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### Article

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## **Power, Secularism and Divorce: Women's Rights in Egypt and Iran**

### **Abstract:**

This article explores how the secular nature of the Egyptian and Iranian states affected women's divorce rights between 1920 and 1939. Contributing to existing literature by examining two states which have not been exclusively compared in this field, unique and important insights emerge regarding secularism, gender equality and family law through textual analysis of laws and memoirs. It demonstrates the impact of secular identities on divorce laws; secularism as a tool to challenge or seek power, and the significance of a state's political environment. This article challenges assumptions that secularism had little impact on family law in the MENA region.

**Keywords:** Gender equality, Iran, Egypt, divorce, secularism, power

### **Introduction:**

Gender equality within family law and the continued positioning of women in the private sphere in Middle East North Africa (MENA) states remains a point of contention. Following the public prominence of the UAE Lachaux custody battle (Parmar, 2014; Roberts, 2014), and the imprisonment of Ghoncheh Gavami for attending a peaceful protest calling for female attendance at volleyball matches in Iran (Amnesty International, 2014), discussions on the perceived patriarchal nature of Islam and the states which implement Islamic law have increased. These cases form part of a much wider debate on religious politics, which has gained substantial international traction since the beginning of the twenty-first century. Here, the Lachaux case comes to the fore because of allegations that Mr Lachaux was able to utilise *Shari'a* Law for divorce proceedings. Concerns surrounding gendered access and provisions for divorce laws form a prominent part of contemporary debates, and were a focal point for women's rights advocates during the twentieth century, alongside calls for increasingly

secular approaches to family law. To comprehend current relationships between gender equality, divorce and religion within the MENA region, gaps in historic knowledge, as evidenced by the existing literature, need examining. This paper therefore explores how the secular nature of the Egyptian and Iranian states affected women's divorce rights between 1920 and 1939.

This paper contributes to ideas of identity and understandings of religious and MENA politics in three important ways. The first is comparative, with Egypt and Iran having never been solely compared. By focusing exclusively on these two cases, a more nuanced comprehension of legal reforms and individual experiences is achieved, and a balanced comparison in relation to the schools of Islam is attained too.

The second contribution is methodological, with interpretive textual analysis providing insights into the underlying meaning of legal texts and personal accounts. The third is theoretical, engaging with postcolonial feminism and drawing on Yoder and Kahn's (1992) three typologies of power; power-over, interpersonal power-over, and power-to. The first occurs in reference to women and power, ranging from the overarching context of patriarchy to social, political, and sexual inequalities within it; the second focuses on binary relations whereby 'one person has the power to influence another within a specific relationship such as marriage, and at its lowest level can be analysed as a personality trait (Yoder & Kahn, 1992 pp.382–384). The final type, also referred to as 'personal empowerment', pertains to 'the control one feels over one's own thoughts, feelings, and behaviors...', and thus stands in contrast to power-over someone else (Yoder & Kahn, 1992 p.384). Subsequently, intersecting factors such as gender, class and location can be used in conjunction with different power structures to conduct linguistic analysis.

Three key observations are also made. Whilst definitional ambiguities arise regarding ‘secular’ and its accompanying suffixes, Taylor’s (2007 p.247) first comprehension of secularity as ‘the retreat of religion from public life’ is employed. It is clear firstly, that secularism was introduced differently in each state, primarily due to differing colonial experiences. The terms ‘internal’ and ‘external’ secularism are thus used to differentiate between implementation methods. ‘Internal’ refers to secularism’s application in Iran through Reza Khan’s modernisation project whilst ‘external’ refers to Egypt’s direct engagement with colonial powers. Secondly, secularism is a tool to challenge or seek power. This is observable through government created state identities, and civilian engagement via nationalist and feminist movements. This feeds forward into the final observation that colonial interactions can be more significant than religious interpretations for the stability of a state’s political environment.

Following a discussion on the existing literature on secularism (Badran, 2009; Fokas, 2010; Başkan, 2014), and women and family law (Asad, 2003; Nazir, 2005; Moghaddam, 2013), this research builds on understandings of the effects of secularism on an area of law which resides within traditional and religious frameworks. Theoretical and methodological considerations then ensue, not only outlining power structures and frames of reference for this linguistic analysis, but also emphasising the strong relationship between textual analysis and postcolonial feminism. This analysis is then applied to legal texts and personal accounts before concluding that, in each case, the secular nature of the state did affect women’s divorce rights and is indicative of broader patterns in the MENA region.

### **Women, secularism and the Middle East**

Within discussions on the oppression of Muslim women in relation to divorce, several voices emerge. First, are those seeking to address preconceptions of Islam whilst recognising gender

related issues; another strand denies divergences in oppression between Muslim and non-Muslim women or posits that in some instances they had more rights. One group argues that oppression is external to Islam, but peripheral factors challenged Qur'anic intentions, with another group contradicting this (Keddie, 1991 pp.1–2); reinforcing quandaries over the relationship between, and interpretation of, women's rights and religion. Moreover, the inclusion of gender rather than its affixation in the secular/religious binary is understood to have successfully cut through generalisations of secular contexts liberating women and religious contexts oppressing them (Jakobsen and Pellegrini cited in Fokas, 2010 p.166)

'Secular' within the context of this research is defined as the acquisition of power through modernisation resulting from the separation of religion from politics and/or the state. Consequently, secularisation is a process, secularism is the separation of religion from politics or the state, secularity is the type of separation (political/social), and secular is the outcome of the process and its manifestation.

Within the religious/secular dichotomy, the latter serves as a point of contention due to definitional and contextual ambiguities. This links to the public/private dichotomy, with secularism often being used to refer to the separation of public and political matters from religious understandings, which were traditionally positioned in the private sphere.

Subsequently, *secularisation* implies the transformation of a society, which strongly identifies with religion, to one that associates itself with non-religious or *secular* values and institutions. Secularisation is thus 'generally thought of as the name of some kind of decline of religion' (Taylor, 2007 p.427). Building on this, Taylor (2007 p.423) posits that 'secularization theory' is predominantly focused on explaining the multifarious nature of secularity, arguing that there are three types. The first is 'the retreat of religion from public life'; the second, a 'decline in religious belief and practice', and thirdly, 'the change in the

conditions of belief' (Taylor, 2007 p.423). Whilst secularisation theory is believed to focus primarily on the first two types of secularity, Taylor (2007 p.423) recognises the inevitable overlap between all three facets. This has resulted in the questioning of religious decline or the amount of space religion originally occupied, thus understanding is based on questions of interpretation (Taylor, 2007 p.427).

From this the relationship between secularism and the public/private dichotomy becomes clearer, with Ferrara (2009) reinforcing the public, political nature of secularism. An understanding of secularism is therefore that public (political) activities and decisions should not be religiously influenced. This perspective, alongside Ferrara's (2009 pp.78-79) social secularism, reinforces notions of privatised religion.

Secularism's visibility fluctuates across the MENA region, with Feldman (2008 p.85) not attributing religious decline to European colonisation due to earlier Ottoman occupation. Contrastingly, Nasr (cited in Yom, 2002 p.96) posits that secularism never disengaged from its colonial identity. Secular identities also emerged in relation to state-religious engagement, with Iranian secularisation resulting in the detachment of religious institutions from the state (separationist) (Başkan, 2014 pp.73). Iranian reforms also occurred following a consolidation of power, rather than alongside them; thus influencing the separationist, secular nature of the state (Başkan, 2014 pp.99; 101). Subsequently, state secularisation is defined as the unabashed safe-guarding of state sovereignty which resulted in different methodologies for the suppression of public religion.

The intersectionality of women, religion and secularism in the MENA region has conspicuously emerged in national, regional and international discussions as debates continue to circulate about the (in)authenticity of women's rights within (less) religious contexts. Prominent amongst them are calls from Western observers for the increased secularisation of

policies. Halliday (2003 p.153) posits, however, that in areas such as family cohesion and female exploitation 'there is plenty for the West to be self-critical about', further emphasising that this emerges from an increasing awareness of the failures of human rights advocates to adhere to their universalising and secular principles rather than the pre-eminence of Islamic thinking. In attempting to emphasise the dangers of generalisations, Moghadam (2013 p.9) argues against gender being monolithic within the MENA context through the recognition of diverging socio-economic and political environments. Moreover, whilst considered the 'father of Arab feminism' (El Guindi, 2003 p.593), Qasim Amin's advocacy of increasing women's rights in areas such as divorce are challenged (see for example Ahmed, 1992) as they are considered to improve male socio-political experiences more, thus also warning against progressive assumptions based on initial engagements with gender equality.

Atatürk's Turkey proved to be highly influential, with the Iranian Shah interpreting the path to modernity as reflecting the need to extricate secular politics (civil law) from *Shari'a*; however, the modernisation of the Iranian state was sought through oppressive measures and consumerist 'Western' culture (Sullivan, 1998 p.223). The Shah's obsession with Western culture was subsequently criticised through a gendered lens by Khomeini who viewed Iranian women as transforming into 'pretty western dolls', thus using this as a framework within which his Islamic project could be situated (Rahnema & Nomani, 1990 p.11) and emphasising the social secularisation which had occurred.

In attempting to understand Egypt's predominantly religious legal alterations, Asad (2003 pp.205-256) enquires into facets of secularisation which are usually overlooked, stressing the transformative effects it had on areas such as family law and ethics. Following these discussions, Taylor's (2007 p.247) first comprehension of secularity as 'the retreat of religion from public life' is thus employed for understanding the issues being treated. Reza Shah's

secularisation of the state thus presents the government's role in religion retreating from the social, public sphere whilst colonial encounters in Egypt evidence political secularisation.

Whilst the secularisation of Egypt and Iran was not a permanent feature, this is not indicative of failed secularisation; rather, it indicates that implementation methods failed. When examining the secular nature of these states, it became apparent that, unlike in Turkey where secularism was implemented at society's roots, it was instigated in a more superficial manner. As aspects of law and customs became more secular, there was no overarching attempt to secularise either state. Instead, Egypt experienced attempted social, political and legal secularisation through colonial powers and Iran had similar experiences following Reza Khan's modernising project, which resulted in an international façade of a modernising, secular state. Whilst Reza Khan treated secularism and modernity as synonymous in his approach to state transformation, this failure does not mean that Islam and modernity are antonyms. Rather, it indicates that a more rigorous implementation needed to occur through the state and for the benefits of the state instead of external appearances or to benefit another state.

### **Theoretical and Methodological Considerations**

Against the backdrop of Western colonialism, postcolonial theories offer insights into the significance of language, class and gender differences in shaping women's lives. Postcolonial feminism particularly focuses on women's lives and pressures impacting on those whose 'voices appear in national narratives' (Schutte, 1998 p.54). Despite this recognition of gender differences emerging as a point of inquiry within postcolonial theory this is not necessarily achieved (Khan *et al.*, 2007 p.231); subsequently contemporary postcolonial feminism continues to apply pressure on mainstream postcolonial theory (Lewis and Mills, 2003 p.2). Additionally, post-colonial feminism is observed to take experiences of Western colonialism

and its contemporary effects in formulating ‘a standpoint of cultural, national, regional, or social identity’ whilst diverging from traditional critiques of imperialism by seeking to avoid ‘rigid self-other binaries’ (Schutte, 1998 pp.65-66).

Apprehensions regarding quantitative methods in feminist research have arisen around the ‘fitting’ of women into ‘methodologically conventional quantitative frameworks’ and the issues emerging from the statistical analyses which have occurred (Tickner, 2006 pp.36–37). Qualitative methods are not immune to feminist concerns, because of frequent claims within feminist work of representing experience or ‘reclaiming voices’ which are subsequently represented as ‘truth’ (Kitzinger, 2004 p.12).

Researcher positionality is thus reflected upon, with cautioning’s against attempting to speak for ‘participants’ (Freire, 2000) or attempting ‘to work on their behalf to help them rise up’ (Bourke, 2014 p.3) becoming crucial. This research does therefore not seek to speak for other women, nor generalise their experiences. Rather, through the analysis of personal accounts of some key women, insight into some experiences and perspectives are gained.

From this, the objective of postcolonial discourse is emphasising ‘difference’ as pivotal in political relations (Olson, 1998 p.47). Whilst methods employed in postcolonial feminist research, such as textual analysis, which is adopted here, appear similar to other approaches, the post-colonial feminist paradigm produces more nuanced insights (Khan *et al.*, 2007 p.231). In understanding class, race and gender within colonial histories it requires researchers to maintain awareness of their own socio-economic and historic positioning in relation to those providing the accounts they analyse.

This form of analysis also understands culture as a type of narrative, with specific texts linking (in)directly to larger aspects of society. Conversely, it is argued that ‘It is difficult to speak of a politics of interpretation without a working notion of ideology as larger than the

concepts of individual consciousness and will' (Spivak, 1987 p.161). This type of textual analysis therefore focuses on how identity formation occurs within texts. This is achieved through the use of power structures, such as colonialism, religion, and patriarchy, to frame the linguistic analysis of legal and personal texts; speaking to individual experiences with divorce.

### **Rights in Dissolution**

Islamic Law permits several types of divorce, each reflecting different forms of gender inequality and religious engagements. Whilst Islamic Law was not removed in either state, and the ultimate premise of women's rights did not dramatically alter during this period, political secularisation becomes obvious in both states through reductions in religious language in the legal documents analysed; indicating that religion underpinned the secular discourse of family law.

*Sunni* Islam (Egypt) recognises two types of divorce, both serving as forms of repudiation (*talaq*) and only becoming effective following 'idda<sup>1</sup> or the birth of a child. A single pronouncement or three individual ones over a period of three months, is not permanent and a husband may take his wife back (Coulson & Hinchcliffe, 1978 pp.42–43). However, the most popular form of divorce is 'talaq of innovation' (*talaq al-bid'a*) and whilst considered to be immoral, is legal and effective (Coulson & Hinchcliffe, 1978 p.43). This form of divorce is immediate and requires the husband to pronounce three consecutive *talaqs*. Unlike the single pronouncement, this is permanent and wives cannot be recalled or remarried until she has married another man, consummated the marriage and it has legally ended. Contrastingly, *Ithnā 'Ashari Shi'i*'s (Iran), do not recognise *talaq al-bid'a* (Coulson & Hinchcliffe, 1978 p.43), instead validity relies on it meeting specifications, accurate Arabic pronouncements of

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<sup>1</sup> This is a specified period of time women wait following divorce or death.

certain words and *'idda* must be observed (Ferdows, 1985 p.28). *Sunni* Islam recognises no such formalities, except for *'idda* (Ferdows, 1985 p.28).

Under Egyptian law, repudiation is the rejection or denial of the validity of a marriage contract, or responsibility towards a wife. Yet validity was dependent on him not being 'in a state of drunkenness or under constraints' (Article 1); it not being a form of 'interpersonal power-over' to constrain her; it not being a single pronouncement with gestures implying 'three-fold significance' (Article 3); 'intent to repudiate is clearly established' with no uncertainties (Article 4); and it occurring after consummation or in return for compensation, in which case it became irrevocable (*The Egyptian Gazette*, 12<sup>th</sup> March 1929 p.4). Whilst these conditions limited patriarchal power structures within 'interpersonal power-over' relations, the process itself was not eliminated; illustrating continued religious practises despite less religious language being used. Stipulations pertaining to *Radjii* (revocable) repudiation, except in certain circumstances, reinforce the gendered nature of divorce, indicating that minimal changes occurred in family law during this era with regard to 'interpersonal power-over' due to the continuation of patriarchal traditions. From this emerges hegemonic masculinity; legitimising such continuations (Connell in Cohn, 2013 p.4) with masculinity being dependent on men's ability to exert power and control (Kaufman, 1994 p.59); something which remains prominent throughout family law.

Serving as the Iranian counterpart, the Civil Code outlined permissible types of divorce (Sections 1143-1155 in Naqvi, 1968b p.361). It was only revocable when occurring before consummation; a woman was past child-bearing age; divorce occurred through *Khul* or *Mubarat* providing 'the wife does not demand the return of compensation (paid to the husband)'; and a third divorce following three 'consecutive matrimonial connections by way of recall or a fresh contract' (Section 1145 in Naqvi, 1968b p.361; Taleghany, 1995 p.167).

Additionally, it was forbidden if girls were under nine years of age (Ferdows, 1985 p.27).<sup>2</sup> Moreover, an irrevocable divorce protected against husbands recalling wives during *'idda* (Naqvi, 1967 p.242), indicating limits to male power in aspects of divorce. The use of *'obtain*' reinforces the female requirement to gain male permission in ending a marriage. Irrespective of eligibility in achieving one of these divorces, men were financially *'compensated*' following both. Compensation, usually as recognition of a loss of something, introduces business connotations to the dissolution of a marriage whilst simultaneously reinforcing patriarchal power structures and speaking to restrictions on female resource access and emphasising male economic privilege (Friedl, 1991 p.195).

Egyptian law recognises several variations of *talaq* (NWRO, n.d. p47). However, in the case that the wife be the claimant, *talaq* occurs by a third party (*tatliq*), therefore removing the possibility of female divorce, placing it in the hands of a *qadi* (judge) who appoints male arbitrators. The ultimate decision thus remained a male jurisdiction, with religious traditions continuing despite increasingly secular language in laws. The process of divorce or the inclusion of a third party contained certain conditions and had three different classifications. The first was revocable, which was applicable to a single divorce, whereby the husband *'owns the right to take back his divorced wife to the marital bond*' during *'idda* without a new contract regardless of her acceptance (NWRO, n.d. p.47). Linguistic similarities with the Iranian Civil Code emerge here, with *'owns*' denoting male possession and subservience of women. The other two classifications are minor and major irrevocable. The former was reliant on the wife's acceptance of returning to him, thus removing the notion of male

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<sup>2</sup> *'Khul* divorce is one which a wife obtains from her husband due to the hatred borne towards him against payment of some money to the husband, whether the money is the dower itself or its equivalent, or more or less than it'; whilst *Mubarat* 'is one in which there is hatred in both the parties, but the compensation (paid by the wife to the husband) shall not exceed the amount of dower' (Sections 1146-1147 in Naqvi, 1968b p.361; Taleghany, 1995 p.167).

ownership. This required a new marital contract and *mahr*<sup>3</sup> if the wife agreed to return, and could occur at any point. The latter refers to divorce following the third pronouncement by the husband, whereby he had no claim over the wife and could not take her back unless she had remarried, consummated it, and it had legally ended (NWRO, n.d. p.47); limiting hegemonic masculinity, but indicating diverging masculinities based on individual capabilities (Kaufman, 1994).

In examining types of divorce it becomes apparent that, in both Egypt and Iran, business undertones emerge through language, subsequently reinforcing a co-existence of patriarchal power structures, with economic factors and permissions fortifying its gendered nature through the positioning of men on a higher platform to women; thus underpinning the patriarchal nature of family law and reinforcing power structures, however, in this instance it is the state. Whilst reflecting the multifarious nature of patriarchal power structures, it also evidences the effects these had on men through the state's limiting of their abilities.

### *Initiating Divorce*

In understanding the effects of the secular nature of the state on women's divorce rights, the prominent emergence of a public female consciousness during the first three decades of the twentieth century in both states is significant, as it coincided with secular influences prominently challenging the status quo and governmental responses. The ease of male divorce is a key concern in the family laws of Muslim countries, with it being understood as a threat or punishment (Colliver-Rice, 1923 p.91). Should a woman suggest divorce, her husband could punish her by withholding *mahr* which she would receive when divorced by him (Colliver-Rice, 1923 p.91), thus speaking to Yoder and Khan's (1992) interpersonal

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<sup>3</sup> *Mahr* refers to the customary payment of money, or goods of the equivalent value, to the bride when married. This amount is determined prior to marriage and is written into the contract. The closest translation to English is 'dower'. The main difference between the two terms however, is that *mahr* is compulsory in Islamic marriage, whereas dower was optional and usually paid upon death of the husband.

power-over and the notion of male ownership. This also referred to paternal authority in the dissolution of his daughter's marriage which, along with male jurisdiction over divorce, began to be challenged in Egypt. However, paternal annulments were simplified through evidence that the husband was of an 'inferior social status' (Kholoussy, 2010 pp.112; 114), therefore indicating variations in male power (Kaufman, 1994). Class thus accompanied sex as crucial determinants of women's social positioning (Bethke Elshain, 1981), with a man's lower social status representing a potential hindrance, and paternal engagements evidencing male susceptibility within patriarchy.

Despite religious traditions preventing female divorce, contractual stipulations provided opportunities for women to seek divorce should they be broken; indicating that a limited form of 'power-to' was emerging within each state alongside social secularisation. This is evidenced in Egypt prior to 1920 by Huda who, at the age of fourteen, left her husband having discovered he had returned to his pregnant concubine, despite stipulations that the marriage be monogamous; they were separated for around seven years (Sharawi Lanfranchi, 2012 p.29). For Fay (2003 p.94) it is important to recognise *Huda's* decision separate from Ali prior to meeting Europeans and her intense self-education; indicating a growing secular, feminist consciousness detached from direct Western engagements. Huda's decision to separate was 'by no means typical of other young women' (Badran, 1986 p. 18), thus suggesting a break with conformity, the emergence of her own feminist identity and a clear understanding of her rights based on the stipulations. However, her position within the upper middle class echelons of society would have provided her with a different form of access and agency, as well as being educated by European tutors at a young age.

Whilst the right to initiate divorce was applicable to both sexes, certain criteria had to be met for women. This included evidence that suffering had been inflicted due to polygamy, inability of the husband to financially support her (and children), disappearance,

imprisonment and abuse. The provision of evidence not only reinforces divorce as a male realm within the patriarchal structuring of the family, religious interpretations and the state, but it also speaks to religious understandings that women are half as valuable as men (Qur'anic verses 2:282 and 4:11 in Ali, 2000 pp.37; 61) without directly citing texts. Consequently, women were positioned at the intersection of the patriarchal legal system and familial structure, whereby their rights remained embroiled within patriarchal structurings of the public and private spheres. This also reflects religious underpinnings of secularly presented laws, resulting in increasingly social secularisation through cultural rather than legal traditions, such as stipulations in Egyptian contracts.

In both states, general provisions for divorce were outlined, stating that a husband may divorce his wife whenever he wants, but it only occurred when the necessary words had been said in the presence of two male witnesses; an 'authorized agent' may also say these words. He must be of sound mind with genuine intention to divorce 'and free', or should he be permanently insane his guardian may divorce his wife for him providing it was in his best interests. From 1925 onwards in Egypt, repudiation was proscribed and legislation was geared more towards discouraging separations (Badran cited in Sadiqi and Ennaji, 2011 p.135). In Iran, divorce could only end permanent marriages, with temporary marriages requiring the husband to waive the remaining duration of their contract (Naqvi, 1968b p.359). Divorce validity was also dependent on knowledge of menstruation at the time, or three months passing since intimacy if menstruation did not occur (Naqvi, 1968b p.359; Taleghany, 1995 p.166).

Unlike Egypt, where stipulations were 'social', the Iranian Civil Code stated that should stipulations have been included, and it later became apparent that the party did not have 'that particular quality', then the contract was revocable (Section 1128 in Naqvi, 1968b p.359).

Revocation must be sought immediately after learning of the cause; otherwise the marriage remained valid (Section 1131 in Naqvi, 1968b p.360). Linguistic vagueness however, introduces potential issues. Stipulation specificity indicates potential for the ease of male divorce. Moreover, the flexible nature of 'immediately' allows room for a spouse to challenge the duration of knowledge. Additionally, a 'certificate of non-reconciliation' was applicable to the wife who 'had the power of attorney to repudiate herself if her husband did not abide by the stipulation(s) included in the marriage contract' (Marriage Act Section 4 & Civil Code Section 1119 in Naqvi, 1968a p.159; Taleghany, 1995 p.163; Vatandoust, 1985 p.116).

As in Egypt, gendered Iranian laws were also 'challenged'. Iranian Princess, Taj al-Sultaneh referred to 'my separation from my husband' (al-Sultana/Vanzan & Neshati, n.d./2003 p.216), with Amanat (in al-Sultana/Vanzan & Neshati, n.d./2003 p.217) referring to it as 'her divorce'. Whilst divorce occurred and no stipulations in the contract were recorded, similarities lie with Huda as they played prominent roles in their divorces. What is further emphasised is that both women are understood to have broken with conformity by initiating each process. This speaks to class, with Huda's upper middle class upbringing and Taj as royalty would have provided different forms of access and agency to those in different societal positions (El Guindi, 2003 p. 591); as well as the dual feminism Ahmed is understood to have recognised, thus removing the monolithic structure of the Egyptian movement, with Huda representing the first, Western focused strand (El Guindi, 2003 p. 531). Legal restrictions however, could mean Taj initiating and him granting her a divorce. The inability of Iranian women to divorce their husbands is further emphasised by Sattareh (1993 p.136) who highlighted this legal disadvantage when recalling Reza Shah and his determination 'to create the appearance of emancipation'. This indicates a façade to international observers as a way of 'addressing' demands and presenting a secular

environment whilst ensuring ‘power-over’, limiting ‘power-to’ and safeguarding the continued positioning of family law within a religious frame. Thereby creating ‘secular public’ and ‘religious private’ spheres and speaking to the privatisation of religion (Ferrara, 2009 pp.78-79), as well as Asad’s (2003 pp.227-228) notion of a ‘secular formula’. This simultaneously reinforces notions of ‘social’, rather than explicitly political, secularism occurring as a result of Iranian ‘modernisation’.

### *Economics and Health*

Financial and medical factors also enabled women to seek divorce under Egyptian Law 24/1920 (Sadiqi & Ennaji, 2011 p.135). Whilst indicating a relaxation of Egyptian divorce laws, strict criteria which later became law under sections 1120-1142 of the Iranian Civil Code of 1928 (Naqvi, 1968b p.358), reinforced the legally recognised patriarchal stronghold. Insanity and ‘blemishes’ were recorded as grounds for either party to revoke a marriage (Sections 1121-1127 in Naqvi, 1968b p.358; Taleghany, 1995 pp.163-164), however, the absence of specificity for intermittent periods of insanity – whether it was measured by frequency or duration – once again leaves individuals vulnerable to interpretation. Male blemishes refer to those which ‘prevent him from fulfilling the duties of husband’; whereas the second referred to ‘blemishes in a woman’ (Sections 1122 & 1123 in Naqvi, 1968b p.358; Taleghany, 1995 pp.163-164), with double the number being recorded for women. Not only does this make it easier for health to be used for male divorce, but it also speaks to perceptions of female value (see Qur’anic verses 2:282 and 4:11 in Ali, 2000 pp.37; 61), once again reinforcing religious texts without directly citing them; thus indicating the possible secularisation of language. Subsequently, the Iranian government’s prerogative to ensure the health of the couple, and a healthy base for society was reinforced, with their approach to

health being more comprehensive than Egypt's, thus illustrating the reach of the government into the private sphere and the religious underpinnings accompanying this focus.

In 1921, Egyptian women gained the right to sue for divorce when husbands were found guilty of *darar* (mistreatment), which later became law in Iran 'and the judge shall compel her husband to divorce her' (Section 1129 & 1130 in Naqvi, 1968b p.359; Taleghany, 1995 pp.164-165). The use of 'compel' indicates the removal of male 'interpersonal power-over' women and his 'power to' take her back or refuse her divorce; thus limiting patriarchal power within a relationship whilst simultaneously reinforcing its presence through external actors such as the *qadi* (judge) and emphasising differences, as espoused by postcolonial thought (Olson, 1998), in the gender variable. Later, Egyptian law (1929) introduced additional grounds whereby women could gain a judicial divorce because of *darar*, and reconciliation was not possible (Kholoussy, 2010 p.97). Absence and imprisonment were also grounds to request a divorce *Bain* should he be away without 'legitimate' reasoning for more than a year and no communication was possible or his sentence was for more than three years after a year's waiting period (Articles 12-14, NWRO, n.d. p.60). The term 'legitimate' once again illustrates linguistic ambiguity, with the role of the *qadi* reinforcing male predominance in this area of family law and implying male decisions with regard to the legitimacy of male absence.

Interestingly, this reflects all three of Yoder and Kahn's (1992) power typologies. Firstly, both male and female 'power-to' are evidenced through a woman's ability to initiate divorce proceedings and male capacity to permit or deny this request. 'Power-over' is reflected through government structures which frame divorce. The 'physical' patriarchal nature of the state is thus embodied in the *qadi* who has ultimate 'power-over' both spouses in validating divorce. Finally, female 'interpersonal power-over' is partially reflected when absence or

imprisonment has occurred due to her ability to request a divorce and the apparent absence of male spousal power.

### **Polygamous Relations**

Prior to the introduction of Law 25/1929, the effects of secularism became increasingly visible in both countries, with groups such as the Egyptian Feminist Union (EFU) staunchly advocating gender equality in the public and private spheres. Some proposals related to restrictions on easy male divorce and eliminating polygamy (Talhmi, 1996 p.11). Whilst the latter was not eradicated, it is arguable that the inclusion of a single article providing women grounds to request a divorce based on the injurious nature of a subsequent marriage, was a response to the demands being made. Defined as the taking of no more than four wives, (NWRO, n.d. p.60), polygamy was unregulated in Egypt, except in Article 11 of Law 25/1929 which outlined a woman's right to request divorce (NWRO, n.d. p.60). Similarly, under Iranian law the conditions which permitted polygamy, but no more than four wives, were not explicitly stated (Naqvi, 1967 p.245). Should it be known that he was already married, it was possible for her to insist that the first marriage be dissolved (Colliver-Rice, 1923 p.121), as has been evidenced in Egypt by Huda's experience. This reinforces the notion of 'power-to' and a more prominent feminist consciousness affected by secular influences in society following colonial engagements (Jayawardena, 1986; Hegde, 1998), whilst speaking to Ferrara's (2009) public, political secularism.

### **Wellbeing**

Whilst only men could have polygamous relations, the effects were recognised in both Law 25/1929 (Egypt) (NWRO, n.d. p.60) and the Iranian Civil Code (1119 in Naqvi, 1968a pp.157-158; Taleghany, 1995 p.163), with a year after each marriage for petitioning to begin. Female wellbeing emerges prominently, with divorce requests being permissible due to

‘physical or moral harm’ making cohabitation impossible (NWRO, n.d. p.60). This reinforces female wellbeing within the family, the limiting of men’s ‘interpersonal power-over’, whilst emphasising the state’s ‘power-over’ relationships within the private sphere. Government responses to calls, originating from increasingly secularised environments, to abolish the practice, illustrates recognition of the detrimental nature of polygamy on some women.

Despite indicating leniency through the female right to petition for divorce, the conditions indicate strong patriarchal overtones upon which this was based; with evidence of irreconcilable damage being required and this did not guarantee her request for a divorce (Talhami, 1996 p.115). Primarily, this new law introduced a more ‘equal’ grounding for divorce, so far as it permitted women to request one, with Iranian law outlining a woman’s right to divorce herself on her husband’s behalf should cohabitation become intolerable (Section 1119 in Naqvi, 1968a pp.157-158; Taleghany, 1995 p.163). Whilst this provided women with a means for achieving divorce, should it transpire it occurred on the husband’s behalf, a *qadi* must have approved it prior to enactment (Naqvi, 1968a p.131).<sup>4</sup> However, limitations remained in both states, with the patriarchal power structure of the family as reproducer of such formations being reinforced due to male authority determining the validity of the claim and outcome, thus reinforcing the linguistic rather than political effects of secularism on gender equality in this domain. This speaks to Iranian separatism (Başkan, 2014 pp.147-148), whilst simultaneously reinforcing secularism as being the ‘retreat of religion from public life’ (Taylor, 2007 p.247), and the intersecting oppressions experienced by women within such power structures (Collins, 2005).

The focus on polygamy stemmed from experiences of some prominent women, such as Huda and Nasif who ‘submitted to family arranged marriages and eventually had to contend with

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<sup>4</sup> The words ‘whenever a husband marries another woman’ were removed from Section 4 of the Marriage Act, thus revoking the woman’s right to divorce her husband should the relationship become polygamous as was previously afforded to her in the Civil Code (Naqvi, 1968a p.131).

polygamous husbands' (Hatem, 1989 p.185). Similar voices were also emerging across Iran, however, Reza Khan did not abolish the practice, rather minor reforms were made and repeatedly altered between 1926 and 1940 (Sanasarian, 1982 p.61). The failure of Reza Khan to abolish polygamy and the token changes which were made to divorce laws suggests creating an illusion to observers, whilst maintaining rigid patriarchal power structures within the state. Internal secularism is thus evidenced through emerging feminist voices and 'reforms' made at the state level. This reinforces female positions within society through their developing agency and state responses to maintain control over women whilst creating the illusion of modernisation and (gender) reform.

### **Economic Considerations**

Two different areas of financial concern relating to divorce are maintenance and alimony. Egyptian Law 25/1920 provided additional grounds for divorce due to the legislators adopting aspects of the more liberal *Maliki Shafi'i* school (Kholoussy, 2010 p.93). These clauses related to the husband's failure to provide financial support, and his absence or illness; thus providing a more permissive tone. It also determined that the waiting period of an ex-wife, who was not breastfeeding or expecting a child could not exceed one year, even if her menstrual cycle did not return (Kholoussy, 2010 p.93).

#### *Maintenance*

When divorced, women were entitled to claim any unpaid *mahr*. If it was not provided, she had to file a civil suit to obtain it. Additionally, she was entitled to continued maintenance, but only during her *'idda*, and had no right to apply for additional financial support after it ended (Coulson & Hinchcliffe, 1978 p.43). Under *Shi'i* law however, *faskh* and *khul* divorce do not carry the same financial conditions. *Khul* grants women the right to seek divorce due to married life becoming intolerable, and requires her to relinquish any outstanding payments

owed and maintenance during *'idda* (Ferdows, 1985 p.26). Divergently, *faskh* is revocable. Predominantly, *Shi'i* scholars believe 'divorce is a natural right of man' and the enforced patriarchal nature of this aspect of family law is because of women's perceived weakness and the need to protect the family (Ferdows, 1985 p.27). Thus religion underpins laws which were increasingly presented through secularised language.

Under Iranian Law, however, a woman's status was prominent in calculating maintenance in a permanent marriage (Articles 1106 & 1107 in Naqvi, 1968a p.156; Taleghany, 1996 p.161), thus contrasting Egyptian Law and reinforcing the importance of class in identity (Mills, 2005). What remains curious however, is whether it is the result of diverging schools of Islam being followed, or the differing effects of secularism and reforms which were made as responses to public calls for increased gender equality and colonial interactions. Revocation of maintenance only occurred if there was no legal justification for her refusal of duties or she was observing *'idda*, unless she was pregnant (Articles 1108 & 1110 in Naqvi, 1968a p.156). The following three sections specified responsibilities within temporary marriages, with maintenance being a reformed area. Initially stated that maintenance had to be stipulated prior to a temporary marriage, or the marriage was based on this, men were not obliged to provide this financial support (Articles 1111 & 1113 in Naqvi, 1968a pp.156-157), this did however, change following the implementation of the Marriage Act which removed the words 'in a permanent marriage', thus extending male financial responsibilities to all marriages. Whilst this did not eradicate the detrimental nature of these marriages to a woman's social standing, it did reduce their harmful effects by ensuring women were financially supported.

Alterations also resulted in courts giving 'a religious sanction' for divorce should a man have failed to maintain his wife (Article 1112 in Naqvi, 1968a pp.131-132); thus partially challenging an Iranian separationist identity (Başkan, 2014). In instances where there were other claimants, or a man was financially incapable of making payments, a wife took priority.

The difference between a wife and other claimants was her ability to demand back payments, whereas the others could only demand future disbursements (Articles 1203 & 1205 in Naqvi, 1968b p.283).

### *Alimony*

Law 25/1920 (Articles 16 & 17, *The Egyptian Gazette*, 12<sup>th</sup> March, 1929 p.4) outlined gendered requirements for alimony payments. These were calculated on a man's financial status, irrespective of a woman's situation, with one year being the maximum claims period. This illustrates male financial responsibilities to an ex-wife during *'idda*, and his continued financial duty to her despite *talaq*. Moreover, the introduction of other *Sunni* schools into divorce legislation indicates recognition of the rigid structure and conditions of the *Hanafi* school, thus acknowledging the more liberal, and the potentially equal nature of the other schools. What is interesting is that whilst religious scaffolding was maintained, the adoption of this approach within Egyptian law indicates the possible filtering through of secular influences and the adoption of this school in regulating family law; thereby reinforcing the secularisation of legal vocabulary without separating religion and politics.

Male financial responsibilities also extended to children, with grandfathers, or other immediate male relatives, inheriting this responsibility in the case of death or financial incapacity. Should there be no male relatives, then it was reallocated to the mother or maternal grandparents (Naqvi, 1968b p.282). Children needed to be born within 10 months of separation, the mother not remarried and the birth occurring within a specified time frame since the couple last had intercourse (Section 1159 in Naqvi, 1968b p.284). These were then used to determine paternal maintenance to a child should the mother have remarried (Section 1160 in Naqvi, 1968b p.284). The patriarchal nature of the family and the financial onus placed on the husband are thus reinforced, indicating that gendered laws hindered both sexes

due to female seclusion and an inability to contribute financially; thus speaking to the need to research both male and female experiences (Stanley & Wise, 1993). It also reinforced the state's 'power-over' individual rights and family regulations within the private sphere, thus politicising the private and bringing it into the public, political domain; combining religious and secular elements.

### **Findings: Equality in the Dissolution of a Marriage**

General provisions in both states, outlined *talaq* as legally recognised however, only Egypt acknowledged *talaq al-bida*. Instead, Iranian law required specific criteria and pronouncements. The differences in recognition of this type of divorce are also reflected through the different schools of Islam. Sunni Islam (Egypt) does not have formalities regarding divorce and its validation, with the exception being *'idda*. Contrastingly, Shi'i Islam (Iran) has a more rigid framework, which is also reflected in state regulations surrounding revocable divorce. Moreover, the patriarchal power structure of the state and the family is emphasised through laws outlining the role of the *qadi* and paternal authority in annulling a marriage due to a man's inferior social class, thus emphasising class as an intersecting variable in experiences and establishing identity (Lewis & Mills, 2003). Moreover, the state's scaffolding for the family speaks to Asad's (2003 p.227) understanding of it as the social unit within which the private individual develops for public participation.

Echoing this understanding of the family's position within society are legalities pertaining to health. Whilst observable in both states, it emerges most prominently in Iranian law. Blemishes as grounds for divorce are listed for both sexes, but the 2:1 ratio for women to men reinforces male superiority. What this governmental reach into the private sphere through the politicisation of bodies within family law indicates however, is the importance of the familial structure in ensuring healthy foundations for society, and this is also reflected through the

importance of the strength of this unit to a strong society. Closely tied to this is wellbeing, specifically physical, mental and financial. Whilst women's rights were limited, these elements reinforced constraints on men with regard to *darar*, the effects of polygamy, and economic responsibilities.

What is interesting is the absence of religious language. Although the patriarchal structuring of family law remained prominent and direct correlations with the perceived superiority of men as outlined in parts of the Qur'an are evident, the absence of religious citations indicates the secularising of language. Moreover, the absence of religious criticism from movements calling for reform indicates that whilst religious understandings were not removed from these laws or individual experiences, the secular nature of the language used illustrates recognition of public voices.

Despite the apparent linguistic secularisation of laws, the rights afforded through reforms continued to reinforce the family's patriarchal structure, whilst simultaneously limiting men's 'interpersonal power-over' in some instances. The primary reforms which occurred pertained to a woman's right to request divorce. In Egypt, these reforms addressed some of the concerns raised by groups such as the EFU by restricting the ease of male divorce and the detrimental effects of polygamy serving as a justification. One of the first areas addressed in 1920 was male financial responsibilities and this was achievable through the adoption of the Maliki school of thought. Within a year, *darar* became grounds for women to sue for divorce, with the 1929 amendments enabling women to obtain a judicial divorce; with absence and imprisonment later being included.

Similarly, Iranian reforms reflected the effects of hostile living environments and permitted women to divorce themselves on behalf of their husband, however, this remained a male domain with validation from a *qadi* being required. However, the Marriage Act removed a

woman's right to divorce due to the injurious nature of polygamy, whilst simultaneously providing financial inclusiveness for women in temporary marriages.

Whilst reforms in both states primarily introduced grounds for female requests for divorce to occur and male restrictions were implemented with regard to ease of divorce, an interesting observation is that both state's reforms moved to reflect more liberal financial stances. The key observation here however, is that Egyptian reform occurred due to the adoption of a more liberal school of Sunni Islam, whereas the Iranian did not. This suggests that the effects of the secular nature of the state impacted women's rights in divorce, not only through language, but also how state authorities chose to engage with the state religion.

Three key observations can also be made from this analysis. First is the impact of the secular nature of each state, which hinges upon interactions with colonising powers, on women's rights in divorce. Here the Egyptian adoption of *Maliki* Islam is interpreted as reflecting a shift to 'compromise' with colonising authorities and thus the externally secular nature of the state; whereas Iran's 'liberalising' move in the same area reflects the internal nature of secularism and the desire to change appearances without changing policy.

The second is how governments and civilians utilised secularism as a tool for challenging and seeking power in relation to gender equality in this area of family law. In both states, reforms represent an appeasement mechanism to quell public animosity towards existing policies without relinquishing control, whilst reinforcing elements of the first observation. Civilians however, appeared to utilise secularism to challenge colonialism and religious interpretations through revolutions focusing on nationalism and gender equality; thus simultaneously challenging the multifaceted nature of patriarchy. The third observation pertains to each state's political environment. This incorporates elements of the previous two, and focuses predominantly on diverging instabilities regarding civil unrest and the effects of colonial

powers. The difference in colonial status of each state is pivotal for the political environment, hinging on different state engagements with them and perspectives on modernisation. Ultimately, the Egyptian political instability resulted from its colonisation, whereas Iran's emerged from internal dissatisfactions, power struggles and individual aspirations.

When a gendered lens is applied, the distribution of rights between sexes becomes apparent. Within general and financial provisions, men are afforded a total of four rights. Both sexes were restricted in four areas, shared one right, and women were granted four rights. This total emerges following legal reforms, with an apparently equal ratio of rights granted to men and women emerging. Despite this apparent 'equality', women's rights were not complete due to the continued predominance of male validity in all aspects of divorce. From this, the cumulative ratio emerges as 4:2 (men:women), once again speaking to women's perceived inferiority.

Many reforms occurred in response to civilian demands, and whilst feminist movements appeared to achieve limited change, their secular nature influenced the partial changes which have been observed, with the secular nature of the state influencing the manner in which this was achieved. Unfortunately, the incomplete nature of these reforms in reducing patriarchy's presence reinforced the shadow status of women.

## **Conclusions**

Despite challenges to family law reform and its sustained positioning within *Shari'a* law, reforms have continued in both states into the twenty first century. Egyptian law 25/1925 was amended in 1979, 1985, 2000 and 2004. In 1971, debates emerged surrounding the inclusion of *Shari'a* law in the new constitution, and family law amendments were proposed. In 1979, revisions to Personal Status Laws legalised divorce on the grounds of polygamy, providing women with a one year period within which they could act. These amendments were

however, reversed in 1985 as authorities ruled that they were unconstitutional due to the people's assembly not having been in session. Women thus lost their automatic right to divorce if men took another wife; they could however, petition but a *qadi* would only grant it if it were in the best interests of the family.

Concurrently, Iranian marriage contracts saw the inclusion of twelve stipulations providing women with grounds for divorce, but only if the husband signed them all (Keddie, 2001). Whilst these conditions were not as substantial as those outlined in the Family Protection Law (1967), some conditions were reinstated following its annulment in 1979. These conditions included the establishment of special courts to decide on family disputes, and later, child custody; and the permission of courts to allocate up to half the property acquired during marriage to women if they were divorced against their will (Keddie, 2001). Later reforms resulted in the provision of government funding to assist women with the 'upkeep of needs' (1985 Bill, Keddie, 2001), and in 1989 limitations were placed on divorce with court permission having to be obtained prior to registering it.

These later reforms are indicative of a broader pattern of engagement between divorce laws and secularism. Secular stability, reflected through implementation methods and thus its internal or external nature, is pivotal in understanding MENA state's engagement with secularism and government reform; as evidenced by Iran making fewer changes and presenting a stronger form of secularism. Thus speaks to a potentially broader pattern across the region whereby the religious or secular stability of a state not only impacts gender equality in family law, but also reform survival.

With this research's findings and recognition of fluctuations in a state's religious identity as the twentieth century progressed, which is evidenced in later legal engagements with gender equality and divorce, the role of secular language and the secular nature of the state become

increasingly visible. The analysis conducted, illustrates that the secular nature of the state did impact women's rights in divorce and this was achieved in three ways. Firstly, secular introductions and can be subdivided into categories of social and state factors. Social introductions of secularism, in both Egypt and Iran, refer to challenging state interpretations of Islam, with state introductions both relating to interactions with the West through direct colonisation (Egypt) and increasing Western influences globally (Iran).

The second conclusion pertains to the use of secularism as a tool to challenge power. Socially, individuals and movements within both states utilised secularism as a framework within which they could seek greater gender equality and challenge state authority. At the state level, we see colonial engagements impact the way in which a state was able to utilise this framework, and thus the secular nature the state adopted. For Egypt, the power being challenged was the British Empire; with an increasingly public, secular engagement permitting the continuation of stronger religious dynamics within the private sphere. Conversely, Iran, sought to increase the power and influence of the state at an international level without relinquishing control over its citizens. For each state, this meant that religious imperatives could be maintained within family law. In Egypt, this was due to the reluctance of imperial powers to engage with matters of the private sphere; with secularism affecting women's rights in divorce through it resulting in the separation of religion from politics (public) and the relegation of religion to the private sphere with an outwardly facing secular identity due to the language employed. In Iran, this resulted from the Shah's great power aspirations for the Iranian state; with secularism referring to the separation of religion from the state. This again, resulted in an outward facing secular identity for policies as well as appearance, with religious overtones being masked by secular language and non-religious, Western appearances.

The third conclusion to be drawn from this research is the motivation behind these differing state engagements. Egypt utilised secularism in this manner, thereby developing an externally secular identity, as a means of maintaining power, and an Egyptian identity, whilst colonised; whereas Iran sought to elevate its international standing. Overall, diverging engagements with secularism, which resulted in different identities emerging, were underpinned by similar rationales and permit the emergence of two key similarities. First, when considering motivations, challenging colonialism emerges as more significant due to state images and a state's overall self-determination within the broader arena. Secondly, secularism affected women's rights in divorce by masking religious overtones, whilst firmly embedding family law within *Sharia* Law. Social engagement with secularism resulted in some alterations, with Egypt's adoption of *Maliki* interpretations indicating different engagements with movements. The effects of secularism can therefore be seen through state responses to Western influences and gender equality movements. The effects of the secular nature of each state on women's divorce rights were the same, with secularism being employed linguistically to address the increasing pressures and influences, internally from movements, and externally from Western powers.

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