

Brainstorming on Women's Rights in the MENA region

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I. Introduction

So close to Europe and yet so far, the MENA Region has for a long time attracted the attention of those in search of the 'exotic', rather than objective comprehension of social realisation. The idea of this paper came in order to shed some light regarding some determinant factors in the formulation of women's rights and thus Personal Status Codes in the MENA region, like theological development, the foreign factor, the cultural and sociological lens.

By carefully observing the different trends of legal reforms in general, and personal status laws in particular, which took place in the MENA region, we can clearly detect three main paradigms.

The first is that of Islamisation, where a return to the application of Islamic law in all fields and especially in personal status law is the keyword. Saudi Arabia is the main example in this regard. Furthermore, many Islamic parties in the countries of the region push for this trend, advocating that Islamic law should play a more prominent role in the legal system. The advantage of this model is that, in many instances, it satisfies the demand for a return to an implementation of Islamic law by conservatives. However, this model has a considerable drawback as it simply does not provide any room for progress regarding women's rights and has an extremely traditionalist and patriarchal view of these same rights, which hardly correspond to the challenges of modern society.

The second paradigm is the secular one, where the government draws a clear line between affairs of the state and religious ones. In the Middle East, the personal status codes have been little inspired by the Western codes in comparison with the influence of Islamic law. The exception to this would be Turkey, where Kamal Attaturk's efforts at secularization had the personal status code inspired by the Swiss one.

While this approach has the notable advantage of allowing an enlightened minority elite in the MENA countries to succeed in putting forward some progressive laws that advance the rights of women, yet it has the main disadvantage of not benefiting sufficiently from public and mass support. The natural outcome of this situation is the creation of what is labelled as "torn" countries where the legal ideal does not correspond with social reality and where a huge gap exists between a highly educated, urban, westernized and minority elite on the one hand, and a less educated, rural, traditionalist mass on the other. In addition, this approach leaves little or no room for cultural relativism.

The third model tries to combine the previous approaches, as in this model reforms are made according to an enlightened interpretation of Islamic law. This being said, the scale and dimension of reforms in these states vary from case to another. In reality, the Tunisian and Moroccan governments are the ones which went further in this regard, whereas Egypt and Algeria adopted a slower and less substantial approach to reforms.

The approach adopted by these states has a number of notable benefits: first, from a political perspective it provides credibility and legitimacy to governments in the MENA countries. It is important to emphasize that the political and historical legitimacy of a number of political leaders in the countries of the MENA is very much linked to the Islamic tradition. Therefore, the enlightened elite can always convince the mass of its endeavour or respond to the

attacks of the Islamists that the reforms undertaken did not go beyond the circle of Islamic law. Furthermore, from a cultural perspective it has the important advantage of safeguarding what is believed to be the cultural and religious particularities specific to this region with the incorporation of a progressive and open approach influence from the West.

After all, women's rights in the MENA are only the reflection of political changes, social tendencies and widespread cultural paradigm.

II. Determinant Factors for Women's Rights in the MENA region

1. Theological Development

The impact of theology is extremely important on the development of the Personal Status Codes in the MENA countries. In fact, Islamic jurisprudence and the four main *Sunni* schools of thought to a large extent represent an essential normative basis from which the provisions of the PSC stem.

In fact, one should not overlook the influence of the Islamic tradition with its different ideologies and schools and Islam should not only be considered as a religious ideology with tenets and teachings from divine inspiration. Islam in the MENA region represents a central and comprehensive source of mundane and cultural guidance for the entire population.

There is a great deal of debate among scholars and feminists regarding women's rights and Islam. Some tend to blame Islam for the subjection and inferior status of women in the

MENA region by putting forward that an immutable religion like Islam imposes certain gender roles, like the acceptance of polygamy and the unlimited right of divorce of the husband. Therefore, a religion like that should completely be discarded from political and mundane decision by adopting a secular approach.

On the other hand, some answer by defending Islam and arguing that through Islam women have acquired their full status of humanity, which was hardly possible to achieve before in the MENA region. In this group one can distinguish between two currents of thought: one which believes that Islam is fair to women as it is practised today, this idea obviously is advanced mainly on religious grounds. The other group believes that Islam by principle carries a message of justice, which include women, however this same message was distorted and misunderstood as a result of social conditions and some rigid cultural traditions.

2. Foreign Presence in the Region

Contact with foreign powers in the region took several forms either through cultural cooperation, where a number of the region's scholars benefited from scholarships in European countries, such as Egyptian reformists in France. In this case, contact with foreign powers was extremely beneficial and positive as academics from the region returned to their countries very much influenced by Western philosophers and ideas of social reform.

The second contact with foreign powers came at the end of the nineteenth century when the Muslim population of the MENA region had to live under the occupation of foreign powers like France and Great Britain. On the whole, this occupation policy took two main forms either through the colonization of certain countries of the MENA, like the case of Algeria by France, or the case of protectorates, like Egypt with Great Britain and Morocco and Tunisia with France. In the two forms, the foreign presence had a real impact on the social structure of a given country of the MENA and therefore on the whole process and form of codification of the personal status codes, by either reinforcing or simply destroying it.

3. Cultural Patriarchy

A prior knowledge of social structure in general, and kinship structure in particular, including an analysis of its composition, internal dynamics and articulation with other institutions is extremely important for a thorough understanding of the evolution of personal status laws in the MENA region¹. Jacques Berque² had called it “structure of structures” during his study of the focal position of the kinship unit in the history of North African societies.

Middle Eastern patriarchy has been described as the structure of power which operates at different levels of society and endorses the primacy of men both through law and custom. This structure is based on division of labour within the family itself, where the woman has essentially

¹ M.Charrad, (2001), *State and women's rights : the making of postcolonial Tunisia, Algeria and Morocco*. University of California Press, Berkley, p 51 .

² *French North Africa : The Maghrib between Two World Wars*, (1967), Translated from French by Jean Stewart . Preager, New York.

a reproductive role whereas the man has the task of earning the family income. From an early age, young boys and girls learn to accept and implement these different roles given to them and become part of their culture. The power of men in these societies stems primarily from their capacity to be breadwinners and their control over all forms of cultural and ideological production. Mass media, religious, educational and political institutions reinforce and reflect the predominance of males³.

In order to preserve this social structure, the control of women and their lives by men is very much necessary. Therefore, these societies developed powerful and efficient institutional mechanisms like that of legal guardianship, by simply claiming a greater sense of economic and moral responsibility for female relatives.

4. Social class

Joseph Schacht believes that in general, modernist legislation is far from being the product of genuine public demand. Instead, modernist legislation is the product of liberals who have succeeded in getting the sympathy of the ruling class and not necessarily the masses, and feeling strong enough to challenge the strong resistance of the traditionalists. This idea describes to a large extent the process of reform of the Personal Status Law in the MENA region. Whereas the majority of *Ulemas* (Muslim scholars) are traditionalists who gained the sympathy of the

³S. Botman, (1999), *Engendering Citizenship in Egypt (The History and Society of the Modern Middle East)*, L. Fawaz (edi). Columbia University Press, New York, p 107.

public masses, modernists on the other hand tend to be lawyers or academics coming from a privileged class or at least well connected with such a class⁴.

In fact, the class system is still very much present in Middle Eastern societies. On one hand there is an urban, well-educated elite which pushes for more liberal laws regarding women's rights and on the other hand, there is a rural, little educated majority, which sympathises with more conservative ideas about women's rights.

Particularly in Egypt, Tunisia and Morocco, the upper and middle class educated, urban elite played a major role in boosting the feminist reform movement by criticising the existing patriarchal local culture and demanding the status of full citizenship for women.

III. Conclusion

Unfortunately, until recently statesmen and politicians in the Middle East and North Africa never really considered women's rights, and thus family law, as being either at the top of their priorities or as a real component in any step towards modernization. On the other hand, it has been considered as a rather sensitive issue to tackle as it jeopardizes gender relations among the members of society⁵. In fact, with the exceptions of Turkey, under the *Ataturk* regime and Tunisia or Morocco, which through its leadership treated the promotion of women's rights as an essential feature of their development plans, most governments in the MENA region tended to

⁴ Ibid p105.

⁵ Tomiche, N, (1991), *al-Mar'a I- Monde Arabe, Encyclopédie de l'Islam*, in Hamilton A.R Gibb (Ed) , Vol.6 (2nd ed). Leiden E.J. Brill, p.p 452-457.

assume that progress could be achieved without the introduction of major reforms touching upon women's rights⁶. Let's keep our fingers crossed that maybe this trend will change, today!

⁶ A.E.Mayer, "Law and Religion in the Muslim Middle East", *35 Am.J.Com Law* 127, (1987),p 139.