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**“Qanun Nashaz” – A Campaign on the Legal Issues associated with Violence against Women in both Public and Private Spheres**

***Introduction***

Women and girls in Egypt are exposed to various sorts of sexual and physical violent crimes, in both public and private spheres, by state as well as non-State actors. The frequency and severity of such crimes have increased after the January 25th Revolution of 2011, due to the overwhelming flow of both women and men into the public sphere. Assaults ranged, in terms of severity and nature of the perpetrators, across a number of regions and governorates in Egypt, and throughout the multiplicity of political regimes that succeeded in power after Mubarak stepped down in February 2011. Many of these crimes have been monitored by feminist organizations and groups over the past few years, with more than 500 documented cases of mass sexual assaults**[[1]](#footnote-1)** including instances of gang rape around Tahrir Square as well as in other places, individual and mob-sexual assaults, and a huge number of sexual harassment cases; offenders have, so far, enjoyed impunity, with the exception of the prosecution of some offenders involved in crimes committed on June 8th 2014, during celebrations of the inauguration of the new president-elected[[2]](#footnote-2), as survivors were able to identify those arrested.

On the other hand, a quick overview of the status of Women in Egypt shows that the huge gap separating eomen from enjoying their human rights has been constantly growing, especially after the January 25th Revolution. Though women have stood up alongside men in the fight against injustice and tyranny all over Egypt until the old regime was overthrown, they have afterwards been one of the most excluded and marginalized groups in all political, economic and legal domains. This is highlighted by recently published statistics, indicating deep economic and social inequalities between women and men. Women still constitute the majority of the poor and illiterate in Egypt, they work longer hours, they are paid less, and they suffer physical and sexual violence at home, at work, and elsewhere. Furthermore, women are minimally, if at all, represented in positions of authority and decision-making.

It is really unfortunate that, when trying to figure out the reasons behind such consistent deterioration in the status of women throughout the ages, the law itself is largely to be blamed. Many existing laws uphold disparity and discrimination between men and women, with regard to various issues and rights, notably: criminal protection, personal status disputes, testifying in court, and penal provisions. The Penal Code, in particular, still allows husbands to discipline their wives by battery under the pretext of applying a right, in a addition to granting courts broad discretion in granting clemency in murder cases committed as "honor crimes". This body of law provides legal cover for systematic infringements on the Human Rights of victimized women.

***Violence against Women in the Public Sphere and the Legal Issues Involved***

Many factors contribute to the spreading of a culture of impunity among perpetrators of violent crimes against women, including the social stigmatizion and blaming of survivors, and the lack of broad and comprehensive definitions of such offenses. For example, the definition of the crime of rape in Article 267 of the Egyptian Penal Code is limited to the insertion of the offender's penis into the survivor's vagina , whereas sexual assault is defined in Article 268 of the same code as a crime of indecency, "indecent violation". Although the former interim President, Judge Adly Mansour, issued decree-law no. 50/2014 amending some provisions of the Penal Code promulgated by law no. 58/1937, which amended Article 306(bis)A by enforcing stricter penalties and added article 306(bis)B to introduce the crime of Sexual Harassment for the first time in the history of Egyptian legislation, this is hardly sufficient to tackle the wide-spread crimes referred to. It should be noted that the persistent impunity of offenders is a result of failure to initiate a comprehensive investigation. In that regard, various feminist and human rights groups and organizations have called for the development and implementation of a comprehensive national strategy for the elimination of sexual violence against women[[3]](#footnote-3). Although this strategy is currently being developed by a committee coordinated by the National Council of Women, its substance has yet to be transparently publicized, and no serious dialogue or consultation was initiated with the organizations and groups that called for it.

*Legislative Recommendations:*

* Consolidation of all legal provisions on Sexual Violence under one title, namely Title IV of Book III of the Penal Code, instead of being under three separate titles. The heading of the consolidated title should be "Crimes of Sexual Violence" rather than "Crimes of Indecency". If associated with moral values, the violent and inhumane nature of the crimes in question is blurred, and offenders are not held accountable pursuant to this nature.
* Developing clear and specific definitions of sexual crimes across Egyptian legislation. These definitions should include anal and oral rape as well as rape by fingers or tools, to replace the deficient definition in Article 267 which falls short of addressing the recent gang rapes. Moreover, Article 268 provides no definition for sexual assault, which should be defined to include any intrusive act against the survivor leading to her or his degradation, as well as sexual acts performed without the consent of the survivor which do not amount to rape.
* Omission of any reference to the victim's sex in all sexual crimes, and providing for general applicability regardless of the victim's sex. The crimes in question are committed in all forms against men, women, boys and girls alike.
* Enacting provisions within the planned law on the protection of witnesses and whistleblowers, to protect the privacy of the information and personal details of whistleblowers and witnesses in sexual crimes. Law enforcement and prosecution authorities should be held accountable for any leaking of such information. The reason for this is that, in many documented cases where sexual harassment was reported to the police, the offender's family would visit the reporting survivor at home and pressure her not to pursue legal proceedings, despite restraining orders being issued. This is a result of allowing lawyers of the accused to review the police reports, where the addresses of the reporting survivors are listed.

***Laws that Discriminate against Women (Laws that Systematically Reinforce Violence against Women)***

***The Egyptian Penal Code:***

1- Article (17) of the Egyptian Penal code is particularly problematic in rape crimes, since it gives judges the discretion to apply maximum clemency in reducing the prescribed penalty by two degrees, as it states: "In felony counts, if the conditions of the crime for which public prosecution is initiated necessitate clemency on part of the judges, the penalty may be changed as follows:

• Capital punishment may be reduced to life imprisonment or rigorous imprisonment.

• Life imprisonment may be reduced to rigorous or imprisonment.

• Rigorous imprisonment may be reduced to imprisonment or incarceration for no less than six months.

• Imprisonment may be reduced to incarceration for no less than three months."

**Issues involved:** The article is frequently used in cases of rape and indecent assault against women, resulting in many unfairly reduced sentences.

2-Article (60) of the Egyptian Penal code states that: "The provisions of the Penal Code shall not apply to any deed committed in good faith, pursuant to a right determined by virtue of the Shari’a.".

**Issues Involved:**

The article is widely used in Wife-Battering cases, helping many husbands escape punishment.

3- Articles on Adultery in the Penal Code (237, 274, 277) discriminate between Women and men with regard to penalties, even though Islamic Shari’a prescribes equal penalties for both sexes, and therefore, these articles are unconstitutional.

When examining those articles thoroughly we find the following:

**(a) Discrimination between Men and Women in Establishing the Crime of Adultery:**

A married woman is considered to have committed the crime of adultery regardless of the location of the act, i.e. whether it took place at the marital home or not. We have nothing to object to in this regard, since the duty to maintain the loyalty and fidelity between a married couple is not limited to a specific location or time, so long as wedlock is in existence. The law, however, does not recognize this fact in relation to the husband, since the husband is not considered to have committed crime of adultery unless the act was committed in the marital home. Elsewhere, the crime of adultery is not established, unless adultery is committed with a married Woman, in which case he is considered an accomplice rather than a principal in the crime. If, however, he commits adultery outside of the marital home with an unmarried Woman, the crime of adultery can not be established against either of them under the applicable provisions of Penal Code.

**(b) Discrimination between Men and Women in Punishing Adultery:**

It was not enough for the law to favor men with regard to establishing the crime, but it insists on applying its discriminative approach against women even in prescribing the penalty for adultery, providing for a lighter penalty for men.

* A wife proven guilty of adultery, inside or outside her marital home, shall be punishable by incarceration for a period of no more than two years (Article 274P).
* A husband proven guilty of adultery, inside his the marital home, shall be punishable by incarceration for a period of no more than six months (Article 277P).

This sort of discrimination is despicable, as it encourages men to commit adultery twice: first by permitting the act if committed outside the marital home, and second by prescribing a lighter penalty, even if the act is committed inside the marital home.

**C- Discrimination between Men and Women in Excuse for Crimes Committed upon Catching the Spouse in the Act of Adultery**

Article 237 of the Penal Code provides for a mitigated penalty for a husband who catches his wife in the act of adultery and immediately kills both her and her accomplice. In such case, the husband is not punishable by the penalties prescribed for premeditated murder or fatal assault, but rather by the penalty of incarceration, whose minimum is as low as 24 hours. The reason for mitigation is the anger and provocation that take hold of the husband when catching his wife in the act of unfaithfulness, even if it was not inside the marital home.

However, a wife catching her husband in the act of adultery, even if she caught him in the marital home where they live together, does not benefit from this mitigation. This discrimination against women with regard to benefiting from the excuse for mitigation is founded on inhumane premise that it is not acceptable for a wife to get agitated or act on impulse when she is shocked by catching her life partner cheating on her in their marital home, but rather must control her anger and agitation, and refrain from hurting her husband or his accomplice. Indeed, if she acted on impulse and killed him or his accomplice, her penalty can not be mitigated and she is punishable by the penalty for premeditated murder, i.e. life imprisonment or rigorous imprisonment.

Therefore, this discrimination is flawed, with no grounds in the reason for mitigation, and is sufficient to render the provision on mitigation unconstitutional. Furthermore, it is in contradiction with the provisions of Islamic Shari’a.

**(D) Discrimination between Men and Women in Adultery Proceedings:**

The Egyptian law favors women with special provisions in adultery proceedings, which is, in our view, unsound.

1- A husband loses his right to file a complaint against his adulterous wife if he had previously committed adultery in the marital home (Article 273). In such case, the wife may argue that she can not be brought for trial since her husband had previously committed adultery. This is an established right for the wife, but not for the husband, i.e. a wife has the right to file a complaint against her adulterous husband even if she had previously committed adultery. This provision is flawed since it establishes set-off in immoralities and sins, since it seems to be granting the wife a right to commit adultery if her husband had set the precedent. It is an anomalous provision justifying immorality by immorality, and we therefore believe that it should be abolished. For despite the fact that its serves the interest of women, such interest is, however, not legitimate.

2- If a wife is convicted of adultery, the husband may stay the execution of the sentence if he agrees to continuing their marital life as it was. This means that pardoning the penalty is a right of the husband for the benefit of his wife. A wife, however, has no right to pardon her husband's penalty if she agrees to continuing their marital life as it was (Article 274). This is unsound discrimination between men and women, as it establishes the inferiority of women despite seemingly being for her benefit, since it does not consider the interest of the family of the wife believed that it would be better to pardon her husband to protect the reputation of the family and out o concern for her children's feelings.

**The Legislative Attitude towards Female Genital Mutilation:**

The battle of the Egyptian society against female genital mutilation started as early as 1920, or even before that, since the Penal Code of 1883 criminalized any infringement on the physical integrity of a human being, whether male or female. Nevertheless, the legislator never showed the explicit will to solve the matter decisively. Administrative Courts upheld the decisions by the Ministry of Health on banning circumcision for girls in the facilities of the Ministry, save in exceptional cases.

Most recently, Law 126/2008 added to the Penal Code a mediocre text, in both form and substance, (Article 242(Bis)) which prescribed heavier penalty for the crime of deliberate physical injury if it was caused in the course of female genital mutilation, notwithstanding the provision of article 61 of the penal code with regard to cases of necessity. The following may be noted in relation to the article:

- It does not directly criminalize female genital mutilation, but only considers circumcision an aggravating factor in the crime of deliberate physical injury.

- It makes necessity an exemption from liability and punishment for female genital mutilation, thereby leaving room for circumventing the new provision by simply claiming that the procedure was necessary to save the female from a grave threat, and the legal rule established that necessity knows no law.

- It grants judges broad discretion in choosing between incarceration and fine. The lower limit of the fine, 1000 Pounds, is not proportionate to the possible revenues of the crime.

- It places the accused at an even better position than where he would be in its absence. Criminal jurisprudence has established that circumcision constitutes an infringement on the physical integrity of the female which is punishable under the penal code. The penalty is aggravated if it leads to death, since the crime is then deliberate physical injury leading to death (Article 236). If death is considered to be the result of involuntary homicide, the accused shall be punishable by incarceration for no less than one year and no more than five years, and a fine between 100 and 500 pounds, or either penalty.

**Recommendations:**

1. Working towards limiting the use of Article 17 by judges in cases of rape, as well as in the premeditated murder cases known as "honor crimes", similar to the way it is not used in drug crimes.
2. Activation of the provisions of the new Constitution that establish the equality of men and women before the law, therefore changing the legal provisions involving discrimination against women.
3. Criminalizing female genital mutilation with an explicit provision and without exceptions, with aggravated penalties for medical professionals who perform circumcision, and making incarceration a mandatory penalty in cases of recurrence or if the accused is proven to be a habitual practitioner of female genital mutilation.
1. "Egypt: Keeping women out. Sexual violence against Women in the Public Sphere", a joint report by FIDH, Nazra for Feminist Studies, New Women Foundation, and Uprising of Women in the Arab World. April 16th 2014. Available at: <http://nazra.org/sites/nazra/files/attachments/joint_report_sexual_violence_egypt_en.pdf>. [↑](#footnote-ref-1)
2. "First Verdict in Cases of Mob-Sexual Assault and Gang Rape in Tahrir Square is No End to the Story; All Previous Crimes of Sexual Violence must be Investigated". Joint Statement. July 19th 2014. Available at: <http://nazra.org/en/2014/07/first-verdict-cases-mob-sexual-assault-and-gang-rape-tahrir-square-no-end-story> [↑](#footnote-ref-2)
3. "Feminist and Human Rights Organizations and Groups call for a Comprehensive National Strategy for the Elimination of Violence against Women, and a Law covering all forms of Sexual Violence". Joint Statement. March 31st 2014 [↑](#footnote-ref-3)