

## **Beyond the Text: The Dignity of Women in the Shari'a Court**

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This analysis shows that women's use of concepts like dignity in the Shari'a court leads them to justice in many cases, despite the fact that the legal system is based on the idea of separate spheres. However, women's use of dignity as a concept is not founded on the liberal system of rights, and therefore does not appear to have been an imposition from outside the system, as is many times the case in rights-based discourse. The concept of dignity appears as a necessary principle in the construction of relationships and social conditions that emerge in each case. Therefore, it can be understood that women use dignity not as a legal distinction or description but rather as a dialogue or negotiation with the legal text. Furthermore, the use of dignity and its concepts gives the women the strength and ability to confront the written rules, and the possibility of negotiating beyond the boundaries of the legal system.

The Shari'a courts adjudicate issues of personal status, including matters of marriage and its effects, divorce, and the division of inheritance. The Shari'a system adjudicates on the grounds that the marriage contract lays out both obligations and rights, designating different roles for the woman and the man within this context. For example, under the marriage contract the husband is obliged to pay alimony and provide a decent life in exchange for the wife's obedience. The law allows any condition to be placed in the marriage contract that is in agreement with the Shari'a. Following any breach of the conditions by one of the two parties, the other party is able to go to the courts to demand compliance or divorce. The man holds the right to divorce, with the knowledge that under the law, arbitrary divorce - any divorce of a man from his wife without reason - obligates him to pay compensation. Built on these sometimes opposing roles and obligations, the legal text assumes inequality in the rights and obligations between the man and woman in the marriage contract and inheritance, and the power balance tends to favor the man over the woman. However, this description disregards the social, economic and political self-management systems that govern the dynamics between the legal text and social reality, and the roles of key actors in giving the legal text meaning.

These factors have led to the emergence of several studies exploring a more contextual understanding of the social and legal system. These studies find that in general, the Shari'a court judges use social and legal flexibility when ruling in personal status law cases. These studies have pointed to the essential role of the Shari'a courts in interpreting the legal text and jurisprudence as a vital legal practice,<sup>2</sup> and that the Shari'a judges understand and base their decisions on a number of considerations of the legal text, including the social, economic, and political implications.<sup>3</sup> It is notable therefore that Palestinian women take an active role in influencing results and achieving their interests. Women can, in many cases, avail themselves of loopholes in the law and intersections between the rule of standard law and social customs, and judges' frame of reference, which has allowed, in a number of cases, women to reach justice.<sup>4</sup> However, the law itself is characterized, as

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<sup>2</sup> Welchman, Lynn, 2003. *Islamic Family Law*. Ramallah: Women's Center for Legal Aid and Counselling.

<sup>3</sup> Shehada, Nahda, 2010. *Women, Courts and the Law* (in Arabic). Ramallah: Muwatin Press, Centre for the Study of Democracy & and Centre for Arab Unity Studies.

<sup>4</sup> *Ibid.*, p. 5.

Mirziban Hosseini pointed out, by both flexibility and rigidity, absolute and relative. Therefore the court becomes a forum in which to negotiate between the legal text and what is beyond the legal text: social, economic, and political conditions that do not fit within its strict boundaries.

In the shadow of this ability in the Islamic courts, women use the concepts of dignity to negotiate the legal text or change the dynamic forces surrounding it. Such use comes in many cases where the woman is unable to negotiate on the facts of her case. For example, on the issue of obedience, the wife is able to argue that leaving her husband's home is not disobedience or a refusal to obey *only* if there were objective reasons for her acts, such as the husband's refusal to spend money on her, there is a danger to her person, or because her husband had begun sending her to her family's house. In cases where there is no objective reason, the law allows obedience to be imposed on the wife. Obedience is among the most difficult issues in the court, and therefore judges are reluctant to impose a solution. If the wife is charged with disobedience, she may lose her legal rights, such as her dowry and others.

During my court observations, I noticed that a number of women used the concept of dignity to fight the requirement of obedience and to escape its effect. For example, in one case the judge decided that the woman must return to her husband's house because there had been no objective reason not to do so. The judge then said if the wife did not return, but stayed away for weeks, refusing to return by herself, then her husband must bring a *Jaha*, a dispute-resolution council composed of well-known and respected elders from the community, to the wife's house. The wife's refusal to return and her steadfastness to her demand is a matter of dignity, not law. The judge, for his part, agreed with the woman in this controversy, departing from the legal codes, and declared that the husband must seek to send the *Jaha*, for it is not acceptable that the wife should return to her house while she was still feeling affronted. Enforcing the law does not mean disregarding the woman's feelings and dignity. The wife forced her husband to send the counsel to her, which opened the door to a discussion of the issues that the wife wanted from her husband, a discussion that did not fall within her legal powers to demand under the accepted causes for non-obedience.

From here we note the following: Women's use of the human dignity concept is done outside of the legal text, not from within it. Further, women's use of the concept of dignity does not rely on procedures or legal questions, but on a fundamental principle that cannot be undermined by the legal text, its objectives, or its causes. It follows, therefore, that the concept of human dignity is absolute in its protection of the weaker party, and allows the modification of the balance of powers in favor of the weak. It is always possible to say that a person does not have a certain right, but it is never possible to say that a person does not have dignity.