

# كسر القوالب Breaking the mold

#Breaking\_The\_Mold

## Arab Civil Society Actors and their Quest to Influence Policy-Making

Country: **Lebanon**

### Changing the Age of Child Custody for Sects in Lebanon: Lebanese Women's Organizations Versus Religious Institutions

A Reading of The Approach to Personal Status Issues and The Movement of Women's and Civil Organizations  
Towards Sharia Courts

The present case observes how the Lebanese women's movement faced the Sunni and Shiite Sharia Courts to change the age of child custody for the two sects; it succeeded in the first case, but the movement is still working in the second case. The case raises many questions: What does the civil society do when it finds itself obliged to demand reform within the religious institution to achieve urgent policy change facing the absence of the immediate ability to have a unified civil law that governs personal status issues?<sup>1</sup>

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#### CASE BACKGROUND

#### DIFFERENCE IN THE AGE OF CUSTODY AMONG THE SECTS AND LOWERING THE AGE OF CUSTODY IN FAVOR OF THE FATHER IN MOST SECTS

The personal status is governed by almost 15 laws that govern 18 religious sects, through which the affairs of the sect's members are managed in the absence of a unified and inclusive civil law (Human Rights Watch, 2015). Being active in this field, civil society organizations are aware that passing a unified civil Personal Status Law is "extremely difficult", and it has not yet been accomplished. Therefore, their activities focus on correcting religious courts' practices while sometimes relying on human rights approaches, but mostly on religious jurisprudential arguments to refute religious court allegations. Hence, the age of custody in Lebanon varies from one sect to another, according to what is determined by the higher religious authorities in the sect (Sharia Court). Among the Islamic sects, the clerics say that it is necessary to revert to the traditions, in word and deed, taken from the Hadiths and the behaviors of the Prophet, his companions and his family (Al-Maadrani, 2018), while the religious text is absent in Christian

courts that sometimes refer to practices in Islamic courts, but with a greater willingness to change because of the absence of an explicit relevant text (Human Rights Watch, 2015; the Lebanese Democratic Women's Gathering, 2018).

The comprehensive review of the age of custody shows the extent of this problem, especially with the different ages of custody among the sects that can be low in most sects in favor of the father. As for the Islamic sects, the age of custody of the Sunni community was set at 7 years for males and 9 years for females before civil society's efforts led to its amendment and raising it to 12 years for males and females in 2014. As for the Shiite sect, the minimum age of custody was set at two years for males and 7 years for females, while the religious authority rejects any attempt to amend or revise, and links any discussion of the "ijtihad" with other obstacles that will be mentioned in the context of the case study. However, according to the People of Unitarianism, i.e., Druze community, the age of custody was set at 12 years for males and 14 years for females, after it was set at 7 years and 9 years, respectively. Furthermore, a woman loses custody of her children within the Shiite community if she is of a religion other than her husband's

<sup>1</sup> The present case study will shed light on the movement carried out by the campaigns to change the age of child custody for the two sects, Shiites and Sunnis.

religion or if she remarries. The mother loses custody within the Sunni community when the child is more than five years old if the mother is of a religion other than the father's religion or remarries. As for the Druze community, the mother loses her right of custody if she marries. (The Lebanese Women's Democratic Gathering, 2018; Human Rights Watch, 2015). As for the Christians, the Greek Orthodox sect amended the article related to the age of custody and raised it from 7 to 14 years for males and from 9 years to 15 years for females. Concerning the Evangelical community, the age of custody was raised from 7 to 12 years for males and 13 years for females. As for the Catholics, the age of custody is still two years for males and females, without modification<sup>1</sup>.

This presentation of the age of custody in different sects and age groups does not refer only to discrimination against women, but also to discrimination among Lebanese women, as they are not legally equal as a result of the prevailing Personal Status Law governing their private affairs (the Lebanese Women's Democratic Assembly, 2018).

### THE MOVEMENT TO CHANGE THE AGE OF CUSTODY IN SUNNI COURTS

Changing the custody law has never been on the policy agenda, despite the long history of attempts to change some personal status articles. In 2006, lawyer Iqbal Dogan, with many female lawyers, human rights defenders and women's rights activists, established a women's movement that includes women of all sects under the name "Family Rights Network" (Legal Agenda, 2011). The network aimed to put pressure on the religious authorities of the various sects to amend their personal laws in a fair way to women and children, and thus to amend sectarian personal status laws as long as a unified civil law is not passed (Legal Agenda, 2015). The network called on the religious authorities of all sects to intervene to amend the age of custody. It was the first and most prominent of its campaigns towards Dar Al-Fatwa of the Sunni community (Lebanon Files website, 2011), especially that the maternal age of custody was set at 7 years for males and 9 years for females.

Without any funding, the movement began in 2007 with personal initiatives and relied exclusively on the financial contributions of women involved in the network. The league's main goal was to include in the agenda of the Council of Ministers a clause to amend the age of custody, and later the Parliament to urge Dar Al-Fatwa to meet and amend laws under the political pressure. Moreover, the league held seminars and discussions in various Lebanese regions to raise men and women's awareness concerning "the need to change the age of custody". It also visited many prominent Sunni politicians seeking their support and was supported by Fouad Siniora, Saad Hariri, Khaled Qabbani and Najib Mikati. However, it faced objections from the Mufti, at the time, Muhammad Rashid Qabbani and Member of Parliament, Samir Al-Jisr, who was the head of the Administration and Justice Committee and expressed his lack of conviction in changing the age of custody based on religious texts corresponding to the league's arguments and not on human rights texts. In 2012, the campaign submitted a proposal to amend the law to Member of Parliament, Al-Jisr, but it remained locked away despite many reviews. At that time, and with the affected women, the campaign organized protests in front of the Lebanese Dar Al-Fatwa House, leading to a demonstration in front of the home of the Mufti of the Republic. In 2014, the league entered Dar Al-Fatwa after a long protest before it, and the Supreme Commission handed over the law proposal, which received 24 votes at Dar Al-Fatwa, with 23 against it, but it was

<sup>1</sup> Despite the low age of custody among the Catholic community, the effort to correct it is absent despite the absence of any legal religious text binding this age, and thus the possibility of not working with it is easier in Catholic court cases, according to lawyer Iqbal Dogan.



not sent to the Official Gazette to come into effect<sup>2</sup>. The league once again resorted to Prime Minister Najib Mikati, who contacted the Mufti to issue the law in the Official Gazette, which is what happened, and the age of custody was raised accordingly to 12 years for females and males.

### THE MOVEMENT TO CHANGE THE AGE OF CUSTODY IN JAAFARI COURTS

The Jaafari legislation is considered strict in comparison with the Sunni legislation, which emerged with the "legalization" of the state during the Ottoman era in Lebanon, according to Wajih Kawtharani in the book "Authority, Society and Arab Political Action in the Late Ottoman Era: Modalities of Power in the Levant". In fact, Shiite legislation began late, with the Supreme Islamic Shia Council's establishment in 1967, which was the last sectarian council established in Lebanon. During the civil war, it complied with the "fatwas issued by the supreme authority of the sect" and took "the right to defend the sect's rights and raise its social and economic level", according to Edmond Rabat in "Lebanon's Historical and Political Formation". Furthermore, the Supreme Islamic Shia Council's affiliation to Najaf authority in Iraq added more extremism to the rulings and made negotiating over many of them more difficult. Consequently, extremism has become more apparent in terms of consolidating control over the sect's conditions, particularly the number of its adherents, which is expressed by linking upbringing by the father and being leniency towards a man's marriage to a woman of another religion in exchange for not allowing the same case for the woman. The struggle between civil society organizations and religious institutions seems to result from the lack of reading the sociological roots of religious sensitivity and extremism in these religious institutions.

The Shiite sect's personal status law has not changed in decades, despite the opening of the gate of ijthad, which stipulates the review of old fatwas and makes them more appropriate with the

<sup>2</sup> The amendment is issued according to a decision issued by the Dar El-Fatwa in accordance with the provisions of the Family Law (Article 15). It is noticeable that the Dar El-Fatwa has the power to legislate in this field according to Law No. 177, which aims to amend Article 242 of the Law on the Organization of the Sunni and Jaafari Sharia Judiciary. Consequently, any amendment made by the Mufti is listed in the Official Gazette. Since 2014, the Mufti's decisions have been referred directly for publication in the Official Gazette without passing through the Parliament, which is what civil society has taken on, as this step grants more power for clerics.

present time. Women in Lebanon, along with children, are still subject to the Personal Status Law approved by the Supreme Islamic Shia Council and based on the Shiite religious authority in Najaf in Iraq or the so-called authority of Ali Al-Sistani (Al-Maadrani, 2018), noting that Al-Sistani's legal decisions related to custody and family affairs, such as marriage, divorce and inheritance, are not applied in Iraq, as the Iraqi people are subject to the provisions of a single and comprehensive civil law that sets the age of custody at 15 years for males and females.

In parallel with the focus on the Sunni Courts, Dogan, with the members of the league, tried to work towards changing the age of custody of the Shiite community. She also tried to communicate with clerics from within the Jaafari Court without reaching any results. She contacted Parliament Speaker Nabih Berri, who is considered one of the most prominent Shiite figures in Lebanon, but he refused to meet the league. Later, the league contacted Member of Parliament Muhammad Raad, representing the Shiite Hezbollah, to put political pressure on the religious court, but he expressed the party's unwillingness to deal with anything that would conflict with the authority of the Supreme Islamic Shia Council. Accordingly, it became evident that the path with Shiite politicians would not lead to any results, as happened with Sunni politicians, in addition to the fact that the religious response was only expressed by the Shiite clerics who are not related to the official Shiite institution, such as Mr. Ali Fadlallah and Sheikh Ahmed Talib; hence, the league has stopped working towards this path.

Later in 2012, the "National Campaign to Change the Age of Custody in the Shiite Sect", or what is known as the "Protection of Lebanese Women" campaign, was launched when Lebanese activist Zeina Ibrahim created a Facebook page calling for Lebanese women to support the demand of women in the Shiite community. Then, Nadine Jouni joined her, and together, they founded a group of women who had lost their custody rights. The campaign figures contacted the league to benefit from its experience and to pursue its strategies.

Simultaneously, the Association "Enough Violence and Exploitation" (KAFA) launched a legal act to pass a unified civil law guaranteeing the enactment of fair and unified custody of all Lebanese citizens, regardless of any approach that adopts the amendment from within the religious institution. The campaign moved towards the Supreme Islamic Shia Council and organized protests in front of it, but it did not have much response at the beginning. In addition, the campaign used social media platforms and media outlets and addressed a more appropriate speech to the religious Shiite community by using many religious arguments in exchange for the arguments of the Council. It was able to attract a very large number of religious Shiite women to support it and persuade many clerics who participated in the campaign activities, and they provided religious jurisprudence to support the campaign discourse.

This case became public in October 2016, when Fatima Hamzah, a citizen, was arrested and detained at Ghobeiry police station for refusing to give up on her 3-year-old son to his father, according to a decision issued by the Jaafari Court. The campaign organized a huge demonstration that started from the Supreme Islamic Shia Council's headquarters to the police station, under unprecedented public and media pressure, which prompted Parliament Speaker Nabih Berri to contact the security authorities to release Fatima. Later, Mufti al-Jaafari gave an exception to Hamza that allows her to keep her son with her. Consequently, the campaign used this decision and called for its conversion into permanent law, not an exception, especially that Fatima Hamza's case is collective par excellence. Hence, the influence of politicians on the clerics and the approach of rulings emerges. In cases in which the clerics aim

to demonstrate their power, the matter is left to them if it does not conflict with political institutions' interests, especially that religion in Lebanon and the Arab region is the ideology that nourishes political power.

The campaign's lack of funding is prominent in the two campaigns among the Sunni and Shiite sects. It seems that it was an approved policy, according to what activists assert, to avoid organizational problems, and later on, social and political propaganda that may link receiving any funding to an external agenda, especially that official religious figures criticized the campaign against the Supreme Islamic Shia Council and accused it of having an "Israeli" agenda aimed at harming the hostile environment to Israel through "extraneous" social methods (Hamdan, 2017).

### **OBSTACLES FACING THE NATIONAL CAMPAIGN TO RAISE THE AGE OF CUSTODY OF THE SHIITE COMMUNITY: WAS THE GATE OF IJTIHAD CLOSED?**

Activists in this campaign point out to many factors that prevent the reform of the religious text related to custody, most notably the increase in administrative corruption in the Jaafari Courts, which has begun to come out to the public and is being reported in the media, and the absence of the active female component in the Jaafari Court, which is the case in most spiritual courts in Lebanon, and the difference in the religious authorities of the Shiite community between Qom in Iran and Najaf in Iraq.

It is well-known among the Shiites that there is a gate to ijthad, which is considered a jurisprudential way to replace religious texts that no longer correspond to the current reality (Hamdan, 2017). Nevertheless, the official Shiite authorities refrained from changing the age of custody. Practically, some Shiite clerics who call for reforms say that the field of ijthad concerning custody is open, and there are traditional opinions of historical authorities that consider that the custody of a girl ends at the age of nine, while male custody ends at the age of seven years. In fact, there is no explicit Quranic text on the issue of custody, which gives ijthad more opportunity to interact with the religious text, but the Sharia Courts refrain from doing so in order not to override the fatwa of its religious authority (Al-Ma'drani, 2018; Hobeish, 2014).

### **POLICY RESULT: CHANGING THE AGE OF CUSTODY OF MANY SECTS AND PRECEDENTS IN COURT DECISIONS**

The advocacy process that began in 2006, and continues to this day, has led to a change in the age of custody of many sects, even if the change was not at the level of activists' expectations and demands. It is possible to measure the progress in the issue of custody of the Shiite community from another perspective in the absence of any policy change, i.e., through the jurisprudence of the Sharia judges as a result of the pressure exerted by the campaign and the media adjustment on the injustice against women in terms of custody. These individual initiatives coincide with unprecedented discourse among some Shiite clerics who stress the child's psychological and emotional health as a condition for custody decisions.

What is remarkable is the apparent change in public opinion regarding the issue of custody and the extent to which the religious institution is aware of the interests and rights of individuals, which reveals the importance of the media pressure and community awareness that the campaigns carried out, particularly in religious environments, as well as the many measures taken by the Jaafari Court to protect children who were in the custody of the father, as the Jaafari Court vacated an order that allowed the father to see his daughters after it was proven that

he was harassing them<sup>3</sup>, in addition to issuing of other decisions by the Jaafari Court to increase the number of hours during which the mother sees her children, pressing to prevent the prosecution of mothers who do not abide by the legal conditions, and seeking solutions between the mother and the father that grant the mother more chance to be with her children after they become above the age of custody.

Despite the progress made by some sects in changing the age of custody, such as the Sunni, Druze, Greek Orthodox and Evangelical communities, women in these sects waive custody in several cases, according to Human Rights Watch (2015), to obtain divorce, separation, annulment or dissolution of marriage, which re-raises the problem of the feasibility of changing the age of custody independently of changing the Personal Status Law, which is a broad area for the occurring violations.

### CONCLUSIONS RELATED TO CIVIL SOCIETY'S EXPERIENCE

Most prominent in this case is presenting the issue as a choice between two approaches to confronting the violation of mothers and children's right to custody in different sects. Whereas the Lebanese Family League and The National Campaign to Raise The Age Of Custody for the Shiite and Sunni Sects have worked to reform the religious institution's approach to Personal Status, "Enough Violence and Exploitation" believes that working on passing a unified civil Personal Status Law is the most useful approach. However, in the absence of any immediate way for passing civil law that deals with these problems, how will the Lebanese women's movement be able to address the occurring violations and address the daily problems of women and children if they do not seek to reform what is available in the existing laws until the passing of a unified civil Personal Status Law? Why do the two approaches appear to be in conflict, and women's associations do not work in both directions simultaneously, especially that the

<sup>3</sup> The Jaafari Court in the city of Nabatiyeh revoked a previous decision that allowed a father to see his two daughters (4 years and 3 years) 20 hours a week, including overnight stays at his home. The new decision was based on the existence of an indictment against the father alleging that he harassed his two daughters to justify the annulment decision.

affected women need to solve their problems without waiting as long as the possibility of change within the religious institution exists? In fact, this scene reflects the tense relationship among women's campaigns in Lebanon, the subordinate relationship between campaigns and funders, and the disconnected relationship between civil society organizations and people's real and daily demands.

On the other hand, the issue of cooperation among civil society organizations arises. In fact, the two campaigns operated without any support from major women's organizations dealing with personal status issues, particularly custody. This shows the dilemma that the Lebanese women's movement is going through, particularly in terms of organization, networking, unilateral work, the "arrogant" behavior of the organizations funding small campaigns and the absence of joint efforts (Al-Shoufi, 2016), and the resulting problems, most notably in the two proposed approaches, neglecting the rights of the child to be with the one who guarantees the best care, whether the mother or the father and limiting it to women's rights only (Karama, 2016), bearing in mind that custody in the legal and educational sense is the duty of the mother and the father and the right of the child; it was more appropriate within the framework of the principle of "the child's best interest" to find the most appropriate human rights approach.

Furthermore, this movement reveals the need for effective coordination with the media to employ its intervention in the interest of victims of violations instead of showing custody issues as personal disputes between the father and the mother, and without any systematic and legal approaches that may expose many of the right issues to polarization away from the logical and goal-oriented framework.

It is also important to shed light on the self and systematic efforts of advocacy processes that can achieve a result that is independent of any funding, especially that the feminist struggle in Lebanon has become, for the most part, funded and controlled and with the issues it addresses or withholds (Al-Shoufi, 2016).



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## BREAKING THE MOLD PROJECT

*In mid-2018, the "Civil Society Actors and Policymaking in the Arab World" program at IFI, with the support of Open Society Foundations, launched the second round of its extended research project "Arab Civil Society Actors and their Quest to Influence Policy-Making". This project mapped and analyzed the attempts of Arab civil society, in all its orientations, structures, and differences, to influence public policy across a variety of domains. This research produced 92 case studies outlining the role of civil society in impacting political, social, economic, gender, educational, health-related, and environmental policies in ten Arab countries: Lebanon, Syria, Palestine, Jordan, Egypt, Morocco, Tunisia, Yemen, and the Arab Gulf.*

*Over two dozen researchers and research groups from the above countries participated in this project, which was conducted over a year and a half. The results were reviewed by an advisory committee for methodology to ensure alignment with the project's goals, and were presented by the researchers in various themed sessions over the course of the two days.*

## THE CIVIL SOCIETY ACTORS AND POLICY-MAKING PROGRAM

*at the Issam Fares Institute for Public Policy and International Affairs at AUB, examines the role that civil society actors play in shaping and making policy. Specifically, the program focuses on the following aspects: how civil society actors organize themselves into advocacy coalitions; how policy networks are formed to influence policy processes and outcomes; and how policy research institutes contribute their research into policy. The program also explores the media's expanding role, which some claim has catalyzed the Uprisings throughout the region.*

## THE ISSAM FARES INSTITUTE FOR PUBLIC POLICY AND INTERNATIONAL AFFAIRS AT THE AMERICAN UNIVERSITY OF BEIRUT

*The Issam Fares Institute for Public Policy and International Affairs at the American University of Beirut (AUB Policy Institute) is an independent, research-based, policy-oriented institute. Inaugurated in 2006, the Institute aims to harness, develop, and initiate policy relevant research in the Arab region. We are committed to expanding and deepening policy-relevant knowledge production in and about the Arab region; and to creating a space for the interdisciplinary exchange of ideas among researchers, civil society and policy-makers.*

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