



Critiques Towards Family Law in Egypt Through the Work of Nawal El Saadawi

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Submitted: May 2, 2024	Accepted: Jun 07, 2024	Published: Jul 11, 2024
How to Cite (Chicago): Permana, Dede, Abdel Kader Naffati, and Ahmad Jamaludin Jambunanda. 2024. "Critiques Towards Family Law in Egypt Through the Work of Nawal El Saadawi". Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan 11 (1). https://doi.org/10.32505/qadha.v11i1.8530 .		

Abstract

The history of family law reform in Islamic World can't be separated from contributions of the thoughts of the Islamic scholars from time to time. One of them is Nawal el Saadawi's contribution through her criticism of family law in Egypt. This article aims to discuss some of Nawal's criticisms based on two questions. First, what is Nawal el Saadawi's criticism of family law in Egypt? Second, what solution does Nawal offer to realize a family law that - she calls - is just? By answering both of the questions, it is hoped that this study will provide inspiration for academics and legal practitioners in their efforts to find a gender-just family law format. The method used in this research is qualitative with library research, namely by examining library sources that are relevant to the research theme. The results of this research are, first, material in Egyptian family law relating to divorce procedures, polygamy, bait at tho'ah, living and hadhanah, which Nawal considers is still discriminatory towards women. This discrimination occurs because the state ignores patriarchal culture in society. Second, in Nawal's view, efforts to realize just family law must be started from strengthening the principle of freedom of thought among Islamic scholars and legal practitioners.

Keywords: Nawal el Saadawi, Family Law, Egypt.

Abstrak

Sejarah reformasi hukum keluarga di Dunia Islam tidak lepas dari sumbangsih pemikiran para ulama dari masa ke masa. Salah satunya adalah kontribusi Nawal el Saadawi melalui kritiknya terhadap hukum keluarga di Mesir. Artikel ini bertujuan untuk membahas beberapa kritik Nawal berdasarkan dua pertanyaan. Pertama, apa kritik Nawal el Saadawi terhadap hukum keluarga di Mesir? Kedua, solusi apa yang Nawal tawarkan untuk mewujudkan hukum keluarga yang disebutnya adil? Dengan menjawab kedua pertanyaan tersebut, diharapkan penelitian ini dapat memberikan inspirasi bagi akademisi dan praktisi hukum dalam upaya menemukan format hukum keluarga yang adil gender. Metode yang digunakan dalam penelitian ini adalah kualitatif dengan penelitian kepustakaan yaitu dengan mengkaji sumber-sumber pustaka yang relevan dengan tema penelitian. Hasil penelitian ini adalah, pertama, materi dalam hukum keluarga Mesir yang berkaitan dengan



tata cara perceraian, poligami, umpan at tho'ah, nafkah dan hadhanah, yang menurut Nawal masih bersifat diskriminatif terhadap perempuan. Diskriminasi ini terjadi karena negara mengabaikan budaya patriarki dalam masyarakat. Kedua, dalam pandangan Nawal, upaya mewujudkan hukum keluarga yang berkeadilan harus dimulai dari penguatan prinsip kebebasan berpikir di kalangan ulama dan praktisi hukum.

Kata Kunci: Nawal el Saadawi, Hukum Keluarga, Mesir

Introduction

Efforts to reform family law in Muslim countries have generally occurred since the early 20th century¹ cannot be separated from the contribution of Muslim scholars. Khoiruddin Nasution mentioned a number of names who played a major role in the renewal effort, including Sayyid Ameer Ali (1849-1928), Muhammad Abduh (1849-1905), Qassim Amin (1863-1908), Thahir Haddad (1899-1935), Fatima Mernissi (1941-), and Amina Wadud (1952-).²

Another name known for actively voicing family law reform at the end of the 20th century to the beginning of the 21st century is Nawal el Saadawi (1931-2021). Nawal criticized and proposed a number of changes to family law in force in his own country: Egypt. According to Nawal, Egyptian family law is still discriminatory³, Marked by restrictions on the wives' space (*bait at tho'ah*), the relaxation of the husband's right to polygamy and divorce his wife, as well as several other provisions that are considered detrimental to women. Discriminatory family laws like this, said Nawal, will not be able to raise the level of human life for the better, and on the contrary, it causes a downturn in life.⁴

This paper aims to discuss some of Nawal el Saadawi's criticisms of family law in Egypt especially those relating to divorce, polygamy, *bait at tho'ah*, subsistence and hadhanah. The two big questions that make up this paper are what are Nawal el Saadawi's criticisms of family law in Egypt? And second, what is Nawal's offer of solutions to bring about a family law that is – she calls – justice? Thus, this study is expected to inspire academics and legal practitioners in an effort to find a gender-equitable family law format.⁵

So far the researchers has not found any writings that specifically address the theme of Nawal el Saadawi's thought in relation to family law in Egypt. Some studies of Nawal el Saadawi's thought generally revolve around his gender ideas contained in his works.⁶ Among them is a study conducted by Maryam Habibah entitled *Feminist Themes in Nawal el*

¹ Khoiruddin, "Status Wanita Di Asia Tenggara: Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer Di Indonesia Dan Malaysia," *Disertasi* (2001). 3-4

² Khoiruddin. 9

³ Nawal El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyah* (London: Hindawi Foundation, 2017). 26-27

⁴ Nawal El-Saadawi, *'Anil Mar'ah* (London: Hindawi Foundation, 2017). 80

⁵ Alyssa Marie Kvalvaag, "What Integration Discourses 'Do': The Gendered Migratization of Policy Issues and Justification of Welfare Retrenchment," *NORA - Nordic Journal of Feminist and Gender Research*, 2023, <https://doi.org/10.1080/08038740.2023.2250345>.

⁶ Josefina Erikson and Lenita Freidenvall, "Exploring Sustainability in Parliamentary Gender Equality Work. Insights from the Swedish Riksdag," 2023, 2023, <https://doi.org/10.1080/08038740.2023.2174184>.

Saadawi's Novels.⁷ This study describes the ideas of feminism conveyed by Nawal in her novel works, and how these ideas are implemented into real movements in life.

A similar study was conducted by Firmansyah in an article entitled *The Existence of Egyptian Women in the Novel Women at Point Zero by Nawal Saadawi*.⁸ This study reveals the forms of gender injustice experienced by Egyptian women as depicted by Nawal in her novel. Some of the forms of injustice are marginalization, subordination, stereotyping, violence and additional workload. Then, this study describes what are the forms of resistance of Egyptian women in maintaining their existence as women⁹, as Nawal said in his work.

Studies on family law in Egypt also generally only discuss the history of legislation, the history of reform, or the methodology of its reform. Among them is the writing of Muhammad Syamsul Amin and Armi Agustar entitled *Reform of Islamic Family Law in the Arab Republic of Egypt*¹⁰ which mentions that efforts to reform family law in Egypt at the end of 21 revolve around the issue of marriage age limits, marriage registration, divorce procedures, polygamy procedures and compulsory wills. This update uses the model of superstition, siyasah syar'iyah and text reinterpretation.

The method used in this study is qualitative with the type of library data (*library research*). Nawal Saadawi's works, which discuss the theme of Egyptian family law, are used as primary data sources. Among them are the book *al Wajh al Ari lil Mar'ah al Arabiyah*, the book *'Anil Mar'ah*, and the book *Qadhiyah al Mar'ah al Mashriyah*. While other literature, whether in the form of books or journals, which have relevance to the theme discussed, is used as a secondary source of data. The approach used is descriptive analytics. The operational technique is to collect data, reduce, analyze and interpret it.

The Biography of Nawal el Saadawi

Nawal el Saadawi was born in 1931 in Kafr Tahla, a village in Qalyubiya province, Egypt. His father was an education superintendent in Manufiya province, north of Cairo, while his mother had been educated in France. Nawal studied at the medical faculty at Cairo University, graduating in 1955. After college, she worked first as a doctor in the countryside, then in a number of hospitals in Cairo, until he was appointed Director of Public Health at the Egyptian Ministry of Health.

In addition to working as a doctor, Nawal diligently writes on themes defending women's rights. No less than 40 titles of books written and translated into various world languages. These include *Memoirs of a Woman Doctor* (1958), *Women and Sex* (1972), *God Dies*

⁷ Indriati Ismail Maryam Habibah Kamis, "Tema-Tema Feminisme Dalam Novel-Novel Nawal El Saadawi," *Islamiyyat* 37, no. 2 (2015): 107-12.

⁸ Asep Supianudin Firman Syah, Fadlil Yani Ainusyamsi, "Eksistensi Perempuan Mesir Dalam Novel Perempuan Di Titik Nol Karya Nawal El-Saadawi," *Az-Zahra: Journal of Gender and Family Studies* 1, no. 2 (2021): 66-77, <https://doi.org/10.15575/azzahra.v1i2.10438>. 66

⁹ Bergljót Prastardóttir and Jón Ingvar Kjaran, "Girls Claiming Discursive Space within the Dominant Discourse on Gender Performativity: A Case Study from a Compulsory School in Iceland," *NORA - Nordic Journal of Feminist and Gender Research* 31, no. 4 (January 1, 2023): 335-48, <https://doi.org/10.1080/08038740.2023.2224056>.

¹⁰ Muhammad Syamsul Amin and Armi Agustar, "Pembaruan Hukum Keluarga Islam Di Republik Arab Mesir," *Jurnal Akademika Kajian Ilmu-Ilmu Sosial, Humaniora Dan Agama*, 2023. 75

by the Nile (1974), *The Hidden Face of Eve* (1979), *Women at Point Zero* (1983), and *My Travel Around the World* (1991).¹¹

The critical ideas contained in his works often make him face legal problems. In 1972 she was relieved of her position in the Ministry of Health due to her book *al Mar'ah wal Jins* (*Women and Sex*). Through this book, she challenged the practice of female circumcision that was rife in rural communities in Egypt.¹² In 1981 she criticized a number of policies of President Anwar Sadat which led to his imprisonment. After her release, she wrote about her experiences in prison in the book *Mudzakarati fi Sijn an Nisa* (*My Experiences in Women's Prison*).

In 1982 she founded *Jam'iyah Tadhmun al Marah al 'Arabiyah* (Arab Women's Solidarity Association). At that time, his book entitled *Suquth al Imam* (*The Fall of The Imam*) attracted such public controversy that in 1987 she was forced to leave Egypt. She moved to the United States and taught at Duke University and Washington State University. In 1997 he returned to Egypt.

In 2001 she was accused of apostasy in a court case and demanded a divorce from her husband. But she won the case with the support of human rights organizations in Egypt and internationally. In December 2006 she came to Indonesia to speak at the *Women Playrights International Conference* (WPIC). In 2011 she took to the streets during the Egyptian revolution that toppled President Hosni Mubarak. Nawal died on March 21, 2021 in Egypt. During his lifetime, he received more than 10 honorary doctorates as well as a number of international awards.

Continuity of Family Life and the Family Legal System in Egypt

Family life in Egypt is heavily influenced by the rich and diverse values and traditions of Islam.¹³ The dominant family structure in this society is a staunch patriarchy, in which a wise father acts as the head of the family who has undisputed authority to make important decisions in daily life. The mother, as a life with enormous responsibility, is more focused on complex and high-quality household affairs and the in-depth education of the young members of their family.

Grown children in Egypt often still live with their parents until they find their life partner. Marriage is considered the most important milestone in Egyptian culture which is very fun and festive. It is a joy when a family can help organize and prepare for the perfect wedding for their beloved sons and daughters. Families also play a vital role in a strong and mutually supportive social support system, where friendly and caring relatives help each other in various financial, health, and educational situations.

Despite the significant changes in the dynamics of the modern family, it is undeniable that the noble traditions and values embraced by families in Egypt are still deeply rooted in

¹¹ Nawal El-Saadawi, *Perempuan Di Titik Nol*, Yayasan Pustaka Obor Indonesia, 2019. 176

¹² Adele Newson, *The Essential Nawal El Saadawi*, *The Essential Nawal El Saadawi*, 2010, <https://doi.org/10.5040/9781350223110>. 7

¹³ Yasmine Yousry Mohammed et al., "The Role of Adverse Childhood Experiences in Predicting Child Abuse Perpetration among Married Mothers in Alexandria, Egypt: A Cross-Sectional Study," *BMC Women's Health* 24, no. 1 (December 1, 2024): 59, <https://doi.org/10.1186/s12905-024-02903-9>.

their hearts and minds.¹⁴ The togetherness and deep love between family members is a solid pillar for their lives. And this is the reason why Egyptian families are respected among their society, because they are able to maintain this precious heritage in such a way. In every step of their lives, Egyptian families remained faithful to their values and traditions that had been firmly entrenched over the years.

Family Law System in Egypt

The family law system in Egypt is based on Islamic legal principles that cover various aspects of the family and social life of the Muslim community in the region. Family law in Egypt deals with various matters including marriage, divorce, inheritance rights, as well as obligations that must be fulfilled by each family member¹⁵. This law is of great importance in providing clear guidelines on how a marriage should take place, as well as the rights and responsibilities that must be obeyed by husband and wife. Despite all this, it is undeniable that there have been many criticisms and inputs related to gender inequality that still exists in family law, especially in the context of unfair treatment of women in divorce cases and inheritance handling.

Although the government has taken some progressive steps in addressing this issue, the work to achieve true gender equality in the family legal system in Egypt is far from over. There is still much action that needs to be taken to ensure that women have fair and equal protection in all aspects of family life. In addition, serious debates also occur in Egyptian society regarding the issue of polygamy and young marriage which remain controversial.

In this context, it is important for all parties involved to pay serious attention to this debate. It is necessary to have an open and inclusive discussion, involving experts, religious leaders, academics, and the wider community to address this issue wisely. Gender justice must be a common goal, and policy revisions and changes in the application of family law must be made to achieve this. Only with collective efforts and collective awareness can Egypt achieve a family law system that is more inclusive, fair, and reflects the values of equality in the future.

Criticism of Egyptian Family Law

Nawal El Saadawi has long been a vocal critic of the family law imposed in Egypt, which restricts women in various aspects of their lives.¹⁶ In her outstanding works, she did not hesitate to sharply question the practice of polygamy, divorce, and inheritance rights that were detrimental to women. She clearly and straightforwardly expressed her view that the family law only restricts and discriminates against women's rights, which has the potential to create unimaginable injustices in Egyptian family life.

¹⁴ Heba M. Mohammed, Maria A. Zaky, and Ahmed M. Hany, "Postpartum Family Planning among Women Attending Maternal and Child Health Centers in Assiut Governorate, Upper Egypt," *Journal of the Egyptian Public Health Association* 99, no. 1 (December 1, 2024): 13, <https://doi.org/10.1186/s42506-024-00160-0>.

¹⁵ Iris Sportel, *Divorce in Transnational Families: Marriage, Migration and Family Law*, *Divorce in Transnational Families: Marriage, Migration and Family Law* (Springer International Publishing, 2016), <https://doi.org/10.1007/978-3-319-34009-8>.

¹⁶ Theresah Patrine Ennin and Christabel Aba Sam, "Unmasking Patriarchies: Paradigms of Violation and the Future Praxis in Nawal El Saadawi's *God Dies by the Nile*," *Research in African Literatures* 53, no. 4 (January 1, 2023): 15–31, <https://doi.org/10.2979/reseafritlite.53.4.03>.

Saaduawi's sharpness of criticism and perseverance in voicing the truth has made a very valuable contribution in opening the eyes and making many people aware of the injustice that still exists in society, especially in the context of the family.¹⁷ Through his critique of the existing family legal system, he has succeeded in creating an atmosphere of dialogue and a higher awareness of the importance of change and reform to overcome gender inequality and fight for equal rights in the domestic environment. Saaduawi's persistent struggle against gender discrimination and upholding justice in the family is highly appreciated by many people and for many, it is an irreplaceable source of inspiration in their struggle to create a more just and equal society. Undeniably, Saadawi has raised awareness of this issue and encouraged many people to move forward towards better change.

The Role of Women in the Family and Society in Egypt

The roles of women in families and society in Egypt are very diverse, from being housewives who are responsible for daily activities at home to being involved in the world of work to create a more prosperous life.¹⁸ Although women have legal rights in marriage and divorce, the reality is that they are still faced with various challenges and gender discrimination that have not been fully resolved. In this rock-shattering society in the Mediterranean, expectations for women to uphold family and religious values are high. Interestingly, however, many Egyptian women are now beginning to defy the stereotype and demand a change in their roles.

One figure worth mentioning is Nawal El Saadawi, a well-known human rights activist, feminist, and writer from Egypt. She has long highlighted the issue of gender equality in her bold and controversial works. Through her sharp and passionate writings, Nawal El Saadawi emphasizes the need for gender equality and increased awareness of women's rights in the family and society. She called for women not only to be "perfect housewives", but also to have the right to pursue their dreams, engage in social, political, and economic activities, and get protection from the law.¹⁹

In addition, Nawal El Saadawi also underlined the importance of eliminating all forms of gender oppression and discrimination that still occur in Egypt. She categorically rejects practices that degrade women, such as female genital mutilation, domestic violence, and human trafficking. He invited Egyptian society and the world in general to change the paradigm that involves restraint and oppression of women to a paradigm that views women as equal partners who have an important contribution to social and economic development.

In the context of Egypt's social and cultural diversity, Nawal El Saadawi has indeed given a voice to women who have been marginalized.²⁰ In all her struggles, she has succeeded in inspiring many people with her strong vision of gender equality and social

¹⁷ Chitra Susan Thampy, "Nawal El Saadawi: Attaining Catharsis through Trauma Narration in *Woman at Point Zero*," *Journal of International Women's Studies* 22, no. 6 (January 1, 2021): 36–42.

¹⁸ Rawiya Kouachi, "Unfettered Minds in Prison and Exile in Assia Djebar's *Women of Algiers in Their Apartment* and Nawal El Saadawi's *Woman at Point Zero*," *Forum for World Literature Studies* 15, no. 2 (June 1, 2023): 276–88.

¹⁹ Newson, *Essent. Nawal El Saadawi*.

²⁰ Ennin and Sam, "Unmasking Patriarchies: Paradigms of Violation and the Future Praxis in Nawal El Saadawi's *God Dies by the Nile*."

justice. As an intellectual and defender of women's rights, Nawal El Saadawi reminds us that the struggle for gender equality is not only the duty of women, but also a shared responsibility as a civilized society. In embarking on the path to a better future, women in Egypt and around the world must courageously fight for their rights, and we all need to support them in their noble struggle.

The Social Impact of Family Law in Egypt

The social impact of family law in Egypt is particularly evident in the role of gender in society. Family law that provides unequal power between men and women has created injustice in the family and society.²¹ This directly affects the role of women in family life and Egyptian society. Many women are victims of oppression and discrimination due to unequal family laws. With the existence of such an unfair law, there is an inequality of rights between men and women which then has a negative impact on family stability and harmony of the Muslim community in Egypt.

The social impact of family law in Egypt is not only limited to the gender aspect, but also to all aspects of the life of its people. Family law that favors men has put women in a vulnerable and helpless position. They have no control over family decisions, including marriage, divorce, and child custody. As a result, many women are trapped in unhealthy and unhappy marriages.

In addition, unbalanced family law has also hampered women's social and economic progress in Egypt. They are often not allowed to work outside the home or have the same ownership rights as men. This resulted in economic injustice between men and women, which in turn exacerbated poverty and social inequality in Egyptian society.

Not only in the family, gender injustice caused by family law also has a negative impact on society as a whole. Women do not have an equal role with men in political and social decision-making. They are underrepresented in government institutions and are often overlooked in the policy-making process.

Injustice in family law also has a negative impact on family stability and harmony in Muslim society in Egypt.²² With significant differences in the treatment of men and women, there is tension in the relationship between husband and wife, as well as between other family members. This can lead to conflicts and divisions in the family, as well as affect social ties and solidarity between members of the Muslim community in Egypt.

The living conditions of the family and Muslim society in Egypt are greatly influenced by the existing family law system. Nawal El Saadawi with his criticism of Egyptian family law has opened a very important space for discussion in efforts to change society and protect women's rights in the country.²³ Therefore, there is a great need for a deep reform of family law as the main solution to ensure equality and better protection of

²¹ Mohamed B. Khafajah and Azra Ghandeharion, "When British and Arab Novelists Teach Feminism: A Comparative Reading of Wollstonecraft and El Saadawi's Views," *Forum for World Literature Studies* 12, no. 3 (September 1, 2020): 497-514.

²² Ahmad Bunyan Wahib, "Reformasi Hukum Keluarga Di Dunia Muslim," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan*, 2014, <https://doi.org/10.18326/ijtihad.v14i1.1-19>.

²³ Chia Ling She, "Nawal El Saadawi on Female Genital Cutting and Women's Rights in Woman at Point Zero and Searching," *Ex-Position* 2019, no. 42 (January 1, 2019): 195-220, [https://doi.org/10.6153/EXP.201912_\(42\).0012](https://doi.org/10.6153/EXP.201912_(42).0012).

women's rights. These reforms must involve all interested parties, including governments, legislatures, human rights organizations, and civil society.

As a key recommendation, it is important for the Egyptian government to adopt laws and policies that protect women's rights in the context of the family. The law should cover all aspects of family life, such as marriage, divorce, inheritance rights, and child care. In addition, there is also a need to strengthen effective law enforcement mechanisms, including independent and skilled family courts in placing women's interests in the midst of resolving family disputes.

Furthermore, education and public awareness are also very important in changing views and behaviors towards the role of women in the family and society. There must be a comprehensive education program on gender equality and women's rights at all levels of education, from low to high levels. In addition, the mass media and communication institutions must also play an active role in supporting this social change by providing accurate and balanced information on gender issues.

Not only that, there is also a need for more access and opportunities for women to participate in the policy-making and decision-making process at all levels. Women must have a meaningful voice in determining the future of their families and communities. Affirmative measures must therefore be taken to address all forms of discrimination and barriers that hinder women's participation in social and political life.

By implementing these recommendations, it is hoped that a significant positive impact can be created on the family and social life conditions of the Muslim community in Egypt. Family welfare and the protection of women's rights must be the top priority in sustainable development efforts. Only by changing the family law system, raising public awareness, and providing fair opportunities for all can we make real and meaningful change.

Egyptian Family Law Reform

The codification of family law (*Qanun al Ahwal as Syakhsiyyah*) in Egypt has been carried out since the 18th century AD. This codification is still limited to the laws of marriage, divorce and inheritance.

The content of Egyptian family law at that time was a development of traditional jurisprudence doctrines, especially the jurisprudence of the Hanafi madhhab. Entering the 20th century, Egyptian family law underwent a transformation, especially in the areas of marriage and inheritance, while adhering to the principles of classical jurisprudence. According to Tahir Mahmood, as quoted by Khoiruddin,²⁴ This transformation made history that Egypt was the first Arab country – and the second in the Islamic world after Turkey – to reform family law.

The reform of family law in Egypt was marked by the birth of the Egyptian Family Law No. 25 of 1920 concerning income and divorce, and Law No. 56 of 1923 concerning the age of marriage. In 1929, Law No. 25 of 1929 emerged which consisted of 23 articles with nine subject matter. This law repealed several articles listed in the previous law and gave rise to several new articles, including regarding divorce lawsuits on the grounds that the

²⁴ Khoiruddin, "Status Wanita Di Asia Tenggara: Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer Di Indonesia Dan Malaysia." 94

husband was cruel or the husband was imprisoned. A few years later, Law No. 77 of 1943 concerning inheritance and Law No. 71 of 1946 concerning Wills were also born. The birth of this provision is considered as the forerunner of inheritance law reform in Egypt.²⁵

Efforts to reform family law in Egypt were supported by the demands of the Egyptian Women's Movement (1923) *al Ittihad an Nisai* led by Huda Shaarawi. The group filed 32 demands, including education for women, women's political rights, reform of family law, minimum age of marriage, restrictions on polygamy and restrictions on men's divorce rights. This lawsuit only succeeded in setting the age of marriage for women at 16 years²⁶.

Along the way, efforts to reform family law in Egypt did not always run smoothly, but often received rejection from scholars²⁷ as happened in 1914, 1929, 1943, 1945 and 1974. In 1914, a government draft of a proposed marriage age restriction of 18 to 20 was rejected by clerics on the grounds that it "violated Islamic law".²⁸ The same was experienced by the draft proposal to regulate and tighten the practice of polygamy in 1974. The pros and cons on this issue continued until the passing of Law No. 44 of 1979 which states that judges "can impose talaq if the first wife is not willing for her husband to be polygamous", also "the husband is obliged to meet the needs of the first wife and the expenses of his children"²⁹. In 1985, it was agreed that polygamy could be grounds for divorce for wives if polygamy caused economic hardship, whether listed in talaq or not. The court must also inform his wife or wives of the polygamy plan. Although in practice, to assess whether polygamy causes economic hardship or not, it takes a grace period of a year. If a year passes, the wife is considered to have agreed and therefore she has no right to claim divorce.³⁰

The issue of proving marriage and divorce was discussed for quite a long time. A provision that prevailed earlier in Egypt, proof was sufficient to be done orally known to the litigants. In 1931, this provision was reinforced by the requirement of written evidence from government agencies.

Regarding divorce procedures, the 1920 law gives the court the right to impose talaq if the husband fails to provide for himself, or because of a dangerous disease.³¹ Until the 1970s, divorce occurred only through the words of the husband as long as she did so in good health, sober, not crazy, and not forced. Only in 1985 there was a ruling that divorce should be recorded in a certificate from a notary.³²

²⁵ Mohamad Salman Podungge, Panji Nugraha Ruhiat, and Si'ah Khosyiah, "Hukum Perkawinan & Kewarisan Dalam Tata Hukum Mesir Dan Sudan," *Al-Ahwal Al-Syakhsyiyah: Jurnal Hukum Keluarga Dan Peradilan Islam*, 2022, <https://doi.org/10.15575/as.v3i1.17476>. 21

²⁶ Yunan Labib Riziq, *Al Mar'ah Al Mishriyyah Baina Al Tathawwur Wa Al Taharrur 1873-1923* (Cairo: Maktabah al Usroh, 2002). 166-167

²⁷ Khoiruddin, "Status Wanita Di Asia Tenggara: Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer Di Indonesia Dan Malaysia." 118

²⁸ Riziq, *Al Mar'ah Al Mishriyyah Baina Al Tathawwur Wa Al Taharrur 1873-1923*. 78

²⁹ Maleeka Zaghlul, *Hurras Al Islam : Ulama Al Azhar Fi 'Ashr Al Muashiroh* (Tunis: al Markaz al Wathani lit Tarjamah, 2015). 200

³⁰ Khoiruddin, "Status Wanita Di Asia Tenggara: Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer Di Indonesia Dan Malaysia." 116

³¹ Ahmad Jamaludin Jambunanda et al., "Marriage Law in Religious Court: Regulation and Decision on Marital Property in Sustainable Legal Development," *Journal of Law and Sustainable Development* 11, no. 10 (October 23, 2023): e1759, <https://doi.org/10.55908/sdgs.v11i10.1759>.

³² Khoiruddin, "Status Wanita Di Asia Tenggara: Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer Di Indonesia Dan Malaysia." 246

In 2005, Egypt issued Law No. 4 of 2005 which amended Law No. 25 of 1920. In terms of legal substance, the 2005 amendment is considered to indicate Egypt's return to conservative laws because it contains articles that are considered detrimental to women, such as the automatic revocation of a wife's right to divorce if her husband practices polygamy.³³

Some of Nawa el Saadawi's Criticisms of Egyptian Family Law

Compared to other legal products, Egyptian family law is considered by Nawal to have received less public attention. It is still seen as a second-class law or considered a woman's business only. Even in Nawal's judgment, Egyptian women who sit in parliament do not have a good concern for the content of family law.³⁴

Egyptian family law was adopted from the teachings of the Qur'an and the Sunnah of the Prophet. However, Nawal said, the interpretation of these two sources is often in favor of men as a result of the dominance of scholars who come from men.³⁵ As a result, Egyptian family law also reflects patriarchal culture that is passed down from generation to generation in daily life. A number of rules in family law are considered by Nawal as detrimental to women. According to Nawal, Egyptian women are like a piece of land that can be treated by its owner.³⁶

That's why Nawal criticized some of the provisions contained in the Egyptian family law as the following explanation.

Divorce Procedure Issues

The provisions regarding divorce procedures in Egypt are regulated in Law No. 25 of 1920, Law No. 25 of 1929, and Law No. 100 of 1985.³⁷ The first two laws provide for the reasons that allow the court to impose talaq, namely because the husband fails to provide a living, because of a dangerous disease, because of poor treatment from the husband, or because the husband travels for a long time. While the 1985 Law stipulates that divorce must be recorded in a certificate signed by an authorized notary.³⁸

The three laws, in Nawal's view, still relax divorce procedures. So, the facts on the ground are that husbands in Egypt can divorce their wives whenever they want.

According to Nawal, the divorce problem is not a woman's problem alone, but a man's problem and also related to children. Innocent children are often affected by divorce that occurs in both parents. Many girls from *broken homes* are eventually willing to be married by polygamous men.³⁹

Nawal proposed that the divorce procedure be regulated as strictly as possible so that husbands do not easily divorce their wives. Nawal quoted the opinion of scholars who stated that talaq is not the prerogative of the husband so that the husband is not allowed to

³³ Wahib, "Reformasi Hukum Keluarga Di Dunia Muslim."

³⁴ El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyah*. 187

³⁵ El-Saadawi. 189

³⁶ El-Saadawi. 205

³⁷ Moh Mujibur Rohman and Moh Zarkasi, "Reformasi Hukum Keluarga Di Dunia Islam," *AL-SYAKHSHIYYAH: Jurnal Hukum Keluarga Islam Dan Kemanusiaan*, 2021. 24

³⁸ Khoiruddin, "Status Wanita Di Asia Tenggara: Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer Di Indonesia Dan Malaysia." 246

³⁹ El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyah*. 156

divorce his wife whenever she wants. Divorce should only take place in court, as has been the case in some other Arab countries, such as Yemen, Syria and Tunisia.⁴⁰

Nawal compared the talaq provisions in Egyptian family law with similar provisions in several other Arab countries. From the results of his study, Nawal considered that most Arab countries still legalize patriarchal culture⁴¹, but Egyptian family law is "*Min Aktsar Takhallufan fil Bilad al 'Arobiyah, wa Aktsaruha Ta'assufan bil Mar'ah*", which is the family law in the Arab world that is the most backward and most discriminatory against women.⁴²

The Problem of Polygamy

The widespread practice of polygamy in Egyptian society, according to Nawal, is the result of polygamy rules in Egyptian family law being too lax, so husbands can easily do so. Even though Nawal said, the law of polygamy itself is still debated by scholars, both in the past and today. On issues that are still being debated, scholars should dare to do *ijtihad* in order to choose the option that is most beneficial for the *ummah*.

Nawal cites the views of Muhammad Abduh – a well-known reformer in the Islamic world – who rejected polygamy.⁴³ Like Abduh, Nawal also made the Qur'anic verse "*If you are worried that you will not be able to do justice, then marry only one woman*"⁴⁴ and the verse "*You will not be able to do justice among your wives even if you want to*"⁴⁵ as the basis of his opinion to reject polygamy. Nawal said, "when justice is impossible, polygamy is forbidden."⁴⁶

The provision of polygamy in Egyptian family law as contained in Law No. 25 of 1920 and Law No. 20 of 1929 is still influenced by the doctrine of classical jurisprudence. Several times attempts to propose restrictions on polygamy submitted by a number of circles, always failed to materialize because they always received strong rejection from scholars.⁴⁷

The new provisions for polygamy contained in Law No. 100 of 1985, according to Nawal, still provide opportunities for husbands to polygamy freely.⁴⁸ Bad effects also arise in society, such as husbands who leave their wives to marry other women they just know, or husbands divorce their wives and leave their children uncared for.

Disputes over polygamy settled in court often hurt women. In one case, for example, there was a wife who took her husband to court on the pretext of "never providing for him". Even though they are blessed with three children who are in college and require a lot of

⁴⁰ Dede Ahmad Permana, "Majallah Al Akhwal Ash-Shakhshiyyah Dan Pembaharuan Hukum Keluarga Di Tunisia," *Jurnal Studi Gender Dan Anak*, 2020, <https://doi.org/10.32678/jsga.v7i01.173>.

⁴¹ Nawal El-Saadawi, *Qodhiyatul Mar'ah Al Mishriyah Al Siyasiyyah Wa Al Jinsiyyah* (London: Hindawi Foundation, 2017). 28

⁴² El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyyah*. 194

⁴³ Utsman Amin, *Al Imam Muhammad Abduh Raid Al Fikr Al Mishri* (Cairo: al Haiah al Mashriyah al Ammah li al Kitab, 2015). 30

⁴⁴ Q.S an Nisa : 3

⁴⁵ Q.S an Nisa : 129

⁴⁶ El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyyah*. 192

⁴⁷ Khoiruddin, "Status Wanita Di Asia Tenggara: Studi Terhadap Perundang-Undangan Perkawinan Muslim Kontemporer Di Indonesia Dan Malaysia." 118

⁴⁸ Kristina Malmio, "'Women Became Free!' Activism, Feminism, Race, and Political Poetry of the Second Degree in Henrika Ringboms Händelser Ur Nya Pressen 1968-1974," *NORA - Nordic Journal of Feminist and Gender Research* 31, no. 2 (January 1, 2023): 149–59, <https://doi.org/10.1080/08038740.2023.2183987>.

education costs. At the end of the trial, the court only set an obligation of 70 pounds per month to the husband.

Responding to the verdict, Nawal said, "Is there a humanitarian crisis worse than this? Which religion is capable of defending against such injustice behavior? Is it okay for every husband to abuse his wife and children and the problem is solved with 70 pounds a month?"⁴⁹

Wife's Compliance Problem (Bait at Thaah)

Egyptians recognized the term *bait tha'ah* as the doctrine of a wife's total obedience to her husband. On this basis, a wife may not travel out of the house except with the husband's permission. A wife's defiance towards her husband, whatever the case or background, will be categorized as *nushuz* behavior. If a husband beats his wife, either for cause or no reason, and then the wife goes to her parents' house, then the husband can ask the police for help to forcibly pick her up to return to her husband's residence. If the wife refuses, according to Egyptian family law, the wife is judged to have committed *nushuz*.⁵⁰

The concept of *bait tha'ah* in this sense is used in Egyptian family law. On that basis, the Egyptian Court of al Qadimah ruled in 1975 that "a wife who goes on Hajj without her husband's permission is not entitled to a living from her husband". This ruling also refers to the classical doctrine of jurisprudence, the meaning that a living is provided to the wife as compensation for her readiness to stay at home.⁵¹

The court ruling, published in *al Akhbar* newspaper in September 1975, was not free from Nawal's criticism. According to Nawal, wives should have the full right to travel without their husband's permission, including to perform Hajj. If the wife does not get the husband's permission to go on Hajj, she may be accompanied by a mahram from her family, such as her biological father or siblings. And during this journey, the wife is still entitled to a living from her husband.⁵²

According to Nawal, the concept of total compliance like this is no longer relevant to apply. Wives should not be regarded as subordinate husbands, but equal partners who need each other and have equal rights and obligations with each other. The wife should not be forced to do anything against her conscience, even in the name of obedience to her husband.⁵³

Livelihood Issues

The laxity of divorce procedures in Egypt encourages many husbands to divorce their wives for no apparent reason. Then, the ex-husband is only obliged to pay compensation

⁴⁹ El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyah*. 196

⁵⁰ Harwis Harwis and Marini Abdul Djalal, "Nusyuz and Domestic Violence in Indonesia: Reinterpreting Punishment Using the Ma'nâ Al-Haml Method," *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan* 10, no. 2 (December 15, 2023): 161-77, <https://doi.org/10.32505/QADHA.V10I2.6698>.

⁵¹ Muhammad Ibn Ahmad Ibn Rushd, "Bidayat Al-Mujtahid Wa Nihayat Al-Muqtasid," III (Cairo: Maktabah al Khanji, 1994), 41.

⁵² El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyah*. 199

⁵³ El-Saadawi.

fees⁵⁴ (*mut'ah*) whose value does not exceed the amount of income for a year. This has led to the displacement of former wives, so many of them live suffering from not having enough income for themselves and their children.⁵⁵

Nawal sees this as a form of injustice. The *mut'ah* money that husbands used to give, Nawal said, was of little value. A husband who has a lot of wealth, Nawal said, will arbitrarily act arbitrarily – including divorcing his wife – because he feels that everything can be paid with money.⁵⁶

As with polygamy, settlement of livelihood disputes in Egyptian courts – according to Nawal – also often harms women. Among these was the Cairo Court's 1975 ruling on bread. At that time there was a husband and wife divorced even though the wife was pregnant.⁵⁷ When his wife gave birth at a private clinic, she applied to the court for £500 to be paid by her husband. But the court rejected this application saying "the husband is not obliged to pay this birth fee, nor is the wife entitled to the birth expenses of the ex-husband."⁵⁸

Hadhanah

Before the enactment of Law No. 100 of 1985, the issue of child custody (*hadhanah*) in Egyptian family law was one of the points criticized by Nawal el Saadawi. The existing rules state that if there is a married couple who divorce and have young children, then the daughter lives with the mother until the age of 9 years. At the age of 9 years and over, the child must live with his father even though he does not want to. While the son lives with his mother until the age of 7 years then he chooses to follow his father or mother.

Nawal considered this provision unfair and ignored the benefit of girls when they were forced to live with their fathers even though they still wanted to live with their mothers.⁵⁹

Nawal saw it as "*igtishab li haq al umm*", a deprivation of a mother's rights. When a daughter is taken care of by her father, she is often not well taken care of because the father is busy working or busy with his new wife. Finally, there are many incidents of girls who then choose their own way of life, engage in promiscuity or are trapped in a bad life. Supposedly, Nawal said, the child stays with his mother because a mother's patience and affection are more suitable for a child's growth.

In 1985, the Egyptian government revised the age limit for girls and their mothers to 12. After that age, children are free to choose whether to follow their father or stay with their mother. This provision is reinforced by article 11 of the Egyptian Constitution of 2014 which states that the state guarantees the care and protection of mothers and children, and does not

⁵⁴ Minna Salminen-Karlsson and Anna Fogelberg Eriksson, "Men Are Always Better? How Swedish Municipalities Justify Pay Differences in Gender Pay Audit Reports," *NORA - Nordic Journal of Feminist and Gender Research*, 2023, <https://doi.org/10.1080/08038740.2023.2183255>.

⁵⁵ Iffah Fathiah et al., "Protection of the Rights of Adultery Children in Indonesia: A Perspective of Positive and Islamic Law," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 10, no. 2 (December 2, 2023): 147–60, <https://doi.org/10.32505/qadha.v10i2.7068>.

⁵⁶ El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyah*. 201

⁵⁷ Sofia Zettermark, "Invisible, Responsible Women in Sweden-Planning Pregnancies, Choosing Contraceptives," *NORA - Nordic Journal of Feminist and Gender Research* 31, no. 4 (January 1, 2023): 349–66, <https://doi.org/10.1080/08038740.2023.2214742>.

⁵⁸ El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyah*. 201

⁵⁹ El-Saadawi. 202

justify hegemony in the household.⁶⁰ Some of these changes are inseparable from Egypt's role as one of the first countries to sign the convention on the rights of the child in 1990.

Analytics and Solution Offers

Nawal's criticisms of family law in Egypt were fueled by her anxiety about the plight of women she witnessed. Nawal, who passed through childhood to adolescence in the 1930s and 1940s, often witnessed discriminatory practices by men against women. At that time, Egyptian women – as in other Arab countries – were still underdeveloped and living under the shadow of a strong patriarchal culture. The practice of divorce occurs wildly and without rules, so that 3 out of 4 women in the city of Cairo, or 1 in 4 women in Egypt as a whole, are victims of divorce.⁶¹

Nawal said the fact that the birth of a baby girl was not welcomed, unlike parents' joy at the presence of a baby boy. Girls are often subjected to intimidation or sexual violence such as female circumcision in sadistic ways, sexual abuse, forced marriage, to the practice of polygamy which is carried out almost without rules. Women who have babies are still forced to work in the rice fields even though they have to leave their babies behind.⁶²

These discriminatory practices are deeply rooted in society and have been carried out for generations since the Ottoman dynasty. Although the Egyptian government sets a number of rules to control it, in reality such practices still occur in society.⁶³ According to Nawal, as long as patriarchal culture is still embraced by Arab society, Arab women will not achieve equality with men at any time.⁶⁴

As a solution, efforts are needed to renew religious thought among scholars. Laws related to women still feel biased because scholars are generally constrained by jurisprudence doctrines that are considered final. In Nawal's view, the definition of fair law is non-discriminatory.⁶⁵ Nawal therefore offered freedom of thought (*at tafkir al hurr*) in matters of religion, something that was still considered taboo in much of the Arab world. Religion must play a role in protecting wives and children dominated by irresponsible husbands. This freedom of thought is important, considering that so far religion has not been able to control the role of the state in allowing patriarchal culture.⁶⁶

According to Nawal, Arab women have always been placed in a position below male domination. Women are considered second-class human beings, while men are classified as first-class human beings. Therefore, Nawal tried to expose this patriarchal behavior while affirming that women and men have the same human dignity.⁶⁷ This she expresses for

⁶⁰ Agung Burhanusyihab and KM Al Fathur Ikhsan, "Perceraian Dan Akibat Hukumnya Di Negara Muslim," *As-Syar'i: Jurnal Bimbingan & Konseling Keluarga* V, no. 3 (2023), <https://doi.org/10.47467/as.v5i3.2840>. 648

⁶¹ Qassim Amin, *Tahrir Al Mar'ah* (London: Hindawi Foundation, 2010). 91-92

⁶² El-Saadawi, *Qodhiyatul Mar'ah Al Mishriyah Al Siyasiyyah Wa Al Jinsiyyah*. 42

⁶³ Adrien K Wing, *Family Law and Gender in the Middle East and North Africa, Family Law and Gender in the Middle East and North Africa* (Cambridge University Press, 2023), <https://doi.org/10.1017/9781139151719>. 150

⁶⁴ El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyyah*. 206

⁶⁵ El-Saadawi, *Qodhiyatul Mar'ah Al Mishriyah Al Siyasiyyah Wa Al Jinsiyyah*. 31

⁶⁶ El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyyah*. 216

⁶⁷ Firman Syah, Fadlil Yani Ainusyamsi, "Eksistensi Perempuan Mesir Dalam Novel Perempuan Di Titik Nol Karya Nawal El-Saadawi." 68

example in her literary works, when her criticisms are expressed through the figure of women who carry feminism and fight against patriarchy culture. The form of diction expressed by Nawal in his works has always broken the doctrine of male domination over women.

To the women themselves, Nawal asked that they be able to be economically independent in order to have a strong bargaining position in front of their husbands. The notion that men are producers and women are consumers, according to Nawal, must be completely changed. In this context, Nawal says, "women who are able to provide for themselves will not fall into servitude to their husbands, as women who have no income experience"⁶⁸

Conclusion

From the explanation above, several things can be concluded as follows. First, the material of Egyptian family law related to divorce procedures, polygamy, bait at tho'ah, subsistence and hadhanah, was considered by Nawal to be discriminatory against women. The discrimination occurred because of the state's neglect of patriarchal culture in society. Second, efforts to realize just family law must start from the principle of freedom of thought adopted by scholars and framers of laws and regulations. At the same time, women must also have the economic ability to have a strong bargaining position in front of men.

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⁶⁸ El-Saadawi, *Al Wajh Al Ari Lil Mar'ah Al 'Arabiyah*. 208

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