and various forms of popular spells and traditions so as to give birth to boys. Among popular classes for example, immediately after giving birth to a daughter, a woman is fed veal meat so as not to beget any more girls.<sup>17</sup> Interestingly, when it comes to birth-control, it is the mother who is the focus of control rather than the husband. According to Dr. Sireen Musmar, Director of Jam`iyyat al-Umma wa Tufulaba of the Ministry of Health, men are very resistant to using any form of contraception and

child-control is mainly a wife's responsibility. The subject of sterilization is never even broached in the Jam`iyyat's efforts to control birth because of the negative repercussions that this may have on its activities among the Jordanian public.

The possibility that a husband could take another wife is without doubt a most important source of fear to women, a fear that "keeps her on her toes" so to speak. The threat is always a reality, something to be apprehensive about notwithstanding how solid the marriage. Arabic fiction is full of stories of a wife who learns about her husband's second wife and the humiliation that follows. Movie after movie presents the same story often with a `urfi wife (common law wife) who remains hidden for fear of social recrimination. Even though the religious discourse justifies such actions as determined by God and therefore could not constitute a harm to believers and whole books have been written to show God's wisdom in allowing men to take a second, third or fourth wife, except for the odd case, Muslim women have never found polygamy acceptable. Interestingly, polygamy is given some interesting, modern justifications that are presented from within an Islamic context to show how beneficial polygamy is to Islamic society and even how privileged women are because of polygamy. Women are told that men die in war and without polygamy some women would be left husbandless and only a few would have husbands, an unfair situation for the rest. Besides, if a wife could not have children or if she is sick, is it not better for her to remain an honoured wife in her husband's home while he takes another wife than if he would divorce her and she would be destitute? The justifications even include a husband's desire for another women, and here the West is always brought in to compare the superiority of polygamy to extra-marital relations and the taking of mistresses in Western societies. Is it not better for a

wife to remain in her husband's home, cherished and respected, than his divorcing her and taking another wife whom he desires? The contradictions of these arguments is lost in the face of a wife's helplessness to stop her husband from taking a second wife. He could and many do. But the justifications are based on basic fears of women who find refuge in seeing this as religiously sanctioned as a means of overcoming the pain of disillusion, betrayal, and heartbreak. There is no honor in having your husband take a second or third wife, only humiliation no matter what the discourse says. But because women are completely dependent on their husbands for financial support, would lose their children in custody battles, and would lose their financial rights in shiqaq and niza` courts which would see a wife's wish to separate from a polygamous husband as the wife's fault since the husband has an unquestionable right to take four wives without having to show that any of the excuses justifying polygamy by `urf are true. Having left school early, or left her job to be married or have children, a woman becomes hostage to her dependent situation and there are little alternatives for her than to accept her husband's polygamous actions. The fear is constant of her and her children's destitution given the influence of the new and often younger wife and the economic pressures on the husband that may bring about her repudiation at the least provocation.

Yet some actually still claim that women find nothing wrong with polygamy and that a woman could actually choose her new durra (second wife) especially if she is older, in poor health, or needs someone to help with household chores. If this allegation was true, why is it that archival records show us that the most important demand made by wives when signing marriage contracts, is that they have the right to terminate a marriage if a husband decided to take another wife?

Jordanian laws have taken this aversion to polygamy among women into consideration. Thus it allows women to include conditions in their marriage contracts as long as said conditions do not contradict with Islamic principles. Unlike most Muslim countries, Jordanian laws and courts do not regard a condition controlling the husband's ability to take a second wife to be against Islamic principles. Jordan's laws are quite advanced in this area in comparison to others like Syria, Saudi Arabia, or Egypt, who refuse to put any controls on a husband's polygamous rights. While this issue will be discussed in Chapter 6, it is important to point out that notwithstanding the existence of this right to include conditions, hardly any Jordanian women take advantage of it. Reasons for this must be looked for in the hesitation of a bride or her family to appear too "tough" perhaps thereby chasing away the bridegroom, a real possibility given the patriarchal order and male pride. More importantly, however, is the fact that most women are in fact not aware of the existence of such a right. Even though the laws require that the officiating ma'dhun explain the marriage certificate, requirements, and every aspect of the marriage, most Jordanian women do not know that they can include conditions in their marriage contract and certainly not a condition that could limit the right of a husband to take a second wife. Such a condition would in fact introduce leverage within the marriage and a husband would have to think twice before taking a step that would mean losing his wife and breaking up his home. At least it would reassure a wife of a way out with full financial benefits in case this happens to her.

Perhaps the greatest contradiction in a Muslim woman's life in Jordan and elsewhere is the Islamic emphasis on equality which places her at the same level as men in God's eyes. The shahada profession of faith, praying five times a day, fasting

Ramadan, going on the Hajj at least once in a lifetime, and paying the zakaat, is equally required of men and women. The Hajj rituals are also the same as are the actual steps taken in ablution and prayer. “All Muslims, women and men alike, are equal in the eyes of God” is a statement with which Muslims have grown, repeated often in school, on television, in books, by politicians and clerics. This statement with which young Muslim women have grown since early childhood is confirmed by the Qur’an. In discussing genesis the Qur’an states,

O mankind: Reverence your Guardian Lord Who created you from a single soul/person (nafs) created of like nature its mate and from them twain scattered (like seeds) countless men and women; reverence Allah through Whom you demand your mutual (rights) and (reverence) the wombs (that bore you): for Allah ever watches over you. (Qur'an, Surat al-Nisa', 4:1)

It is He who created you from a single soul/person and made its mate of like nature in order that he might dwell with her (in love). When they are united she bears a light burden and carries it about (unnoticed). When she grows heavy they both pray to Allah their Lord (saying): "If You give us a goodly child we vow we shall (ever) be grateful." (Qur'an 7:189)

A clear declaration of equality, as all Muslims believe. Yet, in a society which is Islamic for all extents and purposes, this image of equality seems to have been lost except when the people are reminded that they are Muslims and the followers of “the most just of all religions.”

Wilaya (guardianship):

Jordan's Personal Status Code sets out a tight framework regarding the powers of a waliyy and the courts follow closely in their application of these laws. If anything, guardianship laws concord with Jordanian social `urf more than other elements of the Jordanian legal system. The contradictions between what the law states and sets out to do and how the state and its courts apply these laws are minimal when compared to other issues such as marriage, divorce, rape or honor crimes. This concordance is in itself problematic because the `urf upon which laws of guardianship are based is in fact outdated and dates from a time when the majority of Jordan's population lived under tribal conditions. The Ottoman Family code did bring in a more structured and state-controlled form of patriarchy and declared the Hanafi madhhab as the main source of personal laws. These new measures, however, did not actually replace the preceding system but were rather added to the already existing tribal patriarchy that was closer to the Maliki School of law than other madhahib. The over-layering and combining of different legal codes and legal philosophies resulted in strengthening a waliyy's powers by making the state a participant with new forms of control. Today as Jordanian society undergoes deep structural transformations by moving away from a tribal makeup to modes of production more attuned with urbanized, service oriented, industrialized and commercialized societies, laws of guardianship stand as a hindrance to "opening up" the system to allow for greater participation in the country's development and future.

**Guardianship usually involves the powers of a father over his children, boys and girls alike. The relationship between a father and a daughter is built on strict respect and authority, deep pride and love, and fear of the father's authority. As**

**pointed out earlier, it is the mother who raises the children and the father is there to protect, to financially support and provide for the family, but he also holds the power and responsibility for discipline.**

The love for and the fear of the father becomes mixed together in the child's self. The youngster learns early in life to obey the father's orders without questioning them and looks at his father as the mighty giant who rules unchallenged in the family's world.<sup>18</sup>

While both girls and boys are raised to respect and give unquestioning obedience to their fathers, the girl continues under the father's control much longer, practically until she is married, and even then, he does not lose his actual if not legal control over her. The legal authority of the father differs according to the gender and age of the child. The authority is almost absolute over minors and changes, at least theoretically, as the child grows older. However, because of the nature of clan and family relations in Jordan, the powers of the father over his children, particularly the daughter, continues throughout her life. When the father is dead, a substitute waliyy, like an uncle, does not hold the same powers as does the father or grandfather.

While the legal minimum age for marriage is 15 years for girls and 16 for boys, the age for legal majority in Jordan is 18 according to the Jordan Civil Code, Section 43.

Every person who attains full age, enjoys his mental powers and is not forbidden shall have full capacity to exercise his civil rights. The age of majority shall be eighteen full solar years.

Here the discrepancy illustrates the talfiq (patching) of modern Western laws together with Islamic law and `urf. The age 18 became the legal practice in Europe following the

Napoleonic code.<sup>19</sup> In contrast, the minimum age for marriage is theoretically based on a particular interpretation of the Hanafi madhhab. Actually none of the madhahib set a particular minimum age for marriage or for reaching majority. Rather they spoke in generalizations as to what is preferred. For the Hanafis, majority was determined according to rational behavior, `aql (maturity) and puberty (bulugh). Establishing a standardized legal minimum age for marriage to be applied homogeneously throughout a country is part of normal state-structuralism accompanying centralization. In other words, notwithstanding the claim that personal status laws in Jordan stem from the shari`a according to the Hanafi madhhab, in fact, whether the minimum age for the marriage of girls is set at 15 as it is at present, or 18 as Jordanian feminists and activists demand, the particular age would have little to do with Islamic law or practices. The state can raise or lower the minimum age for marriage as it wills. Keeping the minimum age of marriage low at 15 for girls has meant a much shorter period during which girls could be educated or trained in a craft particularly since Jordanian girls tend to be married quite young, the median age of marriage for girls in Jordan is 18 years including remarriages.

One of the most important powers a father has over his daughter is the requirement that he consent to her marriage, “la nikah bi dun waliyy” (“no marriage without a guardian”). According to Jordan’s laws no marriage can take place without a male guardian’s consent notwithstanding how old the daughter. Only if the daughter has been previously married could she then be able to transact another marriage without the approval of a waliyy. Article 13a of Jordan’s personal status code states:

The consent of the guardian shall not be required for the marriage of a woman who has been previously married (thayib) who is of sound mind and who is more than eighteen years old.

Accordingly, women who reach the age of majority and do not suffer from “idiocy or lunacy” (Section 44) are supposed to enjoy full personal freedom and capacity to exercise their civil rights.<sup>20</sup> Interestingly the same type of right is extended to marriage so that once a girl has reached the age of eighteen she can ask the judge to marry her to the man of her choice and the guardian would have to present legal reasons to the judge to stop him from performing the marriage. In other words, competency of a woman to handle her own affairs is based on her experience. Once she has experienced the state of matrimony, then she is considered competent in choosing a husband. This approach has little to do with the Hanafi madhhab which considers competency to exist with `aql when a young person reaches puberty and rationality. This means that experience in life, for example through education or work, would count according to the Hanafi code, yet that is not how Jordan’s laws are applied notwithstanding that the stated source happens to be the Hanafi code. In contrast, the Malikis do not consider a woman to have reached majority unless she has been married and gained the experience necessary for legal competency, which tells us that at least in this point, the Maliki code kicks in to extend patriarchal control beyond what the Hanafi code allows. The opposite happens wherever necessary.

Glaring contradictions in gender laws are demonstrated by Article 22 which denies women the very rights that it granted them in Article 13a. It does so by bringing in the Hanafi interpretation of kafa’a (social parity) as a means of limiting a daughter or granddaughter’s (girl or woman’s) right to choose her own husband no matter how old

she is, that she is `aqil (mature) or of the required age set up by Jordan's personal status codes.

If a virgin or a woman who has been previously married and has reached eighteen years of age denies that she has a guardian and marries herself and it is later discovered that she has a guardian then the case shall be examined and if she has married a man of equal status, the contract shall be binding even if the dower is less than the proper dower. If she has married a man who is not of equal status then the guardian shall be entitled to apply to the judge requesting dissolution of the marriage.

This means that even when a girl reaches the age of 18, the official age of legal competency, she could still have a guardian. But there are conditions to this rule that tell us something about the philosophy behind the law. It is not a girl who has reached legal competency who cannot marry herself, because this Article assumes that she could so in the situation where she has no guardian. It is when she does have a guardian and she hides that fact to facilitate her marriage that it becomes problematic. But why should a person who reached majority be expected to have a guardian only because such a guardian, like a father or grandfather, is alive, while another whose father is not alive, is not required to get the approval of said guardian to the marriage? Obviously, this Article is meant to suite circumstances in which there is a father or other guardian who claims authority on the female—woman or girl—then his word supercedes hers. This is pretty traditional to Maliki law which claims that a woman must have a waliyy except for a woman with no protector, who is of low morals or who is ugly. To give the guardian a basis upon which to object in case the marriage has already taken place, the Hanafi

madhhab kicks in to ensure that the strictest interpretation of kafa'a is applied. Whereas all of the madhahib require kafa'a, the Malikis and Shaf'is accept the marriage of a girl to someone who is not her social equal once the marriage has been consummated. But that is not the case with Jordan's laws that use the Hanafi madhhab to allow the judge to annul a marriage on the basis of kafa'a at the request of a guardian unless the wife is pregnant or a child has been born from the marriage.

Clearly, Jordanian laws see the guardian as the father, if he is alive then he has extensive powers, if not, then his replacement's powers become limited. Article 6 of Jordan's personal status laws states:

A judge may, upon request, give in marriage a virgin who has reached fifteen years of age to a man who is of equal social status and where her guardian, other than her father or grandfather, opposes the marriage without lawful justification. If the opposition is on the part of the father or grandfather, the claim of the woman shall not be heard unless she has attained eighteen years of age and the opposition is without lawful reason.

But the father could still stop this marriage on the basis of kafa'a (social parity).

Add to this the fact that a married woman who is less than forty years of age cannot come to court to sue for divorce from her husband without the presence of her father if he is alive and a male waliyy if deceased and it becomes clear that women are considered under the powers of their fathers (or grandfathers) as long as the father is alive. Similarly, a girl who is still considered a minor under eighteen years of age cannot ask her husband for a khul` divorce without the approval of her guardian.<sup>21</sup> Having reached the age of 18 a

daughter can ask a judge to marry her, but the father can stop the judge from performing the marriage on the basis of lack of kafa'a. He chooses her first husband, her divorce and her remarriage, the husband must be of equal social status or the judge could annul her marriage at the demand of the guardian. At fifteen she does not choose her own husband although her consent is required. Theoretically she has to give her consent, practically speaking the pressure brought to bear on her is such that her refusal gets lost. As In`am `Asha, known journalist and TV personality, related to me, she was the eldest of eight girls and was told her refusal to marry was an obstruction of the marriage of her sisters. No one bothered with her wish to continue her education and her marriage to her cousin took place when she was yet fourteen and eight months. The usual certification of age issued by local health offices was presented to prove she was fifteen years old, the minimum legal age of marriage for girls.

These laws are said to be Islamic and specifically Hanafi. How true is this assumption? If the assumption is true then there is no doubt that practices dating from earlier periods would illustrate the same laws and practices as do Jordanian laws and courts today. Studying court records dating from before the introduction of Jordan's personal status laws however shows that there are significant differences between laws and practices today and then. The differences that are of particular concern to this chapter involve in particular the issue of wilaya. Simply put, while there is usually a waliyy present to stand by the bride, it is only in the case of minors or bikrs (virgins) that a waliyy had to be present. An adult virgin (rashida) could marry herself without the presence of any male to represent her in front of the Hanafi judge. Furthermore, even though it was more traditional that the guardian of a minor be a male relative often

designated by the father but usually chosen by the judge when the father dies before designating anyone, the mother was often made the wasi (guardian with power over property of minor orphan) over her minor children with authority over the child and his/her property.<sup>22</sup> Glossary 1 for Chapter 5 presents a copy of a document in which the mother is recognized as the wasi over her minor children in which she is suing a man who owed her and her children twenty-eight jars of oil that he owed her deceased husband.<sup>23</sup> Another case from nineteenth century al-Salt also illustrates that women were assigned as wasis even when they were not the mothers. In this case a woman took another to court because she continued to live in a house that she and her brothers children inherited from him.

Since Fatma al-Shamiyya, the named defendant has seized the named building without any legal rights, I ask that she take her hand off my share of the building and the share of Mu'mina, the minor who is under my wisaya and to deliver the share of Mu'mina to me since I am her legal wasi as established by the legal document in my hand.<sup>24</sup>

When the wasi was a man, the mother was still often considered the more important guardian as in the following case from sixteenth century Jerusalem in which the mother complained that the legal guardian—chosen by the deceased father or by the court—was not doing enough in regards to her children's extensive inheritance from their deceased wealthy merchant father. The court found for her: "Since his honor...the sheikh Ahmad...the legal wasi over the named orphans, children of...and the guardian (nazir) over them...is to take no general or specific action regarding the property of the orphans named above except with the knowledge of the named nazira (female

supervisor/guardian), and the judge (mawlana al-hakim) gave her his permission in regards to this matter."<sup>25</sup> More importantly perhaps, in premodern courts mothers also had the powers of wilaya over her minor children so that she could transact their marriage and divorce them through her right to wilayat al-ijbar (the right to force) over minors, i.e. she had the same powers as did the father when alive. This fact is not recognizable by Jordanian law today.

### Education and Discourses of Gender

The Prophet Muhammad is reported to have indicated that seeking knowledge was mandatory to all Muslims and was not a matter of choice. Kuttabs in mosques have for long provided basic education to children in essential subjects like religion, Arabic language and Mathematics. Endowing a kuttab or madrasa with a waqf to ensure its future income was always considered an act of great charity to be rewarded in heaven. Beyond the kuttab, it was normal for boys who were exceptional, or who could afford it, to study at higher madrasas in important urban centers, but this did not mean that all girls were cut-off from education. Rather, the education of girls, mostly members of the middle classes, continued in the home and some achieved a high degree of learning and even became teachers and narrators of Islamic traditions.<sup>26</sup> The Qur'an supports this right of women to learn and to enter into religious debates based on this learning. Surat "Al-Mujadilah" (the debating woman) states "Allah has heard and accepted the statement of the woman who pleads with you (the Prophet) concerning her husband and carries her complaint to Allah, and Allah hears the arguments between both of you for Allah hears and sees all things" (58:1). Women are then encouraged in seeking knowledge so as to be able to handle her life with her husband and within her community. This aya is an

important statement and its context tells us that a woman is not expected to simply accept the interpretation of Islamic law that her husband endorses.

The history of women and work, discussed in Chapter 3, illustrated how knowledgeable women actually were regarding their rights and the actions they took to ensure them. Women came to court all the time to be declared wasis over their children and the most reliable in safeguarding their orphan children's wealth<sup>27</sup>; they demanded their inheritance and made sure that their portions were registered in court; and they demanded khul` from their husbands, and when a husband was reluctant, they came to the qadi and presented their cases and got what they wanted.<sup>28</sup> The important thing is that they knew legal procedures and it was not unusual for them to come to court alone without a male representative like a father or brother even when it came to marriage and divorce.<sup>29</sup> Modern codification of law and the requirement of legal representation by lawyers would of course limit the ability of women to handle their own affairs particularly since the new legal codes were no longer as clear or familiar to the population at large. The wisdom of the Prophet in requiring knowledge for all Muslims cannot be dismissed in the face of these facts.

The modern period saw serious efforts on the part of Jordan's government to educate women. Jordan, like other Arab countries with their population of nearly 150 million stretching from Mauritania and Morocco in the West to Iraq in the East, have adopted education as an essential route to modernization of their societies to achieve a higher standard of living and to secure wealth, security, and a better life in the future. The education of women received serious attention. As mothers and potential workforce, educating women has been on the agenda of all Arab countries including Jordan's which

has achieved significant results. Even though Jordan's modern educational plans for women are quite recent when compared to other Arab countries—Egypt being the first with modern schools for girls (1829), followed by Lebanon (1835) and Iraq (1898)—Jordan's high literacy rate among women stands out as a significant achievement. Government statistics dating from 1994 indicate that illiteracy rates were 9.8% and 20.7 percent for men and women respectively. Formal education is available and open to all Jordanian women except for the more rural areas where such facilities are a luxury to begin with. The important point however, is that when it comes to formal education, the school system does not discriminate in providing facilities for men and women, the discrimination comes in other ways such as differences in facilities provided to girls' schools vs. boys' schools, for example computers which do not seem to find their way to schools for girls. In 2000, Jordan's government launched a plan to provide computer and technological education to all schools in Jordan. It remains to be seen what role gender will play in this new plan given the gendered results of Jordan's \$1 billion plan launched in 1988 to reform education.

Jordan's accomplishments in the field of education are rather startling given the fact that such a system was hardly in evidence when the area that later became the Hashemite Kingdom of Jordan was first established in the 1920's. The centrality of education in government plans certainly played an important role in these accomplishments. According to government statistics "today there are 2787 government schools, 1493 private schools, 48 community colleges, and 19 universities." Government plans extended to the countryside, providing a school for every village with 10 or more school-going children. Enrollment is high at 95 percent of students eligible compared to

only 47 percent in 1960, urban and rural attendance being close. These figures gain significance given that today 42.2 percent of Jordan's population are 14 years old or younger and another 31.4 percent are aged 15 to 29 years old, which means that Jordan is potentially enrolling one-third of Jordanians in educational facilities. These are significant numbers and show the critical importance of education in determining the future of Jordan. If the educational system is molded more toward greater gender equality, a strong work ethic, and an orientation toward business and the market, this would prove quite dramatic and perhaps provide the best means for Jordan to modernize and catch up with the productivity expected of a new world order.

What makes this even more plausible is the fact that education is free for all primary and secondary school students in Jordan. Even more importantly, education is compulsory for all children up to the age of fifteen. This is at once encouraging and problematic. It is encouraging because the educational system has virtually a "captive" audience to be molded through the classroom, curriculum and schoolbooks. It becomes problematic for a number of reasons involving teachers and quality of teaching, facilities provided to various schools, the structure and paradigms upon which the curriculum and schoolbooks are based, particularly important because of the universal application of these paradigms in all Jordanian schools through the powers of the Ministry of Education.

Perhaps the first problem with the system has to do with the unequal quality of education. Of the 1,346,178 children who attended elementary and secondary schools during 1997/1998, 951,831 attended public schools while 229,487 attended private schools. Another 143,893 attended UNRWA-run schools and another 20,967 attended other types of government-run schools. The above figures point to the basic split in

Jordan's educational system, i.e. between public and private education. Here is where one of the fundamental splits in Jordan's educational structure gains great significance in the creation of culture in Jordan. The split is not only between rich and poor but it has important social and cultural repercussions that are immediately tied to political and economic problems. Not only are schools equipped differently, the quality of the teachers is also different. For example, some private schools refuse to hire veiled women teachers even if this is against the law. The opposite goes for other schools with particular religious leniency. Association with the way a person is dressed is significant in a teacher/student relationship and is of the greatest importance in cultural construction. Another example involves co-education. Private schools have co-education while public schools do not. But even in private schools that do have co-education, the tendency is to have the boys sit in one part of the class and the girls in another part of the class. Gender segregation is thereby enforced and is probably what the parents expect. Most importantly, while one sector produces western educated, professional oriented graduates to staff the country's higher government levels including important posts in ministries of foreign affairs, culture and economics, the other sector provides lower level graduates, potential army and police officers, and the general student body in Jordanian public universities. As for market-oriented education, that has little bearing in Jordan's educational system in both the private and public schools.

Statistics for the Secondary schools are illustrative of the lack of importance that women give to practical and work-oriented education, a reflection in itself of the education they are exposed to at the primary level. While 38.59 percent of male students were enrolled in vocational educational in 1995/1997, only 17.58 percent of female

students enrolled in that type of education.<sup>30</sup> The rest were enrolled in academic education in science, arts or religion.<sup>31</sup> This is serious since vocational education does not only prepare students who have no interest in pursuing higher studies in crafts that they could later make into a career, but the years spent in vocational training also provide an apprentice program following which a graduate becomes a skilled craftsman ready to join a business or to work privately. Women do not seem to be encouraged to join vocational training the most important reason being that schools for girls do not provide such training and those that do focus almost completely on traditional handicrafts and food-making. A good example of the latter is a school in Hayy Nazal where an impressive program of traditional handicrafts is offered and where students are trained to cook in large well-equipped kitchens. There are also facilities to learn how to sew and knit. But there are no workshops or any form of training in “men’s occupations” which include carpentry, electricity, and computers.

These cultural problems cannot be undermined according to Nawal Hashisho, a well-seasoned exceptional educator who is Director General of “The Modern Schools”, one of Amman’s better private schools. She agrees that class is a basic problem of the educational system that actually emphasizes class and gender differences even though the curriculum of all schools is standardized and controlled by the Jordanian government. Given the power of the schoolroom, Hashisho wonders at the continued dependence on old educational paradigms when Jordan’s educational plans are to advance scientific, technological and business education. “There is no effort at the government level to change a paradigm which is gender based, patriarchal and repetitive of traditional culture.”<sup>32</sup> The centralization of education and central control over textbooks and

curriculum could work toward introducing change, but as long as the same philosophy and outlook underlines the material presented, there can be very little change. This same problem extends to computers, simply providing schools with computers is a first step, what will be taught through the computers is another thing altogether.

One has to but look at the Basic education curriculum and study plan for Jordanian schools to understand what Hashisho is talking about. For 1997-1998 for example, it is only at the 10<sup>th</sup> grade that students begin computer education and that for only one hour per week. Yet, civics and social studies (tarbiya wataniya wa ijtimaiyya) begins with first grade and is given at the rate of 2 to 3 hours per week and “music and anthems” begins at first grade at the consistent rate of one hour per week each. Islamic education and culture begins at first grade and continues till tenth grade at three hours per week. Even more serious, physics, biology and chemistry only begin at ninth grade at two hours per week each. The largest number of hours spent at this level are learning Arabic and Math (nine hours for Arabic per week beginning with first grade and five for mathematics beginning with first grade),<sup>33</sup> both of which are very important but seem to continue the same tradition as the kuttab system (mosque schools for children) that was almost completely focused on learning the Qur’an and Islam, Arabic language and grammar and mathematics.

The emphasis on civics and Islamic culture is important for nationalism and constructing a culture of belonging and loyalty to Jordan. But the way the material is presented is quite deductive, information presented in absolutist and conformist ways that do not lead to interpretation and questioning. It is true that the schoolbooks contain questions for students to exercise their knowledge about the material presented. The

problem is that the questions are regurgitative intended to build nationalism but not leading to an appreciation of concepts like freedom, democracy, historical change even though there are definitions for freedom given in these textbooks. More importantly, there is a lack of effort in trying to make connections between the historical period and the historical context. A schoolbook at the primary level of education may begin with the Arab history of modern Jordan and end with the History of Islam with a particular focus on the Prophet Muhammad. The idea is to extend national consciousness back to the Islamic roots of the Hashemites, to show a long historical continuity and give a particular role for Jordan as continuing the Prophet's tradition of unifying the Islamic and Arab Umma. There is nothing wrong with such a national narrative, it is what all countries do and is certainly the same approach of schools in the United States at the primary and middle school levels, a perfect time to mold kids through national and civic indoctrination. The problem in the way the material is presented to primary school kids in Jordan is that there is no encouragement of speculation among students, they are expected to accept and memorize. No connection is made between history and historical context, between power and social structure, and issues of class and gender are hardly touched upon in either the curriculum or textbooks.

A few examples will illustrate this. Take social studies and civics schoolbooks (al-tarbiyya al-Ijtima`iya wal-wataniya) for elementary schools. Social studies and civics are supposed to introduce a student to the history and culture of their country. To be a good citizen, a person must know about his country's government, institutions, affiliations, loyalties, legal system, social structure and so on. It becomes a subject of both political indoctrination and culture construction. A survey of textbooks for primary

education illustrates how traditional cultural norms including political and social patriarchy can be reinforced by textbooks. The subject matter covered by schoolbooks can be divided into five main parts: Jordan's history particularly that of the Jordanian Royal family and its accomplishments; Islamic history particularly the founding period of Islam and the history of the Prophet Muhammad; geography of Jordan and the Arab world; correct or logical thinking and what makes a good citizen; Jordanian society and culture. In other words, the subjects cover a wide-range of material as expected from this type of class.<sup>34</sup> The structure of the schoolbooks and presentation of material is also impressive, although the historical material especially regarding the Ottoman period generalizes nationalist impressions that are not entirely accurate. The schoolbooks also try to present a gender-free narrative and do mention at least one woman in the context of fighters in early Islam.

But there are serious problems with these schoolbooks that reconfirm attitudes toward women already dominant in Jordanian ʿurf. This is so even though as Hashisho stressed, there is sincere effort to do away with such discrimination. For one thing, most of the pictures in the schoolbooks are of men whether we are talking about cartoons or actual photographers. These include men working in fields, herding sheep and goats in the desert, sitting in their tents or eating in restaurants. It is the men who are depicted as playing the active role. It is the men who are pictured dressed as members of the army protecting Jordan's borders, it is the men who appear as policemen keeping order on the streets, it is men who appear as teachers and as industrial workers. In discussion of tribal life, it is the men who appear in all the pictures, herding or even as children holding sheep. Even in economic activities where women are vital, like in agricultural production,

women remain invisible. In lesson 10 for fourth grade titled “Characteristics of a Good Citizen”, one of these characteristics is identified as working energetically. Three pictures are presented as examples and one of the main questions asked of the students following that lesson is “what are the similarities between these three pictures?” Looking at the picture it becomes obvious that it is men who are at the center. One picture is about agricultural workers, the second about industrial worker and the third is a traffic officer stopping cars on the street. They are all active, working vigorously, and they are men. Just to reconfirm the impression, the students are asked, “Give three examples of persons who work with seriousness and energy.”<sup>35</sup>

As for the women, they appear a few times in schoolbooks. Once as a doctor, once as a nurse, there is a picture of Princess Basma bint Tallal, girls standing in line in school courtyard, women officers dressed and walking in parade probably on independence day, and a caricature of women meeting the Prophet on his arrival at Medina from Mecca following his Hijra (622 A.D.). Almost all of the other pictures are of men, whether we are talking about the past or the present. Except for Princess Basma, the parading army officers and couple of students in group pictures, all the women are depicted wearing a head-cover. Even the doctor is wearing a veil.<sup>36</sup> There are no pictures of women actively involved except for the nurse who appears to be a mother hovering over a young girl. Why not depict the parading officers in some sort of activity rather than a showpiece?<sup>37</sup> The one instance in which a woman is pictured in a professional capacity as a doctor, she is veiled.

Needless to say, all the historical personalities discussed in these books are men whether we are talking about the early Islamic period or the modern period, the emphasis

is on men. Though one woman is mentioned, Umm `Amara Nusayba b. Ka`ab, but she appears to be a rather exceptional and unimportant since little details are given about her contributions.<sup>38</sup> Perhaps one of the reasons for this has to do with the approach to social studies and civics. For here we do not see any great interest beyond a nationalist discourse in which Jordan is depicted as fighting a battle for Islam since the time of the Prophet, then against colonialism and finally today to unify Jordan for its people. This is to be expected from countries that experienced colonialism. The past has to be used as a heritage to unify it with the present and to create a cultural discourse that would confirm the existing hegemony, in this case the Islamic heritage is fundamental. There is also an inordinate amount of coverage of the Jordanian armed forces, placing stress on the aggressive image of man and the essentiality of that image as part of Jordan's security and welfare. The image of macho male is strengthened and modernized.

Engendering is subtle at its best. Schoolbooks are not intentionally gender-discriminatory, the message of gender difference is brought home in more subliminal ways. A good example comes out of the "logic" exercises which are very valuable in themselves since they teach children how to address questions, research them and come up with possible answers. In the social science and civics schoolbook for fifth grade the following story is given. "Basil reorganized the house-furniture while his mother was traveling. He changed the places of the bedrooms and the living room. When his mother returned she was surprised and said: this is a new house!" Students were then asked the following questions: "What did Basil do? Did he buy new furniture? Why was the mother surprised?" The message here is intriguing notwithstanding the intent from the lesson. A boy can actually change the order of the house without his mother's permission and while

she is away and a mother who is simply surprised and has little to say about the actions of her son. Active and aggressive son, passive and compliant mother. Would it have been acceptable to those who put this story together to place the father in place of the mother? Probably not because a father cannot be bypassed when a son decides to do what he wills with the family home but a mother could.

What is missing from these schoolbooks is as important in forming the future Jordanian as what is included. For example, nowhere is there a discussion of concepts such as sovereignty, power, gender or class. The role of environment (bi'a) in forming different groups like Bedouins or peasants is discussed, but no discussion of money, property or class. It may be asking too much to cover a large variety of concepts, but at least the basic concepts by which students should be familiar with have to be covered. Here the experience of Sitt Hind Abdel-Jabber comes to mind. She attributes her success as a professional business woman to the atmosphere in which she was raised in a family where the language of business and trade was quite familiar. She stresses the importance of an early introduction to business education and an understanding of concepts of market forces, buying and selling, to which students are introduced quite early in the United States and which Arab society was familiar with at one time when commerce was a main activity of most of the population. `Abdel-Jaber is correct, there is no reference in textbook or curriculum about the role of commerce, business, banking, how such institutions work, or any approach to the importance of saving and enterprise. In other words no work ethic is being built into the young Jordanian to teach him/her the importance of working for pay, what to do with this pay, or connections between what they do as children and what they would do as adults. There is also little effort to build

symbols, heroes and heroines modeled after ordinary Jordanians and their accomplishments as writers, athletes, or other capacities. The only heroes depicted are members of the royal family past and present. Cultures need symbols that are widely representative. How can a society begin to appreciate possible equality between its men and women when women are completely invisible except if they are Royal?

Students in Fifth grade begin to learn about international organizations, international relations and human rights. The coverage in the schoolbook assigned is comprehensive and important. Part of what is discussed includes the meaning of discrimination and presents examples from history and the contemporary world. Universal equality is also emphasized: “People are born free and they are equal in rights, dignity, and humanity notwithstanding differences in color, race/sex (jins could be either), language, religion, political inclination, or wealth.” Even though the word jins could mean sex or race, given the other issues referred to, it most probably means race in this instant. This is confirmed by the fact that the pictures and discussions in this section of the book do not present women or issues even once. Yet here is an excellent opportunity through which to introduce some of the fundamental problems recognized by the world-community, i.e. discrimination and violence against women which are the focus of great international activism and treaties to which Jordan is signatory.

Classrooms are perhaps even more important in forming the young individual than schoolbooks. As any teacher knows, there is great leverage privileging the teacher in a student-teacher relationship. Not only is a teacher the authority in the classroom, but she is also seen as an example and a guide. The power to grade and to punish is not lost on young students, the earlier years being even more important than later years, so that by

the time a student graduates and goes to college, ambitions and expectations have all but been formed. College can only help redirect or emphasize certain attributes gained by students at the school level and given the fact that in Jordan specialization takes place at the Secondary school level when students are divided into science (ilmi), literature (adabi), religious (shari`a) and vocational (industrial, commercial agricultural nursing, hotel and home-economics). So, even future career-orientation of Jordanian students are set before they graduate and go to college. In other words, schoolteachers in Jordan have greater powers than their counterparts outside the Arab world. Add to that the fact that, at least for girls, school is perhaps the only place where they come into contact with other than direct members of their own families since movement of girls is limited outside of the home without the accompaniment of a family member. The ability of the school and its teachers to mold the future Jordanian woman can therefore not be undermined. Given these facts, schoolteachers can either become a force reinforcing conservatism and traditional expectations from girls in Jordanian society or to instill a different outlook that need not conflict with expectations but could help widen spheres and possibilities.

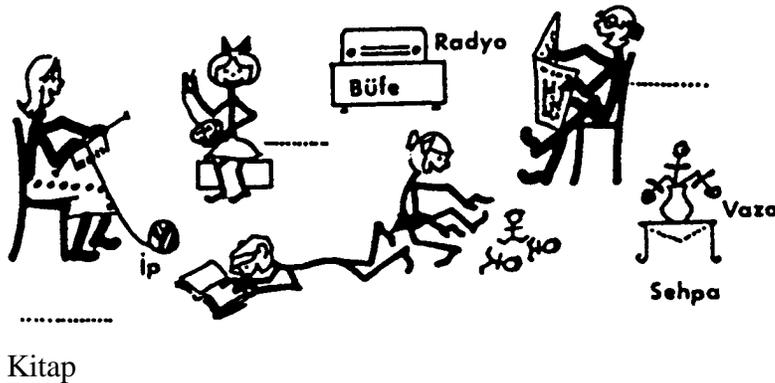
Observations from visiting four Jordanian schools for girls were not encouraging when it came to the culture in the classroom which emphasized gender difference and expected gender roles. Intissar al-qihwi, headmistress of a secondary girl's school in Amman, perhaps one of the most impressive and dynamic educators I have met, explained a great deal about these problems. She understood not only the significance of education but also the serious need to reorient education toward a more dynamic goal-oriented education in which girls understand they could have wider options in life and are given the ability to face

these options. But the first problem that is faced according to her has to do with the parents who look at their daughters as “spending time” in school until they get married. As she pointed out, girls begin to drop out soon around the age of fifteen as their families accept proposals of marriage and the girls are required to drop out. Al-Qihwi found this to be a source of great distress, and tried her best to convince parents to keep their daughters at school even after they are married notwithstanding how difficult this is at every level. There were two pregnant girls at the school at the time of my visit, but al-Qihwi insisted that they complete their school education so that they would have a weapon in their hands since no one knew what the future could bring their way.

My conversation with al-Qihwi added emphasis to the demands of Jordanian feminists that the age of marriage be raised to eighteen to allow girls to mature, to complete their school-education and realize the options that could be open to them. As long as the age of marriage remains fifteen, there seems little that could be done to allow girls to mature beyond the domestic scene. Early marriage only emphasizes Jordanian society’s engendering of roles. Not that early marriage is anything new in Jordan, as archival records show boys and girls were married quite early in Islamic tradition.<sup>39</sup> But the concern here was to allow for early sexual relations within a legal framework, which happens to be one of the important reasons why there is opposition to raising the age of marriage among girls from fifteen to eighteen especially among the more rural and tribal population of Jordan. Since those who want to break the rules do so anyway and girls from rural and tribal areas are married even before reaching the age of fifteen--a medical certificate attesting to their having reached that age is all that is required to prove that she

has reached that age--there is no reason why the minimum age for marriage could not be raised. In fact, if Jordan has future hopes for its women as educated citizens contributing to economic development and growth, raising the minimum age is imperative.

I would like to end this discussion by presenting a cartoon of the typical home scene as presented to students.



The caption below the picture reads:

After washing their hands and brushing their teeth, the family sits in the living room. The father reads the newspaper. The mother knits. The older sister does needlepoint. Suna plays with her dolls. And Jinn Ali looks at the pictures in the books.<sup>40</sup>

This scene comes from a Turkish textbook and is representative of similar scenes that appear in Jordanian textbooks and textbooks from schools all over the Arab world. My selection of a Turkish textbook is to put question into the fallacy that Turkey has managed to change its patriarchal structure by simply changing its gender laws. The laws in Turkey may have changed but not the outlook toward gender and patriarchy, that is repeated through urf to the point of being given “textual” authenticity equated with religion, faith and expected traditions. For things to change, it is this image that has to be attacked and transformed before a new generation of kids continues the same patriarchal

patterns of their fathers and their grandfathers before them. New a`raf are needed and questioning existing ones build on “textual” constructions need to be encouraged.

One can conclude that gendering takes place very early in life. Through family, society and schoolroom young girls and boys are educated into culture in where basic human relations are integral. Social roles begin to be learned soon after birth through attitudes toward children of different sexes. Expectations toward girls in Jordan are different from attitudes toward boys. So are expectations of boys from their families and societies different from the expectations of girls. As this chapter tried to show, the adult woman is formed early on, through relationships with her mother, father and siblings. From the very beginning she is aware that she is a girl and that therefore she is lacking in some way. Her family may love her, but there is not as much celebration or pride in her accomplishments as there is in the arrival and accomplishments of her brother. Financial allocations of the family are directed first toward assuring her brother’s future, she always comes last. Her main job in life, she is told from her very early years, is to be a housewife and a mother. She must learn modesty, not be heard and not seen. The image may not fit with her mother’s relationship with her father or her brothers, for very often Jordanian and Palestinian mothers are the actual power in the home. But even her mother is the first to impress on the daughter the superior importance of the brother and the need to cater to his needs. As she grows older she is faced increasingly with the power of her father. Not only is he the source of discipline and hence of fear, but he is also the one with an absolute legal power over her. She cannot do much without his permission and at the same time he represents security and the source of financial support without which

the family cannot survive. And so develops the love-hate relationship between the father and daughter. No one is more beloved to her heart, yet she is in constant fear of angering him, of acting immodest, or doing something that would be misunderstood as disrespect or immoral. The merging of fear and respect is shared by the sons; but sons know that they will soon get out from under parental authority and be free to develop and grow. For the girls, the only way to “get out” is through marriage, and that is every girl’s dream, what she expects and what is expected of her. Once married however, she discovers that she has moved from one type of patriarchal authority, that of the father, to another, that of the husband. She cannot go out without his permission and cannot even take a job unless he agrees. The power of the father does not end there, her brother’s authority also continues even after she is married. After all she is considered a member of her clan and as such her moral attitude reflects back on them, so her male relatives continue to form a real authority in her life. She can only sue for divorce with her father or a waliyy being present although she can do that if she is over forty years of age otherwise the judge may refuse to hear her case. Educated or not, owner of business or not, doctor, lawyer, what have you, and she can still not marry herself without her father’s permission or divorce without his approval. She could appeal to the judge if she is an adult over eighteen years of age. But why appeal to a complete stranger when she is already considered an adult and could in fact marry, have her own home and be trusted with raising her children at the age of fifteen. The contradictions of a girl’s life develop into those of a woman’s.

When married and in her home she expects to be the queen as she has always been told. According to the Islamic discourse that she was told should guide her life, she should have her own home separate from her husband’s family. When that does not

happen, she finds she has no one to support her in her bid for a separate home even though the law should stand with her. The alternative is divorce and there is something wrong with a divorced women she soon learns. In school she was supposed to be educated and look forward to a more active and productive future, but the school only reemphasized the lessons of her early youth, i.e. the passivity of a woman, the activeness and even aggression of man, and the importance of patriarchy. As this chapter tried to show, for Jordanian women to be expected to take a greater role and interest in their country, its development and its economic activity, there will have to be basic changes in attitudes in regards to bringing up children, to school curriculum, to teaching in the classroom and finally in the legal system that sanctions patriarchal power and makes women into passive dependents.

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<sup>1</sup>Mustafa Ibrahim al-Zalmi and `Ali Ahmad Salih al-Mahdawi, Usul al-fiqh fi nasiguh al-jadid wa tatbiqatuh fi al-tashri`at al-qanuniya wa khasa al-qanun al-madani al-urduni raqam 43 li sanat 1976 (al-Irbid, Jordan: al-Markaz al-Qawmi lil-Nashr, 1999), p.31 & 82.

<sup>2</sup>Ibid., 82-84.

<sup>3</sup>Kamel S. Abu Jaber, Fawzi A. Gharaibeh and Allen Hill, The Badia of Jordan: The Process of Change (Amman: Publications of the University Of Jordan, 1987), p. v.

<sup>4</sup>Ibid.

<sup>5</sup>Nayif al-Nawaysah, al-Tifl fi al-hayah al-sha`biyah al-urduniyah (Amman, Jordan: Ministry of Culture, 1997), pp. 28-29.

<sup>6</sup>Al-Nawaysah, P. 139.

<sup>7</sup>Fatima Barbari `Abdallah, "Lament for her Dead Daughter," in "Women's Laments for Children who have Died," collected and translated by Jamal Zaki ad-Din al-Hajjaji and Susan Slymovics and Suzanne Qualls, published in Elizabeth Fernea, ed., Children in the Muslim Middle East (Austin, Texas: University of Texas Press, 1995), p. 223.

<sup>8</sup>Shami and Taminian p. 74.

<sup>9</sup>Meeting in high school with Rihab

<sup>10</sup>Abdulla M. Lutfiyya, Baytin a Jordanian Village: A Study of Social Insititutions and Social Change in a Folk Community (London: Mouton \$ Co,m 1966), p. 143.

<sup>11</sup>Lutfiyya, p. 158.

<sup>12</sup>Abu Farwa al-Rajbi, "Saya'ti", in Ibda`at Qisassiya: min ibda`at qasasi nadi usrat al-qalam al-thaqafi, al-zarqa' (Amman: Ministry of Culture, 1997), p. 19-29.

<sup>13</sup>Elizabeth Warnock Fernea, "Childhood in the Muslim Middle East", in Elizabeth Warnock Fernea, ed., Children in the Muslim Middle East (Austin: University of Texas Press, 1995), p. 5.

<sup>14</sup>Most of the translations of the Qur'an in this paper will be taken from A. Yusuf Ali's excellent translation and commentary. The Holy Quran, Text, Translation and Commentary by A. Yusuf Ali (Brentwood, Maryland: Amana Corp., 1983).

<sup>15</sup>Insert citation for short story

- <sup>16</sup> al-<sup>c</sup>Asqalani, fath al-Bari bi sharh Sahih al-Bukhari, Cairo: Dar al-Rayan l'il-Turath, 1987, Vol. 12, p. 334.
- <sup>17</sup> Al-Nawaysah, p. 29.
- <sup>18</sup> Lutfiyya, p. 158.
- <sup>19</sup> Emile Butaye and Gaston de Leval, A Digest of the Laws of Belgium and of the French Code Napoléon (London: Stevens and Sons, 1918), p. 64.
- <sup>20</sup> The Jordan Civil Code, p. 7.
- <sup>21</sup> Shari`a court case no, 24624 (dated during 1990's) published in 1Abdel-Fattah `Ayish `Umar, al-Qararat al-qada'iyya fi'l-ahwal al-shakhsiyya hata `am 1990 (Amman: Da Yamman, 1990), p. 5.
- <sup>22</sup> Jerusalem, 2 Ramadan 789[1390], published in al-`Assali, Watha'iq muqadissiy Tarikhiya, Vol. 2, p. 109.
- <sup>23</sup> Nablus Shari`a court, 1276-1277[1861], 2-13:27.
- <sup>24</sup> Al-Salt Shari`a Court, 1328[], 16:180-105.
- <sup>25</sup> Al-Quds Shari`a Court, 1058[], 28-140:317-2.
- <sup>26</sup> See Chapter 3.
- <sup>27</sup> Al-Salt Shari`a court, 1352[1933], 34:5-3.
- <sup>28</sup> Al-Salt Shari`a Court, 1350[1932], 34:66-18; Al-Salt Shari`a court, 1350[1932], 34:82-49. Al-Salt Shari`a court, 1350[1932], 34:95-69; Al-Salt Shari`a court, 1350[1932], 34:102-82.
- <sup>29</sup> Al-Salt Shari`a court, 1342[1925], 27:98-4.
- <sup>30</sup> (Table 11) Distribution of secondary education students according to sex and type of education for the school years, 1995/1996,1996/1997,1997/1998. (%).
- <sup>31</sup> (Table 11) Distribution of secondary education students according to sex and type of education for the school years, 1995/1996,1996/1997,1997/1998. (%).
- <sup>32</sup> Discussion at the Professional and Business Women's Club in Amman, Jordan, August 2000.
- <sup>33</sup> (Table 9) Basic education curriculum and study plan (1997-1998), Source: The Educational statistics of the MOE for the years 1995/1996.
- <sup>34</sup> Al-Tarbiyya al-ijtima`iya wal-wataniya, year 3, part 2 (Amman: Ministry of Education, 1998).
- <sup>35</sup> Al-Tarbiyya al-ijtima`iya wal-wataniya: year 4, part 2 (Amman: Ministry of Education, 1998), p. 43-45.
- <sup>36</sup> Al-Tarbiyya al-ijtima`iya wal-wataniya: year 4, part 2 (Amman: Ministry of Education, 1998), p. 37.
- <sup>37</sup> Al-Tarbiyya al-ijtima`iya wal-wataniya: year 5, part 2 (Amman: Ministry of Education, 1998), p. 111.
- <sup>38</sup> Al-Tarbiyya al-ijtima`iya wal-wataniya: year 3, part 2 (Amman: Ministry of Education, 1998), p. 51.
- <sup>39</sup> Al-Salt Shari`a court, 1344[1925], 35:241-194. This is a case in which two minors married through the power of their respective fathers were being divorced in court by them.
- <sup>40</sup> "Turkish First-Grade Text from Jinn Ali Starts School, Cim Ali Publications, Ankara" in Elizabeth Fernea, ed., Children in the Muslim Middle East (Austin, Texas: University of Texas Press, 1995), p. 22

## Chapter 6

## Marriage, Obedience and Work

The Islamic marriage contract defines the relationship and mutual obligations of husband and wife. The contract as applied in Jordan allows husband and wife to include conditions that they consider of particular importance for the success of their marriage and their willingness to remain in it. As long as these conditions are within the bounds of what is acceptable to the shari`a, courts find them to be legitimate and either party can sue for divorce if the other breaks the condition and is therefore in a situation of breach of contract.

At the heart of marriage are a number of assumptions that are not written out but that are socially accepted and legally recognized by the law and courts. Most importantly is the responsibility of a husband to support his wife financially. Schools of law have differed on exactly what constitutes support, for example does it include medical expenses? Notwithstanding differences, all agree that by becoming married, a wife expects to be supported by a husband and that this support should be according to the social level that she was used to while still in her father's home. Jordan's laws recognize a husband's responsibility to support his wife and take a wide comprehensive outlook that grants the wife the most important needs itemized by shari`a: "A wife's nafaqa includes food, clothing, housing, medical needs within the known bounds, and [a servant] to serve the wife whose social equals have servants."<sup>1</sup> The woman's own money that she may receive from inheritance, investment of her dowry, or any other means, is considered

hers according to the Islamic shari`a and not the household's or family's. The exception to these rules in Jordanian laws involves the working wife: "There is no nafaqa for the wife who works outside the home without the husband's approval."<sup>2</sup> This does not fit with the Islamic shari`a but is a modern addition based on the shari`a idea that a wife who leaves the marriage home without her husband's opinion does not deserve his nafaqa. That "leaving the home" really meant abandoning the marriage and not living with the husband and not simply going out of the house, has been forgotten. While Christians have a different form of marriage and marriage contract, nevertheless the same expectations regarding the husband's responsibility for the financial support of his wife apply.

What does the wife owe in return? Here the law is interpreted differently, but it is generally acceptable that the wife's obedience to her husband is expected in return for his financial support. When she is disobedient, then he has the right to withdraw his financial support or to divorce her without compensation or payment of the agreed upon financial rights defined by their marriage contract. What constitutes disobedience is problematic and, according to court records, very often contradicts Jordanian laws. The question of a wife's right to work without a husband's permission figures prominently here. Given the shari`a outlook toward women's work, it was not surprising that modern Shari`a Court judges seemed to vacillate about this matter. A judge's decision that "The work of a wife with or without the husband's permission does not deny her a nafaqa" was overturned by Shari`a Court decision number 18900 in which the judge concluded "I say that that decision is contrary to what article 68 of the law states."<sup>3</sup> Jordanian judges have also vacillated in cases before the court involving family disputes over a wife's work when the husband did accept her work. Here questions revolved around proving that he did

approve, and if this is proven does he have the right to withdraw this approval later. What if he married her knowing that she was already holding a job or involved in business, does that constitute approval?

Personal Status Law gives the impression that once the husband has acquiesced in regards to his wife's work, he can no longer deny her. Actually the situation is much more complicated and this law in particular must be considered one of the most important hindrances to the entry of women into the work force or of opening their own business since her continuation in either is dependent on "keeping her husband happy." The problems here are diverse. A man could refuse to pay his wife any financial support on the basis that he asked her to quit working and she refused and continued to work.<sup>4</sup> A husband could also deny his divorcée her rightful financial compensations due her because of his divorcing her on the basis that she worked without his permission. When the wife sues for these financial rights that are often agreed upon at the time the marital contract was signed, the court asks her to prove that she had received his approval that she could work. Since such approval is almost always an oral agreement, it becomes very hard to prove.<sup>5</sup> Another interesting case<sup>6</sup> took as a basis for its decision the fact that the wife worked in the armed forces and would not be able to resign. Here the husband moved his wife to an area to live outside of Amman where she had lived continuously for a long time. In a ta`a case he demanded that his wife move there with him. As the records state, the wife worked in the armed forces before her marriage, since she continued to work after being married to him, it is clear that he must have approved her work. Yet the court did not dispute the husband's right to demand that his wife quit and come live with him, rather it asked that he prove that the new home he set up was acceptable as per

shari`a requirements and also indicated that since the wife worked in the armed forces she did not have the right to resign even if she wished to do so. So the husband's acceptance of a wife's work did not mean that he could not change his mind later and it was the wife's inability to resign rather than her husband's right to demand that she stop working that was of substance to the court which turned down the husband's legal action.

Women in professions considered quite respectable in Jordan also face the same kind of marital control. A number of cases indicated that teachers often faced being declared nashiz because they refused to give up their jobs on their husband's demand. Nashiz is a condition in which a wife is considered disobedient and not deserving financial support from her husband. Being declared nashiz did not mean that a wife would be granted divorce by her husband, he could keep her in that state indefinitely if he so wished unless she took the case in front of the judge and went through the expenses and hassle of shiqaq wa niza` as discussed elsewhere in this report. In Tamyiz Court case 21332 dated 12/4/1980, the wife, a teacher, was asked to prove that her husband approved that she worked. Given her education and the fact that she was already in the profession, logic should have indicated that the husband must have married her knowing that she had a profession. Since it was he who questioned her right to work, the burden of proof that he never approved of her work should have been placed on his shoulders. That however was not so in this case nor in any of the cases surveyed, the onus of proof was laid on the shoulders of the wife notwithstanding the acknowledged `urf that written conditions in the marriage contract at the time the marriage is contracted is not acceptable socially. Certainly not acceptable to husbands who could be considered wimps if they succumb to their wives' conditions. So according to `urf such conditions are always oral

and the courts should be well aware of that. Obvious evidence, like the wife's education, profession, or inclusion of a wife's profession in the marriage contract, sometimes do and sometimes don't make a difference in a judge's rulings. Since Jordanian marriage contracts allow for the inclusion of conditions, women should be advised to insist on the inclusion of such oral agreements in the written contract particularly since Jordanian urf (a basis for law in Jordan) accepts the idea that a husband has a right to allow or refuse his wife the right to leave the home or to work.

Complicating the issues more is the fact that today husbands whose wives work with their approval question their responsibility for supporting them. Other husbands claim the wife's income as a family income to be spent by the husband as the financial supporter of the family. Jordanian law strengthens such arguments by allowing a wife's right to her husband's financial support to fall if she works without his permission, which has given husbands leverage to control the wife's income in return for giving them the right to work. Being the head of the household means controlling the budget, a working woman then would have to abide by her husband's control of where her money is to be spent. Women have left jobs because of these reasons. As one woman told me, "I became tired of my husband changing his car every year while I continued wearing the same clothes from my trousseau." Another told me that her brother-in-law sat in her dentist sister's clinic after work to receive the fee of her customers and nightly counted the income for the day, which he then pocketed. While these cases may not be typical, control of a wife's income does not sit well with wives and discourages them from opening their own businesses since ultimately they have no control over their own income or ability to continue working if the husband changes his mind.

This chapter will detail these problems and draw upon actual court records that show the dilemma faced today by young men and women whose needs no longer conform with what Jordan's personal status laws defined earlier in the century. Given the expectation that a wife's obedience is reciprocated by a husband's financial support, a wife's income from a job or business is a particular point of contention. What is involved in an Islamic marriage? What does paying of nafaqa entail for the husband and its connection with the definition of marriage according to the shar`ia as compared to how personal status laws define the institution? Should the wife be an equal supporter? Should the husband be in control of her money as is expected of the head of a household whom traditions recognize as the sole or at least main financial supporter of the family? What happens to the whole question of qiwama (guardianship or support) when a wife contributes to the household income? Today couples are moving increasingly to form joint-decision type marriages in which both work, bring income home, and spend it together for mutual needs. While this is a positive move, the laws do not protect the woman once the marriage begins to fall apart. A woman who works is regarded as not fulfilling her full marital obligations. A wife who "wants out" of a marriage has a very hard time getting divorced and almost always loses a good portion of her financial rights—including property she and husband bought together—in return for ending the marriage. Therefore it is important to try and understand the significance of the law requiring a husband's permission before his wife could work. Such laws appeared only in the modern period and they were by no means unique to the Islamic world. Even today French women cannot work at night without their husband's permission.

Other questions to be addressed in the chapter include the wife's ta`a (obedience).

Is it contingent on the husband's payment of nafaqa? What does ta`a involve and how is it connected with the meaning and purpose of marriage in Islam? If the wife contributes equally to the household income, should not then obedience change in meaning since it is reciprocated by a husband's financial support? At the heart of these questions are laws and traditions regarding marriage that are controlled by personal status laws, already extensively referred to throughout the book. Here we will focus on personal status laws pertaining to marriage in its various aspects including financial support, obedience and women's work. Because of the importance of divorce and court procedures regarding marriage and divorce in constructing gender relations and the power of patriarchy, these will be covered as well. The approach follows the methodology outlined for this book, looking at today's laws as a construction of various legal traditions which can be deconstructed and new ones introduced more fitting with Jordan's needs today without really touching on the central social concerns regarding morality and honor.

### Defining Marriage

Including pre-nuptial conditions in a marriage contract is undoubtedly one of the most important instruments that women in Islamic societies at one time used to ensure control over their marriage, a wife's position within her husband's home, financial support expected from her husband and even intimate details involving the marriage.

Modern Jordanian women do make use of this right to a certain extent but nowhere close to its potential nor to how well their sisters did before the beginning of legal transformations by the Ottoman Empire during the nineteenth century. Earlier conditions were quite comprehensive and sometimes included specific conditions that

were sometimes particularistic to the couple being married. Some of the more general conditions that repeat themselves often included a husband's not taking a second wife, that he not beat her, not move her away from her family, provide her with particular luxuries and items of clothing and so on. Today, Jordanian women make little use of pre-nuptial agreements even though they could give them leverage and empower them in relations with their husbands. Ignorance of this right among both men and women and the general unwillingness of the bride and her family to "act tough" toward a bridegroom and thereby lose him, have curbed the potential of this instrument guaranteed by law and of long-standing existence in Islamic societies. Furthermore, the meaning of pre-nuptial agreements has changed significantly in modern law. That they should not contradict with Islam is a general rule applied before and after the modernization of law. But it is in the interpretation of what does or does not constitute "Islamic rules" in a marital relationship that the differences between earlier practices and today's practices illustrate the confining of the woman's agency in negotiating her life and the greater power that has been handed to a husband by modern law.

As for ignorance of the law, this seems to be widespread among Jordanian women and constitutes a serious problem in regards to their knowing whatever rights they have today. For example, all Jordanian women know that a wife has the right to hold the `isma (marital knot) if this is agreed upon at the time the marriage is contracted. They also know that holding the `isma gives the wife the ability to divorce her husband. However, most Jordanians think that if at the time of the marriage contract a woman is given the `isma this means that only the wife retains that power and the husband loses it. This belief is incorrect since whether a wife holds the `isma or not, the husband never loses

his absolute power to divorce her at will. But it is the perception that matters. Brides are not willing to “steal a husband’s manhood” by asking him to turn over the prerogative of divorce. Given the centrality of marriage in a woman’s life and the fear of spinsterhood, it is important that the husband be appeased and not frightened away from the marriage. It is true that the ma’dhun (cleric who officiates in a marriage or a divorce) is required to discuss all aspects of marriage and the marriage contract with the bride and bridegroom, this never takes place because it is not traditional for the ma’dhun to do so and because the bride is usually absent at the signing ceremony (katb al-kitab).

What is “Islamic” and therefore not open for negotiation in a marriage contract is actually dependent on the definition of marriage, a definition that has changed significantly with modernity as happens with most institutions largely due to sociopolitical conditions. Article 2 of Jordan’s Personal Status Laws<sup>7</sup> defines marriage as “a contract between a man and a woman who is legally available to him with the object of forming a family and producing children.” This definition, like the rest of Jordan’s Personal Status Laws, is based on the Ottoman Family Code of 1917 which was adopted by Jordan and which was in turn supposedly based on shari`a practices earlier. That however is not the case. Furthermore, even though it is widely believed that all Muslim countries follow the same philosophy of marriage, that is also not the case. Other Muslim countries do not conclude that the purpose of marriage is forming a family and reproduction. For example Article 1 of Kuwait’s 1984 Personal Status code states: “Marriage is a contract between a man and a woman who is lawfully permitted to him, the aim of which is cohabitation, chastity and national strength.” Libya’s 1984 marriage laws, Article 2 defines marriage as “a lawful pact which is based on a foundation of love,

compassion and tranquility which makes lawful the relationship between a man and a woman neither of whom is forbidden in marriage to the other.” In contrast, definitions of marriage similar to the Jordanian appear in the Personal Status Laws of Syria and Egypt. The Syrian definition is: “Marriage is a contract between a man and woman to whom she is legal whose purpose is to create common life ties and procreation (al-zawaj`aqd bayn rajul wa-imra’a tuhil lahu shar`an ghayatihi insha’ rabitah lil-haya al-mushtaraka wal-nasl).”<sup>8</sup> Almost the exact same definition of marriage in the Syrian code appears in that of Iraq.<sup>9</sup> Algeria’s Personal Status laws define marriage in a similar way, “marriage is a contract that takes place between a man and a woman according to the Shar`. Of its goals is the formation of a family based on affection, sympathy, cooperation, and morality of the couple and the protection of posterity [ansab].”

The comparison between the Kuwaiti and Libyan definitions of marriage on the one hand and that of Jordan, Syria, Iraq and Algeria on the other is important. The most important difference has to do with the formation of family and procreation. Neither Kuwait nor Libya were subjected to French or British rule as in the case of the rest, nor did they experience direct diffusion of Western concepts of family and marital relations as did countries whose legal systems were reconstructed and modernized under European tutelage. It is therefore not surprising that Kuwaiti and Libyan definitions of marriage are closer to the Qur’anic definition of marriage than the others. The importance of “family” and children as a “purpose” from marriage are more attuned with European Victorianism than with Islamic traditions. While Islam looked on children as one of the great prizes of life, marriage constituted a different relationship within Islamic tradition. After all, divorce was allowed and as court records illustrate, people divorced and married others

quite often and they continue to do so today. Furthermore, we do not see “not having children” as an important reason for divorcing wives in Ottoman court archives, although that type of reasoning is an important cause for divorce in modern courts. Yet inability to consummate marriage was an important reason for a woman’s suing for divorce in Ottoman courts, consummation being the purpose from the marriage and therefore non-consummation is one of the most accepted reasons for divorce according to all the madhahib. Ratib al-Zahir points out that Jordan’s personal status laws as a whole and the definition of marriage specifically do not fit with the most acceptable interpretations of marriage among the fuqaha’s reading of the Shari`a.

It is important to question the definition of marriage because of the basic division of labor based on gender that Jordan’s personal status laws legitimizes. If marriage is transacted to form a family and procreate, a wife’s primary function becomes bearing her husband’s children and taking care of them at home. She provides the service at home, i.e. cleaning, cooking and so on. Her marital obligations toward her husband was to obey him which includes not going out of the marital home without his prior permission. In return, it is the husband’s responsibility to financially support her and their children. This type of basic relationship between husband and wife predominated globally and continues to be the most acceptable way by which people look at marriage and roles of husband and wife. It is codifying these roles into law that carry consequences for a woman that are in question here. The definition places the woman in the home and “going out” becomes a breach of her marriage contract if she has not received his prior approval. The many cases that were brought to Ottoman courts in which a husband demands that his wife “not go out” or his wish to divorce her because she goes out too

much, show that women went out at will and that the question of a husband's approval was probably more complicated.

A nineteenth century declaration of divorce recorded in the Shari`a court of Nablus illustrates the attitude toward a wife's going out without a husband's prior permission. "In front of the honorable Shari`a qadi...[man's name] appeared and declared that he took an oath in regards to his wife Fatima...that if you were to go out of this house then you are divorced a triple divorce with no going back. After his oath she left the house and was [thereby] divorced. The hakim declared that he owed her all her financial rights including her delayed dowry and had him pay her delayed dowry of 25 qirsh..."<sup>10</sup> It is important to point out here that the wife received her full financial rights and that leaving the home without her husband's permission was not considered cause for divorce on her part which would have given her husband the right to renege on his financial obligations toward her. A husband's financial obligations toward his wife could amount to an impressive nest-egg for the wife since they include her delayed dowry agreed upon at the time the marriage was contracted, her alimony usually assessed as one year support after divorce unless she gets remarried, her `idda allowance which includes housing and living expenses, and could also include a mut`a allowance since the marriage was ended not of her choice even though the wife may have left the home to enforce her husband's oath to divorce her.

The outlook of courts has changed, today's courts look at the wife as the section of the "family" that belongs in the home, her leaving the home for any reason then constitutes a form of "harm" to the family. Therefore in determining the causes of divorce, a wife's work figures strongly against her and she suffers accordingly through

substantial reduction of her alimony in Shiqaq and Niza` (family dispute) courts.

Working wives know that, and the social pressures on them is a great hardship since she is still expected to be a full-time person at home and yet carry a job's responsibility. At the least appearance of problem within the marriage, it is the working wife who receives the censure of society and the law.

One should also point out the inconsistency in personal status laws that may establish a division of labor between husband and wife, but do not take this division into consideration when it comes to compensating a wife for her years of marriage when divorce takes place or when the husband dies. His property and all assets accumulated during the marriage that are written in his name—which is the norm—stay with him at the time of divorce or are inheritable according to Islamic law when he dies. The wife's share in the first is zero and in the second it is one-eighth if she has children from him and one-quarter if she does not. In other words, if the purpose of marriage is creating a family, the laws that follow from such a basis are not consistent with the meaning of a family. This is particularly so given the ease with which a husband can divorce at any time and at will. Notwithstanding how much time a wife may have given the “family”, she has little leverage or rights that are normally associated with “family”, for example half of all marital assets or the right for a husband's full pension in case of his death as is normally the case where the principle of “family” is a basis defining laws of property, taxation, social security and so on. In fact, the whole idea of “family” seems to be applied only when it comes to the definition of marriage and the division of labor between husband and wife. Two laws in particular prove this. The first law has to do with nationality. According to the Jordan Civil Code, Section 33, “Jordanian nationality shall

be governed by a special law.” Section 34 defines who has this right by detailing who is included in a family. “1.The family of a person shall consist of his relatives. 2.Persons shall be deemed to be relatives if they have a common ancestor.”<sup>11</sup> Nationality, however, is not granted according to this definition of family. Not all relatives have a right to enjoy Jordanian nationality only those with a Jordanian father. This is another contradiction in the law that effectively denies women equal rights and puts into question the fate of any property owned by women who are married to non-Jordanians. Security of nationality and property are essential for any type of economic growth. The second law involves taxation. Tax exemptions provided by Jordanian laws benefit men and discriminate against women. Article 13 gives the husband the right to 500 dinars exemption for his wife, for each of his children and parents he supports. The wife does not have the right to claim the same exemptions even though the law considers a husband and his wife independent taxpayers. Women can claim exemptions only if the husband demanded explicitly for his wife to be granted these exemptions or if the wife is the only supporter of the family (Article 4:c). In other words, we are not talking about a “family” unit but rather a patriarchal unit based on male custody over female rather than a family unit in which all its members expect equal protection and support. Women’s groups I met with and whose reports I read referred to these two laws that they considered to have severe impact on women. While these laws may not appear to be immediately pertinent as constraints on women and work, in fact they are.

So what is marriage according to the Shari`a? Actually, marriage in Islam is based on a contract that is quite similar to any other type of contract that sets out the basis upon which the parties involved reach mutual agreement. The very wording of the definition of

marriage in Jordan's personal status laws confirms the contractual nature of marriage. As Ratib al-Zahir points out "a sales contract for example can take place between a man and a woman who is legal to him (tahilu lahu shar`an). A rental contract as well could be between a man and a woman who is legal to him."<sup>12</sup> More importantly, al-Zahir regards the definition of marriage as hedging the interpretation given to it by the fuqaha'. Modern lawgivers kept away or shied away from the idea that a marriage contract allowed a man to enjoy a woman sexually. Rather they tried to show noble intentions from marriage, with "lofty goals such as building the good society that assured chastity and virtue."<sup>13</sup> Put differently, one can conclude that modern marriage is defined according to the historical context presented by the twentieth century with a strong dosage of leftover nineteenth century Victorianism with its emphasis on the nuclear family, the wife's domesticity, and a "home, sweet home" attitude. Seen this way, the philosophical outlook regarding marriage and gender actually has little to do with the shari`a as practiced earlier before the modernization of law and must be seen as a modern state-constructed system that can be changed by the state the same way it was created by the state.

The linguistic meaning of the word zawaj (marriage), points to the joining of one thing with another after each was separate on its own. The word became known by its association with the act of joining a man with a woman in particular so that the word when pronounced came to have only that one meaning. In fiqh, marriage was defined by the fuqaha' in many ways, similar to one another, all of which revolved around its purpose and that giving the right to the man to enjoy a woman... According to contemporary Hanafi

theologians [however]—for example Sheikh Mustafa al-Zarqa’—  
 marriage is defined as a contract between a man and a woman  
 whose purpose is to legalize sexual enjoyment between them with  
 the purpose of procreation and formation of a family.

Here al-Zahir takes issue with the contemporary Hanafi definition of marriage and points out that Sheikh al-Zarqa’ and other theologians of the modern period have mixed-up between the purpose from marriage, i.e. sexual enjoyment, and the results of the marriage, i.e. procreation. He also points out that the definition of marriage in Jordanian law is linguistically incorrect. Marriage cannot be between a man and woman “who is legal to him” (tuhilu lahu shar`an) for the purpose of procreation, because she is not legal to him until she is married, and it is the contract that makes this possible. One can conclude from this that linguistically the definition of the contract is faulty and as it stands it is but a construct emphasizing the possible results of the marriage, i.e. family and procreation, as seen by state legislators, rather than an Islamic purpose from marriage. The reasons for entering into a marriage contract, then, should not be confused with the possible results of the contract, yet that is what personal status laws have done.

Court records seem to confirm this definition of marriage as allowing the husband exclusive intercourse with a women, that being the purpose of the marriage. This rare case comes from Ma`an Shari`a court and dates from 1932.

Majlis al-shar`I at the Shari`a Court of Ma`an met with me, `Abdal-Majid Mihyad acting as presiding judge. The adult woman Thuraya bint `Awda al-Hasanat came and with her husband Salim Badah Ibrahim al-Hasanat who are known to Salim b. Khalil al-Hasanat and `Amid Badah Huwaimil al-Hasanat, all of whom are inhabitants of Wadi Musa, and Khashman Bada `Ayyid Abu Krayki from Ma`an. The mentioned Thuraya asked her mentioned husband Salim to remove her (yukhli`ha) from his marriage-knot (`ismatihu) and marriage contract against fifteen Palestinian pounds as replacement for khul` that she would pay

him when she is married to another man and against renouncing all his duties toward her due to their marriage, and renouncing the nafaqa due her for the `idda period. The mentioned husband accepted this and [divorced her through] khul` by using the words "khali`tik" from my `isma and marriage contract against an amount of fifteen Palestinian pounds that you are to pay me when you marry another man and against all what is due you from me pertaining to our marriage and your nafaqa due you for the `idda period. Thuraya agreed and committed herself to paying him the substitute for khul` when she marries another that he... Accordingly I explained to the mentioned [man] that his mentioned wife is now divorced (banat) from him a baynuna sughra (irrevocable divorce) and is not legal for him to remarry except with a new contract and new dowry... and I explained to the divorced (makhlu`a) that she has the right to marry whoever she wished and that when she does get married she has to pay the agreed upon amount. Written and signed on the 27<sup>th</sup> of Sha`ban which is equivalent to 25/12/1932.<sup>14</sup>

This rather rare case (I have seen it only once before) is signed by all the parties concerned including the wife who was literate since there is no indication that she included a sign next to her name. The inclusion of a condition that her divorce is contingent on her compensating her husband in case she marries another man illustrates the rights the husband saw from this marriage and the acceptance of the court for conditions that go beyond what we know today as the norm. Certainly there is nothing in Personal Status laws that would allow a judge to allow such a condition today nor would it constitute part of acceptable social practices. Yet, the demand of the husband, the commitment of the wife, and the instructions of the judge show there was nothing wrong in the eyes of either the court or society that two persons can include whatever conditions that suited them whether in marriage or divorce. More than this, the case shows that it is the sexual aspect of the relationship that is the mainstay of the marriage. After all the couple are being divorced, yet the husband still wants a hold

on the wife and demands compensation for delivering his sexual rights to a new man. He does not expect to take her back without paying her a new dowry since divorce by khul` is irrevocable. She is no longer going to live with him and there is no expectation of children. So the only hold left is her compensation of her giving herself to another man and it will presumably be through the dowry she receives from the new man that she will purchase her own freedom from her first husband.

This does not mean that children were unimportant to marriage; to the contrary, as very early marriage contracts show, one of the pleasures of marriage is to have children. But hoping for children is a far cry from legal codification that makes out the purpose of marriage to be “having children”. In Islamic history children were born from slave-women and were recognized by fathers who then usually manumitted the mother as an umm al-walad (mother of the boy) without there being any marriage. Besides we do not see medieval fuqaha` spending time discussing not having children as one of the reasons for a husband to divorce his wife or for taking a second wife. Such excuses are part of modern discourses on gender and have little validity in Islamic fiqh. What interested fiqh was a husband’s virility and his ability to consummate the marriage. One of the reasons that all the madhahib adopt for faskh (annulment) of marriage or for granting the wife divorce with full compensation is the husband’s impotency. Yet among contemporary Islamic thinkers, muftis and fuqaha`, not having children has constituted an important excuse for divorcing a wife or a husband. As explained in chapter 2 of this book, fiqh is closely connected with social and moral discourse and can therefore be seen as a good reflection of the socioeconomic forces producing culture from within particular contexts.

### Contracting Marriage

The method of transacting marriage and the content of contracts belonged to the two parties involved. Any condition was acceptable as long as it was acceptable to the shari`a. The important thing to realize is that many issues included in Muslim marriage contracts that are accepted as purely Islamic were really included as a normal part of local `urf. Comparing marriage contracts dating from before the reform of laws and courts and contemporary Jordanian marriage contracts will help illustrate what basic “Islamic requirements” have been most consistently followed and what was more `urf than Islamic. Both the shape and the content of marriage documents differ from the pre-modern to the modern period. While the pre-reform marriage contract can best be described as a “blank sheet” into which the contracting parties representing bride and bridegroom entered the acceptable formulas for marriage contracts for that particular town and madhhab and conditions that may have been agreed upon, the modern contract is more like a “fill-in-the-black” form in which particular information has to be entered. The basic information required is the same for modern and pre-modern contracts, but they are significantly different in other ways. Thus, all contracts required the inclusion of the name of the bride and bridegroom, their fathers’ names, location or address, the name of the official contracting the marriage (qadi or ma’dhun), and that the wife is free to marry which really means that she does not already have a husband or that she has completed her `idda if divorced or widowed. The consent of the bride has to be noted in the contract and the name of her waliyy or her wakil (agent, proxy) is also included. Sometimes the husband is represented by a wakil, and if the bride or bridegroom happen to be minors as is often the case in premodern contracts, then the names of those marrying them must be recorded. A dowry is expected in these contracts as is some ijab

wa qubul statement which is something like an exchange of vows. Other required information includes the status of the bride, whether she was a bikr (virgin) or thayib (previously married) also referred to by the words hurma or mar'a (woman). The name of her previous husband was included and when she was divorced from him, if relevant. The same information is not required of the husband except in premodern contracts if the bridegroom is a minor in which case his waliyy would be acting on his behalf.

Another requirement normally included in all marriage contracts is the mahr (dowry) and here the form in which it appears differs greatly according to `urf and socio-economic standards. While fulfilling the requirement of the shari`a that the bride must receive a dowry which is hers to keep, each community and family negotiated the best form that this dowry should take. Usually the dowry was divided into a muqaddam and mu'akhkhar which are supposed to mean advanced dowry paid at the time of the marriage and a delayed dowry to be paid at the time of divorce or the husband's death. Today this is the classical form that the dowry takes, but that was not the case earlier for many parts of the Ottoman Empire where varied practices by which the dowry was paid existed. A typical khul` case showing the issues involved reads:

...the woman Laila...present [in court] identified by... and Karim... her neighbor, asked her husband the man called Hassan...here present with her in the majlis to divorce her (yukhli`ha) from his `isma and marriage knot (`uqdat nikahih) on condition that she relinquish the mu'ajjal (delayed dowry) of her dowry amounting to fifteen qirsh and the rest of her mu`ajjal (advanced dowry) amounting to twenty qirsh and from the nafaqa

of her `idda and her housing expenses and that the nafaqa of her infant suckling daughter Amna and her clothing allowance and the nafaqa for her pregnancy from him from which she will be delivered for five years from today...<sup>15</sup>

This case illustrates that a bride did not necessarily receive the full amount of her dowry before the marriage is consummated, rather a larger amount is reserved to be paid later during the marriage than the mu'akhkhar—referred to as mu'ajjal in this case—than she would receive in case of divorce or the husband's death. Another interesting issue has to do with the five years during which the husband pledged his support to his children if not the ex-wife. This may have been part of their original marriage contract or part of the divorce settlement.

A marriage contract from the Upper Egyptian town of Isna explains the flexibility of marriage and divorce decisions further. Here the agreed upon saddaq (dowry) was not paid as a lump sum but was divided into a mu'ajjal which is paid immediately at the time of betrothal; a `idda compensation which included clothing and furnishings whose cost is calculated and paid to the bride's family as a cash sum; and the hal which is due before the consummation of the marriage. As for the mu'akhkhar part of the dowry which could constitute up to seventy percent of the total amount, it was often paid in installments over long years during the marriage and not at its termination<sup>16</sup> and sometimes other arrangements were made by which the muqaddam and mu'akhkhar were more traditionally paid.<sup>17</sup> Theoretically the money went directly to the bride and it was a debt owed by the husband unless it was negotiated as part of a divorce settlement. While it was not unusual to pay the muqaddam<sup>18</sup> in installments often reaching twenty years, in

richer commercial towns, the muqaddam was always paid in advance and quite often paid directly to the bride or to her wakil in her presence.

Differences in marriage practices show that social practices were geographically based and are linked to socioeconomic conditions. They also indicate that we should not generalize about the status of women without consideration to the specifics of the particular historical context. For example, one widely accepted conclusion about Islamic society is that divorced women are frowned upon by their communities and have a hard time getting remarried. The archives show a completely different picture, second marriages were entered into quite easily by women, more so in certain areas than others. The women of al-Salt for example did not seem to have any problem marrying, divorcing and remarrying. A girl or a woman would come to court with her betrothed and ask that the judge officiate in their marriage, no shyness seemed to obstruct her from doing so nor did she need the intervention of a male relative to speak on her behalf even though she often had a man acting as wakil to “give her away” as a form of respect and acknowledgement of her status as a protected woman. Often the wakil was not a member of her family.

Interestingly, when a woman was embarking on a second or third marriage, she was not only usually present when the marriage was being contracted, but also received the dowry in her own hands. Women also often demanded that they receive the full amount of the dowry in advance and not in portions of advanced, delayed or on installments. In other words previously married women who were marrying again or were remarrying their divorcées showed a greater wish to control their marriages. This tells us that she may have had to give up a large portion of her dowry in return for divorce or that her guardian had in fact acquired the dowry and she was cheated of all or part of it. Studying dowries in marriage contracts illustrates the negotiations that went on between the different parties to a marriage, in particular the role played by women as active participants in deciding what their marriage would be like and how the financial obligations which involved her would be decided. The picture is far from the passive woman being forced into a marriage that modern society pictures about Muslim women before the modernization of laws and courts.

Marital obligations in marriage contracts dating from the Ottoman period and earlier included certain obligations expected from the husband as well as promises made by him that appear in a large number of the contracts with certain differences. One usual obligation is in regards to the husband's responsibility to support his wife and to provide her with an adequate wardrobe or a sum of money to cover her clothing expenses. The usual promise the husband made was to provide his wife with a "wardrobe (kiswa) for winter and for summer" (kiswat al-sayf wal shita'). But there were other formulas indicating that negotiations were involved in determining what that kiswa was going to be. In marriage contracts of many towns there is no inclusion of a clothing allowance perhaps because it was taken for granted that a husband supported his wife, or perhaps because clothing was not expected of the husband or clothing was not such an important issue. Even though modern Jordanian laws consider the kiswa to be part of nafaqa, actually Islamic fiqh saw it as a separate obligation. The same went for the fee to be paid by the father for breast-feeding his child. The way the modern understanding of these concepts works means that the judge makes a nafaqa allowance based on a particular sum which glosses over all of the rest since they become automatically included. That is why a divorced woman ends with such a small alimony including miniscule amounts for breast-feeding often no more than 5 Jordanian dinars a month, insufficient for a few days' nourishment.

Details regarding kiswa included in pre-modern marriage contracts were one way by which a wife's family ensured the welfare of their daughter in her new home. Conditions were widely used for the purpose of obligating the husband to provide certain assurances about the marriage that if he did not fulfill would constitute a "breach of

contract.” The injured party could then consider she/he was divorced, ask for divorce from the qadi, or as in most cases, renegotiate the contract completely based on the new situation. Whereas both husband and wife could and did include conditions in the contract, these conditions were more important for the wife and constituted a safeguard against future abuse at the hand of her husband. The reason for this has to do with the system of divorce in Islam. While a Muslim husband has an absolute right to divorce his wife at will, the wife does not have that right but has to appeal to the judge to be granted a divorce. Setting conditions to the marriage contract at the time the marriage took place when the parties are still “ala al-barr” (“on the shore”, not yet embarked) give her a way out of the marriage later on or at least the ability to renegotiate her marriage from a position of strength when it becomes obvious that the marriage is not in her best interest. So what are the most usual conditions that wives included in marriage contracts before the establishment of modern personal status laws?

1. “No” to polygamy

Interestingly, and perhaps not surprising, the most widely included condition has to do with polygamy. This is very important because notwithstanding what the shari`a says about how many wives a man had the right to take, the courts allowed to stand marital conditions limiting the husband to one wife. Court records show us that wives used their right to divorce or to renegotiate their contracts when the husband broke the condition. Courts treated husbands who took a second wife after having agreed not to in the marriage contract as having committed a breach of contract. Whether the shari`a gave the husband the right to take more than one wife or not was not the court’s concern, it was

the agreements he entered into when he contracted the marriage that concerned the court. In short, the court did not decide what constitutes shari`a and what did not and insisted that contractual conditions be adhered to even if it was contrary to the agreement between husband and wife.

That a husband not acquire a slave-concubine (tasari) was also high on the list of conditions. Tasari gives us pause because of the changes in the interpretation and application of the shari`a given historical transformations. Whereas it was very normal for men to own slave-concubines, this became legally unacceptable by modern law following the emancipation of slaves and the push to end slavery undertaken by the British Empire and followed by its colonies and dependencies including countries like Sudan where slavery was a mainstay of the economy. Even though the shari`a never forbade slavery and slavery continued in practice until forbidden by the modern state, the shari`a did frown upon it and that gave modern Muslim governments an excuse for forbidding slavery. But shari`a also frowned on divorce declaring it “the greatest of legal evils.” Yet talaq (husband’s unlimited right to repudiate his wife for whatever reason) was never forbidden by modern law.

Tasari therefore gives us a good idea about how the shari`a has adjusted from age to age depending on who is interpreting it. Even though the right to sexual intercourse with slave-women was sanctioned by the shari`a as practiced during the Ottoman period, it is certainly not sanctioned by the shari`a today since slavery was made illegal by the modern state. So here again we see the flexibility of the shari`a and the changes that it can incorporate in answer to new demand. The expectation is of course that change toward “better” interpretations and laws would be in the direction of greater human

dignity as was the case with slavery, unfortunately the same has not happened when it came to women's rights.

2. Wife-beating

The second condition most widely included by women in marriage contracts involves wife-beating and abuses of various kinds. Women were at the mercy of husbands who could be abusive, and since bride and bridegroom did not really know each other before marriage in any concrete way that could inform of the potential violence of the husband, it was clear from the frequent appearance of conditions against wife-beating and abuse, that women of all levels of society refused such treatment and gave themselves the option to get out of abusive marriages.

This does not mean that for a wife to be divorced because of abuse or beating that she had to have had a codicil against marital abuse in her marriage contract. When abused or feeling that she suffered abuse of some sort, a wife came to court and demanded that her husband cease his abuse, that he be punished, pay her compensation, or that she be divorced from him. To receive justice, she had to prove her case usually through the presentation of witnesses or evidence to the satisfaction of the judge. When abuse was proven, the judge would defer to the wife's wishes but would not automatically grant her a divorce preferring reconciliation between her and her husband if only on a trial basis. If she insisted on divorce, the qadi could not force her to stay with her husband against her will and usually offered her khul` as a means of immediate divorce from her husband. If this was a repeat complaint or if the abuse was excessive, the qadi could opt to divorce her thereby guaranteeing her financial rights. She lost such financial rights through a

khul` divorce.<sup>19</sup> A typical nineteenth century case details a situation where the husband had previously taken an oath that he would divorce his wife if he were to beat her again. He did beat her, she sued for divorce and the judge granted it to her against the husband's denial. Since the divorce was a triple divorce, the only way he could ever remarry her according to the shari`a, was if she were to marry another man first and consummate the marriage with him.<sup>20</sup> The welfare and safety of the wife seemed to be the primary concern of qadi courts as the following wife-beating case shows (Glossary 1, Chapter 6):

It has been proven through legal methods following the legal suit [presented in court] and acceptable witnesses that Nassir b. Hajj Sa`id from the village of Marda... is not to be trusted (ghayr ma`mun `alayha) in regards to his wife, the woman Sa`ida....of the village of Bishta. He constantly punches her and hurts her through beatings, insults and so on. Therefore, the hakim al-shar`i (head of court or legal council) has forbidden him from moving his wife from her village since he is not to be trusted but he is to continue supporting her financially and that he live with her in the ways acceptable to the shari`a...<sup>21</sup>

Including a condition to the marriage contract against abuse made things easier for a number of reasons. First the husband was forewarned, and significantly many contracts that included a condition against wife-beating were remarriages in which the wife made her marriage “air-tight” to control the abuse of the husband she was remarrying as well as giving herself an immediate way out of the marriage while safeguarding her financial rights. Secondly, while some “abuse” conditions were straight

forward, others tended to be very specific as to exactly what constituted abuse. This way it was not left up to the judge to decide whether the beating the wife suffered from or other form of abuse sufficed her demands in court. Last, wives were careful to include details as to what would happen and what compensation she would expect, often including divorce, if the husband treated her in an abusive pattern. By agreeing to these conditions, the husband could not depend on the court's gender outlook in determining the outcome when and if he abused his wife. Courts often took other matters into consideration, including the character of the couple and who vouched for them within the community. So his word may be taken against hers as justification for abuse could be found to explain her treatment at his hands. By beating her for any reason, whether acceptable to society or not and whether the man was of unimpeachable standing in the community or not, the husband was in breach of contract and a wife would get an automatic divorce if that is what she wished. Given the daily cases of wife-beating and abuse, most of which go unreported and when reported disregarded by the police, and even when brought to court, justifications are found for wife-beating, pre-modern marital conditions against wife-beating and abuse were certainly much more superior in protecting women than state laws that remain ink on paper today.

3. A Husband's Absence

Another important condition that is mostly tied with the location in which the marriage took place and the husband's occupation, has to do with travel. This condition is particularly prevalent in contracts from cities like Nablus, Jerusalem, Aleppo or Alexandria where large transit communities lived, for example communities of

maghariba. Contracts from these towns illustrate that it was common for marriages transacted with merchants that a codicil be included divorcing the wife when the husband travels for a specific period of time. Sometimes the codicil indicated that if he left her “without any financial support” for a specific period of time then she had the right to ask the qadi to divorce her. Given such pre-nuptial agreements, when women came to court asking to be divorced, no one could or did object to granting it to them. There was no specific waiting period demanded of her since that period had already been set by the contract.

...In her suit against her husband Muhammad... the woman Sharafiyya... claimed that her husband had taken as a condition (allaq) her divorce over supplies/enjoyment (ala mut`a), that if he was to be absent from her in al-Quds al-Sharif town a period of months and left her without any nafaqa and no legal provider then she becomes divorced from him.<sup>22</sup>

In this sixteenth century case from Jerusalem, the courts divorced the wife but the husband returned and claimed that she lied and he had never taken such a promise upon himself. The wife provided reliable witnesses and the divorce stood. This means that the condition was actually an oral one undertaken at the time of marriage and was not necessarily included in the marriage contract. As mentioned earlier, cases in which a wife claimed the oral acceptance of a husband that she could work after her marriage have been denied by modern Jordanian courts.

When there was no “absence” condition in the contract, women asked to be divorced from husbands who had left them for a period of time that was beyond what was

considered acceptable. In such cases qadis did make an effort to ask women to be patient and wait for the husband to return. Some women did take the qadi or shaikh's advise at least for a while, but there was no forcing the decision on them and most women had already made up their minds to divorce before coming to court. A "husband's absence case" ending with the wife's divorce dating from 785[1385] reads as follows:

Bismillah...according to the here-signed witnesses...they testify to legally binding knowledge of Hajj Muhammad al-Karki al-Jammal who married Buthaina Khalil b. Ghazi of Nablus a legal marriage and that he was absent before the marriage was consummated and his whereabouts were not known after his wedding. He left no financial support (nafaqa) and no one to support her and he is unable to pay her dowry...<sup>23</sup>

In this case it was enough to prove that the husband left his wife without support and that he was absent for some time for the court to give her the divorce she was suing for. Other important conditions were that he not travel far away and leave her for a long period of time, and often the period was specified like one year, six months, or even less. In a contract from sixteenth century Cairo the wife included a specific condition that if her husband mistreated her or moved her far from her family or took a second wife, then she had the right to be divorced if she so wished.<sup>24</sup> This type of contract is quite typical and reflects common gender concerns that go beyond time and space.

Another situation in regards to travel involves the bride's demand that the husband not travel with her or take her to live far away from her family for any extended period of time or move their residence to another town. Modern law has included this

situation as one reason for which a wife can ask her husband for a divorce. The term used indicating the distance beyond which a husband could not take his wife is masafat al-qasr (distance that can be traveled in one day).

To conclude, conditions included in marriage contracts were binding to its signatories. Breaking a condition constituted a basis for divorce, and since a husband automatically had the right to divorce his wife, including conditions in the contract benefited the wife more than the husband since his "breach of contract" allowed her to sue for divorce without losing her financial rights. The contract's flexibility allowed women to include all sorts of conditions, some of which were discussed above. Sometimes the conditions included were very specific and even unique. Wives could include the specific place where they wished to live, that the marriage home be near her family, or that she not live with his family where a wife's traditional authority over the household would be minimized. Other wives asked to be provided with specific comforts such as house-help, slaves, or jewelry. Still others included details regarding the specific quantity and quality of the kiswa (wardrobe) he was to provide her with or that she be provided with certain funds or pocket-money beyond the agreed dowry.

Modern marriage contracts differ significantly from the premodern ones discussed above. While they too fulfilled Islamic requirements, they differed in their form and function. One significant difference has to do with the inclusion of a line in the modern marriage contracts that require the addition of the wife's profession. While a woman's craft was sometimes added next to her name in court records if that is how she identified herself or the matter for which she came to court involved her craft during the premodern period, it was not usual for a wife's profession to be included in the marriage document

and neither was that of the bridegroom most of the time. Furthermore, wives did not include conditions in premodern contracts giving them the right to work or handle their own money, but this is an important condition included sometimes, if not enough, by modern wives. Since women have always worked or invested their money, the non-inclusion of conditions in premodern contracts and their inclusion in modern contracts are closely related to the marriage and family laws of the two periods. The inclusion of conditions allowing the wife to work after her marriage was a way of handling the law according to which a wife had to receive her husband's approval to be able to work. Since there was no such law before the modernization of the legal system and the introduction of personal status laws, there did not seem to be any need to include a condition allowing a wife to work even though wives did work as chapter 3 has illustrated. In other words, a husband's control over whether his wife could work or not is really a modern invention. Legists introduced and codified into law questions of little relevance earlier thereby establishing gender controls and enforcing them through the powers of the state acting in the role of patriarch.

Finally, a minimum age for marriage was an innovation of the modern state. It is true that fiqh has a great deal to say about the proper age for marriage, and that there seemed to be generally accepted patterns regarding the age question particularly where it involved the dukhla or the actual consummation of a marriage that could have been contracted much earlier. Thus it was almost unheard of that a dukhla could take place before the girl or boy reached bulugh (puberty). Rather, even when minors were married, the marriage was contracted but the girl stayed with her family until she was physically able to consummate the marriage. Often the husband asked or was required by her family

to support her while she stayed with her family. Majority today is determined on the basis of a pre-determined set age established by the modern-state following traditions in the West. As explained in chapter 5, a minimum age requirement for marriage, 15 and 16 for boys and girls respectively, has no precedence in premodern marriages nor are the ages of particular relevance for any of the madhahib. Furthermore, 21 as an age of majority when the son or daughter are no longer under the guardianship of their parents and are considered competent to control their own lives, has no bearing in shari`a law but comes directly out of French law. Giving sons the right to handle their own property when they reach the age of eighteen has little to do with Hanafi law which determines majority with mental maturity and puberty, and did not give an exact date. Rather the madhahib spoke in ranges and the courts turned over the managing of property to boys who were much younger because they proved they had reached rushd (majority). The point I am making here is that marriage contracts are a result of more than the actual formality of taking a wife according to the dictates of a particular religion. The shape of the contract and hence its ultimate impact on those signing it, is defined according to particular conditions at the time the marriage was being contracted.

Modern marriage contracts require the inclusion of who would hold the `isma (right to divorce). Giving the wife that right did not deny the husband the same right, but simply allowed the wife to divorce herself. If the wife is not indicated as holding the `isma, then it would be the husband's sole prerogative to divorce. Holding the `isma was also built on the idea that the husband had the right to delegate his right to divorce to his wife and was not seen as a condition included by the wife according to which she was willing to enter into the marriage. The interpretation is quite patriarchal and is built on the

assumption that the husband was the only party with a “will to act” within the marriage, itself a concept foreign to shari`a which judges each individual according to his/her actions and gives women the right to manage their lives and finances. It does however reflect the philosophy behind Western patriarchy before the gender revolution that took place as part of the social upheavals accompanying the Industrial Revolution, end of the ancien regimes, and two world wars. This is important because before the reforms the right of divorce was not indicated in the contract, this did not deny the husband the right to divorce his wife whenever he wished, but it also allowed the wife to sue for divorce for whatever reason. Since the modern social discourse belittled a husband who allowed his wife to hold the `isma, this method of security for the wife is hardly resorted to except in marriages involving very wealthy or experienced women, women of the "aristocratic" classes, or famous artists. Interestingly, when Muslim women are asked about holding the `isma, they consider it unacceptable practice and demeaning to the man. When questioned further it becomes clear that most don't know that when a woman holds the `isma the man can still divorce his wife if he so wished. The fiction is that she takes that right away from him thereby denying his manhood.

#### Courts and Procedures in Contemporary Jordan

Jordan's modern shari`a courts were created by law number 41 for 1951 later replaced by law 19 for 1972.<sup>25</sup> The head of the Shari`a Court system is the qadi al-quda (chief justice of Shari`a Courts) and the courts are formed of first instance courts in various parts of the country, each headed by a single qadi, and an appeals court headed by three qadis, one acting as head. The rulings of the appeals court are final. Among the functions of the

shari`a courts pertinent to women and gender are included: Hadana (custody of infants), wilaya and wisaya (guardianship); Marriage, including the marital contract and all matters involved in marriage; Divorce and disputes stemming from marriage; the dowry in its different types including tawabi` mahr (furniture and furnishings expected from the husband according to traditions and agreement); nafaqa (financial support) due from the husband to his wife and children during the marriage and after divorce; and paternity of children.

The real significance of courts and court procedures usually become apparent to a woman only when faced with dissolution of her marriage. She may have to appeal to a judge to approve of her marriage when her father refuses to give his consent, to divorce her from a husband to whom she no longer wishes to be married, or she may have to appear in court to ask for her financial rights and those of her children from a husband who has abandoned or divorced her and does not pay nafaqa. She may also appeal to the courts for custody of her children or for various forms of settlements dealing with her marriage. It is no exaggeration to describe the usual experience that women get out of shari`a courts today as traumatic. A breakdown of a marriage is usually placed at her door except in situations where the husband's reputation is unredeemable. She is often without any funds, her husband having divorced her and walked out leaving her destitute, yet she is expected to come to court and pay for a lawyer to represent her. Expecting to receive financial rights as stated in her marriage contract, particularly her delayed dowry, she soon realizes that she is lucky if she gets out with a fraction of what she expected out of which she still has to pay court-fees and lawyer-fees. Lacking financial resources, even the cost of transportation to and from home to court becomes difficult. Lawyer Manal

Shamut, an experienced Shari`a Court lawyer, described these difficulties and how unwilling judges are to expedite cases so that wives would not have to struggle to come to court, leaving daily jobs and losing wages, and paying for transportation they could ill afford. Ratib al-Zahir who is a practicing Shari`a Court lawyer and was a previous judge in Shari`a Courts of Jordan, confirmed Shamut's assessment of the difficulties faced by women who come to shari`a courts as did [need permission to use his name] who censured Jordan's judges for making the situation even harder on both women and men than it need ever be.

One main reason for which women come to court today is to sue for divorce. Divorce would allow her to keep her financial rights otherwise she would be expected to relinquish all such rights by asking her husband for khul` (divorce in which wife compensates husband in return for his divorce). To be able to sue for divorce, a wife has to prove that the marriage is causing her harm, defined according to a list allowing her to divorce which was put together by the committees that write Jordan's personal status laws. The list which includes non-support, wife-battering causing severe bodily harm, and irreversible impotency of the husband, is based on the shari`a as represented by medieval fiqh. However, books of fiqh never presented a list of what constitutes reasons for divorce that must be applicable if the wife is to be granted divorce, as is the case in Jordan today. Rather, fiqh discussed what the fuqaha' considered to be problems brought to their attention in their capacity as Islamic thinkers, muftis, or judges as the case may be. They thought about particular situations that presented themselves and did not set out to define the only Islamic reasons for divorce. Such narrowing of reasons was the prerogative of the modern state in its efforts to standardize its systems as well as a new

moral attitude to try and keep the nuclear family together by limiting access to divorce by placing the wife under greater control of her husband. This patriarchal attitude meant that a husband's right to divorce would not be curbed or controlled in any way.

Khul', also known as ibra' because the wife frees her husband from any financial obligations toward her, is open to the wife in case she cannot receive a divorce decision from the judge. However, according to the way khul' is interpreted in Jordanian courts, it is not a direct right of the wife, rather the husband has to agree and he could ask for financial compensation before he agrees to let her go. The alternative would be a divorce case in shiqaq and niza' courts which could last a long time. Wives are more than willing to simply give up their rights to get out of a marriage especially when it is especially abusive to her yet perhaps not abusive enough to convince the court or the abuse may not fit within the parameters of "harm" defined by the law.

Shiqaq wa Niza' is the name of the court that a woman has to apply to for divorce from her husband in Jordan. It is there that the wife must prove that there are such severe problems between her and her husband as to warrant the divorce. A husband can bring a shiqaq and niza' case as well in his effort to divorce her without having to pay her full financial rights (i.e. alimony, 'idda alimony, mu'akhkhar dowry). Invariably what is at stake are the wife's financial rights, financial rights that were guaranteed to her at the time of her marriage in case her marriage did not work out. So we are not talking about taking more out of the husband, except for a mut'a allowance that would be decided by the judge if the husband is clearly in the wrong and the divorce would mean the wife would be denied future benefits that she had expected from the marriage. The law is very specific about the reasons allowing the qadi to grant a wife divorce. She could be granted

a divorce for non-support, but she would first have to prove that her husband is not supporting her, that there is no member of his family, for example his father, who is willing to support her and that the husband is destitute and there is no hope of such support. To prove all this she usually has to wait a long period of time. Other causes of divorce could be marital abuse in which her husband beats her excessively enough to break a limb or leave obvious physical harm on her body. Even then, she may not be granted a divorce immediately since wife-beating is sometimes acceptable to court depending on the social background from which the husband and wife originate.

Otherwise it becomes a shiqaq and niza` case. A husband's impotency is one of the reasons included allowing a wife to sue for divorce. But proving a husband's impotency is not a simple matter and is not always sufficient to receive a divorce judgment. Not only must there be medical evidence to his impotence, but the wife has to prove that she had no previous knowledge of his condition before agreeing to the marriage and that she did not agree to live with him after knowing about it. Interestingly, her shyness in this matter is not taken into consideration as it is in accepting her shyness as a cause for keeping quite as a sign of acceptance when her marriage is performed without her vocal approval. Besides, even after the husband's impotency is proven, he is given one year according to the Hanafi madhab in which to get cured. In other words a wife would have to go on living with a husband whom she has taken to court and whose impotency she has proven notwithstanding what emotional and physical hardship this might cause her. The following case from turn of the century Ma`an illustrates the handling of cases of impotency by shari`a courts even before the introduction of personal status laws but after the changes introduced with the Ottoman Mejelle and the application of the Hanafi code.

One interesting aspect of this case is that the wife's complaint did not include her husband's inability to give her children as a reason for suing for divorce. Rather it was the lack of the consummation of the marriage that was in question.

In the Majlis al-Sharif of the Court of Ma`an district in liwa` (region) of Karak, in Governorate of Syria...appeared the woman Fatima... and claimed that her husband al-dakhil biha (cohabit, marriage consummated), Muqbil...here present with her in the Majlis as witnessed by.... All from the village of al-Shawbak, stated that her mentioned husband Muqbil, had since one year and four months married her and cohabited (dakhal), but that until this day he has not had intercourse with her and was not able to get an arousal and she asked to be divorced... The husband was asked about what she claimed and he confessed that they are married but he was not able to have an erection and asked that he be given a year according to shari`a law, and accordingly we granted him a year in accordance to the shari`a and ordered her to live with him for one year and at the end of the year if he had not been able to have intercourse with her and was not able to have an erection (intishar alatihu), she should then come before the judge...<sup>26</sup>

In shiqaq and niza` (family dispute or irreconcilable differences) cases the judge chooses two arbitrators who could be--but not always are—from the couple's families. The arbitrators' first objective would be to save the marriage and report back to the judge. If they succeed, all is settled. If not, then they have to report back to the judges whom

each arbitrator believes is at fault in the breakup of the marriage. They also have to give him estimates of the percentages they feel should be paid to the wife out of her financial rights. They are expected to take the husband's financial ability into consideration in making these estimates. The judge then considers their suggestions and reaches his own decisions keeping the husband's financial abilities in mind. The process sounds fair but what is at stake here is not a determination of how much alimony she would receive as in the case of American courts, what is being decided in this process is how much to take out of the already agreed upon financial rights of the wife. This includes her delayed dowry that was agreed upon and contracted at the time of marriage and is legally due to her at the time of divorce or the husband's death; her alimony for one year which should be calculated as the full amount afforded by the husband and not a percentage of it; and possible mut`a compensation since she will be getting very little out of a marriage that she expected to have lasted a long time and that may be breaking up for "irreconcilable differences" and for no fault of hers. Depending on the status of the marriage, gifts the husband gave her could also be in issue. So the wife has a lot at stake while the husband could only gain from this type of arbitration. In effect, a wife who does not wish to stay in a marriage has to buy her way out of it and is left harmed by the procedures and quite often destitute. Undoubtedly, this is not a situation where she could be economically productive.

Therefore in shiqaq and niza` courts, whether it is the husband or the wife who sues for divorce, the result is almost always against the wife in the sense of reduction of her financial rights and compensation. As for mut`a compensation, it was almost automatically provided a wife in medieval courts and was assessed quite separately from

the kiswa and nafaqa.<sup>27</sup> In a court case from Jerusalem dated 795[1396] the qadi agreed to a divorced wife's demands for financial rights. After questioning the husband as to his profession and income for the last year—husband was a mortician—the qadi granted her ten percent of the two-hundred thousand dirhams the husband earned that year as mut`a compensation and five percent for her kiswa for that year.<sup>28</sup> It should be mentioned that this document dates from before the Ottoman period, mut`a compensation was not frequently awarded in Ottoman courts. Today, however, more women are demanding mut`a compensation and courts are awarding them. The revival of these old medieval traditions is part of the Islamic movement which is reviving books of turath that are being reread and reintroduced into Islamic legal `urf. Qadis today award mut`a compensation in cases where there is flagrant abuse by a husband of his divorce rights, and in particular when the husband is wealthy and the wife is losing out by the divorce.

Procedures used in “family dispute” cases are modeled according to the Qur'an which frowns on divorce and requires that two reliable people, one from the husband's kin and the other from the wife's kin, be assigned the job of reconciling the couple. A number of issues are not taken into consideration in these arbitration procedures. The most important is the fact that Fiqh has interpreted divorce as being the sole prerogative of men, when the wife holds the `isma this is seen as a husband delegating his right of divorce to her. He could also take her back at will during the `idda period unless it was a final divorce. But if divorce is a man's prerogative and Islam frowns on divorce as being the “legal act least dear to God”, one would assume that the arbitration system was intended to be applied in case the husband wishes to divorce. But that is not the case and it is only when the wife asks the judge to divorce her (tatliq) or when the husband brings

his divorce to Shiqaq and Niza` court in an effort to reduce his financial obligations to his wife that arbitration is used. So arbitration in no way touches him. Yet the Qur'anic basis of arbitration pointed above does not indicate that it is to be applied in the case where it is the wife and not the husband who wishes to be divorced, rather the Qur'an talks about the requirement for arbitration in any situation where divorce is contemplated by either the husband or wife. The arbitration aya is not gendered:

If you fear a breach between them, appoint two arbitrators, one from his family and the other from hers. If they wish for peace, Allah will cause their reconciliation. For Allah has full knowledge, and is acquainted with all things (Qur'an 4:35).

Since wives wishing to divorce usually remain adamant while the husband can afford to be patient since his right to divorce at any time exists, "family dispute" cases always end up with a wife staying with a husband she does not want to remain married to or being "cheated" by preferring to lose all rather than remain with husbands who are abusive, who took second wives or someone she simply did not wish to stay married to.

One of the biggest problems that women face in shari`a courts has to do with delay in procedures. For example, a qadi is often dissatisfied with the results of the two arbitrators he chose; he may and often does call upon a third to join them and may also disagree with the findings of the third due to the disparity between arbitrators. Add the fact that the husband almost always appeals decisions when they work against him, which causes further delay in the court's reaching a decision. Meanwhile the wife may have no financial support and is under pressure to remain under the power of a man she wishes to divorce. Since a husband has the prerogative to divorce a wife, does not have to wait for

divorce to take another wife, and it is he who is to pay the compensation, delays are as consequential to him as to the wife and given the possibilities that delays are to determine how much less he would pay his wife, they are in fact welcome. The inequality in regards to divorce is therefore clear and is a major cause for women's suffering today.

As pointed out earlier, various Jordanian codes contradict each other in regards to gender. Different presumptions are used to justify laws in different codes. Some are more obvious than others. Such contradictions could be handled by judges and procedural regulations of the courts. However, that does not happen. For example, the Jordanian Civil Code is the final arbiter when it comes to disputes between various legal codes: Section 11 of the Civil Code states:

Jordan's civil law shall be the reference in regulating relationships when their nature is required to be determined in a case where there is conflict of laws in order to ascertain the applicable law among them.<sup>29</sup>

At the same time, Section 62 of the civil code declares itself against harm in the law: Injury does not justify injury and damage shall be abated.<sup>30</sup> ("la darar wa la dirar wal-darar yuzal").<sup>31</sup>

Given these two Articles one would imagine that the important principle of comparative advantage (based on the Islamic principle of maslaha) would apply here.<sup>32</sup> But that is not what happens in court, comparative advantage is not applied in situations when it involves harm to the wife. Thus the qadi does not take into consideration the harm to a wife when compared to the advantages of a husband who wishes her to remain married to him or who refuses her wish to take a job. Rather than divorce a wife whose

husband wishes to remain married to him on the basis of comparative advantage, the qadi usually looks at the good of the community, i.e. applies `urf which makes it harder for a wife to divorce. If the wife sues and insists on separation, it becomes a case of “family dispute” (shiqaq wa niza`) and certain steps are taken that ultimately lead to financial disadvantages to the wife. In certain cases when a wife badly wants a divorce, she is even forced to forfeit child support her husband must pay her to support his children living with her and this the court finds acceptable even though it means denying the child support, here the “good of the community” does not seem to figure.<sup>33</sup> One should also point out the fact that the “good of the community” is not even considered in reference to controlling husbands’ abuse of their divorce rights or polygamy.

Another example of inconsistency in the laws is presented by Article 225 of the civil code that states: “What is traditionally known/accepted is like what is laid out as a condition in a contract.” Article 226 involving trade contracts amplifies the meaning of Article 225: “What is known/acceptable between merchants is like/equal to conditions [to the contract] between them.” At the same time, the civil code recognizes the power men have over women in actual life and that this power could be coercive and can cause enough fear to make women do what the husband wishes even against her will. Section 142 of the Civil Code states:

The husband has authority over his wife and if he obliges her by beating or for example precludes her from her kin in order to have her forfeit any of her rights or grant him property and she does, her disposition shall not be effective.<sup>34</sup>

Even though a husband's ability to coerce his wife is taken into consideration by law when it comes to property which could have been disposed of by the wife under duress from the husband, the same logic is not applied to situations in which the wife asks to be separated from her husband because of intimidation or fear of physical abuse without going to a shiqaq and niza` court. Moreover, in shiqaq wa niza`, the onus of proof is on her shoulders and fear and intimidation of her husband are not enough causes that would save the financial rights due her from her husband.

The recognition of Jordan's Civil Code that women could be coerced by husbands is a rather important instrument that can be used to support women in Shari`a court, yet the opposite almost always happens. When a wife complains to the court of being abused or coerced into actions that she cannot approve of, for example accepting that her husband's mother live with them, she has to present concrete evidence to her allegations or the court does not accept them. For example, it is well known that mothers-in-law are not exactly accommodating to wives and can make their lives miserable. In Jordan, quite often mothers live with their sons, the usual given reason being financial need which is acceptable to the law. But as everyone knows mother-in-law can become a source of friction. While Jordanian laws recognize the right of a husband to house his impoverished mother and father with him whether his wife agrees or not, the understanding that a mother can live with her son is almost universally acceptable in Jordan notwithstanding the social conditions of the mother and even if it contradicts with the wife's Shari`a rights recognized by Jordanian laws which guarantee her the right for a separate home. Court records from before and after the modernization of law throughout the Islamic world show that the wife's right to a separate home is not disputable and is based on the Prophet

Muhammad's tradition since he provided each of his wife with completely separate quarters which were considered hers. In Ottoman courts, when a wife sued for separation from her husband because he is not providing her with a proper home, the qadi either divorced her or asked her husband to prepare a separate legal home in which he was to live with his wife. Legal records of the Business and Professional Women's Club show that one of the most important reasons for family disputes involves the mother-in-law's presence in the family home as well as the interference of the mother and the sister-in-law in a wife's affairs even if they are not living with her. When the matter reaches court and notwithstanding the traditional and usual relations presented by this situation, the case becomes a "family dispute" shiqaq wa-niza`, a solution not altogether to the advantage of the wife as has been shown.

Here the problems are both bureaucratic and legal. On the bureaucratic side, a woman whom the courts have awarded financial settlements in court cases, usually have to return to court many times before the paper work is finalized and they can receive what is due them. Meanwhile, a divorced mother would have to find the means for transportation to and from the court, and money to feed her children, pay the rent and support herself. At one time the wife's family could have helped, but from the BPWC records I studied, that does not seem to be as feasible because of the death of her parents, or inability of her family to support her. The situation therefore is one in which a divorced woman faces real hardship caught between financial needs, the court system, and often an abusive ex-husband. As the system stands, women are defined and dealt with as dependents. Financially this means that unless a woman has some wealth of her own she is dependent on a father or husband for financial support. Since salary scales of

most employed women in Jordan are low, even working-women depend on a male to financially support them. Because of this, one would imagine that in legal disputes the system would ensure that women would receive what support is due them in as expedient a way as possible. That is not the case according to lawyers interviewed, women who have had to deal with the system in regards to their nafaqa, and to case records.

There are many situations in which court procedures delay payment of the wife's financial rights according to cases from Jordanian courts. For example, a wife sues her husband for divorce. The court assigns two arbitrators to try and end the dispute between the couple. Arbitrators are chosen on the basis of closeness to the couple, one from her family and one from his. The judge could assign his own when family members are not available. If the arbitrators fail to reach a decision, the judge can assign a third. The arbitrators try to end the dispute, then they try to settle the matter out of court, and finally they bring their findings back to court. If they recommend divorce they also recommend the amount of nafaqa that the husband should pay his wife based on his financial ability. The judge then makes his decision based on these findings. Very often, because of the relationship of the arbitrators to husband and wife, there is a great discrepancy between the suggested amounts. In a 1996 case the Ibtidai Court awarded the wife a nafaqa based on the findings of the arbitrators it assigned. The husband appealed the decision. The Court of Appeals concluded that there was a great discrepancy between the amount of nafaqa suggested by the arbitrators, two of whom suggested 500 dinars as monthly alimony to cover the wife's expenses and estimated that the husband could easily afford this amount. A third arbitrator estimated that 40-50 dinars alimony sufficed to cover the wife's expenses and that the husband could not afford more. The Appeals Court decided

that the two estimates were far apart and asked that the arbitrators present details supporting their conclusions. Meanwhile the court's *Ibtida'i* Court decision awarding the wife nafaqa (decision 40971 dated 27/7/1996) was nullified until further deliberation (decision number 17743).<sup>35</sup>

From what I have been told by women lawyers who deal with these problems on a daily basis, this type of case is not unique but is exemplary of the type of frustrations women who sue for divorce face all the time. It was quite common that the judge approved a husband's request to reduce his divorcee's nafaqa after she was awarded what the legal procedure decided was due to her (case 41006 dated 31/7/1996). The system is set and run in a fashion that discourages women from asking for financial rights and very often after fighting a long battle, wives simply agree to accept whatever a husband wishes to give them and withdraw their cases. The records of BPWC and the lawyers working there confirmed this and discussed many cases in which a wife either chose to conciliate with the husband even after the court awarded them nafaqa, or accepted whatever settlement was offered rather than go without any support at all.

A further point that needs to be made is that most court decisions awarding nafaqa involve very small amounts that can hardly pay rent let alone cover the expenses of children. A rough figure would be 40 to 50 dinars a month for a mother with two children. This is based on cases recorded by the PBWC's Hot-Line and legal files. As one wife after the other complained, the amount is not enough to cover a fraction of her expenses and the expenses of her children and in many cases the husband must have been able to pay more since they often took another wife or bought a car or owned their own businesses. The ability to finance court cases is a heavy burden particularly when one is

destitute and many of these women are. Ratib al-Zahir points to Shari`a Courts as constituting a point of hardship and dilemma for women and points out that they need to be made more efficient and their procedures homogenized and streamlined:

These laws have now been in effect for 40 years, and there is a genuine need for change to insure a fast and fair judicial system especially in regards to the delivery of legal notifications which take too long by the time they pass through existing legal procedures...the law did not take into consideration time needed [for preparation] or for delay, which leads to big differences between procedures followed from one court to the other and one judge to the other. Therefore a maximum delay period must be established especially since a lot of the cases brought in front of shari`a courts need expedition because of the sensitivity of cases like nafaqa, child custody, and parental visitation. Family matters in particular need to be settled expeditiously so that the problems do not multiply and become more complicated thereby making it more difficult to solve (Glossary 2).

As corollary to the above, “giving all cases brought in front of shari`a courts the [automatic] right to appeal lengthens court cases.” This becomes a real hardship when it comes to questions of child custody, visitation rights, or nafaqa. There is no reason why the decisions of the court of first degree would not be final in such sensitive cases as child custody of infants, child visitation, or a specific amount of nafaqa, etc.” (see Glossary 2)

One last point that needs to be made is in regards to the prerogatives of the judges who sit on the bench in Shari`a Courts. Basically a qadi is expected to apply the law as compiled according to Personal Status Law and according to defined procedures. Although this is meant to limit arbitrariness and allow for fairness in the judge's judgement, this limitation of the judge's abilities is problematic because even though Jordanian laws stress the freedom of the judiciary, in fact the qadi does not use his own prerogatives and applies the law in its narrowest and most conservative sense. The philosophy applied therefore does not allow him to look at what he can see beyond the case being presented to him. For example, judges are aware of the general social belief that women could be under severe pressures from husbands and even Jordanian laws allow her to get out of contracts she may have signed under duress. A qadi, however, is not allowed to bring this type of logic into a marital dispute case because the codes and procedures have to be applied strictly and this type of leeway is not included in personal status laws. While most judges are quite conservative, those who could make a difference are constraint from doing so by the law.

To conclude, personal status laws constitute the most important hindrance to women owning their own business or being employed. They create a patriarchal order that places the burden of family and home on the shoulders of women. Women may work, but their primary function is seen as belonging in the home. She may be a lawyer or judge but is responsible for the marital home, cook, clean and raise the children just as though she did not work. Even though the husband helps, it is seen as voluntary on his part and not his duty. If marital disputes reach court (usually in cases of Shiqaq wa Niza` which are very

often relegated to arbitration), the wife's employment works against her because she is not paying sufficient attention to her home and children. Given the push factor in labor laws, the glass ceiling, low pay and incentives to leave the job, working becomes less attractive except for some professional middle-class women or poorer women who cannot afford not to work.

The impact of personal status laws cannot be undermined in regards to women, work, and participation in public life, the economy, or political system. As a totality, personal status laws confine women within predetermined patriarchal parameters, they give her only limited freedom of choice outside parental and husbandry approval. In short, with the exception of a few women, even those who enter the labor market or open their own businesses are in fact under the control of husbands.<sup>36</sup>

There were significant differences in the treatment of shari`a courts of various periods. Even though the name shari`a courts apply to these type of courts before and after Jordan's legal reforms, the differences were quite significant not only in regards to the type of cases brought before the courts, modern courts being specialized, but also in the specific areas of the law assigned to shari`a courts. From the above we have seen differences in regards to marriage contract and conditions acceptable to shari`a court judges from Ottoman courts as compared to modern courts. Differences in handling questions of divorce, nafaqa, ta`a, and so on, are also documented. Perhaps the greatest difference concerns the agency of women in determining their own marriage, their relationships with their husbands, and the fate of the marriage. It was not up to the judge or the law applied in premodern shari`a courts to decide for the wife the conditions of her marriage nor did he demand the approval of a male guardian in every action she took in

regards to her personal life. Rather she came to court alone or with a male family member or neighbor, it was up to her. No one asked her where is your guardian unless she was a minor and had not been married before, otherwise she was a free agent who negotiated her divorce with her husband and determined her own future. The judge made sure that shari`a rules were observed in all these transactions, for example, he had to ensure that the `idda period was observed so there would be no confusion regarding paternity, that there was an ijab wa qubul statement so that the marriage would be legal with the exchange of vows, that the marriage was witnessed and recorded thereby made public (ishhar) which is a requirement for Sunni marriages. But unlike shari`a judges in Jordanian courts today, there was no demand that a waliyy be present to officiate in a marriage unless the bride or bridegroom were minors, nor was there need for a guardian to be present when a woman sued for a divorce as is the case today if the woman is less than forty years old, nor did the judge insist on bringing in two arbitrators because the wife sued for divorce or demanded khul` as is the case today in Shiqaq and Niza` courts. In all these instances, it is the agency of women and the flexibility of the law that allowed her this agency that has been compromised.

The significance of this discussion is that it deconstructs what we have come to accept as shari`a law in most Islamic countries today. As explained earlier, the fact that Personal Status Laws are understood to be shari`a laws has meant an inability to fight them. The above discussion of marriage shows that the definition of marriage and the philosophy behind marital laws in Jordan today are actually based on historical conditions earlier in this century. Such laws were greatly influenced by Europe's outlook toward gender during the nineteenth and early twentieth century. It is suggested here that

given the changing conditions in Jordan and the world order, that this is a time to begin to think seriously of changing outdated laws to fit with contemporary needs in a way that would hold on to fundamentals of the shari`a and traditions as they have evolved and changed, while at the same time taking the needs of Jordan faced with the need to develop and enter the twentieth century.

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<sup>1</sup> Personal Status Law, no. 66a.

<sup>2</sup> Personal Status Law, no. 68.

<sup>3</sup> Court decision quoted in Ahmad Salim Milhim, al-Sharh al-tatbiqi li-qanun al-ahwal al-shakhsiya al-urduni (Amman: Maktabat al-Risala al-Haditha, 1998), p. 101.

<sup>4</sup> Tamyiz Court 41157 dated 3/9/1996.

<sup>5</sup> Tamyiz Court case 20876 dated June 1979.

<sup>6</sup> Tamyiz Court 248/92.

<sup>7</sup> Personal Status Law for 1976, published in the Official Gazette, no. 2668, dated 1-12-1976.

<sup>8</sup> Personal Status Law for Syria, Law 59 for 1953 amended by law 34 for 1975.

<sup>9</sup> Personal Status Law for Iraq, Law 188 for 1959.

<sup>10</sup> Nablus Shari`a Court, 1266-1276[1850-1860], 2-12:37.

<sup>11</sup> The Jordan Civil Code, Trans by Hisham R. Hesham, p. 5-6.

<sup>12</sup> See Glossary no. 1, pp. 9-10.

<sup>13</sup> Ibid., p. 11.

<sup>14</sup> Ma`an Shari`a Court, Sijil Hisr Irth, 1932, 2:26-27.

<sup>15</sup> Al-Quds Shari`a Court, 1043[1634], 24-122:137-1.

<sup>16</sup> Muhammad Sayf al-Nasr abul`Futuh, "al-Ahwal al-Ijtima`iyya fi Madinat Isna", in Raouf Abbas and Daniel Crecelius, Abhath Nadwat Tarikh Misr al-Iqtisadi wal`Ijtima`i fil`Asr al-Uthmani, 1517-1798 (Cairo: Cairo Univ. Center of Publication, 1992), Majallat Kuliyyat al-Adab, special volume, no. 57, p.232.

<sup>17</sup> Isna Shari`a Court, Sigilat, 1193 [1777], 31:cases 43 to 46, 53, 61.

<sup>18</sup> Manfalut Shari`a Court, Ishhadat, 1238-39 [1819-1820], 5-50,51.

<sup>19</sup> See for example Ma`an Shari`a Court, 1316 [1899], 34-43 in which the wife compensated her husband with fifty riyals and she relinquished her rights to a nafaqa for the `idda.

<sup>20</sup> Nablus Shari`a Court, 1276-1277[1861-1862], 2-13:76.

<sup>21</sup> Nablus Shari`a Court, 1276-1277[1861-1862], 2-13:37.

<sup>22</sup> Al-Quds Shari`a Court, 1043[1634], 24-122:287-1.

<sup>23</sup> Al-Quds Shari`a Court, 22 Jamadi al-Akhira 785[1385], published in al-`Assali, Watha`iq Maqdisiyya Tarikhiya, p. 51.

<sup>24</sup> Jami` al-Hakim Shari`a Court, Sijillat 966 [1559], 540:200-898.

<sup>25</sup> Amended by law 18 for 1973, 7 for 1978, 25 for 1979 and 25 for 1983.

<sup>26</sup> Ma`an Shari`a Court, `1317 [1899], 34-44.

<sup>27</sup> Al-Quds Shari`a Court 2 Rabi` al-Akhar 792[1392], al-`Assali, Watha`iq Muqadissiya Tarikhiya, Vol. 2, p. 118.

<sup>28</sup> Al-Quds Shari`a Court, 15 Dhul-Hijja 795[1396], 19:653 published in al-`Assali, Watha`iq Muqadissiya, Vol. 2, p. 19.

<sup>29</sup> The Jordan Civil Code, translated by Hisham R. Hashem (Amman: al-Tawfiq Printing Press, 1990), p. 2.

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<sup>30</sup> Ibid., p. 9.

<sup>31</sup> Al-Qanun al-Madani al-Urduni (Amman: Niqabat l-Muhamin, 1994), p. 19.

<sup>32</sup> A good example of how comparative advantage is applied is in regards to the right to construct a window in a wall of a house which overlooks the house of another. Such a window would allow fresh air and sunshine to the house honor but would deny the neighbor his privacy and could expose his women-folk to the eyes of strangers. Here the judge would have to decide if the benefits of the homeowner outweigh the disadvantages to the neighbor and reach his decision accordingly.

<sup>33</sup> See Shari`a court case number 10902 in Sheikh `Abdel Fattah `Ayyish `Ashur, Al-Qararat al-Qada'iyya fil Ahwal al-Shakhsiya Hata `am 1990 (Amman: Dar Yaman, 1990), p. 4.

<sup>34</sup> The Jordan Civil Code, p. 21.

<sup>35</sup> Published I, p. 1183.

<sup>36</sup> In one of the sessions I attended with Mrs. Manal Shamut of the BPWC in which she met with women to answer their questions about personal status laws, one of the women informed the group that her sister's husband sits in her clinic each evening after he returns from his job to count her earnings for the day. The sister is a dentist. This is but one example that illustrates the acceptable sense of control of a husband who has permitted his wife to work in the first place.

## Chapter 7

## Honor Crimes

Islam's condemnation of pre-Islamic practices that allowed for female genocide (wa'd al-banat) provides a glaring example of the contradictions that face women in their everyday lives today. Prohibiting "wa'd al-banat" is constantly used as the symbol of how Islam corrected cruelties against women that were practiced by primitive pre-Islamic pagans. Unfortunately, the message Islam brought by prohibiting female genocide seems to have been forgotten with today's rising violence against women that is growing beyond any proportion witnessed before or after the coming of Islam.

"Wa'd al-banat" was a Bedouin tradition practiced by certain Arabian tribes particularly during periods of hardship and food and water shortages. Tribes did not commit genocide on females alone, but like tribal communities in many other parts of the globe, newborn children were regarded as the most dispensable and replaceable and therefore infants of both sexes suffered genocide during periods of deprivation and hardship. But that was not the form of genocide that Islam abolished, this was a specific form of genocide that had to do with fears regarding honor, killing a newborn female child as a way of eliminating a potential source of dishonor. The message of the Qur'an therefore involved honor and the complete and unquestioning prohibition of female genocide was in itself a

prohibition of the attitudes toward women that regard them as a possible source of dishonor. The holy Qur'an reinforces this conclusion in its clear condemnation of the murder of the innocent.

When news is brought to one of them of the birth of a female child,  
his face darkens and he is filled with inward grief. With shame  
does he hide himself from his people because of the bad news he  
has had! Shall he retain her on contempt or bury her in the dust?  
Ah! what an evil they decide on? (16:59).

But the Qur'an goes further to close the gap that ensnares and condemns women by prohibiting slander and protecting victims of gossip and hearsay. The Qur'an does this by imposing punishment on the slanderer, he who passes judgment and tells stories without the required evidence set by the Qur'an and by the Prophet's example. Islam does not demand the punishment of the subject of gossip, rather the stringent punishment due a slanderer was meant to stop such actions and protect potential victims of slander. Made into a hadd, an offense against God, anyone who, without legitimate evidence, repeats suspicions against another about his/her morals and honor was to receive eighty lashes, which is the highest punishment prescribed by the Qur'an following that prescribed for adultery, one hundred lashes.

It is therefore a wonder that while all Muslims find great pride in these facts and repeat them to glorify Islam, "honor crimes" are still committed, justified and their perpetrators are protected by the law and allowed to commit

their crimes under the pretext of honor. This takes place despite the fact that one of the best known Islamic stories known to Muslims is the fact that the Prophet Muhammad himself stood in the position of a husband whose wife was the subject of gossip regarding her morals. What did he do? What did her father, Abu Bakr al-Siddiq do? Did either of the two men take a knife and kill her so as to wipe his honor clean and stand tall in front of a community that had condemned her? No, the Prophet saw through this and set the example as to how to act in such a situation, and it was on this occasion that God decreed the punishment for those who slander as a hadd because it was a matter offensive to God. In other words, suspicions regarding the Prophet's own wife `Aisha and gossip regarding her misconduct did not bring about a retaliation against her, rather it brought about a Qur'anic aya that made the suspicious person who repeated gossip without evidence not only a sinner in the eyes of God but also punishable by the authorities.

Where are the religious authorities today who should be the first to condemn honor crimes whose female victims fall to their fathers and brothers because of gossip and hearsay and without even receiving a hearing? How can those with religious knowledge and power not pay attention to what God has to say through His Qur'an about such matters but defer to the attitudes of their tribal traditions which Islam was sent to change in the first place?

Where is the state with its modern laws that actually claim human rights and is signatory to many international agreements that demand enforcement of the law especially that the main faith of the land gives clear evidence that supports the

very principles of human rights that the state claims to uphold. The very fact that the Qur'an sets out conditions of evidence which require that at least four males must have in fact witnessed the actual act of zina (adultery or extra-marital sex) shows how far God was willing to go to stop these types of injustice.

But there is more to the question of honor and crime. While a suspicious act of sexual misconduct on the part of a female brings about her murder and the murderer benefits from laws of leniency, when a male is proven to have raped a female, his act is not dealt with as a question of honor even though what he has done is to commit the ultimate dishonour to both his family and hers. Ironically, rather than punishment to the full extent of the law, the payment of compensation is allowed to alleviate the antagonism between the clans, diyya becomes the way by which a tribe covers up the action of its male member. As for the victim of the rape, when it is a woman—quite often victims are young helpless boys—she is considered lucky when her rapist offers to marry her or is forced to do so by the police so as to conclude the problem. She has little choice in the matter being already despoiled and regarded with pity, and therefore she has to marry the same man who violated and raped her. In other words, girls are condemned and killed by their families for being suspected of committing extra-sexual relations, but men are supported by their clans when they commit the ultimate crime of rape whose punishment in the Qur'an is prescribed at one hundred lashes. Once diyya is paid, no further punishment could be exacted and once married to his victim, he then appears magnanimous and an ideal citizen.

Therefore it is important to include rape as an honor crime and to emphasize the contradictory approach of both society and state to questions of honor. Besides, the numbers of regularly reported cases should raise serious concern. According to official Jordanian figures, 1995 witnessed 41 cases of rape (ightisab) and 192 of Hatk `ird (shame--differences with ightisab to be discussed later), 1996 witnessed 63 and 223 cases respectively, and 1997 witnessed 57 and 215 respectively. These are significant numbers for a small country like Jordan and are probably a fraction of what really occurs since a woman who accuses a man of raping her is actually also putting her own morals into question and could fear retaliation from her own family even if she is able to prove the accusation. Many, like their sisters all over the globe, simply prefer to keep quiet.

Why do such crimes take place? For one thing they are not unique to Jordan but exist in almost all Arab and Islamic countries. They exist in third world countries, Africa, Asia, and Latin America. Last year there were thirty honor crimes reported in Italy and such crimes take place in other European countries like Greece and Spain. So there is no monopoly over such crime for Jordan even though the Western media has somehow pinned such crimes on Jordanian shoulders. One should also emphasize that crimes tied with sexual conduct or misconduct as the case may be depending on how societies view them, exist and are on the rise throughout the globe. Certainly daily news in the United States present serial killers, pedophiles and all sorts of others forms of sexual perversions that prey on women and children. So are wife-beating, marital abuse, child abuse and incest on the rise throughout the globe. Today more women are

coming forth to open the eyes of the world to their abuse not only by strangers but also by family members. Honor crimes are certainly not unique to Arab Muslims; Christian women have been victims of such crimes for similar reasons. So there is nothing unique about Islamic or Arab societies as far as concerns sexual crimes. What is serious in regards to honor crimes in Arab countries is that they are justified and given credibility on the basis that they are somehow condoned by Islam or the Islamic shari`a. No matter how much religious authorities correct such assumptions regarding Islam, the justifications continue.

Mr. Abu Abseh, the Jordanian who killed his sister with a paving stone, was doing more. He was administering God's law, he said.

"We are Muslims," Mr. Abu Aseh's older brother said, "and in our religion, she had to be executed."<sup>1</sup>

This attitude is serious and is quite widespread in Islamic countries. Yet it is quite baseless, as the following discussion will show. Rather, violence against women is a social phenomenon with multiple reasons that can actually be challenged by moral principles holding the family together and by religion rather than the other way around. As previous chapters have shown women have been denied respect and equality and hence protection of the law in various aspects of their lives. Even when she is a mother fulfilling what the most conservative elements of society insist is her essential job, i.e. taking care of her children, she does not receive fair ruling from court judges who deny her essential rights given to her by society, by law and by the Islamic Shari`a such as financial support, her delayed dowry, and even support for breast-feeding her infant son which is a right

clearly established by Islamic law and schools of fiqh. Without going into more details about how a woman is raised and the peripheral role defined for her, it is enough that she is treated as an unequal and incomplete individual by the legal system for her to be the subject of abuse at the hands of a younger brother or an abusive husband. Weakness gives rise to contempt, and the weak are the usual victims of violence. As long as women are treated the way they are in the work space, in the home and by the courts and government, they will continue to be victims of violence, will fear for their well-being and probably continue to act with fear in regards to angering male relatives, but rather stay home. Sexual crimes against women may appear to be different from honor crimes against women, in fact they all stem from a lack of respect toward women and recognition of their individual right to a decent, safe and free life. Gender crimes are build on the concept of fear and control through shedding blood, a rape victim is as afraid of being hurt or killed as is a young girl afraid of being hurt or killed by a brother or a father. In the latter case it is more abhorrent because the very individuals in her life whom she has looked up to for protection are the ones who harm her.

This chapter will begin by discussing Jordan's criminal codes dealing with the issues of honor crimes and will emphasize the aspects of leniency that are the foundation of these laws. Rape will then be the focus of discussion with particular emphasis on the meaning of zina. Since Jordan's criminal code was adopted from that of Egypt, a comparison with Egypt's criminal code would help explain the selectivity undertaken by Jordanian legists to fit with Jordan's particular needs, in

this case tribal needs regarding gender and honor seemed to have played an important role in the construction of Jordan's criminal codes. Lastly, a discussion of the outlook of Islam regarding gender relations and morality should help draw the line between what is conceived as Islamic and what Islam actually prescribes in answer to the excuses used by those who commit honor crimes and those who allow them to get away with those crimes who insist that Islam sanctions their actions.

#### Honor Crimes and Laws of Leniency

While Jordanian honor crimes have been exaggerated by women activists and the media when compared to similar crimes taking place in other countries, the fact still remains that Jordan has on its books a law that permits one person to kill another. This is contrary to all legal traditions and puts into question the very idea on which legal systems are based, i.e. the rule of law. No one will dispute the fact that one of the fundamental reasons for the existence of law, why people accept to be ruled by laws and their enforcement, is protection of the weak from arbitrary actions of those with power over them. Jordanian labor laws recognize this and state protection of the weak as the purpose from the very existence of labor laws. Yet Jordan's Penal Code actually allows a man to kill his wife, daughter or sister if he discovers her with a strange man. The law may demand that the perpetrator must have "surprised" his victim while she was in the act of committing an extra-marital sexual act, but Jordanian courts gloss over these specifics without anyone objecting. Justification of honor, morality or Islamic sanctions are not only questionable, but do not hide the fact that Jordan today has laws on its books that

permit and encourage the killing of one person by another. Nothing in Islamic law gives such permission, nothing in tribal law gives such license and certainly nothing in modern law permits the weak to suffer at the hands of those in power over them.

While criminal law 340 is the culprit permitting murder, honor crimes are actually sanctioned by three specific laws in Jordan's criminal codes. These laws (340a, 340b and 98) make it possible for someone, always a male, to get away with or to receive reduced sentence for murdering a daughter, sister, wife or cousin in the name of family honour. Violent crimes against women that could result in physical harm or death for alleged sexual misconduct have come to be known as "honor crimes" because they are justified as being crimes against the honor of a family or tribe. According to official statistics in 1995 a total of 181 honor crimes were reported, 35 of which were murders. The number rose in 1996 to a total of 201 honor crimes, 40 of which were murders, but fell in 1997 to 77 honor crimes, 16 of which were murders. Besides murder, the highest number of honor crimes fall under the description of attempted murder, which together with severe physical harm constituted the largest number of honor crimes, reaching 117 in 1995, 137 in 1996 and 42 in 1997. Add to these 7 crimes itemized under wrongful homicide in 1997 bringing the number of actual honor crimes ending in death in 1997 to 24 rather than 16.<sup>2</sup> Observers have questioned these figures and consider them much lower than what actually takes place especially since honor crimes are not always reported. In 1999 the reported number of homicides ending in death from honor crimes was estimated at 29-30 according to official figures.<sup>3</sup>

In honor crimes the victim is always a woman suspected of sexual misconduct which is seen as the most serious offence to a family's honour and therefore necessitating redress if the family was to regain its respectability in the community. Given the fact that many of the victims were later found to be virgins, it is clear that there are other reasons behind such crimes and in particular competition over property and inheritance, getting rid of a sister as is the case in the majority of these crimes, becomes a means of getting rid of someone who stood to inherit what could go to the brother. Notwithstanding the wide belief among Jordanians that property and inheritance is at the heart of many honor crimes, this does not seem to be taken into any great consideration by the courts that almost always allow reduced sentences to brothers who kill their sisters no matter how sexually innocent the sisters turned out to be once their bodies have been autopsied.

More important than the number of honour crimes committed is the fact that such crimes continue to take place and are growing in number. In honour crimes, the word of the victim is hardly considered, and Jordanian laws actually protect the perpetrator of the crime rather than its victim by treating honor crimes as lesser crimes and crimes of passion. Because of the growing numbers of honor crimes, the increased national and international publicity condemning them and the deep anger of Jordanian women in regards to the way these crimes have been handled by the juridical system, Jordan's government has been particularly interested in changing the laws and taking a stiff stand against the continuation of such crimes. One of the first acts of King Abdullah II after coming to the throne

was his letter of March 1999 in which he urged the amendment of any laws discriminating against women which resulted in the Ministry of Justice's recommendation to the Jordanian Parliament to eliminate article 340 of the Penal Code. These efforts resulted in failure notwithstanding the great efforts in that direction and the strong stand that had previously been taken by King Hussain and Queen Nur. While the Upper House of the Jordanian Parliament approved the changes, it was the Lower House that diverted them and left them in limbo for later discussion, effectively ending the campaign to change them at least for the present. Conservative elements brought about this rejection by deputies who refused any suggestion that honor crime laws be abolished or changed. They justified their stand on the basis of protecting the morals of Jordanian society. Perhaps because of the various political and economic problems faced by Jordan, the government chose not to pressure further which is usual in such situations, sacrificing women's rights has always been an element of negotiation to achieve greater leverage and hegemony.

The attitude of the Jordanian Parliament is quiet odd especially since the excuse used has to do with up keeping morality and holding on to Islamic ideals and traditions which they insist are under attack by Western and American influence. Does this mean that Islam condones the killing of innocent women under mere suspicion? How could that be when "throwing words" is a hadd punishable by eighty lashes? Actually, by its actions the Jordanian Parliament allows for leniency for those who not only "point the finger" but also commit the murder and thereby give the green light to others to follow suite. One wonders at

what moral priorities are involved here. What makes the situation even more serious is the age of both killers and victims in honor crimes. Researchers have found that these were very young killers ranging in age from nineteen to thirty. Furthermore, over 58% of the killers were unmarried, 32.4% illiterate, 29.7% were enrolled in secondary schools and 23.1% in high schools. As for university students they constituted 3.7%. Therefore there is a strong correlation between educational level and tendency toward honor and sexual crimes. Interestingly while only 12.9% of the men were unemployed at the time they committed their crime, the rest were mostly employed in seasonal or temporary jobs with little security. In other words there is a clear correlation between social class and honor crimes. There is also a correlation between the locale and crimes, thus 46.3% of the perpetrators of honor crimes lived in popular urban quarters. One last important detail is the researchers' findings that this was not a group stimulated by religious ethics, 69.4% did not perform their prayers and 55.5% do not fast in a country which has punishments in its legal books against those who eat or drink in public during Ramadan.<sup>4</sup>

Given the profile of honor crime perpetrators and the fact that 35.1% of those in criminal rehabilitation centers have already served prison sentences for previous crimes they committed, and that they tend to act as bullies in their everyday life and that family conditions also played a role in these crimes (38.9% of the fathers of perpetrators were dead, 26.8 had a dead mother, and 44.4% were children of polygamous marriages and 24.1% were brought up in broken homes, the parents having divorce when the boy was 5 years or less in nearly 50% of the

cases)<sup>5</sup>, it is surprising that there is still a strong believe that honor crimes could be put in a special category involving family honor and that the state allows for reduced sentencing as a form of leniency to their perpetrators. Add to that the fact that medical examination of the victims of honor crimes found that 95% of them were quite innocent from the crimes that they were killed or assaulted for, and that these figures are well-known and publicized and the responsibility and actions of those who control the laws and legal structures in Jordan should be a source of deep concern.

Perhaps some of the actual stories of violence may illustrate the seriousness of the contradictions between laws that do little to stop crimes against women--and thereby encourage crimes--and the claim by legislators and other elements of Jordanian society that this is a question of protecting Jordanian society and its moral fabric. A young girl called Khadija was killed by her father who claimed he was “cleansing the family honor.” The medical examiner and investigation proved this to be absolutely false. When confronted with the evidence, the father admitted that he was motivated by suspicions of her misconduct and had no actual evidence of her committing any dishonorable act. A twenty-four year old man killed his wife because he suspected her of misconduct without bothering to ask her about his suspicions. In yet another case, a forty year old mother was killed by her much younger brother because he suspected her of misconduct.<sup>6</sup> A witness to an honor crime had this story to relate. As she entered a hospital in Amman, a man came rushing toward an obviously pregnant woman leaving the hospital with her two children—a son and a daughter—followed by

her husband carrying a third child. Brandishing a knife, the man attacked the pregnant woman, opened her abdomen and then cut her throat right in front of her husband and children. He then ran out of the hospital and took a cab to the police station to give himself up, as the witness later found out. The children were in shock seeing their mother brutalized in front of their very eyes; so was the husband who proceeded to protect his wife's mutilated body with his jacket. It all took place within a few minutes and left the on-lookers in shock. Presumably as was later suggested by the media, the brother as he turned out to be, suspected that the child the victim, his sister, was carrying was the result of an illicit affair. But how could that be if her husband was with her at the hospital for pre-natal care and protected her body from on-lookers while expressing immeasurable grief? Questions that should have been asked by the court that later looked into this crime and allowed the brother a reduced sentence so that he spent no more than a few months in prison. The idea that a girl belongs to her male relatives beginning with the father, based on the principle of wilaya applied in Jordan (see chapter 5) is at the heart of this type of attitude by the courts.

The three particular laws of Jordan's Penal Code that provide a gap through which perpetrators of honour crimes get away with murder are:

- Law number 340(a) exempts from punishment a perpetrator who discovers his wife, or one of his female relatives, committing adultery with another person, and kills, injures or harms one or both of them: "A person who surprises (yufagi) his wife or any of his maharim (unmarriageable relation, for example sister or

daughter or niece) while committing adultery (zina) with another person and he killed them or wounded them or harmed them both or one of them, benefits from this legitimising excuse (ʿuthr muhallil). ”

- Law number 340(b) actually exempts a perpetrator of an honour crime from punishment. Anyone—in every case a male—who commits a murder, physical injury, or another form of harm when he discovers his daughter, wife, one of his sisters or other relatives with another man in an illegitimate act can receive reduced sentence. 340(b) “reduces the sentence of a person who murders, wounds, or harms... if he were to surprise his wife, or one of his usul or furu` or his siblings with a man in an illegal situation.”
- Law number 98 allows for the reduction of the sentence received by an individual for a crime he committed in anger due to a wrongful act of great gravity committed by the victim.

A number of important issues need to be made regarding the titles used for the laws and the particular wording used for the laws.

1. Legal code 340 is itemized under sub-title “al-`uthr fi al-qatl”, a close translation of which is “Excuse for murder.” In other words there is no question that the law recognizes that a murder has taken place, meaning that one individual has intentionally taken the life of another and that such a murder is excused.

2. 340(a) describes the person who benefits from the law as a “male” since it speaks of “he who surprises his wife”, i.e. there is no indication of a wife surprising a husband in such an act which would be considered zina under Islamic laws and is included as part of hudud crimes against God warranting punishment as prescribed by the Qur’an. The Qur’an talks about both men and women who indulge in extra-marital sex as committing zina.
3. The question of “yafagi” needs to be addressed because there is no definition of the meaning of surprise. Does the law mean suspicion of adultery as “surprise” or does it indicate an actual act of adultery? ‘Hal al-talabus’ (being caught in the act) are the words used in the law; this would mean that “surprise” by the husband involves his discovering his wife, sister, or daughter in the actual sexual act, i.e. as it is taking place. The rules of evidence are not included with the law even though the rules of evidence are clearly stated in the Qur’an and that being four male witnesses or eight female witnesses to the actual act of fornication. The lack of rules of evidence opens the door to arbitrary interpretations of “surprise” and “talabus”.
4. The word maharim is defined as “being in a degree of consanguinity precluding marriage.”<sup>7</sup> This would not include cousins since marriage is possible between them. Yet in practice courts have not differentiated between a brother or a cousin when they commit such a murder.

5. Reduced sentencing for honour crimes committed by cousins and uncles and even further related members of a clan is allowed through 340(b) which uses the same language as 340(a) but with significant differences. While 340(a) speaks about “uthr muhallil”, i.e. an excuse justifying murder, 340(b) concerns “al-`uthr al-mukhafaf”, i.e. an excuse allowing for reduced sentence in case a man surprises his wife, one of his direct women blood-relations or branches thereof (‘usul, furu’) while with a male “on a bed that is not legal” (‘ala firash ghayr mashru`). So 340(b) covers any gaps in 340(a) by giving reduced sentence to just about any member of a clan who kills or harms a female relative for what he considers to be sexual misconduct. Moreover, what is meant by “a bed” is not defined yet the subtle differences between 340(a) and (b) would indicate a way by which the murder of a woman who is found with a man without any sexual act is taking place between them would be excusable by law. This is confirmed by the way the law has been applied by the courts, even a chance meeting between a man and a woman could be interpreted as “a bed.” So it is not only the law that is objectionable, even more so is the interpretation and application of said laws by the courts.
6. Jordan’s penal code includes other crimes that are excused by law that are included in the same section and under the same subheading of exemptions for honour crimes. These include self-defence, killing or wounding trespassers who enter houses at night without permission and with the intent to harm or steal, and involuntary manslaughter. In other

words, honour crimes are equated to crimes committed in self-defence or defence of the home both of which are internationally accepted causes for reduced sentencing or justifiable homicide. Strict rules of evidence are included and demanded by Jordanian laws for a self-defence plea.

Unfortunately, stringent proofs are not expected in honour crimes for reduced sentencing, and all judges seem to require to apply leniency is evidence that the killer is an actual relation of the victim and had some provocation and suspicions about her morals.

7. Law 98 closes the gap completely by making “passion” as a cause for crime. When an individual is under the influence of great anger then his actions could not be taken against him. Here it is assumed that this anger would be proven and that premeditation was not part of the crime.

Actually extreme anger is taken for granted to exist because of the nature of the crime and therefore no specific rules of evidence are detailed in the laws nor are they expected by courts. This does not mean that a trial does not take place, that the police does not investigate or that witnesses are not brought in. All this takes place except that the intent seems to find a way out for the killer rather than prosecute him to the full extent of the law for having killed another human being. It is no wonder then that a young man who killed his teenage sister because she received an unsolicited love-letter from a neighbour received a sentence of three-month prison. What was the evidence of her participation in such an act, why is such an act one of dishonour and how could a judge reach such a decision is explained by

the willingness of the system to allow it and the continued acceptance of tribal urf as part of the legal structure in Jordan.

From the above points we can conclude that as the laws themselves illustrate, the wording actually opens the door to a judge to let a murderer go free or with a sentence which amounts to less than smacking the hand of a child. The laws are loose and hedgy enough to leave the definition of honor crime open to include just about any form of violence that could be undertaken against women by a male family member. While 340(a) is specific about adultery (zina), it does not indicate whether what is being discussed is proven adultery? What is the basis of the rules of evidence or of the rules regarding police investigation and the attitude of policemen in such crimes? Are there methods to guarantee that a-priori attitudes of those given the responsibility to investigate these crimes or those who sit in judgement do not interfere with legal processes? Why is the involvement of the family in the criminal act not investigated by the police? Given the fact that too many of contemporary honor crimes are enacted by juvenile boys, is it so difficult to conceive that they were put up to it by adult members of the family who would perhaps be treated more severely by the law?

Most significantly, why is premeditation not taken into consideration in honor crimes? Here law 98 comes into play since it excuses what can be termed “crime of passion” because the person committing it is not acting rationally. In this situation, premeditation is vital. The law itself is an import from French criminal codes and part of the modernization of laws throughout previous colonies of England and France. French laws of intent require that a crime of

passion be committed on the spot, i.e. under the influence of shock from discovery and influence of uncontrollable anger, hence the “surprise” (yufagi) in 340(a). Crimes of passion according to French laws, however, have particular rules of evidence. For example, if a person discovers his wife committing adultery and kills her immediately, he could go free; but if he leaves the room, to find a weapon for example, with which he proceeds to kill her, then the “crime under passion” plea would not work. But this is not how “crime of passion” pleas are treated in Jordan; a person could go a month before killing his victim and still be considered acting “out of his mind”.

A comparison between Jordan’s criminal code and that of Egypt may help explain the “tribal” nature of Jordan’s laws notwithstanding how modern they look or Islamic they are claimed to be. The absolute inequality of Jordanian laws and their patriarchal nature exemplified through the powers they give to a husband in regards to zina will be used as example. Even though both Jordan and Egypt’s penal codes have great similarities, Egyptian civil codes having been taken as models for Syrian, Palestinian, Iraqi and Jordanian laws, there are serious differences when it comes to honor crimes that should give us pause. Egyptian laws like Jordanian laws allow for reduced or commuted sentences for a crime committed under particular conditions and pressures. Article 62 of Egypt’s penal code states: “there is no punishment for a person who undertakes his action while out of his mind and lacking his own will due to madness or other mental incapacity.”<sup>8</sup> Here there are no details given to explain the meaning of “crime of particular seriousness” or “crime of great injustice” as is the case in law no. 98 of

Jordan's penal code. While "action" could be any crime Egypt's Penal Code, the descriptions included in the Jordanian law are more of a reference to honor crimes than anything else. The most important difference, however, is that Egyptian laws do not allow for leniency or exemptions for honor crimes. In other words, Egyptian laws do not permit one person to murder another under any pretext as does Jordanian law 340. The same goes for Syrian and Iraqi laws. Therefore, given the common origins of the criminal codes of these countries, one must look at Jordanian laws as being "cut to size" to fit with Jordanian priorities, in this case questions of tribal honor.

Furthermore, while leniency for crimes of passion does allow for an open door in Egyptian law, the rules of evidence required for a "passion crime" plea are very serious and no exemptions are made in these rules for honor crimes. A killer of his daughter, wife or sister, is treated as he would be anywhere, i.e. as a murderer with the state prosecuting to the full extent of the law and when premeditation is proven, then he receives the death sentence or life in prison. The fact that an adulteress is caught in the act does not justify a crime against her or her partner except if the husband becomes immediately violent and commits his crime while not in his right mind. Nothing in the law justifies the killing of a sister or other female relative for committing a dishonourable act.

Here we are talking about laws regarding adultery and the treatment of adulterers. The shape, logic, heading and sub-headings of Jordanian and Egyptian penal codes are almost the same. The various issues included and covered by the codes are also the same, which is to be expected since they are modern codes

modelled after European ones. The differences come in specifics that differ according to acceptable traditions in each of the countries. However it should be pointed out that in Egyptian society killing a daughter for immoral acts is as common as it is in Jordan, the difference however comes in the fact that the law does not justify such a murder nor allows a way out for its perpetrator. If caught, claims of family honor have no bearing in the decision of the judge because the law does not allow him. These differences are important to point out because even though the codes of both countries are modern and are structured after European laws, the construction and interpretation of the law as well as the execution by the courts and law-enforcement agencies of the two countries differ. While in Jordan it is more important to cater to tribal traditions, in the Egyptian case, the law at least in theory is designed to punish perpetrators of capital crimes. Moreover, the usual and incorrect justification for laws condoning honor crimes in Jordan are said to be the Islamic shari`a. Yet both Egypt and Jordan have applied the Hanafi code since the nineteenth century as the basic source for shari`a laws, one would therefore expect greater similarities in specificities regarding crimes, criminal behaviour and punishment particularly given the discourse about the consistency with Islamic law.

As for adultery, Article 274 of Egypt's penal code reads: "The married woman whose adultery is proven will be sentenced to a prison term not exceeding two years but her husband can stop the execution of the court's decision by agreeing to live with her as before" corresponds to Jordan's Article 282(a), "A consenting adulteress and her partner are to receive sentences of six months to

two years” and Article 284(a) to (d) which eliminate any role for the state in regards to zina except if a husband asks the state to investigate his wife’s adultery as long as they are still married or four months after a divorce takes place. Rules of evidence in regards to adultery are clearly spelled out in 282(b) of Jordan’s Penal Code: “the evidence that could be acceptable as criminal evidence to provide proof for this crime is their [i.e the adulterers] arrest while they are in the actual act of committing the crime, or a legal confession, or the existence of letters or other written documents.” The very same rules of evidence are required in Egypt’s Penal Code, Article 276, with two important differences. While Jordan’s law is intended toward a wife and her lover, i.e. privileges the husband who is seeking redress, Egypt’s law is gender neutral by using the masculine “mutahim” (defendant). In fact Jordanian laws do not look at the husband as a possible subject of zina whose wife could have legal recourse against him, rather it is the father in the case of a minor girl or unmarried daughter and the husband in the case of the wife who has the right to ask for apprehending the wife for committing zina. Thus while Egypt’s Penal Code, Article 275 following 274 in which the sentence for adultery was set at 6 months to two years, reads: “a male who commits zina is to receive the same sentence”<sup>9</sup> there is no such law in Jordan’s Penal Code. Furthermore, Egyptian Article 277 punishes the husband who commits adultery in the marital home: “Every husband who commits adultery in the marital home and this is proven according to a wife’s complaint, receives a prison sentence of no more than six months.”<sup>10</sup> Such a law does not exist in Jordan’s Penal Code and a wife has no recourse against her husband’s

zina since the law does not give her the right to bring forth a complaint in the first place but reserves such a privilege to the husband and father since the state cannot become involved in issues of adultery except if a complaint is brought by one of those two males.

Perhaps the only recourse against men and adultery in Jordan's legal codes comes in regards to what is considered acceptable public actions. Article 283(a) and (b) read, "a husband will receive a prison sentence of one to two years if he takes a mistress in public in any place he could be. His partner receives the same punishment."<sup>11</sup> Here a husband who commits adultery in the marital home could ostensibly be prosecuted by Article 283, although since the home is not a public place, the case may be difficult to prosecute. Besides, the law may not indicate that the wife has the right to bring complaint against him, but it does not exclude her. The law however is so vague that what is included or excluded is left up to the investigators and to the judge, and here since there are no indicated rules of evidence or definition of what a mistress (khalila) constitutes, it becomes more of an arbitrary system left up to those in authority to determine. Perhaps Weber's idea of "qadi justice" who rules arbitrary without reference to legal codes has validity for legal systems dealing with gender today. In almost all cases the qadi's arbitrariness works against women even though the ambiguity of the law could in fact be used to strengthen their rights vis-à-vis a husband's fidelity and her marital home.

In short, Jordanian laws dealing with adultery are directed against the wife as adulteress and not toward the husband as adulterer, in fact other parts of

Jordan's Penal Code make this fact quite clear. The modern period witnessed the establishment of gendered state-supported legal codes that placed women under the power of men. State laws and state police became instruments of insuring these conditions. With growing gender struggle, the interpretation of law has proven to be an important method of increasing male control over women and children. As is usual in such situations, contradictions take place and usually work against the weaker party. For example, according to the Penal Code, the waliyy (legal guardian) has sole right to ask the authorities and the court to intervene in case of zina involving a minor. Otherwise the state does not prosecute. A husband was given that same right regarding his wife, however the wife was denied any such right in case her husband was a proven adulterer. This means that even though Jordanian laws provide for procedures by which claims of adultery could be handled through legal process, that depended solely on the wish of the male guardian of the female involved if unmarried and if married, of her husband. She however did not have the same recourse in the situation where she catches her husband in the act of adultery, she could not get the state to prosecute him and as corollary does not receive reduced sentence for killing him.

While it is usual to talk about honour crimes as constituting actions taken by women and dealt with by men of the same family whose concern is focused on their family's honour, actually any crime that is of a sexual or intimate nature that takes place outside of what is legally and traditionally acceptable, constitutes an honor crime. At the same time while zina is normally looked at as adultery in the sense of sexual intercourse between a male and a willing female, actually zina

constitutes any sexual act outside of a legitimate relationship and involves coercion, at least in its Islamic definition. Therefore zina includes rape, an act in which a woman is coerced, male coercion being taken to be impossible notwithstanding Qur'anic stories like that of Zulaikha. The issue of rape will be covered in the next section of this chapter, but the modern laws of rape on Jordanian books today are important as a follow up on the above thesis that Jordan's laws are purely patriarchal and intentionally misogynistic. Even when it comes to rape, the laws are not as victim-oriented as those of other Arab and Islamic countries and can be considered to allow for leniency considering the offence involved.

#### Honor Crimes in Islamic and Tribal Laws

Theoretically, the first source of Muslim jurisprudence is the Qur'an followed by Prophetic traditions. The Qur'an is detailed in regards to gender relations and deals directly with zina (extra-legal sexual intercourse): "Do not commit zina, for it is a shameful deed that leads to greater evil" (Qur'an 18:32).<sup>12</sup> Zina was proven by confession, and the Prophet Muhammad required that a rapist confess four different times before being judged. The punishment for zina is clearly stated in the Qur'an as one-hundred lashes, no difference being made between male and female. Using Hadith as reference, the fuqaha' have added stoning as a punishment and made a differentiation between those who are married and commit zina and those who are not married confining stoning to those who commit adultery even though they are already married. However, there is no

mention of stoning anywhere in the Qur'an and the punishments mentioned for adultery are whipping and exile. There is also no evidence that stoning was resorted to as a punishment for zina until the modern period, at least not in the lands that previously belonged to the Ottoman Empire. There are court records showing the prosecution of acts of immorality including conclusive or confessed prostitution, but even in these cases there is no stoning and the state in the shape of the judge and lieutenants of the court did not see any reason to take matters in their own hands, although that depended on the particular location.<sup>13</sup> When stoning is applied in Iran, Pakistan and Afghanistan today, it is based on fiqh interpretations and not on the Qur'an even though theoretically the Qur'an is the primary source of shari`a law and its dictates are not disputable by any other including Prophetic traditions. But that should not come as a surprise because most issues regarding gender are determined in the same way with preference given to whatever source is most misogynistic.

Even though zina in modern law is applied exclusively to consensual intercourse outside of marriage, zina has the added meaning of non-consensual sex in the Qur'an and fiqh. Thus zina in the Qur'an is placed between a string of ayas dealing with social violence: forbidding the killing of one's children, forbidding murder since God made life sacred, and forbidding the robbing of a helpless orphan's property (Qur'an 17:30-34). Prophetic traditions also emphasize the dual meaning of zina. One tradition tells of a tribesman who asked the Prophet to punish him for having committed zina. The Prophet asked him several times if the woman acquiesced in any way. Since the man continued to deny her

willingness, the Prophet ordered his punishment and not the woman's. In another tradition, however, when a woman confessed to consensual zina, she too was punished. In the first story the man's crime was extra-marital sex in which the woman was not willing, which amounted to rape, therefore only he was punished, but in the second story the woman participated and was therefore punished. According to the tradition, the punishment was by stoning.<sup>14</sup>

The above-mentioned Prophetic traditions show the meaning of zina in Islam as encompassing both rape and extra-marital consensual sex. Punishment was meted out on whoever took an active part and the punishment was equal notwithstanding the sex of who committed it. Other precedents were set throughout Islamic history that will help formulate the laws and attitudes of Islamic societies toward sexual crimes today. During the early period of Islamic expansions when laws were being formulated to handle new situations, ʿUmar b. al-Khattab (second Caliph in Islamic history) is said to have offered a woman who was raped to marry the man who raped her. When she refused he had the man pay her the dowry of her peers as compensation. In another tradition ʿUmar had a male slave whipped and then exiled for forcing a woman into zina. In both cases no stoning took place. The acts of the Caliph ʿUmar constituted an important source for the madhahib to follow such as giving the victim of rape the choice to marry her killer and payment of compensation as a preferred method to corporal punishment.<sup>15</sup> Following ʿUmar b. al-Khattab, fuqaha dealt with rape as a violation of "property" (i.e. ightisab) of what belonged to another. "Property" in the sense of "usage" and not in the absolute sense that the word connotes today.

Thus, <sup>c</sup>Asqalani includes zina in both "kitab al-ikrah" ("Book of Coercion")<sup>16</sup> and under "Bab al-Sariq hina yasraq" ("chapter of the thief when he steals")<sup>17</sup>, indicating that a "right" was stolen through coercion. The fuqaha' also used an important tradition of a promise given by the believers to the Prophet: "They baya<sup>c</sup>u (swore allegiance to) the Prophet that they would not steal nor [commit] zina."<sup>18</sup> This is interpreted to mean that a man who committed zina was committing a kabira (major sin)<sup>19</sup> and therefore a hadd crime whose punishment is prescribed by God and therefore cannot be reduced, increased, changed or commuted by anyone.<sup>20</sup>

While most madhahib agree with this, Abu Hanifa according to a tradition relayed by Abu Yusuf, is the only faqih who allowed commuting the hadd if one of the witnesses against a rapist dies before the sentence is carried out<sup>21</sup> or if the rapist marries the woman he violated because "the woman becomes the property of her husband through marriage in regards to his right to enjoy her..."<sup>22</sup> In contradistinction, Malikis considered that once "a woman's claim of having been raped is proven, a legally competent (mukalaf) free Muslim had to be stoned, even if he was subsequently married [to his victim] by a binding marriage."<sup>23</sup> Shaf<sup>e</sup>is and Hanbalis agree with the Malkis on this point. It is interesting that the modern state found it preferable to apply the Hanafi code according to Abu Yusuf even though there is no basis in either Qur'an or hadith for doing so. Today in Jordan when the rapist marries his victim and he is considered in "possession" of exclusive sexual rights to her, ihtibas, his crime falls and is considered as never to have taken place. This particular law has been changed in Egypt and a rapist still

has to undergo the punishment prescribed by the law and courts even if he were to marry his victim. This was seen as a way of deterring rape, Jordan has yet to change its laws to reflect the seriousness of the situation of rape today which is a constant fear among Jordanian women who are cautious to leave home or take jobs that could open them to such sexual abuse.

Notwithstanding the differences in the schools of law, they all agree that zina between a man and a woman constituted illegal sexual intercourse punishable as a hudud crime and necessitating compensation and that zina meant both extra-marital consensual sex and rape. The following handling of rape by Shaf'i speaks for all the schools notwithstanding particular differences between them.

If a man forces a woman, the hadd must be applied to him but not to her because she was forced. She receives the dowry (mahr) of her equal whether she was a free woman or a slave. If she is a slave then her compensation is reduced in proportion to the reduction in her price [caused by the rape]. If she is a free woman then her injury is to be compensated over and above the marriage-dowry due to her: dowry is for sexual intercourse and compensation is for the crime.<sup>24</sup>

Thus redress was to be sought by the "property" owner, the rape of a person, or the "robbing" of virginity, was equated with a sense of personal proprietary right. Notwithstanding how dishonorable or psychologically harmful rape may have been, it is not that which was paramount in the mind of pre-modern Shari`a courts as much as how the victim was to be compensated for the harm that had befallen

her/him. A diyya had to be paid, same as the diyya for the nafs (life), loss of a limb--a nose or other parts of the body--or any other physical harm such as severe wife-beating.<sup>25</sup> Determination of diya depended on a number of criteria pertaining to the particular case. Important criteria included the religion of the rapist, the age of the victim--whether she was a minor (qasir), a virgin (bikr), or an adult woman (baligh, thayb)-- , married, free or a slave. The sex of the victim was also important since males were often victims of rape. The payment of diyya is a continuation of tribal law and a concession to the continued tribal nature of Jordanian society.

Here we see another important contrast between Jordan's civil code and Egypt's civil code modeled after the French penal code of 1810. Diyya presents a good example of the serious differences between the penal codes of Jordan, Egypt and France. Diyya places the law in private hands to determine the outcome rather than allow for the rule of law and its enforcement by the state thereby limiting the state's ability to act as protector and enforcer of the laws. The Egyptian legal code, introduced in 1883 was acclaimed for its having moved away from payment of diyya and its enforcement of the state's role in establishing rule of law.

It [meaning Egypt's penal code] clearly separated the civil side from the criminal which was previously confused with the blood-price and the right for remission of the crime or injuries by the injured party or his heirs. It secularized penal law. It softened the penalty. It instituted a simple penal law, clear and well regulated on the whole; a fixed law exempt from arbitrariness; a law

[uniformly] equal for all, knowledge of which is accessible to all.<sup>26</sup> Jordan's laws followed the Egyptian/French model by separating the "civil side" from the criminal, secularized penal law and "softened the penalty" by eliminating corporeal punishment and replacing them with prison sentences. However, Jordan continued to allow payment of the blood-price and "the right for remission of the crime or injuries by the injured part or his heirs." The new laws did regularize and standardize the handling of crimes and corrected previous arbitrariness of courts and modernized the legal system to meet with the needs of a centralized nation-state. However, Jordan's laws do not meet with the changing needs of a fast-growing, business-oriented, urbanizing society. The rationalization of the legal system did not act as an inhibitor and controller of crimes, rather particularly when it comes to gender violence, the existence of a "way-out" for perpetrators of these crimes through laws of honor and payment of diyya has only helped in the growth of gender crimes to "epidemic" proportions compared to what they were not even a decade ago.

It should be mentioned immediately that Jordan's laws do not recognize wife-rape. Even if the rape was to take place after divorce but within the `idda period and before a husband was to officially take his wife back, it is still considered a husband's right. The same approach to wife-rape exists throughout the Islamic world as it does globally. According to Muslim jurists, by virtue of the marriage contract the wife has made herself sexually available to her husband and cannot withhold herself from him whenever he wants to have intercourse with

her. The fact that the Qur'an admonishes men not to approach their wives unless they are willing does not seem to have had an impact on Muslim jurists or modern laws. Starting from these premises, discourses on women and sexuality have divided women into "good" and "bad". Good girls caused no trouble to families, those who did were seen as bad girls and deserved what they got. Good wives submitted willingly and did not fight with husbands over their sexual rights or if he were to look elsewhere or marry other wives. As for women who asked for anything else, notwithstanding Qur'anic guarantees, they risked being looked at as "bad" and could suffer consequences. Victorianism brought in as a middle-class ideology, only reinforced such sexual attitudes that placed sexual misconduct at the door of women.

Contemporary Jordanian laws reflect this misogynistic attitude toward sexuality by devaluing the crime of rape, perhaps the most personally injurious and humiliating crime that could be faced by a woman, by introducing the concept of hatk`ird as an alternative definition to sexual crimes that include rape. While rape (ightisab) is clearly defined as sexual intercourse forced on an unwilling female, hatk`ird is defined as a lesser offence involving an immodest action which could be physical, mental or emotional and is within the realms of personal injury but which does not include forced sex. Hatk`ird includes touching a woman's body parts or using foul language which causes her embarrassment and challenges her modesty. Article 292(a) of Jordan's penal code reads:

Whoever has sexual intercourse with a female (other than his wife) without her willingness whether through the use of force or threat or

deception or trickery, will receive a temporary prison life-sentence period of not less than ten years.<sup>27</sup>

Even though Jordanian and Egyptian penal laws are very similar in the words used to describe rape, the Jordanian laws are superior in serious ways. Egypt's Article 267 of the penal code reads: "Whoever has sexual intercourse with a female against her will is to receive a permanent or limited life-sentence."<sup>28</sup> The similar words are not surprising and reflect the similarities in the various legal codes of Egypt, Jordan, Mandate Palestine, Syria and Iraq. The differences in specificities, however, are important. While Jordan's law sets the punishment at a minimum of ten years, Egypt's code leaves the door open to the judge to reduce the numbers of years served depending on the particular case. In fact Egyptian courts have proven lenient in this particular situation handing down sentences that are often quite offensive to the public and which did little to stem the rising numbers of rapes faced by Egyptian women today. Furthermore, the Jordanian law covers every possible situation in which the rape could have taken place, by trickery or misconception. As for the Egyptian law it has left wide open the demeanour of the girl, i.e. did she encourage the rapist and what does encouraging the rapist really mean and what does it constitute. Here questions of intent are one way by which rapists get off easy.

Jordanian laws are also superior in the sense that they called for the death sentence for the rape of any girl who is less than fifteen years old, i.e. the recognized age of majority and marriage in Jordan.<sup>29</sup> Egypt's law until 1999 did not have a death sentence for rapists, rather a rapist of a boy or girl who is less

that 16 years of age could receive a maximum sentence of temporary life-imprisonment which is 15 years. In 1999 after the newspapers gave extensive publicity to the multiple rape of a two-year old girl who was abducted from her home, the public outcry brought about government action to pass the death sentence on this rapist. However, Egypt's laws have always allowed for execution when rape was accompanied by abduction, the latter being a serious crime according to Egyptian laws, so it remains to be seen whether the death sentence would in fact be instituted in similar rape cases. It should also be mentioned that one week before the story broke in the news, a rapist was given a three-year prison sentence by a judge in Alexandria for having raped a three-year old child. But, why establish 15 or 16 as a cutting off age for capital punishment to a rapist at a time when the world is suffering from a rape epidemic, is itself a matter open to question. After all an 18 or 28 year old woman is as much at the mercy of a violent rapist as a 15 or 16 year old girl, the consequences to her life are even more severe given her older age and public gossip which often censures her even more than the rapist. Clearly rape as a crime against women should be placed at the top of the agenda in regards to human rights issues in the Middle East.

Where Jordanian laws are most significantly superior in comparison to Egyptian laws on rape is in the distinction made between ightisab and hatk`ird. Jordan's Penal code is very clear about the crime of rape as ightisab, a word that has specific meaning of usurping something that belongs to another by force and against that person's will. It is an ugly word that is reprehensible and without any confusion in the mind of those who hear it. While it is used mainly as sexual rape,

it could also mean forced and illegal stealing of property, land, goods, money etc. Jordan's laws place the act of rape under the heading of ightisab with no ambiguity as to the nature of the crime. As for Egypt's laws, the word hatk `ird is used to describe rape in preference to ightisab which is used exclusively in the sense of legal usurpation of property like checks or stocks and shares.<sup>30</sup> By describing the crime of rape as hatk `ird, the impact of the crime itself becomes lost since hatk `ird includes much lesser crimes like touching a person's body or making sexual innuendos or advances.

One area in which Jordanian laws fall short, however, involves the distinction made between "rape" and "incomplete rape". While it is understandable that incomplete zina is not punishable since the crime never took place,<sup>31</sup> the idea of "incompleteness" is problematic when it comes to rape. Jordan's laws only recognize rape if actual intercourse had taken place. A Tamyiz court decision concluded that rape could only have occurred if sexual intercourse had taken place "in the place intended for it", i.e. a woman's vagina. If the rape involved any other part of her body or it was the rape of a boy, it is not considered rape.<sup>32</sup> Any such act would then be placed under the description of hatk `ird and prosecuted accordingly. The attitude of the court opens the door to further leniency. In Tamyiz court case 9/66 the court found that "simply holding the hand of the plaintiff and throwing her on the ground and trying to raise her clothing and touching any part of her that could be considered a `awra (genitals, usually hidden sexual areas of the body), does not constitute attempted rape but comes under the description of hatk `ird."<sup>33</sup> That was the same conclusion reached by the court in a

case in which the offender came to his victim's home late at night while her husband was absent and she was asleep. He approached her and began to kiss her, then raised the bed-covering with the intend to rape her. Such details were not enough for the Jordanian court to consider this attempted rape but considered it incomplete attempted rape. In yet another court case, a man asked a woman to have intercourse with him, when she refused he threw himself on her while his sexual organ was exposed and "ready". She fought him and managed to get away. The courts found the situation insufficient for a finding of rape and considered it incomplete rape which warranted a minor sentence. Incomplete attempted rape is handled by Article 68 of Jordan's penal code and is seen as hark`ird rather than rape. This type of definition can only constitute an encouragement and sentencing for hark`ird is a far cry from sentences handed out for ightisab. Only when violence or threat is used in hark`ird is the sentence relatively significant, at least four years hard labour (Article 297(a)). When a young boy is raped, as very often happens, the punishment is a minimum of seven years prison sentence if the boy is less than fifteen years old (Article 296(b)), but if the victim of hark`ird is older than fifteen and younger than eighteen, the sentence is temporary labour (Article 299).

One last issue about rape needs to be discussed here, and that having to do with incest. While it is normal for Jordanians to refuse to acknowledge the existence of incest in their society, today the facts show that this is otherwise. Yet the subject of incest is a very sensitive one and not easily broached anywhere in the world, let alone a conservative society like Jordan. Still, today increasingly

cases of incest are becoming more publicly known and when talking with Jordanian women I realized that such cases are in fact existent although it is not clear to what extent. Society handles such cases differently depending on the place and situation. While quite often a pregnant victim of incest is actually killed by her family rather than the family as a whole losing face, in other cases, a victim of incest is married off to a relative or someone who is married and so the shame is hidden. In one such case related to me by the actual family of the victim, a friend of her brother was paid one thousand dinars to marry her. The very fact that a man is willing to be paid to marry a woman in such a situation is in itself an indication that incest may be more widely known in Jordanian society than is accepted. This possibility is strengthened by the fact that the man who married the victim of incest in the above story was also a wife and child-abuser. Evidence of such abuse was clear on his wife's face and hair, as for his children, three of them between the ages of four and six had received severe beatings with the man's belt which still showed clearly as long red and black lines days after the beating had taken place. It seems that this father had punished his elder eight-year older through burnings in her vaginal area, an indication of the beginning of sexual abuse. The problem with such a picture witnessed by myself, neighbours and social workers, is that Jordanian laws do not really allow anyone other than the guardian to bring charges regarding child-abuse to the attention of the authorities. Even doctors do not have that ability when confronted with possible abuse on examining children. When they do, the matter does not go far because the father's rights over his child are unquestioned in Jordan.

Discourses on Women, Violence, and Morality

Islamic perception of sexual and honor crimes will be discussed and it will be shown that there is no law that places a clan's honor on the shoulders of women nor is there a law that justifies the murder of innocents. Besides, if anything, Islamic law demands balance and presents an equal moral code and standards of both men and women. In other ways, it is not what the laws say as much as it is moral discourses that allow for the continuation of honor crimes and other forms of violence against women and make it possible for perpetrators of such crimes to get away with little punishment. At the heart of these discourses is the idea that women are a potential source of enticement and that they must be controlled so they would not seduce men into sin. In other words, men are ultimately seen as the victims of women's sexuality. Did not Zulaikha bring about the downfall of the Prophet Yusuf? Was not Eve responsible for the Fall from Heaven? Neither woman could control her desires and their actions brought about havoc and the fall of the men around them. Traditions have made women into the symbols of sirens, jezebel's who are out to lead men astray.

But this picture of a tempting siren is not acceptable in the Qur'an notwithstanding how widely it is understood to be so. The story of Adam, Eve, the serpent and the fall from grace is a common story repeated in Arabic literature and found in various books of tafsir. As in the case of the Old and New Testaments, Adam and Eve are tempted by the snake to eat from the forbidden tree and there is mention of that episode three times in the Qur'an in Surat al-

Baqara:35-36, Surat al-A`raf:19-20, and Surat Taha:10-121. But nowhere in these ayas does the Qur'an condemn Eve for the temptation, nor the eventual fall from grace. To the contrary, if anything the Qur'an can be read to question the very patriarchal order that puts man at the top of the pyramid of creation, after all there is no mention in the Qur'an of the whole story of Adam's rib, a fact which is little known even among Muslims. Actually, the Qur'an is rather ambiguous about who was created first, man or woman. Surat al-Nisa':1 could actually be interpreted to mean women were created first although a neutral "nafs" was most likely. It was really pre-existing traditions and patriarchy that allowed for the propagation and confirmation of the patriarchal order placing it within a "holy" religious absolutism that is hard to question. We do know the actual origins of these stories and the early Christian and Jewish converts who brought them into Islam.<sup>34</sup> The Judaeo-Christian conception of the creation of Adam and Eve is narrated in detail in Genesis 2:4-3:24. God prohibited both of them from eating the fruits of the forbidden tree. The serpent seduced Eve to eat from it and Eve, in turn, seduced Adam to eat with her. When God rebuked Adam for what he did, he put all the blame on Eve, "The woman you put here with me --she gave me some fruit from the tree and I ate it." Accordingly, God said to Eve, "I will greatly increase your pains in childbearing; with pain you will give birth to children. Your desire will be for your husband and he will rule over you." This story has no bearing in the Qur'an or Islamic tradition and yet it is an essential part of Islamic gender discourses.

The important thing is that even though historically we know the sources of stories that show women as a periphery of man or that she is the cause of original sin, it is almost universally accepted among Muslims and reinforces the image of a woman who is either a jezebel or a passive follower of an aggressive male. Only if the man is strong, physically and morally, would women be kept in line. These beliefs are at the heart of crimes against women in the name of honor. Given the fact that the Qur'an has no concept of "original Sin" this picture of the essential sinfulness of women, can have no more than spurious basis especially given general rules set up by the Qur'an which do not see women as sinful by nature any more than men, nor is Eve blamed for the fall as she is in the Old and New Testaments. Actually, when the Qur'an discusses women and sin, it almost always discusses men and sin from within the same discourse and using a similar terminology. In Surat al-Nur we are told

Say to the believing men that they should lower their gaze and guard their modesty, that will make for greater purity for them, and God is well-acquainted with all that they do \* And say to the believing women that they should lower their gaze and guard their modesty, that they should not display their beauty and ornaments except what (usually) appear thereof...<sup>35</sup> (Qur'an 24:30-31)

**The Qur'an also lays out equal expectations of men and women and sees them as protectors and assistants of one another.**

The believers, men and women, are protectors, one of another: they enjoin what is just, and forbid what is evil, they observe regular prayers, practice regular charity, and obey Allah and His Messenger. On them will Allah pour His Mercy: for Allah is Exalted in power, Wise (Qur'an 9:71).

Unfortunately, even though the Qur'an recognizes both men and women as possible sinners, and, in fact, provides for equal punishment to both, we find that the issue of sin and shame has traditionally been put on the shoulders of women, who therefore must be secluded lest they cause evil. "Women are an ʿawra," meaning a weak spot or genitals, the implication is then sexual weakness. "When she leaves [her home], she is accompanied by the devil."<sup>36</sup> How can this image of woman as a walking ʿawra be reconciled with the above ayas from Surat al-Nur? And why are women and not men burdened with potential sinfulness when the Qur'an speaks with such equal terms about them?

Examples of the treatment of honor crimes by contemporary Islamic societies show that Jordan does not have a monopoly over such crimes although Jordan has become associated with such crimes by the international press to the point where you mention "honor crime" and there is an automatic reference to Jordan. While not undermining the seriousness of the situation in Jordan it is important to illustrate how serious the problem is in other Islamic countries as well as to show how even though these societies claim to be Islamic and even though equal moral standards are expected of both men and women, a woman's actions are valued differently from the same actions of men by Muslim countries and receive only lip service by their governments. The

following stories from Iran, Egypt, Kuwait, Pakistan and Jordan should illustrate my meaning.

In the Fall of 1986, Soraya, a thirty-five year old Iranian woman, was stoned to death by the men of her village after having been accused of infidelity by her husband.<sup>37</sup> The exact details of the story may be disputable, but certain facts are essentially true if for no other reason than their repetition in hundreds of similar cases in villages all over Iran since the success of the clerical revolution in Iran. Soraya had been accused by her husband and was stoned for fornication even though the accusation was for flirtation and sexual enticement. Those who deliberated her crime were all men and the new clerical leader in the village took the leading role in assuring she received the maximum sentence. The determination of the crime and the sentence passed were based on the cleric's reading of "God's law" to assure God of vengeance for the crime and cleanse the village of the vile acts of one of its members. None of the women participated and there was general mourning among them.

Were Soraya and the other hundreds of women stoned in Iran, Pakistan and Afghanistan during the last two decades innocent or had they committed the crime for which they lost their lives? A good question best answered through the very law that was being used to stone them. While those who claim that stoning was ordained by Islam and demand its application, it is only women who have been stoned while their presumed male partners have not. Can zina occur without a man's participation? If the Qur'an is to be taken as judge, there is no punishment of stoning anywhere in the Qur'an and when zina is discussed, it is in reference to both male and female zanis and is not used in reference to women

alone. But this is not the only area in which the law being applied was broken. There was no confession forthcoming from Soraya, nor of most of the other victims for that matter. No admission of guilt, nor was any proof presented to the act she was accused of. More importantly, fornication had not taken place, which is the reason that her “partner” was not stoned but was regarded as the victim of her efforts at seduction. Yet the legal basis for stoning fornicators is “hadith al-rajm” in which a male convert to Islam is said to have confessed to the Prophet that he had committed zina and demanded that he receive appropriate punishment. After repeating his confession four times on four consecutive days, the Prophet Muhammad finally ordered that he be given what he was asking for.<sup>38</sup> In Soraya’s case, she was judged and executed on the same day. The deployment of sexuality as an instrument of social and gender control was taking new twists and turns as the twentieth century moved to a close.

It was 1999 and the month of Ramadan, with hundreds of people waiting at the central over-crowded `Ataba bus station in downtown Cairo. A young girl dressed conservatively in an Islamic garb and accompanied by her mother, was attacked and raped by perhaps four men according to eyewitnesses. The four men were strangers, and the act was quite spontaneous. Hundreds witnessed the event, and yet when it was finally brought to court, the decision was that no actual rape had taken place, that the girl was still a virgin, and the rapists went free without punishment. When the Minister of the Interior was asked on Egyptian television how such a crime could happen and in Ramadan, he answered that such events take place every day. His declaration brought about denials from the government

and the outrage of a public already aware of the truth of his words. Yet another case comes from Kuwait where a 10-year old girl was kidnapped by four young men and kept for days during which she suffered continuous rape from three of the four young men. According to Kuwaiti law, rapists should have received the maximum Islamic penalty of death for kidnapping and rape. But the case was complicated. On the one hand the girl was the daughter of an immigrant working in Kuwait, while the perpetrators belonged to Kuwait's elite families. Denial proved impossible since the fourth young man, who did not participate in raping the girl but only in her abduction, confessed all. Responsibility for enticing the rape could not convincingly be put at the door of a ten-year old child who had been playing with other children in front of her home at the time of her abduction. As solution, the Kuwaiti courts maneuvered to find a way out of Kuwaiti criminal laws by introducing concepts from tribal/Islamic laws that would allow for the payment of diyya (financial compensation, blood-price) and thereby reduce the perpetrators' punishment to financial compensation which their elite families could easily afford.

As for Pakistan, official statistics admit to over a thousand honor crimes a year, but unofficial figures give much larger estimates. "On an average, regional newspapers in the country report almost five killings in the name of tribal 'honour' every day" reports Massoud Ansari who relates the following story that exemplifies honor crimes as experienced in Pakistani tribal society.

Last month, in the village of Sinjhor in southern Pakistan, 18-year-old Bilkees was detained in a room for a night. The next morning, Bilkees saw her brother

Ghulam Qadir enter the room with an old fashioned pickaxe in his hand. Bilkees tried to talk to her brother and the villager accompanying him but both of them did not listen to her. Instead, they dragged her towards the nearby fields, tied her to a tree and Qadis started hitting her with the pickaxe...The reason for Bilkees being killed in such a brutal manner was that her brother had seen her talking to a boy. Qadis decided to kill Bilkees to save the "family honour." No relatives lodged a complaint against Qadis and Bilkees was buried without any funeral being observed. Bilkees' murder, performed in the name of "honour" is not an isolated case in Pakistan. In tribal societies, those suspected of "illicit" sexual relations are labelled Karo-Kari (Karo being the male and Kari the female) and killed. Anyone who kills a woman for being a Kari and the man she is involved with, is considered to be gairatmand (honourable) and is morally and legally supported by his kinsmen. <sup>39</sup>

Awareness of the peril under which many women live in fear for their lives because of the intent of fathers or brothers to harm them due to suspicions of sexual misconduct, brought about the opening of detention centers where Jordanian women could be protected from possible harm. Lamis, one such 'administrative detainee' as they are officially referred to, was being kept there for fear of being harmed by her father who was threatening to kill her. The father refused to accept the situation and complained to the authorities asking that his daughter be released to him. Notwithstanding the girl's fears and her insistence that she not be turned over to her father, the father managed to get the authorities to release her because of his rights over her as her waliyy, which was not

questioned by Jordanian law. As soon as she was delivered to him the father killed her by slitting her throat. Put on trial, the courts found him guilty but sentenced him to nine months in prison. That this was a premeditated crime with no chance of reduced sentence on the basis of Article 98 of the penal code is unquestionable. That law 340 also does not apply is also unquestionable since there was no element of “surprise.” Still, the father got away with murder and the legal system allowed him to walk.<sup>40</sup> In July 2000 another honor cry was reported by the Jordan Times. A 12 year old girl from the town of Irbid was beaten to death by her father and 13-year old brother. As the newspaper reported, the girl's father's justification for having committed this crime was that "she used to go out walking in the streets without permission.” In other words, it was not that she committed an honor crime, rather she was killed because of fear that her going out may mean she could potentially commit such a crime in the future. The connection with wa'd al-banat is significant. Pre-Islamic Arab men killed their daughters so as to stop any potential honor crime from even taking place, this modern Jordanian man killed his daughter for the same reason and he expects to get away with it because what he did he regards as expected.

The above cases are but examples of the thousand others that remain unknown or are not publicized or even come to light and investigated. In all of them the victims were women and their assailants were men who got away with little more than a slap on the hand. The diversity of the cases does not change the fact that they all had something to do with perceptions and discourses about sexual conduct. One should add another type of crime that intentionally

manipulates moral discourses and the perception of a Muslim public to achieve political ends. Here I am referring to what can be termed the “deployment of rape” to coerce political interests, reported cases of which have come out of Pakistan, where the wives of candidates for the Pakistani parliament were alleged to have been subjected to rape as a form of shaming and hence damaging their husbands and families forcing their defeat or resignation.<sup>41</sup> In Iraq, rape was used as a systematic method of extracting evidence from enemies of the rule of Saddam Hussain, and according to one source, there are paid civil servants whose job is to undertake such rape.<sup>42</sup> The deployment of honor crimes as a way by which patriarchal power is kept in place seems to be forgotten in the wider discussion of laws handling honor crimes. A society in which half its citizens are “kept in line” through fear and intimidation, can have little hope of democratic participation. Males and females all pay the cost of fear and intimidation, each group in its own way, notwithstanding that one group is held hostage by the other. To expect freedom of thinking and personal enterprise from such a situation is optimistic indeed.

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<sup>1</sup> Douglas Jehl, New York Times, June 20, 1999, p. 4 (pp. 1-5).

<sup>2</sup> Lamis al-Nasser, Bashir al-Bilbisi, and Diana `Atiyat, al-`Unf did al-mar'a fil-mujtama` al-urduni: al-khasa'is al-dimoghrafiyya lil-dahaya wal-junat (Amman: al-Multaqa al-Insni li Huquq al-Mar'a, 1998), p. 14.

<sup>3</sup> A 1998 US State Department report found that there were four times as many crimes as are mentioned by Jordanian government reports. The Washington Post, February 2, 2000, p. C15.

<sup>4</sup> al-Nasser, al-Bilbisi, and Atiyat, al-`Unf did al-mar'a fil-mujtama` al-urduni, p. 14.

<sup>5</sup> Ibid., p. 16.

<sup>6</sup> Cases reported by Lima Nabil in al-Ra'yy, November 24, 1998.

<sup>7</sup> J.M. Cowan, ed., Arabic-English Dictionary: The Hans Wehr Dictionary of Modern Written Arabic, 3<sup>rd</sup> edition (Ithaca, New York: Spoken Language Services, Inc., 1976), p. 172

<sup>8</sup> Ibrahim Saleh, Qanun al-`uqubat al-mu`adal bil-qanun raqam 97 li-sanat 1992 (Cairo: 1995), p. 37.

<sup>9</sup> Ibid., p. 192.

<sup>10</sup> Ibid.

- <sup>11</sup> Ramzi Ahmad Madi, Qanoun al-`uqubat raqam (16) lisanat 1960 (Amman: Maktabat al-Thaqafa wal-Nashr wal-Tawzi`, 1998), p. 136.
- <sup>12</sup> Also look up Qur'an 24:2-3, 4:15.
- <sup>13</sup> For example a case of a prostitute who was caught and brought to court with her two male accomplices. She confessed to her activity and to her being forced into immoral acts with men, her attendance of parties where they drank, sang and had sexual orgies. The court however was rather interested in the activities of a particular sheikh and wanted to know if he had ever had sex with her, she denied any knowledge of him and that is how the case ends. There is no mention of further prosecution or of the application of any particular punishment which would be ta`zir in this type of case as evidenced from other records. Al-Quds Shari`a Court, 1043[1634], 24-122:277-1.
- <sup>14</sup> Fath al-Bari bi-Sharh Sahih al-Bukhari vol. 12 (Cairo: Dar al-Rayyan l'il-Turath, 1987), 118-119).
- <sup>15</sup> Ibid, pp. 336-337.
- <sup>16</sup> Ibid, p. 326.
- <sup>17</sup> Ibid, p. 82.
- <sup>18</sup> Ibid, p. 61.
- <sup>19</sup> Ibid, p. 63.
- <sup>20</sup> Besides zina, hudud crimes include slander, drinking alcohol, theft, armed robbery, apostasy, and prostitution. `Abd al-Qadir `Awda, Al-tashri` al-gina'i al-islami vol. I (Cairo: Mu'asasat al-Risala, 1992), pp. 78-83.
- <sup>21</sup> <sup>c</sup>Utayba, Al-tashri` al-gina'i al-islami, p. 282.
- <sup>22</sup> <sup>c</sup>Awda, II, p. 367.
- <sup>23</sup> al-Malki, n.d., p. 327.
- <sup>24</sup> Shaf'i n.d., vi:144
- <sup>25</sup> Bahnasi 1988, p. 36.
- <sup>26</sup> Grandmoulin 1908, I:42
- <sup>27</sup> Madi, Qanoun al-`uqubat, p. 140.
- <sup>28</sup> Saleh, Qanun al-`uqubat, p.190.
- <sup>29</sup> Madi, Qanoun al-`uqubat, p. 140.
- <sup>30</sup> See Article 325 of Egypt's penal code. Saleh, Qanun al-`uqubat, p. 216.
- <sup>31</sup> See a good discussion about this subject in Kamil al-sa'id, Sharh qanun al-`uqubat: al-Jara'im al-waqi'a `ala al-akhlaq wal-adab al-`ama wal-usra (Amman: Maktabat Dar al-Thaqafa lil-Nashr wal-Tawzi`, 1994), p. 248.
- <sup>32</sup> Mentioned in Ibid., p. 8.
- <sup>33</sup> Majallat Niqabat al-Muhamiyyin, p. 711 for 1966, in Kamil al-Sa'id, p. 14.
- <sup>34</sup> For example Wahb ibn Minabih who began telling these stories from the Bible soon after his conversion to Islam. Al-`Aqqad, al-Mar'a fil-Qur'an, pp. 17-18.
- <sup>35</sup> Translation of the Qur'an by Yusuf Ali. The Holy Quran, Text, Translation and Commentary by A. Yusuf Ali (Brentwood, Maryland: Amana Corp., 1983).
- <sup>36c</sup> Abd al-Mit`al M. Al-Jabri, Al-Mara fi'l-Tasawwur al-Islami, (Woman in Islamic Perception), 6th edition (Cairo: Maktabat Wahba, 1983), pp.92-93.
- <sup>37</sup> Freidoune Sahebjam, The Stoning of Sorya M. (New York: Arcade Publishing, 1990).
- <sup>38</sup> Al-<sup>c</sup>Asqalani, p. 119.
- <sup>39</sup> The Hindu, 25-06-2000.
- <sup>40</sup> "Letter to Jordanian Prime Minister: His Excellency Abdu-Ra'uf Rawabdeh, August 9, 1999 Human Rights Watch and Jordan Times, Sunday, October 19, 1997 (Amman, Jordan).
- <sup>41</sup> Shahla Haeri, "The Politics of Dishonor: Rape and Power in Pakistan", in Faith & Freedom, edited by Mahnaz Afkhami (Syracuse: Syracuse University Press, 1995), pp.161-174.
- <sup>42</sup> Kanan Makiya, Power and Patriarchy in Iraq (New York: W.W. Norton & Company, 1993).