Can the Islamic Device of *Khul’* Provide a Remedy for non-Muslim Women in Egypt?

*Dawoud S. El-Alami* *

Since the promulgation of Law 1 of 2000 which comprises provisions regulating a range of issues in family law, there has been considerable controversy and media debate surrounding one of these provisions, the introduction of the procedural regulation of the process of *khul’*. Critics of the law predicted that there would be an explosion in the number of applications for *khul’* and that this would lead to the destruction of family life and the corruption of society. It is too early to judge what effect this law will have in the longer term, but these fears have not been borne out by case statistics so far.

What was not predicted and was not the intention of the law, however, was that the system of *khul’* would be seen as an opportunity for non-Muslim women to free themselves from intolerable marriages.

Christians constitute the largest non-Muslim population in Egypt. It is difficult to find reliable statistics regarding the number of Christians in Egypt but they probably constitute at least 10 per cent of the population and some sources suggest as much as 15 per cent. The great majority are of the Coptic Orthodox Church, but there are also significant Armenian, Greek and Syrian Orthodox communities. Other minorities include Coptic, Armenian, Chaldean, Greek, Maronite, Roman and Syrian Catholics.

Strictly speaking none of the churches countenances divorce for any but the gravest of reasons. Catholic churches forbid divorce and only allow annulment under very limited circumstances. The Coptic Orthodox Church al-

---

* Lecturer in Islamic Studies, University of Wales Lampeter.
1 For a general examination of the provisions relating to *khul’* comprised in this law see Dawoud El-Alami, “The System of *Khul’* in Egypt”, *Yearbook of Islamic and Middle Eastern Law*, vol. 6, pp. 134–139.
2 [http://www.coptic.net/EncyclopediaCoptica/](http://www.coptic.net/EncyclopediaCoptica/). The Coptic Orthodox faith is considered to be based on the teaching of Saint Mark who brought Christianity to Egypt during the reign of the Roman emperor Nero in the first century. Christianity spread throughout Egypt within half a century of Saint Mark’s arrival in Alexandria as is clear from the New Testament writings found in Bahnasa, in Middle Egypt, which date around the year 200 AD, and a fragment of the Gospel of Saint John, written using the Coptic language, which was found in Upper Egypt and can be dated to the first half of the second century.
laws divorce only in the case of adultery, bigamy, or other extreme circumstances (at the request of either husband or wife), which must be reviewed by a special council of bishops. Civil divorce is not recognized by the Church but otherwise the Church does not object to any civil law of the land as long as it does not interfere with the sacraments of the Church. In 1917 the Coptic Orthodox Holy Synod attempted to set down a body of rules to govern matters of personal status but this did not materialize until July 1938 when the Personal Status Rules of the Orthodox Coptic Church came into force; the rules were not considered to be a binding law but were generally applied by the religious courts that were responsible for family law in Egypt until 1955.3

In 1955, however, Law No. 462 abolished these denominational courts, including the Shari'a Courts, and jurisdiction in matters of personal status was brought under the Unified Courts system. Article 6, paragraph 2 of Law No. 462 stipulates that in the case of a dispute in the area of personal status law between non-Muslim Egyptians who are of a single denomination which has a regulated corpus of rules at the time of issue of the Law, ruling will be made in accordance with the denominational code applicable to them, within the limits of the public order. Several years later the Court of Cassation defined what was meant by denominational code as everything that had been applicable under the denominational courts prior to their abolition.4

Articles 5 and 6 of Law No. 462 state that the criterion in determining applicable law is the religion of the parties. Where both parties are of a single denomination then the law appropriate to that denomination will be applied. Where they are of different Christian denominations, however, then no single denominational law can be enforced and the case will be subject to al-wilaya al-aama, which in effect means that it will be subject to Islamic law.

The logical extrapolation of this then is the potential for application of the new khul' provisions, comprised in Law No. 1 of 2000. This would have been inconceivable prior to the enactment of the law but attempts have been made, and some have been successful, by Christian women to use the law to gain relief where they have no other means of access to divorce or where their only other option is likely to be a protracted and painful process of separation.

In a case filed only five months after the promulgation of the Law a Christian woman petitioned for divorce stating in her petition that she was married on 1 February 1987 and that she had cohabited with her husband and that the marriage had resulted in a child.5 She claimed that the husband had mistreated her, ignored her rights as a wife and had failed to maintain her. He had left the marital home and moved to the home of his parents. All efforts at reconciliation had failed. Both spouses were originally Orthodox Copts but on 3 July 2000 the wife was baptised into the Arab Apostolic denomination in Melbourne Australia and was given a certificate confirming this, which was ratified by the Egyptian Consulate in Melbourne. She adopted the creed and practice of this church. The wife requested that in the light of the difference

4 Court of Cassation session on 1 December 1971, Judicial year 22, p. 672.