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FAMILY COURT A. D. R. IN EGYPT AND SOME EXEMPLARY PROVISIONS FOR OTHER MUSLIM COUNTRIES

By Jamila Ahmed Chowdhury

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Abstract: *the introduction of the system of separate family court is a recent but long desired change took place in Egyptian legal arena that is greatly accoladed especially by Egyptian women because of the tiring, lengthy, and complicated pro-male divorce system that prevailed in Egypt over the years. The main objective of this paper is to give the readers an idea about the system of Family Court ADR in Egypt and quote some of its remarkable traits those can also be followed by other Muslim countries in the world. Besides a brief history about the introduction of this new system, difficulties faced by the Egyptian women in pre family court era those rationalize the establishment of a separate family court, and the scope or jurisdiction of new family courts etc. have also been discussed to get a more in depth idea about the Family Court system in Egypt.*

Introduction: Egypt¹ lags behind² the rest of the Middle East and the world in terms of its pursuit to promote ‘women empowerment’ as well as to ensure women’s equal rights compared with their male counterparts in the county.³ Since its independence, Egyptian Government had made little attempt to amend discriminatory family laws⁴ (Hatem,

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¹ Egypt is the most populous Arab country, with a population of 77,505,756 as estimated up to July 2005. Nearly all the population is concentrated notably in the Alexandria and Cairo and along the Nile delta and near the Suez Canal. Approximately 94% of the population in Egypt adheres to Islam (mostly Sunni) and the remainder to Christianity, primarily the Coptic denomination. The World Fact Book, Egypt, at <http://www.odci.gov/cia/publications/factbook/geos/eg.html>, last visited Aug 8, 2005.

² In 2005, commemorating the tenth anniversary of the Beijing World Conference on Women, World Economic Forum (WEF) undertook a study titled ‘Women’s Empowerment: Measuring the Global Gender Gap’ among 58 countries of the world to rank these nations according to the level of equality with men they have attained for their women in five crucial area namely economic participation, economic opportunity, political empowerment, educational attainment, and health and well-being of women. In this study Egypt is ranked in the last position i.e. 58th position amongst the 58-nations studied under the research. World Economic Forum, Women’s Empowerment: Measuring the Global Gender Gap, at http://www.weforum.org/pdf/Global_Competitiveness_Reports/Reports/gender_gap.pdf, last visited Aug 6, 2005.

³ In 2000, an estimated 56 percent of adult Egyptian women were illiterate as compared to 33 percent of adult men. World Bank, Egypt: Summary Gender Profile at <http://devdata.worldbank.org/genderstats/genderRpt.asp?rpt=profile&cty=EGY,Egypt,%20Arab%20Rep&h m=home> last visited August 3, 2005. Women constitute only 21 percent of the labor force (*Gender Assessment: Arab Republic of Egypt*, 1998, p. 50). On average, women are paid only 76 percent of men’s wages in the private sector and 86 percent in the public sector (*Gender Assessment: Arab Republic of Egypt*, 1998, p. 59). An estimated 19 percent of women are unemployed compared to 5 percent of men (*Gender Assessment: Arab Republic of Egypt*, 1998, p. 57). The share of women members in the Egyptian parliament is only 2.9 percent in the lower house and 6.8 percent in the upper house and ranked 122 out of 128 in a world ranking made by the Inter-Parliamentary Union as of April 30, 2005 (Inter-Parliament Union, Women in National Parliaments, at <http://www.ipu.org/wmn-e/classif.htm>, last visited July 25, 2005).

⁴ The discriminatory personal status laws governing marriage, divorce, custody, and inheritance in Egypt deny women many of the rights protected under international human rights law. Muslim Egyptian men have unilateral and unconditional right to divorce without resort to legal proceedings in the court. Unlike men, women can only divorce by court action (*tatliq*). Egyptian women are also denied physical custody rights if

1986:39) and penal laws⁵ those hinder women's empowerment in Egypt, though some civil and political rights have been endorsed for them⁶ (Inhorn 1996:28). However, it is a matter of triumph that the Egyptian government has recently taken a number of steps to improve⁷ women's position in term of their basic human rights those have been guaranteed by the Egyptian Constitution.⁸ Amongst these recent improvements made to promote Egyptian women's rights in their family sphere, the establishment of the family court in 2004⁹ deserves a special mention (Maha, 2004:1; Moussa, 2004:6). The establishment of separate family courts along with a provision for in-court ADR represents an important apparatus for the Egyptian society, more precisely for the Egyptian women to attain more accessible justice since such an apparatus can address many of the problems existed in the regular courts of Egypt those hinder women to access justice through formal courts (Moussa; 2004:6).

But, the emergence of the family courts in the year of 2004 along with an in-court ADR provision does not mean that the concept of in-court A.D.R. in resolving family disputes is as new as the establishment of family courts in 2004. In fact, the essence of ADR was present in the Egyptian court system since 1985 and was practiced under the jurisdictions of

they re-marry or leave the country, while men are never denied custody rights under such circumstances. See more details in, Ron Shaham, *Family and Courts in Modern Egypt: A Study Based on Decisions by the Shari'a Courts 1900-1955* (Leiden: Brill, 1997),p.187.

⁵ Provisions of the penal code also discriminate against women. Egyptian law imposes harsher penalties for women committing adultery. A wife is penalized for two years (Law No. 58 (1937) Promulgating the Penal Code, article 274.), whereas a husband is penalized for no more than six months (Law No. 58 (1937) Promulgating the Penal Code, article 277). For adultery, the evidentiary standards are different for women and men. While a wife is penalized for committing adultery anywhere, a husband must do so in the marital home in order for such an act to be considered adulterous (Law No. 58 (1937) Promulgating the Penal Code, article 277). The murder of a wife (but not a husband) in the act of committing adultery is categorized as an extenuating circumstance, thereby commuting the crime of murder to the level of a misdemeanor (Article 234, 236 and 237 of the Egyptian Penal Code).

⁶ President Gamel Abdel Nasser's 1962 National Charter endorsed equality for women in voting, education and employment. See more details, Marcia C. Inhorn, *Infertility and Patriarchy: The Culture of Gender and Family Life in Egypt* (Philadelphia: University of Pennsylvania Press, 1996), p. 28.

⁷ The Supreme Court of Egypt in November 2000 decided that the Ministry of Home Affairs had no right to refuse a woman a passport just because her husband wanted to prevent his wife from traveling which . Previously under article 4 of the Ministerial decree No. 864/1974 it provided that Egyptian women may not be issued a passport without the prior written consent of her husband or legal representative. The supreme court declared that everyone has the right to obtain travel documents. Again, Law No.1/2000 provides women's rights to divorce by 'Khul' that women madly sought for a long time. In fact, prior to this new law of 'khul' , obtaining a divorce by a wife used to mean an uphill battle against the judicial system that could take years. Moreover, on December 15, 2002, the Supreme Constitutional Court had issued an important judgment confirming that the law governing women's equal right to divorce "Khul" is constitutional. This again ended a two-year struggle by supporters of traditional patriarchal culture to reverse the progressive changes introduced in March 2000, by Law No. 1 of 2000. An amendment of the Citizenship Law (No. 26/1975) made by President Mubarak in May 2003 allows Egyptian women married to foreigner to pass their nationality to their children under certain limited conditions; In December 2003, President Mubarak had appointed the first woman judge to the Supreme Constitutional Court, ending a debate that has been going on for decades between the women's movement in Egypt and the traditionally conservative judiciary. Furthermore, establishment of new family courts in October, 2004 under the law of 10/2004 and enhancement of the time for Women's custodial right over her children under the law of 4/2005 are of course some significant steps for promoting the rights of Egyptian women in the family.

⁸ Article 40 of the Constitution of the Arab Republic of Egypt provides that " all citizens are equal before the law. They have equal public rights and duties without discrimination due to sex, ethnic origin, language, religion or creed."

⁹ Law on Establishment of the Family Courts (Law no 10/2004).

summary (*juz'i*) courts¹⁰, and courts of first instance (*ibtida'iyya*)¹¹ during the trial stage. But the newness of the system of ADR that has been introduced in 2004 is that taking recourse of ADR in the form of mediation through the Family Dispute Settlement Offices (FDSO)¹² has been made mandatory in the pre-trial stage of family courts. Changes have also been made on the system of ADR followed previously in the trial stage, to organize it in a more methodic and structured way.¹³

1. A.D.R. system in Egypt in resolving family disputes: It is already mentioned that the practice of ADR in the Egyptian court system is not of a recent origin; rather the concept of in-court ADR is incorporated in the court system in 1985.¹⁴ Moreover, resolving family disputes through ADR outside the court e.g. in the form of negotiation between spouses and taking legal effect of the agreement made, by going to the Mazun's (religious notary) office, or sometimes in the form of mediation made by different NGOs to resolve the marital disputes through ADR etc. are not new phenomenon in Egypt. Now, this part will first consider the different modes of in-court and out-court A.D.R. mechanisms prevailing in Egypt with a simultaneous attempt to identify some key features in the ADR system of this country. This paper will allow readers to understand the Egyptian A.D.R. system used in resolving family disputes and give idea about some of its exemplary unique features those can also be considered by the policy-makers in other Muslim countries to make the system of ADR more accessible to and effective for their women.

2. In-court A.D.R. mechanisms in Egypt: The family court system in Egypt is established on October 2nd 2004 by the *promulgation of the law no 10 of the year 2004*. The paramount goal of this law is to resolve family disputes under exclusive family courts those require only minimum efforts by the women to get the maximum output from it. Thus, mediation sessions were made mandatory at the pre-trial stage as well as trial stage to assist both the parties in resolving their disputes amicably, relieving the couple especially wives to go through extensive legal procedures of formal trial. The present law establishing the family courts was careful in making justice accessible to citizens concerning family disputes by stipulating the establishment of family courts within the competence of every summary court. In the circuit of summary courts, it has a general, comprehensive and exclusive jurisdiction to look into all the cases related to family matters or to personal status. Moreover, this new law establishes appellate family circuits within the competence of each Court of Appeal to look into appeals against the decisions of family courts. With a view to achieve these goals, a total of 224 courts having 1,200 judges¹⁵ are being set up all over Egypt.

¹⁰ Prior to the establishment of family courts, the Summary Courts had the jurisdiction to decide minor personal status issues together with cases involving misdemeanors and minor offenses; civil and commercial cases the value of which do not exceed £E 5,000 as well as labor disputes arising between employers and employees. Article 9 of the Procedural Personal Status Law on Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters (law No.1/2000).

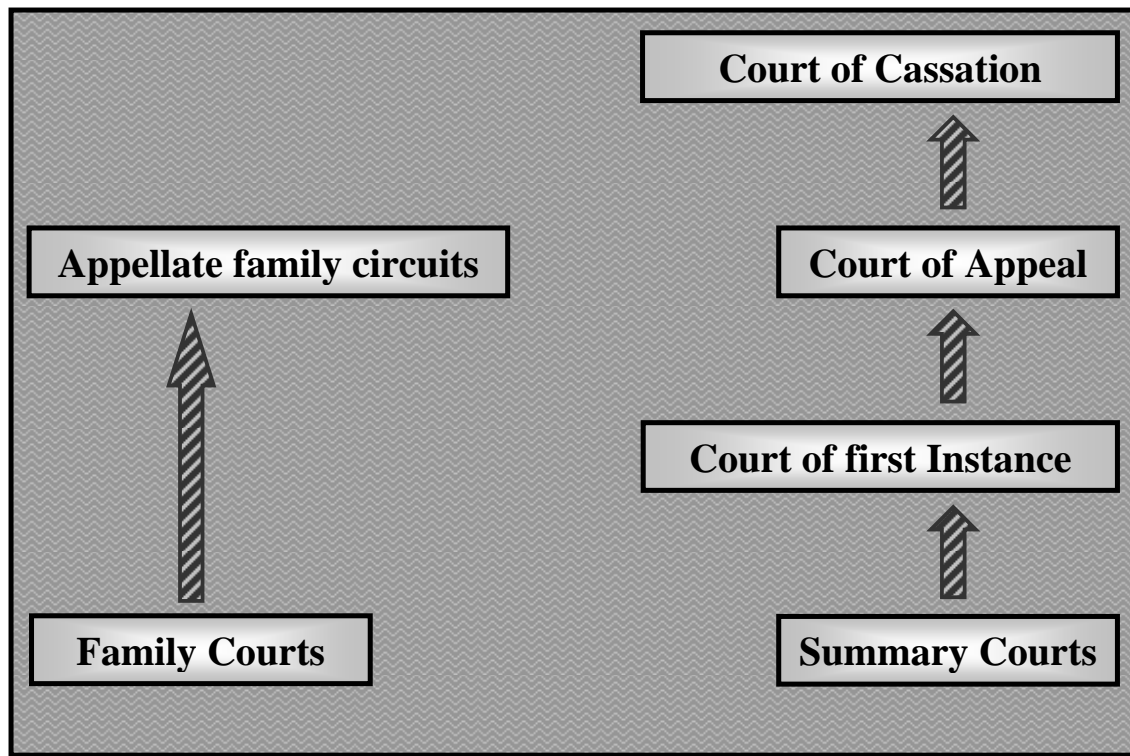
¹¹ The Courts of the First instance had jurisdiction to decide all cases involving matters the value of which exceeds £E 5,000 and all major personal status matters. They also have jurisdiction to hear appeals against decisions of the Summary Courts in civil and commercial cases and misdemeanor criminal offenses. Ibid, article 1.

¹² Articles 6 and 9 of the Law on Establishment of the Family Courts (Law No. 10/2004).

¹³ Ibid, Articles 2 and 11.

¹⁴ Sections 6 to 11 of the Law on Certain Personal Status Provisions (law no.15/1929 as amended by Law no. 100/1985).

¹⁵ Infra 35.

Figure 1: The Regular and Family Court structure of Egypt

Source: Judicial Structure, Egypt, Program on Governance on Arab Region (POGAR), UNDP and Info-Prod Research (IPR) Country Guide, Judiciary, Egypt

3. Development of the new system of family court A.D.R. in Egypt and its rationale:

Until recently and prior to the establishment of family courts in 2004, Egyptian women were facing the burdensome procedures in getting divorce¹⁶. The entire process of divorce was considered as a 'torturous process' for the women (Michael; 2004:4). So, The recent achievement of separate family court is not derived automatically, rather a product of Egyptian women's movement that was also suffered considerable setbacks over the past decades. Though it is claimed by minority of people¹⁷ that the concept of family courts are not entirely new in Egypt because a system of '*Shariah* courts' (religious courts) having jurisdiction over divorce, custody and alimony prevailed in Egypt even before the dethronement of King Farouk in 1953, nevertheless majority of the people¹⁸ argued that it is a 'new phenomenon'¹⁹ to them. In fact, the development of the new family court was in-

¹⁶ Egyptian women who have already been divorced under the personal status courts were asked that whether they think getting divorce from personal status courts was really burdensome for them.

¹⁷ Zeinab Radwan, vice-chairman of the National Council for women (NCW)'s legislation committee pointed out that "the idea of such a court[family court] is not novel for Egypt. This type of court existed in Egypt until the 1952 revolution. At that time they were called Religious courts. The new family court is in fact a modern version." Cited in " A Family Affair " at <http://www.ekly.ahram.org.eg/2003/621/fe1.htm> (last retrieved on July 2, 2005)

¹⁸ When the question is asked "whether the concept of family courts are new to the Egyptian" by the researcher to the interviewees, all of them unanimously replied that family court is 'new' to them.

¹⁹ An interview with Dr. Shokrey Al Dakkak, Chairman of the High Court of Appeal, Egypt on July 25, 2005 and Professor Dr. Maha Mazz, University of Alexandria on June 18, 2005.

fluenced by numerous factors those lead the Egyptian people to think of establishing family courts. Factors acted as strong rationale for establishing separate family courts in Egypt are:

3.1 Ensuring justice for women in a more easily assessable and expeditious way:

After the enactment of the no-fault divorce (*khula*) under the law no.1/2000, Egyptian women get at least an opportunity of giving divorce to their husband for which they were in an uphill battle for a long period, to alter the old-complicated laws of seeking divorce.²⁰ This *khula* option is treated as the 'most groundbreaking provision'²¹ under the law 1/2000. *khula* allows the Egyptian women to seek a unilateral, no-questions-asked divorce in a comparatively easy way²², making Egypt the second country in the Arab world after Tunisia to give women a divorce rights similar to those of men.²³ But at the same time it is also a fact that sufferings of women in getting justice are still prevailing even after the *khula* provision in law. The *khula* divorce- law has simply created an avenue whereby women have to give up their all financial rights (rights to maintenance, dower etc) in exchange for a divorce. Moreover, the *khula* law did not change anything substantially regarding the cumbersome and humiliating procedure that women were bound to follow by going several courts to settle other marital disputes, regardless of whether they choose fault-based divorce or no-fault divorce (see more in section 5.1.1.3). That is to say, prior to the establishment of the new family courts in 2004 a woman had to face mental and physical trauma from the beginning of filing a divorce case up to its end as they had their cases be dealt with by a number of different courts which took several years. For example, one court heard the divorce case, another dealt with alimony and yet another ruled in the custody case. Thus, even after the *khula* law, a necessity was consistently felt by the Egyptian women to resolve all their marital disputes in one place, which was expected to eliminate their grievances from moving one court to another.

Client's reaction-1

BOX 1

"Since my husband didn't maintain me and my two children for 3 years and even I didn't see his face for two years, don't know where he is ... Thus, I asked divorce in the court seeking as well the right to alimony and my custody rights. But now I am running between various types of courts for more than last 10 years. One court heard my divorce case, another make trial for alimony and yet another for the determination of my custody rights. I have been exhausted. I wish if I could get the chance of resolving all the disputes together in the same court!"

Source: Kept anonymous, interview with a divorced woman, Alexandria, July 2005

²⁰ Under the old system prior to this '*khula*' law, despite women's legal entitlement to ask for a 'fault-based divorce', judges still maintain a great deal of discretion in granting such kind of divorce and often require substantial 'evidence of harm' from the wife to validate her petition for divorce.

²¹ Human Rights Watch, 'Overview of Marriage and Divorce Laws in Egypt', at http://hrw.org/reports/2004/egypt1204/3.htm#_Toc87857195, last visited July 12, 2005

²² Respondents were asked whether they support the view that no-fault divorce (*khula*) gives the Egyptian women comparatively easier right to divorce than ever before.

²³ It is critically and justifiably viewed that the introduction of no-fault divorce in 2000 has not fundamentally altered the unequal divorce system in Egypt. The *khula* divorce in 2000 has improved the range of options for some limited women who have financially resources and will not suffer any problem if they forfeit both the right to any marital assets and the right to any future support from the husband. So, *khula* divorce has done nothing to end the discrimination in Egyptian divorce law, rather simply created another avenue whereby women has to give up their all financial rights (right to maintenance, dower etc) in exchange for a divorce.

3.2 Executing the ruling of the court with more certainty:

One of the variables in the philosophy of establishing family courts relates to the execution of justice and the expeditious and effective attainment by the aggrieved party, usually women, of their legal rights as decreed by the courts. Prior to the establishment of the new family courts, there was no separate executing body that would enforce the court rulings (Moussa; 2004: 9). Many divorced women find themselves destitute because of the government's failure to enforce the court rulings. Women had to spend several years trying to trace their former husbands' addresses without which it was not possible to enforce the court rulings.²⁴ Thus, many women were unwillingly driven to the use of *khula`* divorce thinking that there was no guarantee that court rulings for a alimony or child support would ever be enforced. Fayza Kamal, 59 -a victim of the poor enforcement of the court rulings explained:

Client's reaction -2

BOX 2

"I can't work, I have rheumatism. My daughter was three when I first went to the court to ask for maintenance. She is seven now. The total accumulated maintenance is 4800 Egyptian pounds [US\$780], but he won't pay it. He is supposed to go to jail, but he has not. I had to withdraw my youngest girl from school because I can't pay the fees....."

Source: Human Rights Watch, an International NGO

3.3 Minimizing family differences with least possible loss of human potentials:

Another factor that leads to the establishment of the exclusive family courts was to incorporate a system that will provide some effective assistance which will help the couples to continue their family ties²⁵ and to overcome their family differences with the minimum possible loss of their potentiality due to family unrest.²⁶ One of the crucial problems in the previous system that entailed many years to resolve personal status cases was that family differences augmented with regard to what they were at the onset thus inevitably conducting more losses of their potentiality due to prolonged family unrest (Moussa; 2004:8). As family unrest reduces the potentiality of people at their work place, this family bitterness had an extended effect to the development at the national level also.²⁷

3.4 Reducing the case loads on the regular courts:

²⁴ If a woman does not know her former husband's address to forward to the bailiff (the court official responsible for announcing and implementing courts orders), she is simply denied the money as she was awarded in the court ruling.

²⁵ According to Articles 9 the Egyptian Constitution, "the family is the foundation is the foundation of society built religion, ethics and patriotism. The government is careful about preserving the genuine traditions of the Egyptian family, including values and traditions together with embedding and developing these traditions in relationships within the Egyptian society".

²⁶ Interview with Zaid Yehia, lawyer, Alexandria, Egypt July 28, 2005.

²⁷ Notably, the approximate number of personal status law suits is 127,000 per month which is equivalent to one and a half million laws suits annually, and such lawsuits involve approximately seven million Egyptians annually. Perhaps, the most important indications of these figures is that annually there are seven million Egyptians who are mentally and psychologically suffering due to the martial/ family problems which ultimately effect on the economical and social development of Egypt because it has been scientifically proved that marital problems have a 50% to 80% effect on women's achievement, regardless of whether she is a housewife or working woman and 40% to 75% effect on men. See more details, in Dr. Aly Moussa, UN-Project Manager at the National Council for Women in Egypt, 'A general presentation on the social function of the family court and its role in society'; "Establishing the Family Courts" (Cairo: Konrad Adenauer Stiftung, 2004), p.6.

One of the important aspects of establishing separate family courts is to reduce the overburdened caseloads on the regular courts, which dealt with other civil, commercial, and personal status cases etc. at the same time. When women initiate divorce in Egyptian courts, it takes several years to get decree in these already overburdened courts. While thousands of Egyptians seek divorce every year, only a limited number of these cases are finalized during the same period. According to the Ministry of Justice, the number of 'regular procedure' divorce cases for the year of 2002 in the courts of Cairo alone reached a number of 2,755. An additional 1,751-*khula* cases were also registered at the North Cairo court and other 746 at the South Cairo court, which all together totaled as 5,252 divorce cases. But amongst them only 62 were resolved by January 2003²⁸. Moreover, Judges in Egypt, on an average hear seventy to eighty cases per day.²⁹ As a result, the postponement of court hearings and slow progression are the usual phenomenon of these courts. Due to this overburdened nature, Egyptian court fosters delay for which Egyptian women have to pay the heaviest price. The over-clogging of the courts in Egypt persuaded the Government to establish family courts under separate settings.

3.5 Creating a suitable environment of resolving family disputes:

The establishment of 'specialized courts' was expected to expedite the process of resolving family disputes, which are of very personal nature, in such a venue that will be separated from the venues of holding other court's sessions and in such an environment which will not cause harm on the psychological and emotional values of the children of the spouses. One of the main purposes that prompted to establish the new family courts was to save the children from being exposed to criminals in court rooms that might have a detrimental psychologically affect on them.

3.6 Curtailing the provision of appeal to stop intentional delay:

Although the provision of "no appeal"³⁰ in *khula* divorce remedied to some extent the Egyptian women's protracted anxiety after filing cases on divorce³¹, this "no appeal" provision is limited only to *khula* (no-fault) divorces and not extended to fault-based divorce cases. Thus, before the initiation of new family courts in 2004, women especially poor and disadvantaged who can not seek *khula* divorce, due to the fear of giving up all financial rights, had to face the harassment by their ill-intentioned husbands who usually use the provision of appeal to make appeal in the *Courts of Appeal* and then *Court of Cassation* which usually take several more years. Judges also admitted that the system was 'intentionally abused by the husbands'.³² But under the new family law of 2004, only one provision of appeal against family court decrees has been admitted for the fault-based divorces, keeping "no appeal" provision for *khula* divorces unchanged. Thus, it can be treated as a success of Egyptian women to change the law from the scrapping of the Cassation under the name of 'appeal'.

²⁸ Reem Leila, "A Family Affair," Al-Ahram Weekly, Issue No. 621, January 16-22, 2003 at at <http://weekly.ahram.org.eg/2003/621/fe1.htm> (last retrieved on July 2, 2005)

²⁹ An interview with Dr. Shokrey Al Dakkak, Chairman of the High Court of Appeal, Egypt on July 25, 2005.

³⁰ Article 20 of the Law 1/2000 provided that " In all cases, a divorce through *al-Khole* shall be final and irrevocable divorce. The ruling for *al-Khole* shall in all cases incontestable by any method of contestation".

³¹ In response to the question asked to the respondents that whether they think 'no appeal' provision against the *khola* divorce is a positive annexation for the Egyptian women under the Law No. 1/2000. All respondents in an equal tone replied in the positive.

³² Supra 29.

As a further consequence, sometimes divorce decreed in the first instance courts was denied by the appellate courts several years after the initial ruling. Such lengthy and opaque procedures sometimes "can lead to situations where a woman who got remarried after the first ruling may find themselves as 'polyandrists' i.e. legally married by two men at the same time which is prohibited in Islam".³³

These were the major factors that led the Egyptian government to consider the draft law of NCW that demanded the immediate impetus for the creation of a family court system and ultimately it was passed in March 2004 (law no. 10/2004), as a consequence of which the family courts came into existence in October 2004 with 224 family courts consisting of 1,100 judges, 800 administrative prosecutors and 1,400 sociologists and psychologists working in 224 family courts around the country.³⁴ In order to effectuate the function of the new family courts, more than 75,000 cases have already been referred to the family courts³⁵, those have jurisdiction over all matrimonial cases.³⁶ The family courts represent the "first specialized courts in Egypt that provide family members with new types of services."³⁷

In fact, after a long cherished expectation, the family court provides a much-awaited window of opportunity for women to get justice in a more easily accessible way. Although the new law still has some lacking as discussed above, the success or fruit of the newly established family courts starts to ripen, as reflected by the comment of Aziza Al Masri, a 32-year-old accountant and a family court client during a newspaper interview: "I applied to get my divorce a month ago. I have gone through the mediation process for two weeks but I did not want to return to my husband," she said. "It was surprising that once the mediation sessions finished after 15 days, the case was presented at court. I did not expect this could happen in just a month."³⁸

4. Statutory basis of A.D.R. in Egyptian family courts: Article 9 of the Law on Establishment of the family courts, 2004 provides that "The action initially brought before the family courts in connection with the disputes that lie within the jurisdiction of the family courts shall not be accepted without submitting the request for settlement to the concerned family disputes to the family dispute settlement office in order to make an endeavor for reconciliation between the disputant parties.....". That is to say, the notion of A.D.R. in the form of mediation/reconciliation is statutorily recognized in Article 9 of this law. Moreover, taking a reconciliation attempt is made mandatory before going to the family courts for getting legal remedy.

But it cannot be assumed that the legal basis of ADR is as new as the establishment of the family courts in 2004. Rather, the statutory basis of ADR in the forms of reconciliation and arbitration were found much before the establishment of the new family courts, under

³³ Interview with Asraf Majid, Lawyer, Cairo, Egypt, July 30, 2005.

³⁴ According to Justice Minister Mahmoud Abul Leil in 'New Family Courts Make Life Easier for Egyptian Women', Middle East Times, February 17, 2005.

³⁵ The Head Heeb: Women and Egyptian Courts, part 4 at <http://headheeb.blogmosis.com/archives/026534.html> last visited July 17, 2005.

³⁶ *Ibid.*

³⁷ Mona Zulficar, 'New Signs of Progress for Women in Egypt', Women Living Under Muslim Laws, at <http://wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-85801>; last retrieved on July 21, 2005.

³⁸ 'New Family courts make life easier for Egyptian women', Middle East Times, February 17, 2005 at <http://metimes.com/articles/normal.php?StoryID=20050217-053644-8324r>; last retrieved on June 8, 2005.

the jurisdiction of the summary courts and courts of first instance. The first part of Article 6 of the law on Certain Personal Status Provision of 1929 as amended by law no.100/1985 stipulates the basis of mediation/reconciliation in case of petition made by the wife seeking judicial divorce due to the 'harm sustained' by her, saying that:

" If the wife claims that she is being harmed by her husband in such a manner that it would be impossible to continue living together by the spouses, she may then resort to the court and seek a court decree for separating them. The Court shall then pronounce a court decree announcing her as completely divorced, if the 'harm' caused to her is established, and the court has been unable to make reconcile between them..... "
 .The essence of 'arbitration' is found in the second part of the same article when it continues that: *"If her request is refused by the Court and complaint keeps recurring, without evidence of established harm' the court shall then send two arbitrators and pronounced its judgment in the way prescribed by articles 7 to 11 of this law".*

Moreover, the provision of reconciliation and arbitration are also incorporated in case of petition made by the husband as to the curtailment of wife's right to alimony due to her disobedience. Article 11 bis-2 articulates that:

"If the wife refrains from obeying her husband unjustifiably and without any reasonable cause, the wife's right to alimony shall be curtailed from the date of disobedience..... In such a case the court shall intervene to end the litigation between them peacefully through reconciliation with the mission of continuation of marriage and good association between them. However, if it transpires to the court that the difference is deep-rooted and entrenched, and that wife insists on divorce, the court shall take arbitration procedures as prescribed in articles 7 to 11 of the present law", which will be discussed in section 5.1.1.4.

In a more concrete and emphasized way, ADR provision in the way of reconciliation was inserted in Paragraph (2) of Article 18 of the *Law on Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters, 2000* It says, *"In divorce actions, no ruling shall be pronounced except after the court exerts an effort in trying to reconcile the spouses and is unable to realize such conciliation. If the spouses have a child, the court shall offer the reconciliation at least twice, within a period of not less than thirty days and not exceeding sixty days making these two attempts."*

It is true that although Article 6 of 1985, Article 18 of 2000, and finally Article 6 of 2004 do not include either the term 'A.D.R.' or the term 'mediation' categorically in those provisions, nonetheless the insertion of the term 'to reconcile' in all those provisions inevitably reflect the basic ideology that Egyptian people, especially women, are more akin to mediate the disputes to keep their family tie intact, if breaking of such tie is not inevitable. Considering this value legislatures incorporated conciliation proceedings, which will be discussed in section 5.1.1.4 in details; in order to solve the family related matters in a more private and re-conciliated way. These reconciliation provisions came in response to the necessity of pressing matter and in conformity to the teachings of *Sharia* about how to care for the family, and how family should be established on love, mercy and stability (Fawyeza; 2004:18).

5. Jurisdiction of family disputes in the family courts: The law no. 10/ 2004 to form separate family courts is the most recent legislation ever issued to define the jurisdiction of the Personal Status issues of the Egyptian people. But, from Law 25/1920³⁹ up to the present law of 10/2004, it can be seen that not only today's new family courts but also the century-old summary courts⁴⁰ and courts of first instance⁴¹ that previously dispensed with the personal status laws had wide jurisdiction to deal with family issues. But the difference between the old institutions and the new innovation is that the jurisdiction of different kinds of family disputes, prior to the establishment of new family courts in 2004, were regulated not only by one court, rather some were dealt with summary courts and some were with the Courts of first instance. In fact, under this new law of 10/2004 summary courts and courts of first instance were replaced by the newly established family courts.⁴² Now, family courts have the "exclusive jurisdiction to deal with all family cases to be brought thereafter by either of the spouses resulting from marriage, divorce, physical separation, marriage annulment alimony, custody of the children, visitation right, custodian home, removal or suspension of guardianship etc.,"⁴³. While under the old system some family disputes were resolved in summary court⁴⁴ and some were by the court of first instance⁴⁵, now the new intuition of the family courts serve as a 'one-stop center' (Al-Ahram Weekly: 2003) to resolve all types of family disputes under the jurisdiction of one court. Instead of going through various types of courts to sort out family problems, under the new courts clients can deal with all types of family disputes including divorce, custody, alimony, inheritance and family violence etc under the same court.

Article 3 of the Law No 1/2004 provide that: *"The family court shall exclusively be concerned with examining all personal status cases that lie under the jurisdiction of the summary courts and the courts of First instance according to the provisions of Law on Reorganization of Certain Terms and Procedures of Litigations in Personal Status Matters as promulgated by Law No. 1 of 2000"*.

³⁹ The first law concerning the personal status issues was the law no. 25 of the year 1920 which was followed by the law no. 25 of 1929, then was the law no. 44 of 1979 that incorporated some amendment of the past two legislations which were subsequently found unconstitutional in 1985. However, several changes made by 1979 laws were reintroduced and some new provisions were added Personal status (Amendment law) of 1985 (law no 100/1985). After fifteen years of the enactment of the law no.100/1985, another important legislations concerning personal stays issues came into force in 2000 as law no 1/2000 and finally law of 10/2004.

⁴⁰ Prior to the establishment of family courts, the Summary Courts had the jurisdiction to decide minor personal status issues together with cases involving misdemeanors and minor offenses; civil and commercial cases the value of which do not exceed £E 5,000 as well as labor disputes arising between employers and employees.

⁴¹ The Courts of the First instance had jurisdiction to decide all cases involving matters the value of which exceeds Egyptian Pounds 5,000 and all major personal status matters. They also have jurisdiction to hear appeals against decisions of the Summary Courts in civil and commercial cases and misdemeanor criminal offenses

⁴² Article 2 of the Official Journal published on March 18, 2004, Issue No.12 (Supplement A) of the Law No. 10 of 2004

⁴³ Article 12 of the Law No.10/2004.

⁴⁴ See Article 9 of the law no. 1/2000.

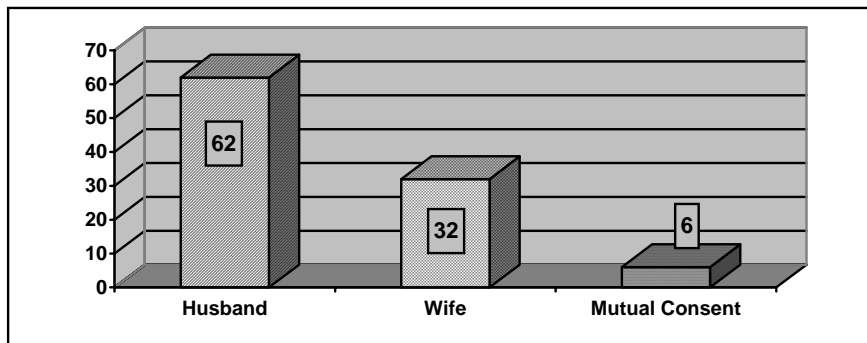
⁴⁵ Article 1 of the law no.1/2000. Moreover, Article 10 of the law no. 10/2000 stipulates that " The Court of First Instance shall have the jurisdiction of examining personal status cases that are not subject to the jurisdiction of the summary courts....."

Since now a days family courts have exclusive jurisdiction to deal with conflicts those arise within the family as well as with other related domestic matters, new family courts are dealing with a broad range of the issues on divorce. Thus, this part will try to give some conception regarding the nature of major family disputes ranging from judicial divorce to some other incidental marital disputes those results from divorce so that the readers can get a comprehensive knowledge about the nature of family disputes in Egypt.

5.1 Judicial Divorce

Central Agency for Public Mobilization And Statistics (CAPMAS), an official statistical division in Egypt, found that in Egypt 6.5 per cent of married couples are divorced annually; in 62 per cent of these cases divorce was the husband's decision, divorces initiated by wives making up 32 per cent of the total number; while in only six per cent of the cases both parties agree on the decision.

Figure 2: Initiation of divorce in Egypt



Source: CAMPUS, Cairo, Egypt

Unlike men,⁴⁶ Egyptian women can only divorce by court action (*tatliq*). Thus, judicial divorce, in context of Egypt, means divorce when it is sought by the wife with the intervention of the courts. Such kind of 'judicial divorce' can be divided into two types:

1. Fault based divorce (regular divorce)
2. No-fault divorce (khula divorce)

5.1.1 Fault-based divorce (Regular divorce): In order to initiate a divorce proceedings with full financial rights, an Egyptian women must prove 'evidence of harm' inflicted by her spouse during the course of their conjugal life, often supported by eyewitness testimony. The notion of 'evidence of harm' imply that "it is impossible for the wife to continue living with her husband"⁴⁷ due to any/some ground/s most of which are mentioned in the law. The grounds for proving the 'evidence of harm' that are accepted by the courts

⁴⁶ Muslim Egyptian men have a unilateral and unconditional right to divorce his wife without resort to any judicial proceedings. They simply need to repudiate their wife/wives, saying "I divorce you, three times, making the divorce irrevocable (ba'in) and register the divorce within 30 days with a Maz'un's (Religious notary) office to make it official. Husband's unilateral power to divorce without any judicial proceedings is categorically incorporated in Articles 5 and 5 (bis-2) of the law of 25/1929.

⁴⁷ Article 6 of the Law No. 25/1929 amended by the Law. No 100/1985 Concerning the Provisions of the Alimony and Some Personal Status Issues.

are: (1) not providing any maintenance or financial support⁴⁸; (2) illness, including mental illness, venereal disease, and impotence⁴⁹ (3) absence of the husband for more than one year or more without acceptable reason⁵⁰ (4) imprisonment for a period of three and more years⁵¹ and (5) husband's 'another marriage' causes her physical/moral/financial harm making it impossible for the spouses to live together⁵² or any kinds of other injury⁵³ (*darar*) which is not mention categorically in the law. However, since 'what constitutes sufficient degree of harm' for the granting of a fault-based divorce is not explicitly mentioned in the law, judges have considerable discretion in granting a fault-based petition for divorce.

5.1.2 No-fault Divorce: By virtue of the Law No. 1/2000, Egyptian women now enjoy the right to file for a divorce without providing either any 'evidence of harm' or 'witnesses', which are a condition-precedent for fault-based divorce. In order to file for a "no-fault" divorce (*khula*), a woman need not have to provide grounds for filing the divorce request, but must agree to forfeit her future rights to alimony and deferred dower (*mu'akhar*) as well as repay her prompt dower (*muqaddam*). Moreover, since *khula* divorce takes away the husband's previous right to prefer appeal to the Courts of appeal and then Cassation, the *khula* has proved to be faster than the fault-based divorce process. However, the option is limited to women who will face no problem if they renounce all financial claims, but not for all women who will be in real financial constraints if they renounce their all rights under *khula*. So, in fact neither establishments of the new family courts under the law No.10/2004 and nor the right of the women to access "*khula*" divorce under the law no. 1/2000 substantively reformed the traditional and discriminatory divorce system in Egypt (Human Rights Watch: 2004).

In case of fault- based divorce, Egyptian women have some legal and financial rights for which they can also contest in the family courts. These includes

5.2 Alimony/ Maintenance: In Egyptian personal laws maintenance is deemed as "*a debt against husband from the date he fails to maintain until the debt is paid or excused by the wife*".⁵⁴

A wife's alimony shall be estimated according to the husband's status at the date when the alimony becomes due, whether he is in affluent circumstances or in financial distress, the alimony shall not be less than the amount indispensable for meeting her essential needs.

⁴⁸ Article 4 of the Law No. 25/1920 amended by the Law. No 100/1985 Concerning the Provisions of the Alimony and Some Personal Status Issues.

⁴⁹ Ibid, Article 9. However, it is also mentioned in Article 9 that "... If she married him aware of the defect, or if the defect took place after the marriage and she accepted it overtly or evidently after her awareness thereof, then separation shall impressible".

⁵⁰ Supra 47, Articles 12 and 13.

⁵¹ Ibid, Article 14.

⁵² Ibid, Article 11 (bis).

⁵³ For example, "physical or verbal violence, attempts to take control of the wife's private property, damage to the "honor" of a wife or her family, or deprivation of marital intercourse", cited in 'Overview of Marriage and Divorce Laws In Egypt' at http://hrw.org/reports/2004/egypt1204/3.htm#_Toc87857195 (retrieved on 23 June, 2005).

⁵⁴ Article 1 of the Law 25 of the year 1920 as amended by Law No 100/1985.

However, in case an urgent reason comes up for entitlement to the alimony by the wife, the Court shall issue a temporary ruling for alimony on the husband within a maximum period of two weeks from filing the action by the wife.⁵⁵ A petition for alimony must be submitted to the court within a period of one year from the date of divorce.⁵⁶

The alimony for the children shall be provided by their father until the daughter gets married, or is able to earn an income sufficient for her expense, and until the son attains fifteen years of age and is able to earn a suitable income. If the son attains the prescribed age without being able to earn for living, due to the physical and mental illness or continuation of his education as suitable for other children like his age, his father shall continue to provide for his alimony".⁵⁷

The most beneficial provision for the wife concerning the enforcement of the alimony - ruling issued by the court is the establishment of a specialized 'alimony fund' under the recent law No. 11 of 2004 which came into force together with the new family courts as a consequence of Article 71⁵⁸ of the Law No. 1/2000. As mentioned earlier, according to Law 11 of 2004 the family courts will include an alimony fund *"to quickly provide women and children with much needed alimony"*⁵⁹ until the money is collected from the husbands, the method of which is also specifically mentioned in the law. If the husband is a government employee, 25 per cent to 50 per cent of his salary,⁶⁰ depending on the situation⁶¹, will be deducted towards alimony; if he works in the private sector or has own business, a special department of the court will ensure that payments are made. Moreover, if the ruling for payment of alimony is subject to a serious litigation and in the papers of the case nothing adequate exist to determine husband's income, *"the court shall ask the public prosecution to carry out an investigation that enables the court to reach such determination.....Despite the provisions concerning the confidentiality of accounts in banks under the Decree Law No. 205 of 1990, any governmental or non-governmental body shall inform public prosecution of any information which will be useful in determining the income of the husband from whom the alimony is required"*⁶².

⁵⁵ See more details in Article 16 of the Law No. 25/1929 as amended by Law. No 100/1985.

⁵⁶ *ibid*, Article 17.

⁵⁷ *Ibid*, Article 18 (bis-2).

⁵⁸ Article 71 of the law 10/2004 provides that a family insurance system shall be established in order to guarantee the enforcement of issued rulings, which determine alimony for the wife, children or relatives. Nasser Social Bank shall be supervision the implementation of the said system. Article 74 further says that Nasser Social Bank or one of its branches within which the husband's home address is located, will notify him to proceed with settlement of his alimony debt within the first week of each month.

⁵⁹, Reem Leila, 'Balance Sheet', Al-Ahram Weekly, Issue No. 733 March 10-16, at <http://weekly.ahram.org.eg/2005/733/fe2.htm>, last visited June 7,2005. The fund's resources will be generated by administrative fees levied for the registration of births, marriages and divorces in accordance with Article 2 of the Law No.11 of 2004.

⁶⁰ Articles 73 and 76 of the Law No. 1/2000.

⁶¹ *Ibid*, Article 76 stipulates that in settlement of alimony debt, the limit will be: (a) 25 per cent to the wife; this percentage shall be 40 per cent in case they are more than one wife (b) 40 per cent to the wife with one or two children (c) 50 per cent to the wife with more than two children.

⁶² Article 23 of the Law. No. of 1/2000.

5.3 Child Custody and Guardianship: Another most recent triumph⁶³ was achieved through the new Law No. 4 of the year of 2005⁶⁴ in the arena of enhancement of women's rights in the family affairs. Amending Clause (I) of Article 20 of law No. 4 of 2005 provides that the women's right to the custody of children shall be terminated with the male or female child on attaining the age of fifteen. Even after the attainment of age of fifteen year for either male or female child, their custody will not automatically be transfer to their father, rather the judge shall give the child a choice whether or not s/he wish to remain with his/her mother until the age of twenty-one in case of the male child, and until getting married in case of female child, while the mother will not get any alimony for the maintenance of her children during the extended period.⁶⁵

Each one of the spouses shall have the right to see the youngster boy or girl. The grandfathers shall have the same right in case of the absence of the parents of the youngsters. In case, it is difficult and impossible to arrange for seeing the children by agreement, the court shall organize a place for such meeting where it should not harm the young boy or girl psychologically.

6. Procedures of in-court A.D.R. in resolving family disputes: It is already mentioned that the ADR is used in resolving family disputes under both the old institution of summary courts and courts of the first instance as well as the new institution of exclusive family courts following two basic dispute resolution procedures:

- I. Reconciliation/ mediation proceedings; and
- II. Arbitration proceedings.

Since the establishment of the new family courts in 2004, the old institutions are no longer dealing with the family disputes. So, the procedures described in this section consists only those followed in the newly established family courts as outlined below:

6.1 Reconciliation/ mediation procedure: In handling and managing family cases, the family court is aiming to be effective and expedient through the technique of using mediation both in pre-trial stage and trial stage. Thus, while discussing reconciliation procedure, it can be outlined in the followings heads:

- a. Reconciliation in the Pre-trial stage; and
- b. Reconciliation in the Trial stage.

6.1.1 Reconciliation in the Pre-trial Stage: Due to the concern for seeking means of peaceful settlements of family disputes before starting the trial procedure, a new office is innovated inside the family court called Family Disputes Settlement Office (*makatib taswayat monazi'at al-usra*). One or more Family Disputes Settlement Office (FDSO) shall be established within the area of jurisdiction of each summary court which will comprise an adequate number of legal, social and psychological specialists and will be headed by

⁶³ Previously under the law of 25 of 1929, physical custody of any child is automatically transferred to the father at the age of ten for boys and twelve for girls, unless the parents reach an alternative extra-judicial agreement or a judge orders an extension of the mother's custody (i.e. by extension it is for the female up to marriage and for male up to the age of fifteen years).

⁶⁴ This new law came in to force on March 8 2005 with a view to amend the Article 20 of the Law. No. 25 of 1929 concerning the Provision elated to alimony and certain provision Related to Personal Status Matters as amended by Law No 100 of 1985.

⁶⁵ See more details, Manal El Jesri, Egypt Today, 'Who Keeps the kids: Recent amendment to the custody law', April 2005, at <http://www.egypttoday.com/article.aspx?ArticleID=4856> (retrieved on June 28, 2005).

one of the expert jurists or specialist in family affairs These offices are to work under the supervision of the Ministry of Justice (MoJ) and the specialists comprising the FDSOs will also be selected by the MoJ for which the rules concerning their selection will be used by decree of the Minister of Justice following consultation with other competent ministries.⁶⁶ The MoJ shall convene and shall form a committee comprising the sufficient number of legal, social and psychological specialists (Rania; 2004:14). Moreover, MoJ will also organize training courses for sociologists and psychologists to train them about how to mediate family disputes successfully.⁶⁷

So, whenever there is a dispute in the family, reconciliation is the first step to be taken so that the problem is not left to be handled like other cases in the open courtrooms. The office has to try to settle this dispute peacefully at first in order to protect the family. Article 6 of the Law No. 10/2004 stipulates that:

“.....Anyone who wishes to file an action concerning a personal status matter that lie within the jurisdiction of the family courts, is obliged to present an application for settlement of the dispute to the concerned family disputes settlement office first.....”

Article 9 gives more emphasize on the “mandatory step” of the reconciliation procedure exercised by the FDSOs in saying that a litigation initially brought before the family court in connection with the family disputes will be inadmissible, if it is filed in a family court without submitting the reconciliation- proceedings for the settlement of the disputes between the parties by the FDSO and rendering its failure in it.

In the reconciliation procedure, the FDSO will meet with the parties to the dispute and listen to their statements and make them aware of the different aspects of their dispute and consequences thereof. It also gives advice and guidance to the disputant parties free of charge⁶⁸ in an attempt to settle the dispute amicably,⁶⁹ in order to preserve the family tie. The attempt for reconciliation must be finalized within fifteen days from date of submitting the request. It is not allowed to exceed this period unless otherwise agreed between the parties. If an agreement is reached through reconciliation, the head of the FDSO shall write it down in a official minutes signed by the parties to the dispute. When the minutes are signed by the parties, it shall have the force of self-executing deeds and consequently the dispute will end thereby.⁷⁰ However, if the two parties failed to reach reconciliation, the case shall then be taken to the family court within a period of seven days, from the date of application filed by any of the parties to the dispute concerning their failure of reconciliation.⁷¹ As a matter of fact, this process of reconciliation in the pre-trial stage “*reduce the number of cases that will reach in the trial stage*”.⁷²

Client's reaction – 3

BOX 3

⁶⁶ Article 5 of the Law No. 10/2004.

⁶⁷ Quote from *Serri Siam, assistant for legislative affairs to the minister of justice* The Head Heeb: Women and Egyptian Courts, part 2 at <http://headheeb.blogmosis.com/archives/015060.html>, last visited July 17, 2005).

⁶⁸ Article 7 of the Law No 10/2004.

⁶⁹ *Ibid*, Article 6.

⁷⁰ *Ibid*, First paragraph of Article 8.

⁷¹ *Ibid*, Second paragraph of Article 8.

⁷² *Supra* 37.

“the mediation session gives me the opportunity to come into a settlement with my husband who previously denied to give any thing to me that I will be given 100 Pounds in each month as maintenance. I think it is only possible due to the psychologist and social workers’ honest attempt to mitigate my sufferings in one hand and to get the legal remedy on the other. Now I just imagine how many women will get their legal remedy in a short time for which they spent previously several years in the court-rooms.”

Source: Kept anonymous, Interview with a divorced house wife, a family court client at Alexandria, Egypt

6.1.2 Reconciliation in the trial Stage: As mentioned earlier in section 5.1.1.4 the provision of on trial mediation is not new in the court system of Egypt. But one of the changes made on in-trial mediation through the enactment of the Law No. 10/2004 is that now either of the couple can apply to the family court only when their attempt for reconciliation is failed in the pre-trial stage by the FDSO in accordance with the provision of Article 8 of the said law. Moreover, now the family court is made up of three judges, at least one is of the level of the president in the courts of first instance, and they will be assisted by two experts; one is sociologist and other is psychologist and at least one of them must be a woman. The said two experts shall be appointed from those recorded in the rolls to be issued by decree of the Minister of Justice in agreement with the Minister of Social Affairs or Minister of Health, depending on each case.⁷³

Another important change is the inclusion of two experts in the court proceedings and making their attendance mandatory during proceedings to make an attempt for reconciliation between the parties, for the cases of divorce, court imposed divorces, annulment of marriage, child custody, retention of marital hose, visitation, cases of lineage, and obedience. The court may call for their assistance in other cases if it deems necessary.⁷⁴ Since no more details is described, as regard to the court proceedings in combination of this panel of 5 persons in the trial stage, in the present law, it will be in accordance with the provisions of the Law No. 1 of the year of 2000.⁷⁵ Accordingly, unlike other marital cases in case custody of the child, if one party fails to attend the conciliation session, being aware thereof without having any reasonable ground, his/her absence in the conciliation proceedings shall be considered as h/she is refusing it.⁷⁶ In case of fault based divorce, the conciliation effort will be taken by the court at least twice within a period of not less than thirty days and not exceeding sixty days separating these two attempts, if the couple have child.⁷⁷ Even for no fault divorce (*khula*), the court shall not rule for divorce through *al-khole* except after trying to make reconciliation between the parties.⁷⁸

However, the law did not impose the attendance of the two experts in Appeal circuits like it did in the family courts, but stipulates that the circuit is allowed to call for the assistance of the specialist if it deems so.⁷⁹

6.2 Arbitration procedure: After the failure of mediation/ reconciliation attempt in the trial stage as hereinbefore mentioned, the arbitration procedure will take place. In fact,

⁷³ Article 2 of the Law No.10/2004.

⁷⁴ *Ibid.* Article 11.

⁷⁵ *Ibid.* Article 3.

⁷⁶ First Paragraph of Article 18 of the Law No. 1/2000.

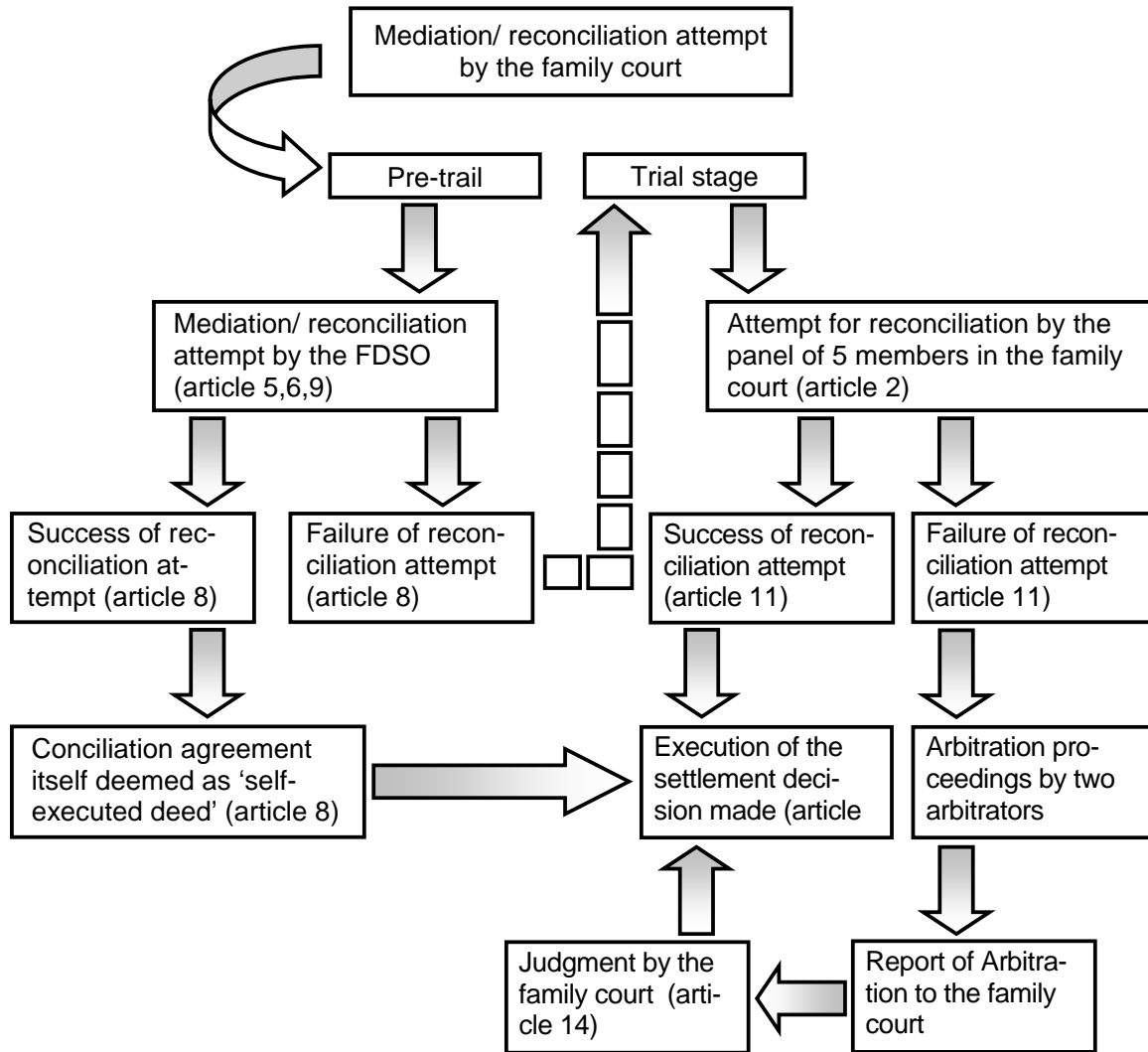
⁷⁷ *Ibid.*, Second paragraph of Article 18.

⁷⁸ *Ibid.* Article 20.

⁷⁹ Article 2 of law No 10/2004

proceedings of arbitration are not changed under recent law of 10/2004, rather in pursuance of article 3 and 13 of the new law; it follows the provisions of the Law No. 1 of 2000.

Figure 3: A.D.R. proceedings in Egyptian family Courts:



Source: Law No. 10 of the year 2004 promulgating the *Law on Establishment of the Family Courts*.

Regardless of whether it is fault-based divorce⁸⁰ or no-fault divorce (*khula*)⁸¹, the court will appoint two arbitrators if the court finds that the attempt for reconciliation between the parties have failed. In case of appointing two arbitrators, the court shall request the spouses to name an arbitrator each from his/her own kindred, as much as possible. If either spouse neglects or refuse to appoint his/her arbitrator or fails to attend that session, the court shall appoint arbitrators accordingly.⁸² The court shall notify the arbitrators and

⁸⁰ Article 19 of the Law No.1/2000.

⁸¹ *Ibid*, Article 20.

⁸² *Ibid*, first paragraph of Article 19.

the litigants of such appointment and date of the assignment, and shall also administer the oath to each of the two arbitrators that they shall both fulfill their missions fairly and equitably.⁸³ The process of arbitrators' work shall not be affected by the absence of either spouse to attend the session of the arbitration, once such spouse has been notified of holding the session.⁸⁴ In the session, the arbitrators shall identify the causes of the discord arisen between the two spouses, and shall exert their utmost effort to bring peace between them by all possible means.⁸⁵

The two arbitrators shall submit the report to the court what they have concluded together within period of six months from their date of appointment in case of fault-based divorce⁸⁶ and within three months in case of no-fault divorce.⁸⁷ If they differ, or either arbitrator fails to attend, the court shall hear their statements or the statement of one who attends after taking the oath. Finally, the court may adopt what the arbitrators have concluded, or the statements of either arbitrator or whatever the conclusion the court will draw from the papers of action.⁸⁸

7. Exemplary provisions on New Egyptian Family Law: As mentioned earlier one of the main objectives of this paper is to derive some good lessons from the Egyptian ADR system those can be used to strengthen the system of ADR in other Muslim Countries. Following the discussions made on in-court ADR system in Egypt the exemplary good lessons identified are as follows.

7.1 The family court has, consequently, been conceived as a kind of '*one stop center*'⁸⁹ that provide not only the courtroom facilities but also serves the programs, e.g. psychological support, to assists all members of the family. It streamlines the divorce process by consolidating all disputes into a single case heard by one court that substantially reduces the delay in trial. In other words, new family courts "facilitates court procedure and saves effort, money, and time otherwise wasted by the disputing parties in commuting among different court-rooms to follow up on the numerous lawsuits that arise from marital disputes" (Fawyeza; 2004:19).

Client's reaction – 4

BOX 4

"This [family courts] will save me a lot of time, and money spent and also from exhaustion on traveling to different courts to solve different parts of marital dispute as under the new family court all cases -- divorce, alimony, custody etc., will be heard by the same court"

Source: Interview with a divorcee in Alexandria, Egypt on July 17, 2005.

⁸³ Article 8 (bis-2) of the Law. No. 25/1929 as amended by Law No. 100/1985.

⁸⁴ *ibid*, first Paragraph of Article 9.

⁸⁵ *Ibid*, second paragraph of Article 9.

⁸⁶ *Ibid*, Article 8(2). In case of fault-based divorce, if arbitrators fail to reconcile the couple, they must present a report to the court, outlining who they think is at fault in the relationship. Based on this report, the court grants a divorce and determines the amount of compensation to be given by the party deemed at fault to his or her spouse. Thus, in this case arbitrators wield an enormous amount of influence on the outcome of the case.

⁸⁷ Second paragraph of Article 20 of the Law No 10/2000.

⁸⁸ *Ibid*, Second and third paragraphs of Article 19.

⁸⁹ *Supra* 59.

So, instead of distributing their time and efforts on sacredly on myriad of courts, women can now concentrate on only one court that saves their tiresome roaming on different court to resolve different parts of the same marital dispute.

7.2 Filing any case at the family courts involving divorce, custody, alimony, inheritance, family violence, etc. is free of charge. Not only are this, getting other facilities such as mediation services in the pre-trial stage and psychological supports to the family members from professional psychologists etc. are also attainable free of charge (Articles 3, 7 and 12).

7.3 The law establishing the family courts is careful in making justice easily accessible to all citizens concerning personal status matters by stipulating the establishment of family courts within the sphere of the competence of every summary courts and also establishing competent circuits of appeal within the sphere of competence of each court of appeal (Article 1).

7.4 The law establishing family courts stipulates that the court shall be formed with a panel of three judges at least one of whom must be women. It is obvious that plurality of judges and especially the inclusion of female judge allow a greater privilege to women on for attaining better justice through family courts (Article 2).

7.5 The family courts under the new law have also established a fund to disburse alimony to those women who are facing problems to collect alimony from their ex-husbands. In order to finance the fund, the government is collecting 50 Egyptian pounds (\$8.60) on both marriage contracts and divorce proceedings. This could create a huge fund every year because now a days 400,000 marriage and 60,000 divorce proceedings are being filed each year. Besides, 30 pounds taken on issuing birth certificates, with 1.7 million certificates issued annually are also accumulated in this fund. The Nasser Social Bank also help in financing this alimony fund. Although initially disbursed from this fund, later the money is provisioned to be collected from the ex-husbands who will face a penalty if they do not pay in time.⁹⁰ In cases that, Egyptian women are married to Egyptians working abroad or with foreigners who are residing either in Egypt or outside the country, the general prosecutor's office is made responsible to collect any of such alimony from the defaulter husband through respective embassies and consulates⁹¹.

7.6 It is also provided that the family court shall be assisted by two experts, one shall be a social worker and other is a Psychologist. By doing so, besides the legal view, the view of the society and the view of a individual disputant can be incorporated easily in the mediation process and thereby makes it easier to attain a more acceptable solution under mediation cases. Specialist service has been provided to the newly formed family courts because the philosophy of the government in forming these exclusive family courts is to form some specialized courts those can successfully handle the matters of family disputes those are a complex interplay of different social, religious, and psychological factors relating to the spouses under dispute. These specialists act as mediators and counselors during the mediation process to and try to make an amicable settlement between the disputant

⁹⁰ Article 75 of the Law No. 1/2000. See also, 'New Family courts make life easier for Egyptian women', Middle East Times, February 17, 2005 at <http://metimes.com/articles/normal.php?StoryID=20050217-053644-8324r>; last retrieved on June 8, 2005.

⁹¹ *ibid*, and see more details, Article 71 to 74 of the Law No 1/2000.

spouses.⁹² It is important to note that the role of experts are not limited only in the pre-trial stage or trial stage but also extended to the appellate level, of it deems s necessary. All these are designed to provide absolute justice to women(Article 2).

7.7 Between the two experts (i.e. sociologist and psychologist) at least one shall be woman (Articles 2 and 11). Of course the attendance of women expert will accelerate more justice for women because it is expected that she will play an important role with respect to defining the extent of relative deprivation sustained by the women and real problems related to men. Moreover, “this is the first time that the Egyptian personal law says that women have to be an essential and mandatory part of the court; without the presence of a female in the court, it will not run”.⁹³

7.8 The new family courts offer A.D.R. in the form of mediation in the pre-trial stage by the family disputes settlement offices for the first time in the Egyptian history and also made more effective in the form of mediation and arbitration in the trial stage by the family courts with a view to assist both parties in resolving disputes amicably and to save the couple from going through extensive legal procedures. Mona Zulfikar, a renowned women activist, lawyer, and also a member of the legislative council of the NCW, mentioned, “These family courts try to bring a solution to the conflicts, either reconciliation or some kind of mutual agreement, and prevent a number of cases from actually reaching tribunal”.⁹⁴ Moreover, in order to avoid the unnecessary delay in case of mediation in the pre-trial stage, it is conditioned that reconciliation shall be finalized within fifteen days from the date of submitting the request. But if reconciliation attempt is failed, the case shall then be taken to the family court within a period of seven days from the date of the request submitted by any party to the dispute in order to go ahead with legal proceedings (Articles 6,8, and 9).

7.9 Under the new law, a specialized 'public prosecution for family affairs' shall be established to assume the task that was previously vested in the public prosecution before the establishment of the family courts. Now, in all actions within the jurisdiction of the family courts, the 'public prosecution for family affairs' provides the judge with an advisory opinion on the respective family disputes. While before the establishment of the family courts, these advisory opinions were requested by the judges on a case-by-case basis; they are now mandatory in all family disputes dealt by the new family courts. The significance of the advisory opinion by the specialized public prosecution for family affairs is that now a decision on the family disputes are not solely depended on the judges' discretion, rather it will be more rationalized by the application of judges observation together with advisory opinion of the pubic prosecutor and report of the experts (Article 4).

7.10 In response to the philosophy behind the idea of establishing specialized family courts suitable in every respect to deal with family disputes, the legislators were careful to hold sessions of the family courts and their appeal circuits in separate places away from the ordinary courts in order to prevail a special atmosphere suitable for resolving family

⁹² Supra 37.

⁹³ Layla Farag, Undersecretary of Social Affairs, Cairo, cited in 'Inadequate Government Response', Human Rights Watch at http://hrw.org/reports/2004/egypt1204/7.htm#_Toc87857213; last retrieved on June 15, 2005.

⁹⁴ “Egypt Family Courts: A Leap Forward” Iran daily, Panorama, November 29, 2004, at <http://www.iran-daily.com/1383/2151/html/panorama.htm#26265>; last retrieved on July 4, 2005.

disputes (Article 10). Moreover, The family courtrooms are designed as child-friendly, having a small garden for children to play in it. *"These courts were designed especially to protect the psychological and social privacy of the families and to spare their children the psychological impact of the trials,"*⁹⁵

7.11 One of the main changes that have been introduced by the new family courts is the scrapping of appeal to the Court of Cassation. The judgments and decisions issued by the appellate circuits are not subject to the objection by way of Cassation. That means, the previous right of preferring appeal to the Cassation against the decisions and judgments of the family courts is seized away which obviously shortens litigation procedures on one hand and elevates the suffering of women with long protracted trials on the other (Article 14).

7.12 In order to facilitate the court rulings passed by the family courts and the circuits of appeal, a special department namely ' department of execution of the judgments and decisions' have been established in each family court. The department will be provided with adequate number of qualified and trained bailiffs of execution as determined by the decisions of the President of the court (Article 15).

7.13 The courts will also make *"follow-up on cases to ensure that court rulings are implemented within an acceptable time frame so as to ensure that justice is not delayed"*⁹⁶

Conclusion: While drawing conclusion of this paper based on all these discussions, especially the notable features of the new family courts as well as the in-court ADR system in Egypt, it can be pointed out that all these features, with particular mention to the insertion of combining courtroom facilities with psychological support, making attempt to reach a reconciliation between the spouses in the form of mediation in the pre-trial and trial stage obviously signify the Egyptian law makers' vehemence to keep up the family tie which is considered as the nucleus of the Egyptian as well as other contemporary Muslim society. So this system of Family Court ADR with a special emphasis to restore the value of preserving family tie can also be used as an exemplary system of Family Court ADR in other Muslim countries of the world.

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⁹⁵ Supra 38.

⁹⁶ Supra 31.

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