

ISSN: 2788-8037

Publication details, including guidelines for submissions:

<https://rowaq.cihrs.org/submissions/?lang=en>

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To cite this article: Samir, Marina (2022) 'Intertwined Hierarchies: The Intersection of Religion and Gender in the Personal Status Laws of Orthodox Copts in Egypt', *Rowaq Arabi* 27 (1), pp. 63-80. DOI: 10.53833/ZJAH6427

To link to this article: <https://doi.org/10.53833/ZJAH6427>

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Intertwined Hierarchies: The Intersection of Religion and Gender in the Personal Status Laws of Orthodox Copts in Egypt

Marina Samir

Abstract

This paper raises questions about the extent to which the demand for a uniform civil personal status law, as advocated by progressive forces in Egypt, shows consideration for the context of religious persecution. In presenting a historical review of milestones in legislation regulating the personal status of Orthodox Copts in Egypt from an intersectional feminist perspective, the paper attempts to lay bare the balance of power among the parties that contributed to framing this legislation. It offers a brief overview of the historical context of the personal status law in Egypt, followed by a history of the emergence of the Coptic Orthodox General Communal Council, which issued Statute 38, the law that has governed the personal status affairs of Christians since 1938. The paper then reviews relevant regulations, legislation, and papal decrees, as well as significant disputes between the church and state on divorce and remarriage for Copts. Finally, it discusses the interlocking hierarchies that shape the status quo: the hierarchy between recognised and unrecognised denominations, between the Coptic Orthodox Church as the ‘mother church’ and the Catholic and Protestant churches, and between the clergy and the laity within the Orthodox Church, as well as social hierarchies based on religious identity (Muslims and non-Muslims) and gender.

Keywords: Egypt; Marriage; Christians; Intersectionality; Personal Status Laws

Introduction: A Uniform Civil Personal Status Code

In the wake of the January 2011 revolution, the internet emerged as a new space for political organisation that change-oriented forces could use to spread their discourses and reach a wider mass base. This has had implications on feminist organising over the last decade, which reached its peak in 2020 and 2021. Women and feminists roundly rejected the draft personal status law for Muslims leaked in February 2021 and used two main hashtags—*#guardianship_is_my_right* and *#for_a_uniform_civil_personal_status_code*—to publicise their responses. The first hashtag, started by the Women and Memory Foundation,¹ received extensive engagement on social media,

and many women used it to share stories and testimonies from their personal lives. A petition was circulated under the second hashtag,² and as of this writing (November 2021) 12,900 signatures had been collected. As is clear from a review of the petition, the authors are committed to the principle of citizenship and gender and religious equality under the law and constitution. The petition rejects in principle any reference to religious laws in personal status codes regulating marriage, divorce, and family relations in Egypt, and it demands adherence to constitutional articles that ‘provide for equality between men and women, and prohibit discrimination on any basis between male and female citizens’. Despite the legitimacy of this demand under Articles 9, 11, and 65 of the 2014 Egyptian constitution (amended in 2019), the petition does not address Article 3, which states, ‘The principles of the religious laws of Christian and Jewish Egyptians are the main source of legislation regulating their respective personal status, religious affairs, and the selection of their spiritual leaders’. It also disregards Article 10 of the constitution, which states, ‘The family is the nucleus of society and its foundation is religion, morals, and patriotism. The state shall ensure its cohesion and stability and cement its values’. I neither reject nor applaud these provisions, but I cite them here because they represent the status quo as shaped by the existing balance of political and social forces. We must engage with this status quo as a political fact; it is not an unshakeable reality, but rather the embodiment of prevailing conceptions about the family, relations within it, and values that govern it. We should understand that the prevalence of these ideas is what allowed the consolidation of the status quo in the first place.

Article 3, which regulates the personal status of non-Muslim Egyptians, was introduced to the Egyptian constitution in 2012, written after the election of an Islamist-majority parliament and by a committee with an Islamic majority. The article was retained in the 2014 constitution, which was amended after the Muslim Brotherhood was removed from power. Some Christian activists denounced its inclusion in the constitution, asserting that it allowed the church to set itself up as ‘the ruler over Christians and arrogate to itself the right to rule on marriage and divorce’.³

We can see Article 3 as the response to Egyptian churches’ historical demand⁴ that Christian personal status matters be left to the church. In my view, this is one political actor’s response to a decades-long demand from another political actor; it is neither positive nor negative per se. Rather, we can see it as a concession by the state—the stronger party—in a moment of social and political flux in order to win over another strong social and political actor with the aim of restoring the state of equilibrium, albeit under different conditions. In other words, this concession reconfigured the relationship between the parties, but did not radically change it. Looked at this way, it is important to understand how the power of each of these parties was formed historically, the internal components of each one, and the basis on which the demand took shape as a negotiating card.

Likewise, we can see in the demand for a uniform civil law a political ambition to move beyond religion as a factor regulating social relations. This is a radical political strategy for Egyptian society, in which religion is a foundational social and political component of citizens’ consciousness, their relations with each other, and their relationship with the state. Nevertheless, despite the radical nature of this strategy and its progressive approach, it often fails to address the complex conditions produced by sectarian politics over time, or to offer solutions in the present

that do not conflict with the long-term goal and do not ignore power relations based on various social characteristics, including religious identity. Instead, this approach advances egalitarian slogans without elaborating a detailed way to achieve them in a reality governed by structural inequality. As a result, these slogans cannot mobilise a popular base, as many people may be unable to connect with a slogan that does not bother to offer solutions to their present concerns.

Here I am most interested in what feminist groups mean when they talk about intersectionality in the Egyptian context. Based on my own involvement in various feminist groups and debates, I have observed that instead of treating intersectionality as an analytical framework to be adapted to our local, historically determined social structures, we tend to reproduce social structures formed in contexts far removed from our own. One of the best examples of this is the inclusion of race in analyses of social relations in Egypt and the exclusion of religious identity and geographical location. In addition to religion, where an Egyptian citizen lives is one of the most important determinants of their life experiences, including their experience of persecution and oppression, as well as the opportunities available to them. The opportunities, services, and resources available to Egyptians who live in the capital are different from those who live outside it, and the same disparity holds for rural and urban dwellers.

In addition, class plays a pivotal role in determining individuals' opportunities and the forms of oppression they face. More importantly, it affects how they experience other aspects of their social formation. A wealthy Christian does not relate to his Christian identity in the same way as a poor Christian. Based on personal observations—which merit future research and study—Christians from poorer classes celebrate their Christian identity using their bodies as a space to affirm an identity distinct from the Muslim majority by tattooing saints on their arms and crosses on their wrists.⁵ This practice is not based on any Christian religious belief, in the sense that there is no doctrine requiring tattoos; rather, it is a method of social differentiation. Affirmations of identity are not limited to the human body, but extend to architecture as well. As I observed in two villages located in two governorates of Upper Egypt with frequent sectarian tensions, it is easy to distinguish Christian homes by crosses or the inscription 'God is love' on building facades. I have never seen anything like this among wealthier classes of Christians. I do not cite these examples to romanticise this 'celebration' of Christian identity. While the invocation of symbols of social differentiation may be a way to visibly resist the systematic persecution of Christians in Egypt, it may also be a manifestation of a sense of oppression. Why might a Christian feel they must prove their existence if they did not feel invisible or threatened with erasure on the basis of the identity whose symbols they invoke?

It is important to see the personal status law for Christians in Egypt from this perspective. Over time, marriage has become a manifestation of social and religious differentiation for Christians. The church, as a religious, political, and social institution, has contributed to the perception of Christian marriage as a foundation of Christian identity and belief, but the church is only one actor among many, and not the most powerful.

Before taking further steps to conceptualise tactics that feminist and leftist groups may employ to press the demand for a uniform civil personal status law, it is necessary to re-evaluate this

demand, insofar as it is a strategic slogan that affirms the principle of citizenship but does not grapple with the complexities of the status quo produced by sectarian policies in Egypt. For Christians, especially those from underprivileged classes, the church is not only a place of worship, but it is also a space for the formation of social ties that satisfy individuals' basic need for a sense of social and even physical security. The church offers athletic activities, excursions, camps, festivals, choir, skill-based courses, study groups, and Brethren of the Lord services (which provide support to the poorest Copts). Here, we must ask some questions given the centrality of the sanctity of marriage in the Christian faith: Can Christian women identify with the slogan 'a uniform civil personal status code'? How may this slogan be understood by Christians in Egypt given the religious persecution they face? Would some Christians hear it as a call to abandon a belief that is foundational to their identification with a persecuted religious minority? If a uniform civil personal status code were to be enacted tomorrow, what would be the social cost to Christians, in a context where the church plays a social and service role as well as a spiritual one? Who would be able to pay this social cost? If the demand were met, it would solve the problem of marriage and divorce among Christians, but might this also come at the expense of Christian women's other rights, such as the right to equal inheritance with male family members?

Study Methodology

This research paper uses the historical method, relying on Christian religious readings, whether texts about the general history of the church and the personal status laws of Orthodox Copts in particular, as well as texts on related topics such as marriage in the Coptic Orthodox faith, the priesthood, and comparative theology. It also draws on academic research and non-religious books that discuss the history of the personal status code, the context of its evolution, the history of the Egyptian state's relationship with the Coptic Orthodox Church, and the establishment of the General Coptic Orthodox Communal (*Milli*) Council.

In an attempt to understand the power relationships inscribed in the personal status law for Orthodox Copts, the paper adopts an intersectional analytical lens. It takes Orthodox Copts as an example to illustrate the political and social complexities surrounding the non-Muslim personal status law while acknowledging that there are numerous Christian and non-Christian religious minorities in Egypt, and no single analysis applies to them all. This paper focuses on milestones in the development of the non-Muslim personal status law from the end of the nineteenth century until 2010, a period chosen due to the structural changes— political, social, and legislative— experienced by Egyptian society at this time. It was also a pivotal era in the formation of the ecclesiastical discourse around marriage in the Christian faith, with Pope Shenouda III playing a key role. The paper does not cover the last decade, which in my view requires a separate study. In addition to the Egyptian revolution in January 2011, the death of Pope Shenouda III and Tawadros II's assumption to the papacy at such a critical political moment set in motion a fundamental shift within the Coptic Orthodox Church. Pope Tawadros II was viewed as taking a reformist approach

to divorce, and he met with resistance from the conservative current within the church. The aim of this paper is to highlight the historical roots of this resistance to ‘reform’.

The paper engages several key feminist concepts such as feminist solidarity and intersectionality as an analytical framework for social relations. Since a consideration of the position of the researcher and her relationship to the research topic is a feature of feminist research methodologies, I will dedicate a space to discuss my own position vis-à-vis the topic, which affected my treatment of the subject, my choice of sources, and my analysis of them.

In this study, I started from the questions that occurred to me as I followed feminist campaigns on the personal status law organised at the beginning of 2021. I felt that there were still unexplored aspects of the complex circumstances of Christians, especially Christian women, despite the detailed picture that these campaigns drew about the impact of personal status laws on women. I am well aware that my observation of this unconsidered aspect was motivated by my own religious background, my upbringing in a Christian environment, and my personal experience of Christianity, which goes beyond religious belief and is a core part of my social formation. This realisation has led me to think of systematic ‘invisibility’ as a basic mechanism of oppression, which often assumes subtle, unseen forms. A person may not be aware that something is invisible unless she already knows it exists, but how can she know it exists if it is unseen? I think that progressive political groups often fall into such a vicious circle when they try to include socially marginalised groups. Understanding the mechanism of invisibility in this way may be a simplification, for it does not necessarily take an absolute form. For example, the existence of a certain group may be recognised, while its culture continues to be suppressed or obscured. Or perhaps is not suppressed, but the experiences of its members remain undiscussed or unfamiliar to the majority. These life experiences may be seen, but their drivers and the manifestations of power they represent may not be understood. Sometimes the recognition of an inclusive, uniform identity can itself conceal the diversity of life experiences of its different components. The universal identity obscures the differences in the group and the underlying conflicts within it. It is treated as a monolith with the same interests and outlooks, and is subject to the same one-dimensional analysis and understanding.

I believe that breaking this vicious circle begins with an acknowledgment of ignorance, which is a necessary but potentially insufficient condition for breaking the cycle. Acknowledgement should be coupled with a genuine desire to research and learn, the practice of genuine listening and an effort to understand, and a willingness to question everything we might take for granted. There must also be a recognition that this process does not end when one attains a certain amount of knowledge or insight; it is a continuous, on-going process. These are the foundations of feminist solidarity as I know it.

I admit that I was ignorant of several aspects of the personal status law for non-Muslims, in particular for Orthodox Copts—the subject of this paper. I therefore embarked on a journey of research in an attempt to test the soundness of my questions, with the aim of sketching a broad outline that may help us to map out a starting place that we can build on in the future.

This research paper covers historical milestones on the path to our current moment. It offers a brief history of the personal status law for non-Muslims without delving into all relevant historical details. It includes an overview of the context in which the personal status law emerged in Egypt and a brief summary of the conflict between clergy and laity over the establishment of the Communal Council. It further attempts to recount the most significant crises between the church and the state as pertains to the personal status law for Egyptians, in light of contemporary incidents of persecution against Christians. I consider this research paper an invitation to pause at, interrogate, and review strategies adopted by the feminist and leftist political forces to which I belong. I believe that it could be a starting point for posing such questions, which must be further elaborated on in the future by talking with Christian women from a variety of social and professional backgrounds and different geographical and class positions.

Context of the Genesis of the Personal Status Law in Egypt

The personal status law written in Egypt in the 1920s was the product of the numerous social and political changes of the preceding century. According to historian Kenneth M. Cuno in his book *Modernizing Marriage*, the first attempt to codify the personal status of Muslims in line with the Hanafite rite was undertaken by Mohammed Qadri Pasha⁶ in his 1875 book, *Sharia Provisions in Personal Status*, published in Arabic, French, and Italian⁷ and used as a reference⁸ in the mixed courts.⁹ The law as written by Qadri Pasaha cemented the belief that the family and domestic sphere were domains of religion.¹⁰ As Cuno relates, the law was quite influential for several reasons, among them the delay in drafting a personal status law, despite official discussions since the 1890s about the need for it.¹¹ Qadri Pasha's law was taught in the Faculty of Law as a source and reference for Muslim family law. Since many nationalist leaders in the late nineteenth and early twentieth centuries were graduates of law school, Qadri Pasha's law was their basic introduction to Muslim family law,¹² and this was in a context in which the family occupied a central position in 'modern' Egyptian identity. Indeed, the family had begun to be defined as the basic building block of society whose primary task was to raise children.¹³

At the same time, the Ministry of Justice asked the Patriarchate of St. Mark and other Christian denominations to chime in on issues pertinent to the personal status of Christians, such as marriage, wills, inheritance, guardianship, lineage, legal competency, bequests, and endowments. The Patriarch of St. Mark tasked Father Philotheos Ibrahim¹⁴ with formulating the rules regulating such issues in conformity with canon law. His work was printed for the first time in 1896 in book form as *The Legal Compendium on the Personal Status of Orthodox Copts*.¹⁵ While questions of personal status referred to in communal councils (for non-Muslims) and Sharia courts (for Muslims) had previously covered a wide range of issues, the scope of personal status began to narrow in the 1940s with new legislation, as some issues came to be governed by laws applicable to all Egyptians. However, some of these laws were not secular, but rather based on Islamic law (Sharia).¹⁶ The invocation of Islamic law in issues that had previously been considered a core part of personal status, such as inheritance and wills, consolidated the principle that the standard frame

of reference for legislation was the Islamic faith. This in turn established a power dynamic in which the Christian community was seen as a secondary group in Egyptian social formation without the right to regulate relations within it according to its own religious laws or even positive law.

This took place at the moment in which the project for national independence was crystallised. This project did not transcend religious identity or sectarian affiliation, on the contrary, it was based on the union of various components of Egyptian society—the ‘two poles’ of the nation, as reflected in the Wafd Party slogan ‘Long live the crescent with the cross’.¹⁷ After a long history of non-Muslim exclusion from Ottoman state institutions, the prominent position of Copts in the Wafd Party was something of an anomaly. Even so, the party discourse did not present Coptic culture as part of the nation’s culture.¹⁸

The period reviewed above is the context in which sectarian segregation in personal status was cemented, which took place in tandem with the formation of the modern Egyptian nation state. Three factors emerging from this context helped to shape our current status quo in personal status. Firstly, the family is the basis of society and the fate of the nation is its fate. The forces controlling its formation and managing relations within it reflect the composition of this ‘nation’ and power relations within it. In turn, the family became a vital element in the creation, reproduction, and formation of national identity. Secondly, the family resides in the domain of religion, not secular law. In turn, the family in the national project was taken as a space for religious differentiation. The parties regulating relations in it were not equal in power; they were rather conceived as a Muslim majority and a Christian minority. Thirdly, the national project did not transcend religious identity as a basic component of national identity. On the contrary, it presented religious difference as a union of the two elements of the nation, and although its discourse focussed on political commonalities between Muslims and non-Muslims, it did not devote equal attention to highlighting Coptic heritage as part of Egyptian identity.

The Authority of Canon Law between the Clergy and the Laity

Canon law has two types of sources: primary sources (common to all orthodox churches), which consist firstly of the Bible¹⁹ followed by the Didascalia,²⁰ then the decisions of the ecumenical councils, followed by the teachings of famous church fathers. Al-Safi bin al-Assal compiled the customary collections of canon law, which include provisions from various primary sources, in CE 1239 (the year 955 according to the Coptic calendar of martyrs), and the secondary sources that depend on religious court rulings issued by the religious judiciary.

The General Communal Council established personal status regulations for Orthodox Copts in 1938 in what is known as Statute 38, which has functioned as a personal status code for Copts since its adoption to the present day. The law specified nine grounds for divorce,²¹ which contradicted the Orthodox Coptic Church’s later position that the sole ground for divorce is adultery. In my estimation, judgments of the communal councils are considered secondary sources for personal status for two main reasons. The first is the hierarchy within the Coptic Church between clergy and laity. The authority of priests over the lay congregation is a basic part of both

the Orthodox Coptic faith and Catholicism. This authority derives from the exclusive nature of certain spiritual tasks. It is clerics alone who possess the power to bind and dissolve, teach, interpret faith and doctrine, and bestow the Holy Spirit. As for codification and canon law, this is the task of the holy synods, which consist exclusively of clergy. Moreover, many bishops' answers on questions of religion are tantamount to sacred law.²²

The second reason, which can be seen in light of the first, is that the creation of the General Communal Council was not an easy process; indeed, it met with much resistance from the clergy until it was firmly established. We can see this resistance as a struggle over the absolute power to regulate church affairs and relations within the Coptic community, insofar as the Communal Council reordered the balance of power within the ecclesiastical administration. The demand for the Communal Council was first raised officially in 1874, marking the beginning of tensions between Pope Cyril V and the nascent council until its existence was firmly established in 1905.²³ In the midst of these tensions, the council made a power play by calling on the Khedive to recognise its existence on more than one occasion.²⁴ The conflict reached its peak when the Pope was exiled by order of Abbas Helmi II on 1 September 1892.²⁵ Throughout this period, the main sticking point was scope of the General Communal Council's powers²⁶ and who would lead it.²⁷

Historian Iris Habib al-Masri portrays the pressure the council put on the Pope and the Holy Synod to recognise its establishment as a rebellion of sons against fathers—in other words, a challenge to the patriarchal authority of the clergy on the part of the laity—who rebelled by inviting the state to intervene in church matters. Habib says the Communal Council owed its existence to 'a high order from the ruler'.²⁸ This description reflects a classic patriarchal relationship: even within the single group, not all men are the same distance from power. Historically, cumulative power in this framework fell to the clergy, considered the highest father or authority; however, historical circumstances permitted some lay members of the church to compete for a share of this authority. The class status of members of the Communal Council and the political moment in which this conflict erupted—coinciding with the emergence of the nationalist movement, which assumed the mission of 'modernising' Egyptian society—fostered favourable conditions for the shaping of a new equilibrium in the management of church affairs, one in which the clergy did not monopolise the regulation of church affairs and relations within the Coptic community.

A Brief History of the Personal Status Law for Orthodox Copts

The implementing regulations on the organisation of the Communal Council and its functions, issued by the government in May 1883, provided for the formation of a Clerical Council made up of four clerics. Its authorities included adjudicating personal status cases brought before it by members of the community based on canon law as well as considering inheritance cases provided all concerned parties agreed, meaning that recourse to the Clerical Council in matters of inheritance was not obligatory; it depended on the consent of all concerned.

The Clerical Council began to function in 1883 and first adjudicated personal status matters pursuant to Statute 38 in 1938, after the statute was approved by the General Communal Council.

Article 69 of the statute states, ‘Either spouse, after a judgment for divorce, may marry another person, unless the [divorce] judgment specifically prohibits one or both spouses from remarrying. In such a case, the person may not marry except with the approval of the council’.²⁹ Section 11 of the statute covered inheritance rules under canon law.³⁰

The issue of lineage drove the church’s objection to the regulation of inheritance under Islamic law, according to the memorandum submitted by Pope Anba Youssab and the Communal Council in 1943 during the discussion of a law that would provide for the application of Islamic law in matters of inheritance.³¹ The memorandum explained that the proposed law ‘goes beyond the issue of distribution [the distribution of inheritance shares] to other matters that lay at the heart of personal status and the family order [...] Marriage in Islamic law and canon law is based on entirely different rules’.³² The memo went on to enumerate points of difference between the two religious codes, among them that Christianity prohibited polygamy; that divorce was prohibited except with strict conditions and limitations and required a court judgment from the competent communal court; that marriage in Christianity was not performed solely by concluding a contract, but also required religious rituals and rites performed by a priest to be legally valid; and that canon law does not consider children legitimate unless the marriage is performed in a proper religious way.³³ Based on this, the memo argued that if Islamic law were applied in all inheritance matters, it would entail the recognition of children produced by marriages that were not legally valid under canon law, even if one or both spouses were Christians. In turn, this would shake ‘the pillars of the family order for Christians’.³⁴ For this reason, the Communal Council and the Pope demanded that ‘the bill stop at distributing bequests pursuant to the judgments of Islamic law. If there is any dispute on marital or lineage issues, it should first be referred to the competent communal body for adjudication’.³⁵ We can see here the tacit bargaining away of one of the few privileges Christian women in Egypt enjoy: under canon law, they inherit the same as men. Nevertheless, a certain religious logic underlies the implicit compromise, as explained by Father Salib Suriel, who said that matters of inheritance are a secular, worldly issue in whose regulation and administration the church should not interfere.³⁶ He justified the contradiction between the church’s willingness to cede control of inheritance and its insistence on regulating marriage and divorce by noting that marriage in Christianity is one of the ‘seven secrets’ of the church (a cognate to the five pillars of Islam).

The Clerical Council’s role in adjudicating divorce was brought to an end by Law 462/1955; however, it continued to grant permission to remarry to people whom the civil courts had granted a judgment of divorce, depending on the Biblical legitimacy of the judgment.

Article 6 of Law 462/1955 stated, ‘Judgments in disputes involving non-Muslim Egyptians, persons belonging to the same denomination and rite, and those who have functioning [communal] courts at the time this law enters into force shall be made in accordance with their own religious laws’.³⁷ However, the law did not specify the source that judicial bodies would adopt to understand, interpret, and apply the religious laws of non-Muslims. This was one of the main reasons that legal statutes governing personal status cases for Christians were not unified until the Cassation Court ruled in appeal no. 4/1942/personal status, on 6 June 1973, that Statute 38 must be applied

exclusively in such cases.³⁸ Prior to that, some courts ruled based on Biblical texts used by the church that prohibited divorce except on grounds of adultery,³⁹ while other courts ruled based on Statute 38, which permitted divorce for one of nine reasons.

The adoption of Law 462/1955 met with protest by the heads of the three Christian denominations (Orthodox, Catholic, and Evangelical), and they submitted a memorandum to Gamal Abdel Nasser⁴⁰ on 29 September 1955.⁴¹ The memo explained that the three churches objected to the implicit inequality between Muslims and non-Muslims enshrined in the law. Although the law abolished both the Sharia courts (which adjudicated personal status cases for Muslims) and the communal councils (which adjudicated personal status cases for non-Muslims), in practice, only the communal councils were abolished. The law made the chief justice of the Supreme Sharia Court a member of the Cassation Court and allowed former judges in Sharia courts, who were Muslim clerics, to sit on the newly formed national courts at all levels,⁴² while withholding this privilege from members of the communal councils. The three churches also explained that the law opened the door to Christian conversion to Islam by allowing for the application of Islamic law to non-Muslims in two cases: one, if parties to the case did not belong to the same denomination and rite prior to the filing of the suit and two, if one of the parties to the suit converted from Christianity to Islam in the course of the lawsuit.⁴³

Pope Cyril VI formed a committee led by Father Shenouda, then the bishop of education and later Pope Shenouda III,⁴⁴ and including Father Salib Suriel, professor of personal status at the Coptic seminary, and other members.⁴⁵ The committee sent a memorandum to the Ministry of Justice on 22 October 1962, as the ministry was attempting to draft a personal status law for non-Muslims.⁴⁶ The memo enumerated what the church saw as the main principles to be included in the ministry's bill, among them: monogamous marriage, the grounds for separation, and the rule of divorce only in cases of adultery.⁴⁷ Monogamous marriage, a basic principle that gives the marriage contract its legal, spiritual, and social legitimacy in Christianity, means that neither spouse will take another partner, whether in a civil marriage, a religious marriage that does not follow church rites, or outside the framework of marriage. All such cases constitute adultery, which is considered by the church as sexual relations with any person other than one's legitimate partner in a Christian marriage; anything else is fornication. The 1962 memo also asserted that when adjudicating personal status cases, the same religious law on which the original marriage contract was based must be followed, even if one of the parties to the contract had changed his rite or religion during the marriage, provided that the party who adhered to the religious law of the original marriage contract retained custody of the children.⁴⁸

On 16 June 1978, the three Christian denominations began meeting to draft a family law for Egyptian Christian communities, submitted for the first time on 29 June 1980. After subsequent amendments, the final draft was completed in meetings⁴⁹ of the committee formed by representatives of the Christian denominations and submitted for the second time in 1998. The law limited the grounds for divorce to adultery, fornication, and conversion.⁵⁰ This draft closed a loophole whereby a Christian could convert to another Christian rite in order to obtain a divorce from the court under Islamic law.⁵¹

Article 4 of Law 1/2000, known as the *khula'* law,⁵² abrogated Law 462/1955, but nevertheless retained Article 6 of the old law in its Article 3, which sets forth conditions under which non-Muslim religious laws are applied in personal status matters. According to the article, spouses must not only both be Christian, but must also be from the same denomination and rite, and the denomination must have had its own communal council prior to the enactment of Law 462/1955. In addition, personal status regulations must comport with the public order in Egypt. If any one of these conditions is not met, Islamic law is applied.

Starting to Draw a Map: Interlocking Hierarchies

When talking about the personal status law for non-Muslims, we must take into account more than one social and political hierarchy, each of them existing in and of itself and each of them feeding into the others. In their entirety, they constitute the complex situation produced historically by sectarian policies in Egypt. For example, we must consider that there are unrecognised sects in Egypt and so they did not have a communal council prior to the enactment of Law 462/1955 and subsequently Law 1/2000. As such, their personal status matters were, and still are, adjudicated according to Islamic law, not according to their religious beliefs or to a secular law governing all Egyptians regardless of religious affiliation.

Another necessary consideration is the hierarchy among the three recognised churches in Egypt—Orthodox, Catholic, and Evangelical—which is built on diverse, overlapping foundations. First, Orthodox Copts make up the majority of Christians in Egypt, and the Coptic Orthodox Church was established in Egypt by St. Mark the Apostle in the first century CE and continues to this day. Because of this history, the Coptic Orthodox Church is seen as the ‘mother’ church in Egypt. In addition, due to Orthodox Copts’ contributions to the national independence movement and their public rejection of Britain’s promise to protect minorities in Egypt in the Declaration of Independence issued on 28 February 1922, they, along with Jews, are considered ‘national minorities’, unlike minorities of European origin, which accepted British protection and representation.⁵³ It is worth noting here that Coptic Orthodox discourses typically stress that Catholicism and Protestantism came to Egypt with increased European influence, spread largely by missionaries who offered educational and medical services to attract Orthodox Copts to these rites.⁵⁴ With time, all of the above led to the emergence of substantial differences between the churches. There are also doctrinal differences—generally theological and liturgical—between the three churches as well. For example, the Protestant church does not recognise the priesthood like the Catholic and Orthodox churches do. Understanding this hierarchy of power, which is not directly related to the personal status law per se, helps us understand and analyse the power relationship inherent in the draft ‘uniform’ personal status laws for Christians. In addition, national sovereignty was cited as a reason for the enactment of Law 462/1955 according to the law’s explanatory memorandum,⁵⁵ which can be seen as an extension and reflection of the vision of the family as a space for the embodiment of national sovereignty.

Another hierarchy that should be considered when talking about personal status laws for non-Muslims is that based on religious identity. It cannot be ignored that the church's position defending its regulation of Christians' personal status matters moved in parallel with structural changes in Egyptian society. None of these shifts, however—from the national independence movement to the 1952 revolution to the economic liberalisation of the 1970s (the *infitah*)—overcame the sectarian structure of Egyptian society. Indeed, they preserved it. The failure to transcend citizens' religious identification since the founding of the nation state project itself entailed an element of religious discrimination; in turn, this reinforced religious persecution, which has become increasingly evident in Egyptians' daily lives since the 1970s. Throughout all these shifts, the family has remained the 'foundation of society' and a principal arena for the formation of national identity, including its sectarian aspects. We cannot, therefore, isolate the conflict over the personal status law for Christians from the context of religious persecution.

There are multiple examples that serve to resituate the personal status law in this context. In November 1971, Papal Edicts 7 and 8 were issued,⁵⁶ in the wake of the adoption of the 1971 constitution, Article 2 of which explicitly made Islamic law a major source of legislation for the first time. The article was amended in 1980 to make Sharia *the* major source of legislation, even after three Christian members withdrew from the People's Assembly committee that approved the change before it was put to a referendum, to protest the addition of the definite article to the clause.⁵⁷

In general, many Christians describe the era of Anwar al-Sadat as the worst for Christians in modern Egypt due to the frequent incidents of religious persecution seen during his tenure, for example the events of Khanka in 1973.⁵⁸ Later in 1977, al-Azhar submitted a draft apostasy law that provided for the execution of apostates from Islam and the enactment of the Islamic *hudud* punishments.⁵⁹ In parallel with this, the church convened a Christian religious conference in Alexandria on 17 January 1977 to discuss various topics, including freedom of belief, freedom of worship, protection of the family and Christian marriage, equality and equal opportunity, and the representation of Christians in representative bodies.⁶⁰ That a conference organised to oppose a bill discriminating against Christians discussed issues of family and marriage along with citizenship-related topics indicates that in terms of ecclesiastical and doctrinal logic, they are interrelated and fundamentally bound up with Christians' sense of religious persecution. Subsequently, in early 1978, the three Christian denominations met to draft a unified draft personal status law for Christians, which was submitted to the Ministry of Justice in 1981 and again in 1998 after it was amended. As the 1970s came to a close, Sadat placed Pope Shenouda, the most important contemporary religious symbol for Christians, under house arrest and removed him from his papal position.

It is also important to see the church's objection to court rulings obligating it to issue dispensations to remarry in light of multiple rulings from the Administrative Court in the wake of the Wafaa Constantine crisis (2004), which denied people who had converted from Christianity to Islam and then back to Christianity the right to obtain official documentation of their re-conversion.⁶¹ Tensions between the church and the state reached a new high⁶² when on 14 March

2006 the Administrative Court obligated the Coptic Orthodox Church to allow people who had obtained a divorce on grounds other than adultery to remarry.⁶³ This was the first time that the court intervened to compel the church to grant this dispensation, pursuant to Article 69 of Statute 38. Subsequently, in 2008, Pope Shenouda III released several amendments to Statute 38 in the Official Gazette, including the repeal of Articles 52–58, which had permitted divorce on grounds other than adultery. Article 50 of the amended statute permitted both spouses to demand a divorce on the grounds of adultery, which was defined to include a broader range of acts than the act of fornication itself.⁶⁴ In addition, the 2010 crisis over the personal status law⁶⁵ coincided with the Camilia Shehata crisis and the events in Naga Hammadi, both in 2010 as well.

It is important to see the position of Christian women in light of all these hierarchies, as well as the gender-based hierarchy both within the church community and in wider Egyptian society. Along with the hierarchy in the church between laity and clergy, discussed earlier, there is also the hierarchy between men and women. These two hierarchies do not operate separately, and men's exclusive access to the priesthood contributes to the perceived inferiority of women. This masculine superiority stems from the fact that the enjoyment of certain spiritual powers within the church is unavailable to women. Christian women cannot become priests, and therefore have no authority to interpret religion. As the Bible says, 'The head of woman is man' (1 Corinthians 11:3) and 'Wives, submit to your own husbands, as to the Lord. For the husband is head of the wife, as also Christ is head of the church' (Ephesians 5:22–23).⁶⁶ And, of course, the interests of Christian women are not uniform, but may differ depending on class and geographic position. So while giving women access to the priesthood would not change the position of all women in the church, the fact that they do not have such access cements a gender-based hierarchy within it. Moreover, relationships within the typical Christian family may reflect this hierarchy. This hierarchy explains men's precedence over women, and it is not formed in isolation from the social, economic, and political context in which it arose, in which social roles place men in a position of leadership and women in a position of subordination, and which link masculinity with qualities such as objectivity, wisdom, and forethought, while associating femininity with weakness, emotion, and impulsivity. Based on this duality, men are expected to play a leadership role within their families and groups, as well as protect and, if necessary, discipline the women of their group. An essential part of the formation of masculinity stems from a man's ability to provide the protection expected of him.

Interestingly, in Pope Cyril VI's memorandum to the Ministry of Justice in 1962, the church invoked the value of mutual consent when assuming the role of patriarchal protector of Christian women. In the memo, the church refused to apply provisions for the House of Obedience to Christian women regardless of circumstances, even if it was due to the husband's change of religion, denomination, or rite, because 'marital life in Christianity is based on agreement, mutual consent, and love, and compulsion cannot enter into it under any circumstances'. But this same value—mutual consent—is not invoked when it comes to women who wish to divorce and who turn to the church in such cases. How does the church not see that remaining in a marriage absent the free will of the two parties, simply because they will not be able to obtain a judgment for

divorce and remarriage, is a form of compulsion, which is inconsistent with the values on which marital life in Christianity is based?

Conclusion

The family has historically been considered the domain of religion. As such, it is an arena for religious differentiation in a society that has not yet transcended sectarianism in the management of social relations. As a result, the principles governing relationships in Egyptian Christian families have come to be considered doctrinal principles grounded in the Christian faith. It is important to understand that this view is not limited to the church as an institution, but is also a belief held by the majority of Christians. Many factors and actors have contributed to this situation, including the state, the church, Islamist groups, and society itself. The question here is, will Christian citizens feel comfortable with a civil personal status law that goes against their faith, and this in a highly sectarian context? Would someone consider recourse to such a law a betrayal of their oppressed group or an abandonment of it and their affiliation to it? This group is not limited to the church as an institution, but includes family, kin networks, friends, and social support circles.

I believe that in the context of persecution, persecuted communities typically cleave closely to one another to confront violence they face collectively, even if rules that govern this community are themselves unfair to those in more vulnerable positions within the community. These rules are not shaped separately from the wider society in which that community lives. Within this dynamic, Christian women bear an added burden due to their gender. In our patriarchal, conservative context, women embody the group's honour—a broad, loose social concept that is expressed materially in a person's general moral behaviour, including their behaviour in their body and lifestyle. It also assumes various social expressions that revolve around one's 'reputation', which is based on judgments of those around the person. Here, women are denied their right to conduct their lives outside the acceptable norms of social behaviour within and outside their communities because the consequences of their choices typically do not affect them solely as individuals, but extend to their group as well. Hence any deviation from the rules of the group or broader society, particularly if they belong to a persecuted community, may be seen as a double victory for the persecuting group. In expressing victory, women's unacceptable behaviour is used against the persecuted group and its men, who have not performed their ostensible role in controlling the women of their group. This dynamic places pressure on Christian women in two ways: one, it makes them responsible for 'representing' their group in broader society, as a reflection of their community, and two, it makes them vulnerable to heightened scrutiny within their own group.

The family also plays a pivotal role as a tool for the reproduction of existing social relations. The family is not only a space for passing on genes or material wealth, but also social identities, including religious identity. Preserving the family is preserving the numerical and social strength of the group. In an authoritarian context where there is no visible example of social support circles outside kin relationships, investing in the family is itself a goal that secures its members' future, particularly if they are from poorer social classes. For all these reasons, the family is of central

importance as a pillar of the group. It also plays a role in religious upbringing, and is a vital space for the formation of an individual's gender and control of their sexuality, by which I do not mean sexual orientation, but rather sexual life in general. In our society, where marriage is the only socially acceptable framework for sexual relations, and where 'honour' revolves around women's sexuality in particular, if a woman has sex outside of marriage, she loses her honour and this stigma extends to her surroundings. The social cost of female 'fornication' is therefore greater than male fornication, even the act is called fornication or adultery in both cases. In the Christian community, another layer is introduced to this dynamic, related to the church's definition of Christian marriage. In order to be socially legitimate, a marriage must meet ecclesiastical conditions; civil marriage is thus 'adultery' in the church community, for both men and women. Here, too, we must be cognisant of the calculations any Christian woman makes when turning to the courts for redress. Similarly, we must understand that not all Christian women will be able to assume the social cost of aspersions on their honour or the honour of their families and children, which might result in the loss of their social support network in a context of religious persecution. We must further note the unfair conditions faced by many women who have turned to the courts in the past, and it is necessary to articulate our feminist discourse and demands in a way that reflects the position of Christian women across classes.

In addition to the foregoing, the demand for a uniform civil personal status code is clearly inconsistent with Article 3 of the Egyptian constitution. This is not a problem as long as we are aware of all aspects of this article. Pursuant to Article 3, Christian women can now inherit equally with Christian men, under canon law⁶⁷—a right the church tacitly traded away in exchange for a tighter grip on matters of parentage and lineage in the 1940s. We should think long and hard about the logic of our objection to Article 3, which may mean ignoring an economic right of Christian women that was trampled in the past and remains disputed today. We lack much knowledge about the priorities of the direct stakeholders here, which requires field research and the creation of feminist spaces in which Christian woman are an active part. In my view, this is the ideal way to reconcile our long-term goals and our slogans about citizenship and equality with the status quo.

About the Author

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This article is originally written in Arabic for Rowaq Arabi

¹ Women and Memory Foundation, 8 March 2012, accessed 15 September 2021, <https://bit.ly/3xxi3Tq>.

² 'Min Ajl Qanun Madani Muwahhad li-l-Ahwal al-Shakhsiya [For a Uniform Personal Status Law], accessed 15 September 2021, <https://bit.ly/3cYbrnG>.

³ Ishak, Ibrahim (2015) 'Azmat al-Harakat al-Qibtiya bayn Tasallut al-Dawla wa-Abawiyat al-Kanisa [The Crisis of Coptic Movements between the Authority of the State and the Paternalism of the Church], Egyptian Initiative for Personal Rights, 1 October, accessed 26 September 2021, <https://bit.ly/3pagsze>.

⁴ Suriel, Salib (1990) *Qawanin al-Ahwal al-Shakhsiya li-'Aqday al-Khutba wa-l-Zawaj wa-Butlanih wa-Faskhih* [Personal Status Laws for Engagement and Marriage Contracts, Annulment, and Repudiation] (Clerical and Theological Seminary for Orthodox Copts).

⁵ Wood, Winifred, and Noha al-Sawah (2017) *Tarikh al-Washm 'ind Tawa'if al-Aqbat al-Masihiyin 'ala Marr al-'Usur fi Misr* [The History of the Tattoo among the Coptic Christian Rites over the Ages in Egypt].

⁶ Qadri Pasha studied at the language school and attended lessons at al-Azhar, becoming an expert on comparative French law and Islamic law. He contributed to the translation of French laws and was twice a member of Khedive Tawfiq's Cabinet, once as minister of justice and once as minister of education. See Cuno, Kenneth (2015) *Modernizing Marriage: Family, Ideology, and Law in Nineteenth- and Early Twentieth-Century Egypt* (Syracuse University Press).

⁷ Ibid.

⁸ Ibid.

⁹ The mixed courts adjudicated cases for Europeans, instead of the local Egyptian judiciary; they were abolished in 1949.

¹⁰ Cuno.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibrahim, Philotheos (intro.) *al-Khulasa al-Qanuniya fi al-Ahwal al-Shakhsiya li-l-Aqbat al-Urthuduksiyin* [The Legal Compendium on the Personal Status of Orthodox Copts] (al-Tawfiq Press).

¹⁵ Suriel.

¹⁶ Ibid.

¹⁷ Suleiman, Samer (2010) 'Man al-Mas'ul Fi'lan 'an Qiyam Nizam al-Milla al-Masihi?' [Who Is Really Responsible for the Christian Communal System?], *al-Shorouk*, 4 November, accessed 13 October 2021, <https://bit.ly/2ZwI7Sd>.

¹⁸ Hatem, Mervat, *The Pitfalls of the National Discourses on Citizenship, Ethnicity, and Gender in Egypt*, manuscript from the archive of Dr. Amal Abd al-Hadi.

¹⁹ This includes the gospels, the Acts of the Apostles, the general epistles (the Catholic epistles), the epistles of St. Paul, and the Old Testament. See Suriel.

²⁰ Ibid. The Didascalia, as given by St. Aclimandos, a disciple of St. Peter, were compiled by Copts into two books and includes the teachings of the twelve apostles, St. Paul, and St. Yaquob, the bishop of Jerusalem.

²¹ These are: 1) adultery; 2) a spouse's abandonment of Christianity, provided there is no hope of his/her return to the faith; 3) the absence of a spouse for five consecutive years, provided it is not known whether he/she is alive or dead and a judgment is issued affirming the absence; 4) a sentence of four or more years of prison with hard labour given to either spouse; 5) madness or a chronic, terminal illness; 6) physical assault by one spouse on the other; 7) misconduct by either spouse provided there is no hope of reconciliation; 8) failure to perform marital duties; 9) the entry of either spouse into holy orders.

²² Pope Shenouda III (1985) *al-Kahanut* [The Priesthood], pt. 1 (Coptic Orthodox Seminary).

²³ Labib, Hani (2012) *al-Kanisa al-Misriya: Tawazunat al-Din wa-l-Dawla* [The Egyptian Church: The Balance of Church and State] (Dar al-Nahda al-Misriya Publishing).

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Habib, Iris (1981) *Qissat al-Kanisa al-Qibtiya* [The Story of the Coptic Church], pt. 5 (Maktabat al-Mahabba).

²⁹ Labib.

³⁰ Egyptian Initiative for Personal Rights (2019) 'Tarikh Tanzim Tawzi' al-Irth 'ind al-Masihiyin fi al-Qanun al-Misri hatta Thawrat Yanayir' [The History of the Regulation of the Distribution of Legacies among Christians in Egyptian Law up to the January Revolution], accessed 28 September 2021, <https://bit.ly/3xvqpuY>.

³¹ For the full text of the memo, see Habib, p. 100.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Suriel.

³⁷ Suriel.

³⁸ Labib.

³⁹ 1) The Alexandria Appellate Court ruled in case no. 49/12JY, on 21 May 1956, that canon law only permits divorce on grounds of adultery, as enshrined in the Holy Bible; 2) the Assyout Appellate Court ruled on 4 May 1958 that ‘the sole grounds for divorce in canon law is adultery. While some Christian clerics have ruled and some communal councils have permitted divorce on other grounds, such as deep-seated alienation or irreconcilable discord, this contradicts explicit revealed law, which does not permit divorce except on grounds of adultery’; 3) the Alexandria First-Instance Court ruled on 25 March 1956, ‘It is understood from canon law that divorce is prohibited in Christian law’; 4) the Qena First-Instance Court ruled on 21 February 1956 that the court adhered to the major sources of ecclesiastical law exclusive of all others, first and foremost the judgments of Christian law as inscribed in the Holy Bible. Speaking of more recent secondary sources, the court stated, ‘They kept pace with developments over time, responding to the desires of some people of weak faith and hence permitted divorce on grounds with no basis in the Bible [...] The since-abolished communal courts applied [these judgments] long ago, choosing to overlook that Biblical judgments prohibit divorce’. See Suriel.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Labib.

⁴⁵ Pope Shenoud III (1997) *Shari‘at al-Zawja al-Wahida* [The Law of Monogamy] (Abbasiya: Anba Ruways Press).

⁴⁶ Suriel.

⁴⁷ Labib.

⁴⁸ Suriel.

⁴⁹ These meetings were held in 1998 on 29 January, 28 October, and 15 November. See Labib.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² *Qanun Tanzim Ba‘d Awda‘ wa-Ijra‘at al-Taqadi fi Masa‘il al-Ahwal al-Shakhsiya Raqam 1 li-Sanat 2000* [Law 1/200 on the Regulation of Some Conditions and Litigations Procedures in Personal Status Matters], <https://manshurat.org/node/27318>.

⁵³ Hatem.

⁵⁴ ‘Al-Lata‘ifiya: Maqalat min ‘Azat al-Qummus Bulus Jurj’ [Non-Sectarianism: Sermons from Hegumen Bulus George], <https://bit.ly/311e8Cl>; Nasim, Essam (2019) *Mulakhkhis Tarikh Dukhul al-Tawa‘if al-Kathulikiya wa-l-Burutistantiya li-Misr* [Brief History of the Entry of the Catholic and Protestant Denominations to Egypt], accessed 17 October 2021, <https://bit.ly/3cWeUmN>.

⁵⁵ Suriel.

⁵⁶ Pope Shenouda III issued Edicts 7 and 8 on 18 November 1971. Edict 7 stated that adultery is the sole grounds for divorce and that the church does not recognise any divorce granted on other grounds; the marriage therefore remains valid in the eyes of the church even if a court rules otherwise. Edict 8, issued the same day, discussed divorced couples, stating that pursuant to Biblical teachings, a divorcé, man or woman, may not remarry, even if they divorced because of adultery, since they could not be entrusted to a new spouse. If a couple of divorced on other grounds, for example under state law, and the spouses remarried, the second marriage is considered adulterous, since the Coptic synod does not recognise the divorce and does not permit remarriage except on grounds of adultery, though the court may adjudicate personal status cases based on Statute 38, which enumerates nine grounds for divorce.

⁵⁷ Labib.

⁵⁸ Ibid.

⁵⁹ Punishments that are explicitly defined in the Quran and Hadiths for certain transgressions, such as adultery.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² See Pope Shenouda’s sermon of 15 March 2006, available on the Coptic Kunuz Channal, YouTube, 3 May 2016, accessed 8 October 2021, <https://bit.ly/3HWNFa2>.

⁶³ Saad, Jacqueline (2006) *Vicious Circle: Coptic Divorce between Positive Law and Canon Law*, thesis, the American University in Cairo.

⁶⁴ Bayyoumi, Amr (2008) ‘al-Jarida al-Rasmiya Tanshur Nass Qarar Ta‘dil La‘ihat al-Ahwal al-Shakhsiya li-l-Aqbat al-Urthudux’ [The Official Gazette Publishes Text of the Decree Amending the Personal Status Statute for Orthodox Copts], *al-Masry al-Youm*, 5 June, accessed 8 October 2021, <https://bit.ly/322nQoo>.

⁶⁵ In 2010, the Supreme Administrative Court handed down two judgments in two separate cases requiring the church to allow divorced people to remarry. Pope Shenouda refused to implement the rulings, declaring that the church would take up the matter with the Supreme Constitutional Court.

⁶⁶ Pope Shenouda III, 1985.

⁶⁷ Egyptian Initiative for Personal Rights (2019) ‘Nass Mudhakkirat al-Muhamiya Huda Nasr Allah, al-Muhamiya bi-l-Mubadara al-Misriya li-l-Huquq al-Shakhsiya, fi al-Da‘wa bi-Butlan Ishhad al-Wafah wa-l-Wiratha al-Khass bi-Wafat Walidiha’ [Text of the Brief Filed by Hoda Nasrallah, a Lawyer with the EIPR, in a Suit to Annul the Certification of the Death and Legacy of Her Father], <https://bit.ly/2ZutxKX>.