

PALESTINE 1948 (ISRAEL)

The Ottoman Family Law (1917) is the law applied in the *Shari'ah* courts (religious courts that deal with marriage, divorce and child custody) in Palestine 1948 (Israel). The law was first enacted in the Ottoman Empire in 1917; in 1919 it was endorsed for implementation in historical Palestine. This step was considered revolutionary, as it was the first law that assimilated a Muslim family law into a code. One unique quality of the law is that it was derived through the *takhayyur* (selection) method, in which rules from the four major Sunni schools of law, especially rules that favour women, were selected for use in the code. The code also added rules not based on any of the schools of law, in order to improve the status of women. However, almost one hundred years after the law was adopted, it is no longer revolutionary and does not address all of the needs of the modern Muslim family.

Equality in the Family is Necessary

- ▶ Some of the more challenging provisions of the family law include:
 - According to classical Islamic law, a man has a right to marry up to four women; the Ottoman Family Law currently in force does not limit that right. Though polygamy is against Israeli law, the *Shari'ah* courts have found ways to circumvent the law and allow men to marry more than one wife.
 - Repudiation (unilateral divorce) is accepted by the Ottoman law. Consent of both the man and woman is necessary for marriage, but a man can break the marriage unilaterally, without the woman's consent. Although repudiation is considered valid and legal in the Muslim law, under Israeli law the man could be jailed for up to five years. Therefore, a man can legally divorce his wife through repudiation, but would be committing a crime.
 - There are many expressions that a man can use to divorce his wife. As a result, forced divorce and divorce under the influence of alcohol are both considered acceptable in the Ottoman law. For women initiating divorce, however, it is a long, painful and expensive process.
 - The Civil and *Shari'ah* courts do not take into account the increasing involvement of Muslim women in economic activities.
- ▶ The Muslim community in Israel is not represented by any higher religious body, and does not have a legislative authority like the Druze or the different Christian denominations. Therefore, Muslims do not enjoy any kind of religious autonomy in Israel. The religious courts are formed by the State, and the *qadis* (judges) in these courts are employed according to civil laws.
- ▶ The absence of a legislative body has made it impossible to modify the existing law, meaning the Muslim courts still apply a law that is 90 years old.
- ▶ The Islamist movement says it is impossible to modify the personal status law because there is no higher legislative body. The Islamists consider any change in the law to be a challenge to the Qur'an, and thus to equal '*Kufur*'. They claim that Israel should not interfere with the autonomy of the Muslim community laws, despite the fact that the Israeli Parliament has enacted many civil laws that override the religious law, emptying it of any content.

Equality in the Family is Possible

- ▶ In many Arab countries, e.g. Syria and Jordan, the Ottoman Law has been annulled and replaced by modern laws.
- ▶ Nissa wa Aafaq, a non-governmental organisation, is currently working on a 'New Personal Law project' that aims to propose a draft personal status law that will replace the existing personal law applied in the *Shari'ah* courts in Israel. The proposed reform will derive from the Islamic law, through selecting regulations that suit the spirit of the modern times and the unique situation of the Palestinian families in Israel. The proposed law will select and adapt the most suitable and progressive items from Islamic literature, judicial and legislative practices in Arab and Muslim countries, and modern feminist interpretations of the Qur'an and *Hadith*. Many feminists and heads of organisations among the Palestinian community in Israel have expressed the need for such reform as well as support for an initiative in this direction.
- ▶ A new family law would mean that the community would enjoy some sort of autonomy in creating the law to be applied on family issues. The law would stem from grassroots work, rather than Israeli civil laws.
- ▶ Other feminist organisations have successfully worked to modify civil laws that affect women, such as the Family Court Law. Through hard work and collaboration, the organisations pushed for the law and paralysed any Islamist or conservative resistance.

Source: Report submitted to Musawah in English by Nissa Wa Aafaq – Women and Horizons; Gender Studies Project (GSP), Mada Al-Carmel; Arab Center for Applied Social Research; Assiwar – Arab Feminist Movement in Support of Victims of Sexual Abuse; and several individual feminist activists.