THE POSITIVE PROSPECTS FOR PERSONAL STATUS LAW REFORM: TWO STEPS FORWARD

The preservation of the *Shari‘a* in the area of personal status law has often been presented as the ‘sacrificial lamb’ of modernisers who had been intent on imposing secular codes in the areas of civil, criminal and commercial matters at the turn of the twentieth century. The piecemeal and fragmentary reform of family law that ensued meant that gains by women remained at the margins, and hence could not achieve true equality. It has thus been argued that serving justice to women and meeting the requirements of modernity, requires a secularisation of the family law altogether, and the application of a standard of absolute equality.¹ This approach, however, ignores the fact that any law must be compatible with the social setting in which it operates. The public has to readily accept the laws they are required to conform with and give effect to. Disrupting the careful balance between social and legal norms “creates tensions, and usually does not stand the test of daily life.”²

Since the turn of the twenty-first century Egypt’s personal status law has undergone a gradual reform process that demonstrates the possibility of further developing these laws, without the need to secularise them altogether. Although reforms have often been slow to come, they have gradually granted women greater equality rights. Every national, religious and cultural group have the right to practice and manifest their own religious and cultural beliefs; depriving them of such a right would, in itself, constitute a violation of international human rights standards. *Shari‘a*–derived personal status legislation is engrained in the identities of many Muslim women as well as men. Depriving them of the right to adhere to the principles that form the pillars of their belief system cannot possibly be considered as a legitimate aim. Although the CEDAW is unequivocal in its demand for equality between the genders in family

² Shaham (1997) at 228.
relations, the intent of the CEDAW cannot possibly be to force different
groups of women into lifestyles which they themselves do not approve
of. It is inconceivable for the international human rights movement to
remain impervious to the reality that cultural particularities and diverse
worldviews exist, and that they have the potential to achieve standards of
equality through internal validation processes. According to Behrouz,
imposed foreign values are not easily internalized. As a matter of both
ethics and policy, then, restrictions on the rights of Muslim women can
best be challenged by showing that such restrictions are not in fact required
by Islam in the context of present-day Islamic societies. This is not an
unrealistic task.³

It is narrow-minded to construe the relationship between international
human rights standards and religious beliefs as inherently antagonistic.
Rather than engaging in such polemics, what is required is a heightened
respect for pluralism in the human rights debate in order to adequately
direct the needs of diverse groups of women. Such an exercise is not
an apology for discriminatory practices and laws; it requires the highest
degree of scrutiny of prevailing rules and a radical break with those that
disadvantage women and deviate from the principles of human dignity.
In other words, if a core group of women's human rights can be recog-
nised as constituting universal standards that are to apply without regard
to religion and culture, there are other rights that would have to be cultur-
ally qualified, without jeopardising women's dignity. Achieving equality
for women is a two-way road that requires a compromise solution, with
the aim of genuinely improving their status, rather than serving the ide-
ological purposes of an international and academic elite, detached from
the realities and preferences of the women on whose behalf they purport
to speak.

The elimination of gender discrimination requires that Egypt, as a
party to the CEDAW “assume a role in the reform process to ensure
that its international duty is fulfilled.”⁴ However, this raises the question
of whether this obligation is met if legal reforms are introduced by the
State, but rejected by the people and those who represent them. In such
a case, would the State have absolved itself of any responsibility for the
persistence of discriminatory laws and practices?

In spite of its mixed record, Egypt has demonstrated a commitment to
reforming its family law over the past ten years. This process began with

⁴ Ibid. at 1157.