

2013

# The interconnection of legal and social norms in the practice of fatwa-giving

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BOSTON UNIVERSITY  
GRADUATE SCHOOL OF ARTS AND SCIENCES

Thesis

**THE INTERCONNECTION OF LEGAL AND SOCIAL NORMS IN THE  
PRACTICE OF FATWA-GIVING  
A STUDY BASED ON FIELDWORK AT DĀR AL-IFTĀ'**

by

**NAJAH NADI ABDULFATTAH AHMAD**

B.A., Al-Azhar University, 2008

Submitted in partial fulfillment of the  
requirements for the degree of  
Master of Arts

2013

Approved by

First Reader

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Kecia Ali, Ph.D.  
Associate Professor of Religion.

Second Reader

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Robert Hefner, Ph.D.  
Professor of Anthropology.

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**ABSTRACT**

This thesis examines the dynamic interplay of the shared legal, personal, and societal commitments of *mustaftis*, (petitioners), and muftis at Cairo's Dār al-Iftā', the official fatwa council, where I observed 140 fatwa sessions mostly concerning marital disputes. It focuses on the role and impact of fatwas in preserving social and gender relations in a society with increased religious tendencies and dispositions, such as the Egyptian society. The thesis demonstrates that the study of *iftā'* within its institutionalized and interactive channels could effectively enhance our understanding of the process of legal interpretation in general, and the power dynamics of social/gender relations in particular. Therefore, the thesis attempts to develop a model for the study of fatwas that gives consideration to petitioners, as agencies of the law; muftis, as social and religious interpreters; and the structures of the society of which fatwas are issued, as an influential, yet influenced element.

The thesis demonstrates that Dār al-Iftā' provides Egyptians with an alternative to courts for religious, marital, and social counseling. It further demonstrates how Dār al-Iftā' aims at preserving marriages, and, by extension, the societal and gender norms. During the society preservation attempts, muftis adapted to the social patriarchal assumptions that give each married partner privileges in correspondence to their gender

position in the society. Hence, I pay closer attention to women's involvement in male-dominated spaces such as religious institutions to negotiate their marital relations and to challenge the hegemonic structures of their society.

## Table of Contents

### Note on Translation and Transliteration

### Introduction

### Chapter One: *Iftā'* and Dār al-Iftā' in Context

1. *Iftā'*: methods and structures
  - i. *Iftā'* as an interpretive process: questions-answers correspondence
  - ii. Muftis and their legal qualifications: *Ijtihād al-Manāṭ*
2. Dār al-Iftā' of Egypt: history and development (1895-present)
  - i. The establishment of Dār al-Iftā' as an institution.
  - ii. A transformative social media outreach: Sheikh 'Ali Jom'a and the reform of Dār al-Iftā'
  - iii. The basic structure of the current Dār al-Iftā' of Egypt
  - iv. The fieldwork: July 7<sup>th</sup> – July 14<sup>th</sup> 2012
  - v. Muftis of Dār al-Iftā' and their *iftā'* training
  - vi. *Iftā'* and masculinity
  - vii. Petitioners and *istiftā'* registration

### Chapter Two: Divorce, *ṭalāq*, and Divorce Fatwas

1. Introduction
2. Divorce in the Islamic family law system
  - i. The *ṣarīh* divorce: definition, formulas, and rulings
  - ii. The *kināya* divorce: definition, formulas, and rulings
  - iii. Oath-taking and conditioned divorce

3. Women's divorce: *taṭliq*, judicial divorce, and *khul'*, divorce for compensation
  - i. *Taṭliq* and *khul'* in Egyptian court codes
4. Divorce at Dār al-Iftā' of Egypt
  - i. Dār al-Iftā''s account in *ṭalāq* statements
  - ii. Presenting a divorce case at Dār al-Iftā': the fatwa sessions
    - a. Intention determination process
    - b. Women, divorce, and social enforcements

### **Chapter Three: Power, Authority, and Negotiation**

1. Power-negotiation correlation
2. Fatwa's legal and social authority in marital disputes
  - i. Negotiating legal discourses
  - ii. Negotiating social practices
3. The obedient wife and the financially supportive husband in Egyptian court system and society
4. The obedient wife and the financially supportive husband at Dār al-Iftā'
  - i. Muftis responding to women's demands for financial support
  - ii. Muftis responding to husbands' request for wives' obedience
  - iii. Women: agencies of the family and the law
  - iv. Religious preaching based on social expectations

### **Conclusion**

### **Bibliography**

### **Note on Translation and Transliteration**

Whenever possible, I have used the familiar English forms of Arabic words and names; otherwise, I have followed the *International Journal of Middle East Studies* system of transliteration. All quotes from Arabic sources are translated by me, unless stated otherwise.

## **Introduction**

Knowing the legal ruling related to every action a Muslim engages in is both religiously demanded and socially encouraged in Muslim societies. It is the task of religious interpreters—ranging from jurists and muftis to preachers (imams) and judges—to identify, produce, develop, and deliver Islamic legal rulings. Judges and muftis have the most important roles in the interpretive process because of their direct connection to the practice of their societies; fatwas are responses to questions posed to muftis by petitioners and judgments are verdicts to cases raised in courts by litigants. There are several similarities and differences between judgments, issued by judges, and fatwas, issued by muftis. The most notable similarity is that both are based on the interpretation of the major Islamic religious texts; the Qur'an, and the Prophetic reports—coupled with an extensive heritage of Islamic jurisprudence in the case of fatwas, and the national laws and codes in the case of judgments. The most notable difference is that judgments are legally binding, while fatwas are not. While the application of fatwas is voluntary legally, they are, however, religiously authoritative.

Researchers in Islamic studies and Muslim societies have devoted a great amount of academic works to the study of court judgments and, to a lesser extent, of fatwa collections. The bulk of these studies is based on written documents from pre-modern archives and modern court records and fatwas. Amongst the few studies that investigate fatwas, fewer still attempted to study fatwas within the interactive process between muftis and *mustaftīs*, petitioners. The element of mufti- *mustaftī* interaction adds more to the understanding of the interpretive process, and the dynamics of authority in fatwa-

giving. This thesis thus attempts to analyze the interactive element of fatwa-giving and fatwa-seeking, through analysis of fatwa sessions between muftis and *mustaftīs* at the Dār al-Iftā', the Egyptian Fatwa Council. It focuses on the role and impact of fatwas on gender relations among Egyptian families and shows how, by comparing Egyptian courts' use of a codified version of Islamic legal rulings and Dār al-Iftā''s lenient use of various schools of law, both institutions exercise religious and legal authorities to satisfy desired goals that harmonize social relations, but also enforce patriarchal structures. Since Egyptian courts under the nation-state system are often inaccessible and bureaucratic, the current Dār al-Iftā' in its institutionalized form has filled the need by providing an accessible and affordable alternative to courts. People resort to Dār al-Iftā' for the sake of seeking legal advice, negotiating marital disputes, and for the most part to fulfill their faith demands and religious needs as Muslims. Corresponding to the people's needs and goals, the muftis of Dār al-Iftā', supported by their legal expertise and social legitimacy (as well as the religious authority of their fatwas) provide the society with religious preaching, legal advice and social mediation.

The main contribution of this thesis is to show that, through the dynamic interplay of the shared legal, personal, and societal commitments of muftis and *mustaftīs*, fatwas are constructed via the contributions of **both** parties' respective powers over the fatwa process. Such fatwas, in affecting the *mustaftī* and by extension society in general, serve both personal and societal aims. Creating an alternative space for religious, marital, and social counseling, Dār al-Iftā' aims at preserving marriages, and, by extension, societal

and gender norms. In some cases, this alternative space provides women with greater agency and power than the courts; in others, it does not.

The research consisted of both theory and fieldwork components. For the fieldwork, I attended 140 fatwa sessions, and communicated with muftis and employees at Dār al-Iftā'. For the theoretical component, I engaged with both primary and secondary literature on fatwas, court codes, and traditional jurisprudential texts. I also utilized official government websites for personal law codes and administrative procedures.

I divided my research into three main chapters. In chapter one, I aim to show the legacy and significance of fatwas as authoritative religious opinions paying a close attention to its contextual nature, as well as to show the increased legitimacy of the Dār al-Iftā' among Egyptians. I first explain basic notions and assumptions about the issuing of fatwas—its relation to both, religious texts and contexts of its receiver— followed by a basic introduction on the required legal qualifications for muftis who issue fatwas. Second, I give a brief history and development of the Egyptian Dār al-Iftā' followed by profiles of its appointed muftis and main departments in order to contextualize my research.

In chapter two, I aim to demonstrate that muftis use creative dynamics to engage in and challenge the traditional Islamic schools of law aiming to remain faithful to the traditions while adjusting to modern contexts. Comparing the descriptive analysis of the divorce fatwa cases with the Egyptian *Shari'ah* court codes, I show how muftis, concerned about the stability of society, use various strategies to preserve marriages via the use of distinct legal discourse against the frequency of divorces in the Egyptian

society. I pay special attention to the implication of these pro-marriage and social-stability stances on women resorting to Dār al-Iftā' to investigate their husbands' divorce pronouncements and obtain marital rights. I show that women were granted the support of religious fatwas only when their requests are in line with the socially accepted religious positions adopted by Dār al-Iftā'' muftis. The overall message I hope to convey is that Dār al-Iftā' and its muftis created a maverick *iftā'* paradigm to deal with the complexity of petitioners' contexts while retaining a threefold nature of their role as muftis in the society; this threefold nature consists of the legal, social, and religious aspects of their *iftā'*.

In chapter three, I further explain this threefold nature of *iftā'* as reflected in the negotiation spaces embedded in the *iftā'* and *istiftā'* processes. In particular, muftis and petitioners negotiate the social and religious practices as much as they negotiate the various legal solutions. The social and legal structure of marriage and the relationship between the married couple will be highlighted in this chapter to clarify the scope and limits of these negotiations. The basic structure of marriage, as encountered through my research, consists of reciprocal rights and duties; the husband owns the obedience right over his wife and owes her financial support; the wife owns the financial support right over her husband and owes a full obedience to his orders. The recognition of this structure by muftis of Dār al-Iftā' influenced their fatwas—they issued fatwas in correspondence to these marital rights and duties—as well as their social advices and religious preaching—they consistently insisted that the adherence to these socially

accepted religion-based rights and duties maintains both successful and stable marriages and by extension a stable society.

Overall, it will become evident that the social dimension is strongly present in the legal and religious dimensions in the practice of fatwa-giving and fatwa-seeking, which proves that understanding societal norms is vital in understanding the process of legal formation in this society. With this in mind, this thesis then offers an important reading of the legal and social dynamics of the *iftā'* practice in Egypt. First, it aims at identifying and analyzing the modified legal model on which Dār al-Iftā' depends, and what this model entails in terms of Dār al-Iftā''s institutionalized structure and scholarship; second, the social practices of divorce, and Dār al-Iftā''s role in preserving and modifying these practices; and finally, it aims to look into and beyond the cases presented in the fatwa sessions to identify and analyze the use of the religious authoritative institution of Dār al-Iftā' as a means to negotiating marital disputes by Egyptians who seek consultations at the Oral Fatwa Department in Dār al-Iftā'.

Focusing on the fatwas issued by means of actual interaction between muftis and petitioners in the fatwa sessions at the Oral Fatwa Department at Dār al-Iftā' — as opposed to other forms of issued fatwas such as written and electronic ones—I aim to demonstrate that Dār al-Iftā' provides an avenue for Egyptian Muslims to fulfill their religious desires, negotiate their social relations in the context of ending marital disputes, and participate in the formation of religious authority through their engagement in the process of legitimizing religious institutions. As said, I will pay close attention to women's participation in the Dār al-Iftā' fatwa sessions, aiming to elucidate how women,

as agents of the law, engage in the formation of religious authority by their visits to Dār al-Iftā' in an attempt to improve their social status as marital partners.

## Chapter One: *Iftā'* and *Dār al-Iftā'* In Context

### 1. Fatwa-Giving: Methods and Structures

*Iftā'*, the craft of issuing legal opinions, has a well-known contemporary rule that is strongly rooted in tradition, which states, “fatwa changes with the changes in times, places, cases and persons.”<sup>1</sup> *Iftā'* then comprises, besides its legal sources of interpretation, an active involvement in human affairs including their social norms, personal experiences, and situated contexts of each case seeking a fatwa. Due to *iftā'*'s complex structure, competence for muftis, who perform it, requires not only the knowledge of legal rules, but also the knowledge of these contexts.

Traditionally, there are several types of muftis based on their legal qualifications, and also different types of *Ijtihād*—the processes of reasoning that jurists employ to arrive at a decision that best fits the law pertaining to a particular case<sup>2</sup>, based on its scope and independence in scholarship. These categorizations, as well as a detailed description of the whole process of legal interpretation, are intensively discussed in the science of *'Uṣūl Al-Fiqh*, principles of jurisprudence. They are also discussed with specific focus on guidelines to the muftis' responsibilities and qualifications as well as their piety requirements, in *Adab Al-Muftī*, the etiquette of the mufti, literature<sup>3</sup>. The

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<sup>1</sup> Assayūti, Jalalu Ad-Din. *Al-Rad 'ala man Akhlada 'la Al'ard*. Unpublished manuscript. P, 181.

<sup>2</sup> Hallaq, Wael. *An Introduction to Islamic Law*. Cambridge: Cambridge University Press, 2009. P, 27,

<sup>2</sup> Hallaq, Wael. *An Introduction to Islamic Law*. Cambridge: Cambridge University Press, 2009. P, 27,

<sup>3</sup> Frequently used references on *Adab al-Mufti* literature:

a) Al-Nawawī, Abū Zakariyyā Yahyā b. Sharaf. *Adab al-Fatwā wa-l-Muftī wa-l-Mustafī*. Damascus: Dār al-Fikr, 1988.

b) Al-Timūrtāshī, Muḥammad b. 'Abd Allāh. *Mu'īn al-Muftī 'alā Jawāb al-Mustafī*. Beirut: Dār al-Bashā'ir al-Islāmiyyah, 2009.

practice of *iftā'*, however, is not always as clear, direct, or structured as it seems in these theoretical writings. These writings usually try to draw a picture of “an institution that is fully mature, timeless, and highly ideal in character, paying little attention to historical developments or to actual circumstances to muftis in specific local settings.”<sup>4</sup>

I attempt to draw a contextually situated picture of the practice of *iftā'*, one that closely considers the interaction between legal and social norms. I investigate the legal interpretive methods employed in fatwa-giving sessions. These interpretive methods consist of the use of legal expertise, shared social contexts between muftis and petitioners, and a negotiation process muftis and petitioners use in order to harmonize fatwas with the social practices in their societies. More specifically, I wish to synthesize the following: (A) a basic theoretical *t'aṣīl*, authenticated rooting, of the Islamic family laws and fatwa-giving principles in the foundational texts of jurisprudence and *iftā'* manuals; (B) a contextualized fieldwork of family law fatwa sessions conducted at the Dār al-Iftā' of Egypt; (C) an anthropological analysis of gender relations in the Egyptian society as it appears in both the questions asked and the fatwas given. By means of this synthesis, I hope to investigate firstly, the role Dār al-Iftā' of Egypt, as an authoritative religious institution plays in the preservation of the social relations in Egyptian society, and what it specifically entails in terms of marital disputes. Secondly, I hope to show that *iftā'*, through its distinct relationship with societal norms, has been actively influential in

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c) Ibn 'Abidīn, Assayyed Muhammad Amīn. *Sharh Manzūmat 'Uqūd rasm al-muftī*. (Unpublished manuscript).

d) Al-Shawkānī, Muhammad b. 'Ali. Commentary, Badrī, Abī Mūs' b. *Al-Qawl al-Muftīd fi Adillat al-Ijtihād wa Al-Taqlīd* (Beirut, Dār al-Kitāb: 1992).

<sup>4</sup> Muhammad Khalid Mas'ud, Brinkley Messick, and David S. Powers (eds.), *Islamic Legal Interpretation: Muftīs and Their Fatwas*. Cambridge: Harvard University Press, 1996. P, 15.

Egyptian society particularly in the past few years due to advancements in media and technology, thus enhancing Dār al-Iftā’'s accessibility and authority. Lastly, I base on the above two points, a discussion of women’s use and position in Dār al-Iftā’ — what they want to achieve from resorting to Dār al-Iftā’ and what benefits, if any, Dār al-Iftā’ is able to offer to them.

The following example illustrates the dynamic interplay of Islamic legal doctrine, Iftā’, and Egyptian social practices and circumstances; Sheikh ‘Ali Jom‘a, a prominent Azhari Sheikh, Professor, and Egypt’s appointed Grand Mufti since 2003, issued a fatwa on the permissibility to bury more than one body in the same grave given that Egypt, particularly Cairo, has very limited burial plots.

In the fatwa, Sheikh Jom‘a explained that generally, it is impermissible to bury more than one individual in a single grave. He continues to explain, however, that it is permissible to do so in Egypt due to limited burial plots. Sheikh Jom‘a analogized this to the case of burying martyrs of the battle of *Uḥud* (fought in 625) where the people had to bury more than one in the same grave because there were too many dead bodies and not enough space. He also suggested that in the Egyptian case, they might construct multiple levels inside the same grave. Alternatively, people would need to construct an arch made of bricks or stones over the body previously buried without touching the bodies since it is forbidden. Then they would heap earth over the arch and bury a new corpse over it<sup>5</sup>. Of

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<sup>5</sup> I have attended this particular fatwa session of which Sheikh ‘Ali Jom‘a between 2006-2007, for references to the same fatwa written online:

English: Jom‘a, ‘Ali. “Fatwas: Customs and Modern Issues.” Web. <[http://www.ali-gomaa.com/?page=fatwas&fatwa\\_details=449](http://www.ali-gomaa.com/?page=fatwas&fatwa_details=449)>.

course this fatwa can be applied to other places that have the same circumstances, but the issuing of this particular fatwa in this particular time in the 20<sup>th</sup> century is significant. The fatwa could have alternatively followed the preponderant rule of impermissibility, and suggested that people should bury the dead outside the city in other spacious areas such as the empty desert. However, there were other contextual considerations that prevented Sheikh Jom‘a from making such suggestions. For example, the economic situation makes it nearly impossible for most Egyptians to afford buying these available lands, and the government does not provide any assistance in this regard. In addition, there is a long-standing Egyptian tradition that people visit the graves of their relatives regularly, and it would cause many difficulties for them to travel for such visits if they bury the dead far away. Just as the questioner mentioned, it is also a practice of Egyptian families to keep all family members in the same graveyard. These considerations altogether made it very clear that the fatwa here is not depending solely on the legal rulings, but also the practices, norms, and traditions of the particular context of which it is given.

Muftis must understand the specific situation of each petitioner to determine the most relevant opinion among the available legal opinions; the more they succeed in understating the elements surrounding the *istiftā’*, request for a fatwa, and story, the more they are able to provide an answer that is in the best interest of their questioner. This concern of providing the most appropriate answer to each question explains the flexibility in fatwa-giving and the different fatwas given to different people with different circumstances on the same question. An example to illustrate the particularity of a given

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Arabic: Dār al-Iftā’ al-Miṣṣryyah, the Egyptian Fatwa Council. “Fatawa Sheikh ‘Ali Jom‘a.” Web. <<http://www.Dār-alifta.org/ViewFatwa.aspx?ID=439>>.

fatwa to its *mustafī*, petitioner, is one that I encountered in one of Sheikh Jom‘a’s fatwa sessions as well as in my recent fieldwork at Dār al-Iftā’.

In his book *Fatwas of Muslim Women, (Fatāwa al-Mar‘a al-Muslimā)* which is based on his fatwa sessions, Sheikh Jom‘a discusses a fatwa regarding a man who engaged in illicit sex with his mother-in-law before and after the consummation of his marriage to her daughter. The question was submitted to Sheikh Jom‘a in a fatwa session by a man who claims to have been asked this question by the husband in question regarding the validity of this husband’s marriage and whether his illicit sex with the mother-in-law invalidated his marriage. Sheikh Jom‘a, after seeking God’s refuge from such sins, immediately answered the question by stating that the man’s wife is certainly forbidden on him and that he must immediately separate from the entire family. He explained that the man’s simultaneous sexual relationship with the mother and daughter is absolutely forbidden, and although some jurists claim that “what is forbidden does not forbid what is permissible,” denoting that the forbidden sex with the mother-in-law does not forbid the permissible marriage to the daughter, the man in question’s repeated forbidden act with his mother-in-law does indeed forbid and invalidate his marriage to her daughter even if both are honestly repentant, based on the established jurisprudential rule of “blocking the means”<sup>6</sup> to an illegal act. Explaining the various possibilities that may affect the giving of a fatwa, Sheikh Jom‘a added that he was asked the same question by another man who also engaged in illicit sex with his mother-in-law, but since

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<sup>6</sup> Jom‘a, ‘Ali. *Fatawa al-Mar‘ah al-Muslima, Fatwas for Muslim Women*. Egypt: Nahdet Maṣr, 2010. P, 138.

she had died by the time the question was asked to Sheikh Jom‘a, he permitted the husband to continue his marriage and seek repentance<sup>7</sup>.

Hence, it is clear that the difference in circumstances in these two cases have rendered a different answer to the same question. In the first case, Mufti Jom‘a looked at two main elements of the question: the repetition of the forbidden act, and the possibility of continuing it since both parties are alive. In the second case, however, the repetition of the illicit sex is neither mentioned in the question, even if it could be true, nor is it available anymore with the death of the mother-in-law. Therefore, the Mufti looked at the current marriage and its stability, and thus gave a fatwa, also based on available texts, more interestingly, the same above mentioned text, “what is forbidden does not forbid what is permissible,” explaining that the “blocking the means” rule is stronger than the former rule and hence, it played a greater role in the first case but did not have the same effect in the second.

In case 14 in my fieldwork, a man in his forties who works in a mechanical shop in Munsha‘at Nāṣer, a very poor street in Cairo, came with his elderly mother. The mother began the session (and actually requested that I leave the room, but the mufti told her I am a researcher and that it is important for me to observe) by saying that her son has a serious problem for which she hopes the mufti will find a solution. She proceeded to explain that her son “committed adultery with his mother-in-law and has greatly regretted it and wants to repent to God, but what about his marriage, his wife, and his kids?” The mufti directed his words to the silent husband and said, “What brought you here? Why

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<sup>7</sup> Jom‘a, p, 139.

now?” The husband responded: “I was at work and I heard the Qur’anic chapter of Sūrat an-Nisā’, and since then I’m so afraid of God and will never go back to this sin.” The mufti then gave the man the following fatwa: “Your wife is still your wife, but if you ever go back to this forbidden relationship with her mother, your wife will be forbidden for you now that you know.” The mufti turned to the mother and said, “and he [the husband] shall never even see this mother-in-law again; he has to cut all ties to her completely.” Back to the husband, the mufti continued: “And never tell your wife about your relationship with her mother for the sake of their mother-daughter relationship.”

Here, the mufti issued the fatwa that Sheikh Jom’a gave in the second case mentioned earlier though the mother-in-law is still alive in this case. The ruling in this case considered other factors such as; the fact that the presence of the man’s mother, an authoritative figure over the son, showed his seriousness in repentance. Another factor considered was the man’s residential locality; Munsha’at Nāṣer is a notoriously dangerous slum area, especially for parentless children who become homeless. Therefore, in an effort to safeguard the man’s children the mufti was keen to preserve the marriage. Finally and seemingly to me, the man is very poor, and if the mufti invalidated his marriage he probably would not have been able to afford to remarried, which may in fact become a cause of having illicit sex with other women including his mother-in-law.

These examples, as well as similar cases I plan to discuss, demonstrate that when it comes to the practice of *iftā’*, muftis are not only interested in the precise legal issues, but also, and even more so, in resolving the situations they encounter in a way that preserves and harmonizes social relationships. It might seem to people who do not pay attention to

such essential features of the practice of fatwa-giving as a contradiction in legal rulings, but in fact as the above examples reveal, it is not. Giving different fatwas to different people is the natural result of the rule I mentioned in the beginning of this chapter, “fatwa changes with the changes in times, places, cases and persons.” Fatwa is then a step after the legal ruling, *al-ḥukm ash-shar‘ī*; the legal ruling is primarily a product of the legal scholarship in reading religious legal texts through the understanding and context of its producer, the jurist. The fatwa, however, is constituted through a mutual interaction between the mufti’s scholarship and the petitioner’s particular case. Jurists perform *Ijtihād* to produce different legal rulings to human actions whereas muftis perform *iftā’* to choose the most appropriate one of these legal rulings to the question posed to them. Of course, muftis can also be *mujtahid* jurists and perform both procedures, but it is not a condition for their eligibility to practice *iftā’*.

It is worth noting here that it is stated in the (*Iftā’* methodology) section of the Dār al- Iftā’ ’s “the etiquette of giving a fatwa” manual that the Dār al-Iftā’ use and transmit “the four well-known Sunni schools of jurisprudence (Mālikī, Hanafī, Shafī‘ī and Hanbalī) while also acknowledging and take into consideration the other schools of jurisprudence that Muslims follow in different parts of the world, which are “Ja‘farī, Zaydī, ‘Ibādī and Dhahirī”<sup>8</sup>. This methodology is a major factor in the flexibility Dār al-Iftā’ enjoys in terms of following multiple *madhhabs*, schools of law, instead of specified-*madhhab* based *iftā’*, which in fact was the most common type of *iftā’* before

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<sup>8</sup> Dār al-Iftā’ al-Miṣryyah, the Egyptian Fatwa Council. “The Establishment of Dār al-Iftā’: History and Development.” Web. < <http://www.dar-alifta.org/Module.aspx?Name=aboutdar>>.

the institutionalization of *iftā'* through fatwa councils<sup>9</sup>. In fact, this is one of the features that al-Azhar, as the oldest and most authoritative Islamic studies institutions, is proud of. Ahmad At-Tayyeb, the Great Sheikh of Al-Azhar, has emphasized in several occasions that the preservation of the four traditional Sunni schools of law is a main goal for Al-Azhar as it is believed preserving these schools of law is the safeguard to *Shari'ah's* pluralism.

Next, I am going to briefly explain important *iftā'* principles that are most relevant to this work followed by a profile of the Egyptian Dār al-Iftā' that will help us understand in more detail its position in the Egyptian society.

It is important to mention here that it is not my concern to give a literature overview of the Adab Al-Fatwa, although I do intend to engage with its materials throughout my paper, but rather to pave the road to the next chapters on this thesis. The first *iftā'* principles I will be discussing deals with the relationship between the question and the fatwa issued as an answer to it. The second deals with the exact legal procedures of which muftis need in order to perform *iftā'* and that also define the limited scope of *Ijtihād* they are entitled to. These *iftā'* principles will help us understand the essential elements of muftis' work, their actions, as well as what is to be expected of them as muftis in the fatwa sessions.

#### **i. *Iftā'* as an Interpretive Process: Questions-Answers Correspondence**

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<sup>9</sup> Muhammad Khalid Mas'ud, Brinkley Messick, and David S. Powers. P, 22.

As determined in adab al-fatwa manuals<sup>10</sup>, constructing a fatwa should correspond to the question asked to the muftis. Thus, Fatwa is constructively connected to the act of asking questions. Imam Yaḥyā b. Sharaf An-Nawawī (d. 1300), for instance, insists that the mufti should answer questions only on the basis of the facts stated in the *istiftā'*, the question seeking the fatwa,<sup>11</sup> and that the fatwa applies only to the one who requests it. Fatwas are not to be generally applied by others unless they encounter the exact same situation, which, according to some, should be determined by muftis as well. This emphasis on the adherence to the question being asked and the limitation in application to the fatwa issued makes it clear that the *Iftā'*'s interpretive process starts by the asking of the question, the *istiftā'*. In this regard, it is the petitioner's responsibility to draw a concrete picture of the fatwa case, and accordingly, the mufti begins to conceptualize the case presented in order to place it under a legal category that would allow him to explore the legal options related to the case at hand. Questions are of great significance; the premises and facts given by the petitioner(s) are crucial elements and influential factors in the issuing of a fatwa since they formulate the comprehension of the fatwa case for the mufti.

Having said that, and because individual practitioners have their own commitments, stories, and, we encounter, both historically and in modern times, that carefully, and sometimes selectively, structured questions posed by petitioners and litigants aiming to reach certain results and favorable answers.

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<sup>10</sup> Al-Nawawī, p, 26, Ibn 'Ābidīn, p, 30-39.

<sup>11</sup> Al-Nawawī, 46.

Indeed, petitioners, who are mostly laypeople, will not always be successful in putting together facts that are *legally* influential, i.e. facts that can be recognized by jurists as bases and grounds of legal rulings, *aḥkam*. In other words, petitioners may not recognize what sort of information are relevant to the making of legal rulings—so that they would highlight in their questions—instead, they highlight their concerns and experiences, and since muftis are required to deal with the facts included in the questions, these petitioners’ inputs then become essential to the formulation of the legal rulings.. Hence, petitioners use, in order to achieve their goal of influencing the mufti’s answers, the social norms they share with the muftis of their societies as part of the *istiftā’* procedure. Muftis, who aim to preserve the society’s relations and values as previously stated, take into consideration these social norms raised by petitioners.

Hence, by emphasizing facts that are not relevant to the legal arguments, but are socially, religiously, and sometimes, psychologically influential in the *istiftā’*, petitioners attempted to influence the mufti's perception to the cases in order to reach favorable answers. Individuals attempt to use the religious authority embedded in the Dār al-Iftā’ to claim rights over other individuals and to negotiate duties. Examples of petitioners’ attempts to influence muftis by socially recognized concerns appeared in many different forms in the fatwa sessions I attended. For instance, a husband kept complaining about his wife’s dress code, which is not related to his legal question, in a divorce incident to place the blame on her for causing the divorce pronouncement. The husband then attempted, on the basis of his blame to the wife, to dispute post-marriage financial rights on the basis that the wife’s behavior is a main cause to their marriage dissolution. In

another case, a divorced woman complained about her ex-husband's shortcomings in paying child support and other expenditures, while her legal question was about the permissibility of preventing him from seeing their daughter—whom she has full custody over—until she gets a full payment of the child support. A third case showed a father-in-law telling a story of his son's marriage and the amount of social, economic, and moral losses the daughter-in-law caused his son, while the question was whether his son is permitted to divorce her without having to fully pay any post-marriage rights to her because of her behaviors. All of these cases indicate fatwa-seekers' ignorance of what is relevant in legal questions, but at the same time shows how they bring their social concerns—that were not in all times agreed upon by both spouses, i.e. a spouse may bring a societal norm that s/he adhere to while the other is not, such as the dress code in the previous example that the wife thought was completely appropriate and the husband thought it was not—to the legal procedure. The awareness of the crucial role of social and moral norms that influence muftis' opinions, then, is a must in the study of fatwas and their relation to the contexts of their receivers.

In his article, "The Significance of *Istiftā'* in the Fatwā Discourse," Khalid Mas'ud explains the strong connection between fatwa, *istiftā'*, and social norms by saying: "The scope of a particular fatwa is defined by the *istiftā'*. *Istiftā'* is a medium, which is used frequently to raise questions about new social practices whether they could be assimilated

into the Islamic tradition, and about how conflicts between social and legal norms should be reconciled”<sup>12</sup>.

One may conclude out of this question-answer correspondence that whoever gets to present their case for a fatwa, whether there’s more than petitioner, guarantees him or herself a higher chance of getting his or her desired fatwa. In other words, the more the petitioner is able to state the facts from their own point of view, the more they are likely to influence the mufti’s answer to these facts. Thus, there is an inseparable relationship between *istiftā’* and *iftā’* in both their constituting of a fatwa, and their influencing by the social context.

This interconnection of *istiftā’* and *iftā’* thus forces the mufti to understand the social norms in order to be qualified to give a fatwa. The question then focuses on if all petitioners in the fatwa sessions attended at Dār al-Iftāā’ were equally given the chance to speak. Which one of the petitioners, if any, was granted the priority of being heard or the right to tell the story? Although it is traditionally established that it is not the mufti’s responsibility to investigate the presented facts, were there any techniques by which muftis were able to justly take into consideration all aspects of the fatwa case?

The answer to these questions, which will be further clarified throughout this thesis, depends in the context under consideration on the type of the fatwa. In divorce cases for instance, the priority of speaking, without a doubt, is granted to petitioning husbands and not to their wives. Wives, however, were consulted in cases when husbands claimed they

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<sup>12</sup> Mas’ud, Khalid. “The Significance of *Istiftā’* in the Fatwa Discourse.” The Islamic Research Institute: The International Islamic University, Islamabad Vol. 48, No 3, Autumn 2009. P, 348

forgot or were not sure of the exact circumstances of the divorce incident. Otherwise, it was the husband who was asked to tell the entire story. However, wives were able to speak after their husbands about problems, concerns, and complaints regarding the marital relationship in general. Muftis' justification of this position is that the divorce pronouncement and other related-legal issues, such as intention, are in the husband's hand for he is the one who has the right to initiate it in the first place; this matter will be discussed in further detail. Therefore, wives may only be consulted as a second source when needed. As for non-divorce questions, muftis equally hear all petitioners or at least the ones who asked to tell or re-tell the story in question.

Thus, the narrative and the art of asking questions is an essential part of the formulation of the fatwa; it is where the experiences of ordinary Muslims' and practical applications come in the front of the legal process to steer its interpretation and to emphasize individuals' share in the *iftā'* authority. In other words, muftis and their knowledge of the legal norms coupled with petitioners and their experiences/social norms share the authority and power of the religious fatwas because they both take part of its formation. This shared interpretive process places a great value on the human element in the production of fatwas. Muftis, as Kevin Reinhart explains, "are not merely legal scientists reporting the transcendent facts. They respond also to their knowledge of the petitioner and his circumstances as well."<sup>13</sup> This last point on the shared authority between muftis and their petitioners will be further developed in the third chapter of this

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<sup>13</sup> Reinhart A, Kevin. "Transcendence and Social Practice: Muftis and Qādīs as Religious Interpreters." (Annales Islamologiques, 27: 1993) p. 5-28, p13.

thesis. It is important to place the increased authority and legitimacy to the non-binding legal opinions, *fatwas*, in its larger scale of the increased religious demands that is a result to the “significant changes in how Islamic authority is legitimized through the acquisition and demonstration of knowledge<sup>14</sup>,” and through obtaining *fatwas* in our context. Thus, Muslims’ demands for religious instructions and religious answers to their questions and concerns have led to an expansion in the production of fatwas in their societies.

**ii. Muftis and Their Legal Qualifications: *Ijtihād al-Manāṭ***

Turning from explaining the complex nature of the *iftā*’ procedure and the relation between it and *istiftā*’, the most relevant *Uṣūlī*, foundational, principle to the practice of fatwa-giving, is *Ijtihād al-Manāṭ*. Singling out *Ijtihād al-Manāṭ* among all other *Uṣūlī* principles for discussion does not imply that it is the only necessary legal procedure in the fatwa-giving, but rather it is to emphasize the importance of the contextual linkages of the fatwa question through explaining the legal procedure that precedes the issuing of the fatwa; it relies primarily on these contextual linkages after already investigating the legal texts and the available legal rulings for the question asked.

As mentioned before, understanding the essence of the muftis’ work helps explain the method they follow in the fatwa sessions as well as the limits of their legal authority. The legal authority is determined through the level of their *Ijtihād*, which is through their

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<sup>14</sup> Kalmbach, Hilary. *Women, Leadership, and Mosques: Changes in Contemporary Islamic Authority*. Leiden: Brill, 2012. P, 6-7.

ability to produce suitable fatwas to the questions posed to them using the religious legal texts directly or choose from established legal rulings.

The particular type of *Ijtihād* muftis deal with is called *Ijtihād Al-Manat*, also known as *al-Ijtihād fil ‘illa*, the independent reasoning of the basis of the legal rulings. It is the jurist’s duty in this *Ijtihād* to identify the basis behind each given legal ruling whether already established, i.e. in religious texts or previous *Ijtihāds* of early jurists, or newly established. For this reason, *Ijtihād Al-Manāt* is the most essential method in deducing laws from religious texts according to the Islamic science of *Ūṣūl al-Fiqh*; it functions through the investigation of the *‘illa*, cause— the tool with which jurists can continually produce substantive laws through, for example, the use of *qiās*, analog, which is mainly based on the common *‘illa* between an *aṣl*, established law, and a *far‘*, new branch.

This type of *Ijtihād* is divided into three categories: the first is *takhrīj al-manāt*, the deduction of the basis of a ruling, and it deals with legal rulings that are established in the religious texts with no specification of their basis or attributes that can be suitable *‘illa* for them. Jurists investigate the Shari‘ah’s principles and rulings in order to find the most appropriate basis for such rulings and accordingly apply them, or give them as fatwas, to the cases of which carry the same basis. Al-Ghazālī gives an example for this case using texts that forbid alcohol where drinking alcoholic drinks is made forbidden with no mention of the basis for its forbiddance. Ghazālī states “So, we [jurists] deduce the basis of the ruling *bilr‘i wal nazar*, by reason and speculative reasoning, so we say: “He forbids it [alcohol] for that it is intoxicant, therefore, it [intoxication] is its [forbiddance]

‘*illa*,’ and thus, we make analogy on wine [based on that they share the ‘*illa* of intoxication], and this is *Ijtihād al-ḡyās*, the analogical rational reasoning.”<sup>15</sup> Another example that is more relevant to this work is the established legal ruling that allows for each marriage three divorces based on the Qur’anic text (2:229) “A divorce is only permissible twice: after that, the parties should either hold together on equitable terms, or separate with kindness,” and the prophetic Hadith narratives that explained the third, when companions thought the Qur’anic verse allow divorce only twice, by saying that “separate with kindness” which presupposed a return after the second divorce, and thus making a third divorce allowable. Jurists who considered the basis of the permissibility of the three divorces ruling is literally, i.e. three divorce utterances or declarations, counted the thrice divorce as an execution of the allowed divorce number. Jurists who considered the basis of the permissibility of the three divorces ruling is conceptual, i.e. they are three chances in marriage that constitute three marriages, which presupposes divorcing and remarrying twice counted the ‘thrice divorce’ as only execution of one out of the three divorces.

The second type of *Ijtihād al-manāt* is *tanqīh al-manāt*, the refinement of the basis of a ruling. Similar to the first category, there is no specified ‘*illa* for the mentioned legal ruling. However, in *tanqīh al-manāt* and as Wa’il Hallaq defines it, there are attributes that accompany the rulings and can possibly be its ‘*illa*, which makes it easier for jurists to either examine each until they specify the most appropriate one or just agree that any one of them is possible, and determine their suitability for the specific cases. Hallaq

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<sup>15</sup> Al- Ghāzālī, Abī Hamīd. *Al-Mūstaṣfā Min ‘ilm al-Uṣūl*. Cairo: Al-Halabī: Unknown year of publication. P, 233.

states: “*tanqīḥ al-manāṭ* is the identification of the *ratio legis* [‘*illa*] insofar as it is isolated from attributes that are conjoined within the texts.<sup>16</sup>” In this case, jurists perform *Ijtihād* to specify one of them as the ruling’s ‘*illa*. It is clear how these two categories result in major differences in the jurists’ opinions. An example of this type of *Ijtihād* that is relevant to this thesis is the standard divorce fatwa that Dār al-Iftā’ issues to the standard Egyptian divorce pronouncement where they consider a specific attribute as the basis of the divorce legal ruling as will be discussed in the second chapter.

As for the third category, *taḥqīq al-manāṭ* and the application and verification of the basis of the legal ruling, it is of utmost importance in the craft of acquiring the legal rulings, the issuing of fatwas, and in the application of these rulings in human practices in a specific context. Much to what I have encountered, the muftis of Dār al-Iftā’ do not deal with the first two categories as much as they do with the third since the legal rulings’ basis for the fatwas that I attended, for example, are mostly known or established by the Grand Mufti and the senior muftis. Fatwa trustees then follow these established fatwas in their fatwa sessions, but these bases’ existence or non-existence in a specific case is what muftis need to know. It is the mufti’s job here to determine through the examination of the context provisions if a ruling is applicable in a specific case or not. For instance, the known ruling regarding the requirement of a witness is that s/he is ‘*adl*, just; “But to

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<sup>16</sup> Hallaq, Wael. *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-fiqh*. Cambridge: Cambridge University Press, 1999. P, 201.

determine the characteristics and qualifications on the basis of which a witness can be typically described as ‘*adl* is the function of *mujtahid*’<sup>17</sup>.

Another example that clarifies this method and is evident in the fatwa sessions that I attended is related to *nafaqa*, expenditure. Ghāzālī explains how muftis use *taḥqīq al-manāt* to give a fatwa regarding expenditure by explaining, “The basis of the legal ruling in expenditure of dependents is ‘sufficiency’, and it is known by *naṣ*, known-text, but the fact that a pound is sufficient for this specific person or not is acquired by *Ijtihād* and speculation”<sup>18</sup>. This method is also clearly found in giving a fatwa regarding divorce since that the base of the divorce rulings are known by text or by the above two types of *Ijtihād*. However, the determination of the establishment of one of these bases, such as the intention in the *kināya* divorce, in a specific case is acquired, as will be explained in detail, through the performance of the *Ijtihād* of *taḥqīq al-manāt*.

Thus, in this process two essential parts are being dealt with: the first is the knowledge of the basis of the legal rulings, and the second is the knowledge of the contextual factors by which we are able to determine and connect the legal rulings to the petitioners’ cases in a specific society. Successful muftis should be able to manage the use of these three categories while giving a fatwa in each specific case. As mentioned previously, the last category, *taḥqīq al-manāt*, is the most essential element in fatwa giving due to its direct connection to the application of the legal rulings in particular cases. It is worth noting that because *Dār al-Iftā’* is an institution, it attempts to be

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<sup>17</sup> Masud, Muhammad Khalid. *Islamic Legal Philosophy*. Islamabad: Islamic Research Institute, 1977. P, 309.

<sup>18</sup> Ghāzālī, p, 230.

consistent in the fatwas issued by all of its muftis, and therefore, it agrees—by its fatwa committee led by the Grand Mufti—on standard legal rulings to be followed by their muftis and fatwa trustees in the fatwa sessions. Accordingly, the job of these muftis and fatwa trustees is to investigate the existence of these legal rulings already established by the committee in the presented cases. An example to this is Dār al-Iftā’'s standard fatwa in the common Egyptian divorce cases, which will be discussed in the second chapter.

## 2. Dār al-Iftā' of Egypt: History and Development (1895-Present)

### i. The Establishment of the Egyptian Dār al-Iftā' as an institution

*Iftā'* began with the beginning of Islam itself. The prophet Muhammad (PBUH) and his companions after him are said to be the first to practice *iftā'*<sup>19</sup>. In the early Islamic history, *iftā'* remained a private independent practice that serves the continuation of living according to the Islamic laws through connecting these laws to its practice until it took a public institutionalized form when Muftis first started to work as consultants for the official Qādīs, judges, since the 'Umayyāds (661-720).<sup>20</sup> In Egypt, *iftā'* was also associated with the courts while retaining an independent practice outside the courts simultaneously. By the late nineteenth century, *iftā'* took an official institutionalized form independent from the court system known as the Dār al-Iftā'.

As an overview of the establishment of the Mufti position and the institution of *Iftā'*, the position of the Mufti was well known to Egypt since the Mamlūk era [Egypt 1250-1517]. *Mufti Effendi Miṣr* was the position title given by Muḥammad 'Ali to Sheikh Muḥammad Elmahdy as the first state appointed Mufti of Egypt in 1848<sup>21</sup>. However, according to the official records of the Egyptian Dār al-Iftā', its establishment as the official council of fatwa wasn't until 1895. Jakob Skovgaard-Petersen suggests in his book "Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār Al-Iftā'" that

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<sup>19</sup> Muhammad Khalid Mas'ud, Brinkley Messick, and David S. Powers, p, 5.

<sup>20</sup> Muhammad Khalid Mas'ud, Brinkley Messick, and David S. Powers, p, 5.

<sup>21</sup> Dār al-Iftā' al-Miṣryyah, the Egyptian Fatwa Council. "The Establishment of Dār al-Iftā': History and Development." Web. < <http://www.dar-alifta.org/Module.aspx?Name=aboutdar>>.

1895 is probably when the fatwa records, *sijillāt*, began to be carefully registered<sup>22</sup>. The first Muftī ad-Dyār al-Miṣrīyah, the Grand Muftī of Egyptian lands, was Sheikh Hassūna an-Nawāwī (d.1929), who was the Grand Sheikh of al-Azhar at the same time<sup>23</sup>. The position of the Mufti in Egypt was generally connected to the courts system, yet the appointment of a singular grand mufti was not established until after the official Dār al-Iftā' was founded. Rather, there were multiple muftis for the multiple Shari'ah courts that employed muftis of the four Sunni *madhhabs*, schools of law, who worked as consultants in each court<sup>24</sup>.

In addition to the court muftis, there were also multiple *madhhab* specific muftis for each Egyptian district, *muduriyah*, and state, *wilayah* (city), as well as a mufti for the ministry of justice, and another for the ministry of endowments. Above all these muftis, there was the Great Hanafī mufti of Egypt, who was also called *Muftī ad-Dyār al-Miṣrīyah* and the title was transformed to the Dār al-Iftā''s Grand Mufti<sup>25</sup>. After Sheikh Muḥammad 'Ali's appointment as the Muftī ad-Dyār al-Miṣrīyah in 1899, the position consolidated with that of the ministry of justice; the muftī ad-Dyār al-Miṣrīyah since that time is both the Grand mufti of the Dār al-Iftā' and the ministry of justice<sup>26</sup>.

Until 1931, the Dār al-Iftā' muftis were also consultants in the Shari'ah court, but after the Shari'ah Court Ordinance of 1931, muftis could "no longer hold any office of

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<sup>22</sup> Dār al-Iftā' al-Miṣrīyah, the Egyptian Fatwa Council. "Al-Mishwar, the Journey: The Most Important Achievements of Dār al-Iftā' 2003-2013: A Ten Years Report." In print. P, 103

<sup>23</sup> Dār al-Iftā' al-Miṣrīyah, the Egyptian Fatwa Council. "The Establishment of Dār al-Iftā': History and Development." Web. < <http://www.dar-alifta.org/Module.aspx?Name=aboutdar>>.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

authority within the Shari‘a court system<sup>27</sup>. Subsequently, Dār al-Iftā’'s fatwas, as Skovgaard-Petersen states, “had lost all binding authority and were from then on merely of an advisory character<sup>28</sup>.” In this sense, fatwas of Dār al-Iftā’ lost its state authority and binding source that they used to get from their affiliation with a binding authoritative institution of courts. Throughout this thesis I argue that Dār al-Iftā’ has developed another source of authority that relies on the social legitimacy through its involvement in the Egyptian society. In fact, the Dār al-Iftā’'s detachment of the state courts, in addition to eventually gaining their independence from the Ministry of Justice, has helped them to earn the trust of the people of Egypt, and consequently develop a society-based authority. Such authority and involvement in the social affairs placed Dār al-Iftā’ in a competed position over authorities with courts since both deal with marital disputes within the Egyptian societies.

Thus, the gradual establishment of the Dār al-Iftā’ as an independent institution from the bureaucratic state courts was an advantage for Dār al-Iftā’. The independence from the court opened the possibility for Dār al-Iftā’ to become, similar to Shari‘ah courts, authoritative as a religious institution, and yet, unlike the court, accessible to the members of the society because it is not bureaucratic. Another source of independence was their financial independency; Dār al-Iftā’'s financial administration was under the Ministry of Justice from 1899 until 2007 when Dār al-Iftā’, for the first time, became a

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<sup>27</sup> Jakob, Skovgaard-Peterse. *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār Al-Iftā*. Leiden: Brill, 1997. P, 105.

<sup>28</sup> Jakob Skovgaard-Peterse, p, 105.

financially independent official institution. The implications of this independency will be discussed in further detail.

It is worth noting here that contrary to common belief, Dār al-Iftā' is independent from al-Azhar as an institution, although all of its muftis are by definition Azharis either by their affiliation to Azhari education, both at the grade school and university level, or by their traditional Azhari training. The classical methods of Azhari learning are based on *ijāzā*, license and certification to teach, and *sanad*, continued transmission granted by a Sheikh to a student that qualifies her/him to transmit their knowledge to others by means of the same transmission. The fact that muftis of Dār al-Iftā' are Azharis is yet another factor of their religious authority since al-Azhar, with its history as the oldest Islamic institution in Egypt, is already authoritative for the common Egyptians.

ii. **A Transformative Social Media Outreaching: Sheikh 'Ali Jom'a and the Reform of Dār al-Iftā'**

In the past ten years, coinciding with Sheikh 'Ali Jom'a's appointment as the Egyptian Grand Mufti in 2003, Dār al-Iftā''s history witnessed a great transformation of its social media that significantly increased its presence and authority in the Egyptian society. Sheikh 'Ali Jom'a came with a vision about the importance of *'ulama's* engagement in the society, and the emphasis on the collective institutionalized structure of the religious sectors such as Dār al-Iftā'. Therefore, immediately after appointed. Sheikh Ali, who was supported by his already established fame and credibility in both the

academic Azhari circles for being one of the top legal scholars at al-Azhar<sup>29</sup>, and by the Egyptian society for being one of the leading religious media programs figures, started the reconstruction of Dār al-Iftā'’s infrastructure.

In these ten years, Dār al-Iftā' created multiple different Fatwa councils and departments to respond to the complexity of the new vision of Dār al-Iftā', which necessitated the appointment of new committee members and administrators. As mentioned in their tenth annual report, the total number of the Dār al-Iftā' employees before 2003 was only forty, and currently it is more three hundred. Dār al-Iftā' has also, through their Research Center, worked on the careful documentations of the fatwas they issue which become resources for muftis under training. All these efforts aim to enhance the local and global presence of the Dār al-Iftā'. As a result a tremendous number of agreements, programs, and other corporations were arranged between Dār al-Iftā' and other fatwa councils/religious institutions all over the world<sup>30</sup>.

Most important developments within these ten years, that are most relevant to my argument of the society-based authority that Dār al-Iftā' has developed after its independence from the authority of courts, are those helped placing Dār al-Iftā' to a nationally and internationally recognized religious institution through connecting it and its sources to the global social media links. For example, a multi-languages website was

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<sup>29</sup> Another key factor of Sheikh 'Ali Jom'a's credibility and reputation is that in 1998 Sheikh Jom'a was able to take a permission from the Ministry of Endowments to re-establish the traditional Islamic study circles at al-Azhar Mosque after years of being shut down by the Egyptian state. Not only that he stated teaching there but also invited the leading Azhari traditional Sheikhs, who preserved this traditional study circles outside al-Azhar to teach.

<sup>30</sup> Dār al-Iftā' al-Miṣryyah, the Egyptian Fatwa Council. "Al-Mishwar, the Journey: The Most Important Achievements of Dār al-Iftā' 2003-2013: A Ten Years Report." In print. P, 54-59.

launched for Dār al-Iftā' for the first time to publish, receive, and answer fatwas and conduct *iftā'* research in nine languages<sup>31</sup>. A few years after, a free call center was also launched to facilitate the process of *istiftā'*, requesting a fatwa, for those who do not wish to visit Dār al-Iftā' in person<sup>32</sup>. Other forms of social media outreach for Dār al-Iftā' included Facebook, Twitter, YouTube channels as well as T.V. programs hosting muftis to respond to questions posed to them by the audience.

A pivotal point to raise here is that these latter social media links, receive simple legal and religious issues that deal with information regarding Islamic knowledge such as rituals and its legal rulings and not marital or transactional disputes, specially if more than one petitioner involved—It is so often that muftis refuse to answer such questions unless petitioners present their case at the Dār al-Iftā'. Indeed, this last point is a major evidence to what I have discussed regarding the Iftā' - Istiftā' relationship since the presence of the petitioners will help muftis to gain more knowledge about their specific contexts and/or cases. All in all, these social media transformations of Dār al-Iftā' has enhanced its accessibility to the people of Egypt, which indeed is another strong reason, besides its detachment from the bureaucratic courts system, behind the increased social authority held by the Dār al-Iftā'.

A significant evidence of the development in Dār al-Iftā''s presence and involvement in the Egyptian society appears in the huge transformation of the number of issued fatwas in the past few years in comparison to the fatwa production since the

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<sup>31</sup> Ibid. P, 25.

<sup>32</sup> Ibid. P, 29.

establishment of Dār al-Iftā' in the nineteenth century. According to the *sijilāt*, records, of Dār al-Iftā', the estimated total number of fatwas issuing per year has increased from three thousand fatwas to half a million or a million. This huge industry of fatwas is a consequence of the social demands and petitioner's trust increased by the social media outreach efforts. The unusual new presence of Dār al-Iftā' attracted more people to benefit from its sources as newspaper coverage also started following the new developments of Dār al-Iftā'. An example to such attention given to Dār al-Iftā' is the below article in one of the official Egyptian newspaper, al-Ahram, that provides a statistic, based on the Dār al-Iftā' s annual report, of the total number of fatwas issued in 2012<sup>33</sup>. The title of the article is "Half a Million Fatwas in the Year of 2012,"

Interestingly, after giving details about the different forms of the fatwas issued in 2012, in person, online and through phone calls, the article quotes Professor Yusri 'Abdulmoḥsen, a professor in psychology sciences in Cairo University, in his analysis of the increasing number of fatwas issued in recent years. 'Abdulmoḥsen claims that the interest in the religious opinions regarding daily life events and the media spotlight of muftis and Sheikhs created a "social infection" where members of the society became keen to find a religious support to every action they take.

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<sup>33</sup> Al-Ahram, the pyramids, Official Egyptian Newspaper. "Half a Million Fatwas in the Year of 2012." Web. <<http://digital.ahram.org.eg/articles.aspx?Serial=1141927&eid=794>>



To correspond to the society's needs and demands, Dār al-Iftā' multiplied its buildings and opened other Dār al-Iftā' branches in several Egyptian cities. All the above transformations in Dār al-Iftā' 's legacy and authority in the Egyptian society makes it of utmost importance to understanding their legal scholarship as well as their role in the preservation of the society's relations and stability.

To begin with, I will briefly describe the structure of Dār al-Iftā' 's departments and focus on the department in which I conducted the fieldwork.

### **The basic structure of the current Egyptian Dār al-Iftā'**

Dār al-Iftā' is comprised of several departments and offices. Here, I focus on the department in which I conducted my fieldwork and will only briefly describe the other departments.

There are four major departments in Dār al-Iftā' which are: The Fatwa Council; The Research Department, which is further divided into several research-specialized sections; The Training Department, which is mainly responsible for the Egyptian and international muftis' preparations; and The Support Services Department, which is

responsible for the media outreach through websites and broadcasts, the Dār al-Iftā' journals, reports and documentations of fatwas, etc<sup>34</sup>.

The Fatwa Council: A committee of top muftis and legal scholars under a direct supervision of the Grand Mufti, Sheikh 'Ali Jom'a. The main job of this committee is to issue and produce fatwas to the questions asked by petitioners. Under these muftis there are a group of *umanā' al-Fatwa*, fatwa trustees, who are still in training to be muftis, as well as a group of researchers from the Research Department.

The questions posed to the Fatwa Council are to be first presented to the fatwa trustees, and if they are not able to address them, then, they go to junior muftis. And as a final stage, they go to senior muftis, the main Fatwa Council Committee, and finally, they are to be presented to the Grand Mufti, mostly in either new issues that they have not encountered before or complicated cases that need *Ijtihād*.

The Fatwa Council is divided into four sub-departments: Oral Fatwa Department, Written Fatwa Department, Telephone Fatwa Service (the same members of the oral fatwa department are the ones who talk to petitioners on the phone), and E-mail Fatwa Service. In general, and as explained by the Grand Mufti's advisor who was responsible for my fieldwork, most of the family law cases go to the Oral Fatwa Department— Dār al-Iftā' does not provide written fatwas to family law cases and divorce cases in particular. Most of the transactional cases, including inheritance and alms giving as well as all types of business contracts, go to the Written Fatwa Department. E-mail and phone

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<sup>34</sup> Ibid. P, 23-25.

services are not specified but mostly about rituals as well as family laws. As previously mentioned, muftis insist on the presence of petitioners in questions related to disputed issues in both marital and transactional consultations, and even more strictly in marital disputes since they involve greater space for mediation and negotiation as I shall later explain. Therefore, muftis who answer phone calls and emails request that petitioners come in person to Dār al-Iftā' to obtain a fatwa regarding their issues.

### **iii. The fieldwork: July 7<sup>th</sup> – July 14<sup>th</sup> 2012**

In the summer of 2012, I submitted a request to the Grand Mufti of Dār al-Iftā' to conduct fieldwork at the Oral Fatwa Department by attending fatwa sessions and interviewing petitioners. After a week long processing of my request, I was informed that interviewing petitioners is against the Dār al-Iftā' policies regarding petitioner privacy, and was only permitted to attend fatwa sessions. I attended one hundred and forty fatwa sessions in seven days with four different muftis/fatwa trustees. The following are short profiles of each of the muftis I observed during their fatwa sessions.

#### **a. Muftis and Their *Iftā'* Training**

S E, the head of the Oral Fatwa Department: Sheikh E is an Azhari graduate who has been working on research in the Islamic legal system for over twenty years. I had previous knowledge of him and his study circle in a suburb of Cairo, where he teaches Islamic law to other Islamic law students. Sheikh E is the oldest and the most experienced mufti at the Oral Fatwa Department, however, there are other fatwa committees above him to which he directs complicated cases. He is one of the first muftis to graduate from

the intensive three-year mufti-training program held at Dār al-Iftā'. I attended eighty sessions with him and the most notable characteristics I found in his sessions was the ease with which he issued his fatwas, his familiarity with similar historical cases and his comfort level asking deeper, more personal questions even those unrelated to the question asked to further understand the petitioners social situation.

The other three were Fatwa Trustees. All were Azhari graduates in their early thirties or late twenties. Usually in English we put lower age first: late twenties or early thirties. All had received five to seven years of training at Dār al-Iftā'. One of them was an Imam, the other an Azhari doctoral student, and the third a researcher at the Department of Research at Dār al-Iftā'. They are working under the supervision of the head of the Oral Department, Sheikh S E, and transfer only the most difficult cases up into him. I witnessed very few daily cases transferred to Sheikh S E from the other Fatwa Trustees as well as few cases transferred from Sheikh S E to the group fatwa committee above him, which shows the collective and hierarchal system I previously mentioned.

The differentiation between muftis and fatwa trustees at Dār al-Iftā' is in large based on what is traditionally known in Adab Al-Fatwa as the distinction between *al-fatwa wa hikayat al-fatwa*, giving a fatwa and narrating a fatwa. While the former is related to producing the fatwa and is done by *mujtahid* muftis, muftis who perform *Ijtihād* in any of its levels<sup>35</sup>, the second is merely a *muqallid*, follower, mufti's report of the same fatwa, issued by a *mujtahid* mufti, to others while being able to also report the

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<sup>35</sup> For a description to on the different level of Ijtihad and Mujtahids, please refer to, Hallaq, *An Introduction to Islamic Law*.

authentication of the fatwa. In other words, a *mujtahid* mufti produces the fatwa and authenticates it in the legal sources; a *muqallid* mufti may then transfer it to others with the same circumstances. To connect this difference to the three types of *jihad al-Manāṭ* discussed previously, a *mutahid* mufti is capable of performing the *tanqīḥ*, *takhrīj*—both based on textual investigation—as well as *taḥqīq*, which is based on the investigation of the case’ contextual provisions in order to ensure the fatwa’s suitability to the specific case. A *muqallid* mufti, however, is only capable of performing this last procedure, *taḥqīq al-manāṭ* to ensure delivering the most appropriate (already established) fatwa to the case presented in the fatwa session. For this reason, scholars of Adab Al-Fatwa, in fact, disputed whether to give the title “mufti” to the ones who merely perform *ḥikayat al-fatwa*. Abu ‘Amr Ibn Aṣ-ṣalaḥ (d.1245) for instance, articulates that calling this person a *muqallid* mufti is metaphorical since s/he is not in essence a mufti<sup>36</sup>; but since fatwa trustees—who are the equivalents to the *muqallid* muftis—have the knowledge of the fatwas already issued by Dār al-Iftā’ muftis and able, after receiving the relevant training, to investigate the exact case presented to them, they are set as muftis in these fatwa-issues.

The training each fatwa trustee receives varies in length and type based on the qualifications they already hold upon entering Dār al-Iftā’. There are two main types of training each fatwa trustee/mufti receives. The first is the official mufti preparation course, an intensive nine months of training, established in 2005 and held yearly at Dār al-Iftā’. This training consists of, not exclusively though, research methodology, adab al-

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<sup>36</sup> Al-Nawawi, citing Abu ‘Amr Ibn Aṣ-ṣalaḥ, p. 13.

fatwa, the etiquette of fatwa-giving, history, social sciences, socio-politics, and interpersonal skills such as presentation and speaking skills.

The second type of training is divided into two parts, the first is an ongoing training that focuses on learning Islamic sciences, through reading classical texts with sheikhs inside or outside Dār al-Iftā'. Muftis and fatwa trustees are not obliged to attend these classes but highly encouraged. The second part of the ongoing training is rather individual, i.e. one-to-one training. Because Dār al-Iftā' is based, in methodology, on the Azhari methods of studying the Islamic sciences, a fatwa trustee must receive, in order to practice fatwa giving, an *ijāzā*, a traditional permission to practice or teach given to him by sheikhs who already received it from others who also received it from sheiks before etc. Thus, each fatwa trustee, after receiving the required training, sits in on other muftis/fatwa trustees fatwa sessions to observe their practices for two or three years, then goes to the second phase of practical training and starts giving fatwas to petitioners under observation of his teacher until he receives the *ijāzā* to practice

#### **b. *Iftā'* and Masculinity**

My usage of the masculine pronoun in the last paragraph was to call to attention to the fact that all muftis, fatwa trustees, and *iftā'* trainees at the Dār al-Iftā' of Egypt are solely men, despite a consensus among scholars of Adab Al-Fatwa that masculinity is not by any means a condition for practicing *iftā'*<sup>37</sup>, in the history of the “institutionalized

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<sup>37</sup> A prominent example to those scholars is Imam Al-Nawawī, he writes, “the conditions for a mufti is being a legally competent Muslim, honest, trust... be free or slave, man or woman [and even] blind or mute—if able to write or their language signs is understood.” For more of muftis' conditions, please refer to, Al-Shawkānī, Al-Nawawī, and Ibn 'Ābidīn.

*iftā'*," in Egypt, there is not a single female *muftiyah* officially appointed at the Dār al-Iftā' or given an *iftā' ijāza* through its training programs. In fact, and seemingly to me, there are two major factors behind this strange phenomenon. First, the “institutionalization of *iftā'*”, which bestowed a different type of authority upon *iftā'* that did not exist in the past practice of the free independent volunteered image of *iftā'*. This idea can be further confirmed when compared to the dispute among Adab Al-Fatwa scholars over the competency of women as judges; because *Qadā'*, judicial judgment, already enjoys this type of authority, scholars hesitated to grant its competency to women—who are seen as ineligible religious authorities by some of these scholars.

The second factor behind the absence of female *muftiyah* at the institution of Dār al-Iftā' is that Egyptian society, which bestows authority and legitimacy upon muftis, holds a patriarchal image of what can be accepted and legitimized as religiously authoritative. This notion, clearly, emerged from a wider scale of the society's patriarchal image of gender as a whole. Thus, women are not perceived as legitimate religious authorities and hence cannot act as muftis, who are legal, religious, and social authorities.

The question then, is not merely who has the authority to interpret religious texts— since jurists and muftis both carry this task and there is not a single restriction upon the permissibility of women to perform such tasks—but rather who has the authority to give binding and authoritative opinions to be recognized and practiced in the society. Understanding the issue of women on *iftā'* from this angle shall help us understand the question of authority in Islam in general.

### **c. Petitioners and *Istiftā*' Registration**

The petitioners' registration for submitting cases is highly streamlined at the Oral Fatwa Department; one simply needs to show up during the department's working hours (9 a.m. to 5 p.m.), present photo identification, and register their name at the front desk. Then wait for their turn to be called. Cases are randomly distributed to the muftis of the department. The fatwa sessions are held in the office of the mufti which is basic in design; a desk, few chairs, bookshelves, and a small bathroom inside or beside the office. Each fatwa session lasts for ten minutes to half an hour in most cases, but sometimes they last longer. The mufti carefully registers the petitioner's name, job and neighborhood, which helps the mufti define their social class which is essential in positioning their case based on the petitioner's specified social norms, and in relation to the negotiation of the fatwa he/she receives.

I noticed from the petitioners' answers to the job and neighborhood questions that the majority of the cases were brought forth by middle and lower class citizens. Only a few petitioners were counted as upperclass, perhaps because the majority of cases presented were marital disputes hinged on the extreme socioeconomic pressures felt by the middle and lower class families. Other explanations may be that the upperclasses have other accessible resources for their marital disputes such as courts, since they can afford its bureaucratic and financial demands, as well as the ability to reach famous Sheikhs. It may be that the upperclasses tend to be less religious than middle and lower classes. Above all these assumptions is the fact that the negotiation of marital disputes between married couples that both contribute to the economic status of their household,

such as is the case in upperclass families, may be provided by the economic authority, as an alternative to the religious authority provided at Dār al-Iftā’.

The institutionalization of *iftā’* —its relation to the government and/or state—has indeed affected its independency, as well as its religious and binding authority. Through the affiliation with courts, muftis have found an arena to render a binding nature to their fatwas, that were originally non-binding<sup>38</sup>. The bureaucracy and inaccessibility of courts, however, have been major obstacles for muftis’ outreach in their societies. Although some muftis were simultaneously practicing *iftā’* outside and inside courts, it is still a challenge for petitioners to find the appropriate mufti to consult outside this institutionalized form, especially if they are, as most petitioners, not only interested in receiving a piece of information about their religious matters, but also in using a recognized religious authority in their daily disputes with others, and most importantly in their marital relations. Therefore, an institutionalized yet accessible form of *iftā’* solves this dilemma. For the above reasons, members of the Egyptian society resort to the Dār al-Iftā’ as an alternative religious authority in hopes of finding legal answers to their issues including, and as this thesis is concerned, their marital issues. As a result of A) the resorting and anticipation from the people of Egypt to the Dār al-Iftā’’s authority and mediation, B) the Dār al-Iftā’’s stated interest in becoming the legitimate religious authority in the society, and C) the extensive social media efforts by Dār al-Iftā’ to establish their legitimacy and to reach their target audience, Egyptians, the Dār al-Iftā’ of

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<sup>38</sup> Agrama, Ali Hussein. “Ethics, Tradition, Authority: Toward an anthropology of the Fatwa.” *The American Anthropological Association*: Vol. 37, No.1, pp. 2-18.

Egypt has become a key player in the lives of ordinary Egyptian Muslims through their mediation in the latter's affairs and particularly, marital disputes. Herein lies the importance of the study of the *iftā'* and *istiftā'* practices as a means to understanding the role of religious authorities in the social relations, and particularly gender relations, of Egyptian society.

Lastly, a key point to understanding the roles of Egyptian Dār al-Iftā' is, as stated by the Grand Mufti, 'Ali Jom'a, in the ten-year report of Dār al- Iftā', that it maintains two major goals in its issued fatwas: the suitability of fatwas to the society and the ending of disputes outside courts. Both muftis and employees make the utmost necessary efforts to support these goals. These goals will be expounded upon in most of the cases I will present in this thesis. The ultimate goal of mufti mediation and negotiation attempts is to end disputes, and maintain a stabilized society through the preservation of family units (marriages), as well as through the preservation of gender specified roles and responsibilities.

## Chapter Two: Divorce, *ṭalāq*, and Divorce Fatwas

### 1. Introduction

As we have learned from the introductory chapter, the practice of fatwa-giving is a complex compound of religious legal doctrines and social mediations. Muftis, as legal and social consultants, play an integral role in the preservation of the society's relations and traditions. They provide petitioners, who also bring their stories and expectations to the forefront of legal discussions, with legal solutions that best suit their roles as members of the society and practitioners of the Islamic laws. The question-answer correspondence sheds light on the given fatwa's particularity to the receiving petitioner.

Due to the tremendous mass outreach efforts by Dār al-Iftā' to the mass in the Egyptian society, thousands of Egyptian women and men seek fatwas either in person by visiting the oral fatwa departments at Dār al-Iftā' or by other means of media communication. It is not surprising, after what we have learned about the socio-legal nature of the *iftā'* in Egypt; the majority of these fatwa-seekers are married couples who attempt to solve their marital disputes through a religious authoritative and accessible channel found at Dār al-Iftā'. What surprised to me was that the bulk of this majority was divorce cases; out of the 140 fatwa sessions I attended, one hundred and fifteenth were divorce cases. This is interestingly significant in a current Egyptian society where the social and economic instability have led to increased marital disputes regarding financial duties and properties. The male dominant structure of the society created a socialized form of "divorce practices" aiming to enforce male social control over women rather than

simple marriage dissolution. This is clearly seen in the fatwa sessions attended at Dār al-Iftā' where the divorce cases arise not just because men are trying to dissolve their marriages but also because they are trying to threaten their wives through divorce statements. Consequently, the frequency of divorce cases rendered the majority of the fatwa questions to be related to this matter of which petitioners submit to Dār al-Iftā'. In turn, Dār al-Iftā' corresponded to this phenomenon of frequent divorce cases by creating a maverick scholarship, based on their legal expertise and social experiences as well as their mediation skills, to deal with such phenomenon in a way that would fulfill their role in the society, harmonize the societal relations, including the gender relations, as well as preserving marriages, that is believed to be the building block of the Muslim society as will be further discussed.

Here, I would like to present a fatwa story told by Sheikh Ali Jom'a, the Grand Mufti of Egypt, to explain the complexity of giving a divorce fatwa in general, and in the Egyptian society in particular. The story begins by a question posed to Sheikh Jom'a from an Egyptian man about a divorce incident while he was accompanying Sheikh Ali in a gathering. In the beginning, Sheikh Ali asked the man "What did you say?" The man replied, "You are *ṭali'*, divorca" and continued another conversation. After a while, Sheikh Jom'a asked the man again, "Tell me, what did you say?" The man responded, "I think I said, 'divorce is on me if you do such and such'". Again, Sheikh Jom'a engaged the man in a different conversation, and after a while he asked him once again about what exactly he pronounced. This time, the man said, "I said, 'if you do not listen, then you are divorced.'" As presented, the man thoughtlessly claimed to have declared three different

types of divorce, which I will explain shortly, in the same incident only because he does not recognize the different legal rulings that belong to each of them.

By giving this example, Sheikh Jom‘a wanted to demonstrate that the people of Egypt, because of the dominant social practices, do not necessarily understand or use divorce the way jurists understand it. For these people, divorce is more than a means to end marriages as it is for the jurists. They pronounce different divorce formulas for different social purposes, which result in the frequency of the divorce cases we encounter. Therefore, muftis need to assess these purposes using their knowledge and understanding of the social practices in their specific context, as well as the various legal scholarships that suit this context. Some of these divorce practices do not actually hold the purpose of ‘ending marriages’, which is the only legally recognized purpose for divorce according to Islamic Family Law, but rather they fulfill other purposes such as controlling one’s actions by the use of a threat to divorce—whether the conditioned of the oath divorces—, which is particularly practiced over women as will be demonstrated later.

It is important to note that in this example, Sheikh Jom‘a is primarily speaking about the *kināya*, allusive, divorce, which requires, as a condition for its efficacy, a declaration of the divorce intention. The intention then is the basis of the legal ruling of the *kināya* divorce, accordingly; if the intention of ending the marriage is not present, the divorce is not present as well. As opposed to the *ṣarīh*, explicit, divorce, which is done through predetermined and clear act of divorcing, and therefore, does not necessitate an

intention for its efficacy or establishment. I shall explain in detail the different rulings each divorce type is subject to shortly.

In his study, *Marriage, Money, and Divorce in Medieval Islamic Society*, Youssef Rapoport provides a unique representation of the study of the intersection between the legal and social norms in pre-modern Muslim societies through an investigation of divorce practices and causes in the Mamlūk era [Egypt 1250-1517]. He shows how the social, economic, and legal sects of the Mamlūk era greatly influenced these divorce practices. For instance, he claims that the Mamlūk rulers as well as the common people used the oath-taking divorce to emphasize the binding power of their oaths. He presents some of the places where he found that the oath-taking divorce is significantly used for this purpose, such as for financial obligations, in the marketplaces, gift-giving etc.<sup>39</sup>. Through the study of the socioeconomic and legal aspects that resulted in the frequency of the divorce in the Mamlūk era, Rapoport answers the bigger question of “How did Islamic family law translate into the reality of medieval marriage.” In addition, Rapoport helps us, throughout his book, to rethink the gender relations in medieval societies and their implication on women’s status and independency.

Although the period of which Rapoport is investigating, the Mamlūk period, is hundreds of years before the contemporary context of which I’m investigating, most of the above mentioned ideas are significantly present in the current Egyptian society. Understanding the divorce practices sheds light on the socioeconomic, and even political,

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<sup>39</sup> Rapoport, Yossef. *Marriage, Money, and Divorce in Medieval Islamic Society*. Cambridge: Cambridge University Press, 2007.P, 85-87.

status of Egyptian citizens, as well as the gender relations in this complex dilemma. The following examples from the fatwa sessions show the frequency of initiating the divorce oath in similar events (all these cases are presented by male petitioners):

Case number (98): I have sworn a divorce oath to quit smoking, and I did not.

Answer: Divorce is not valid and you need to pay oath *kaffārā*, atonement.

Case number (42): I said to my daughter, “divorce is on me if you won’t do such and such,” then she did what I swore on and said, “Ok, [indicating that she doesn’t care] divorce her [his wife].”

Answer: Divorce is not established and you need to pay oath *kaffārā*, atonement.

Case number (91): I work as a merchant and because of the bargaining nature of my work; I swore to divorce my wife so frequently. Does this count as a divorce?

Answer: This is not a divorce. Pay an atonement you can afford, and stop using divorce promises in your daily work.

In these cases, husbands were aware of the fact that they are risking their marriages by pronouncing the oath-divorce or the conditioned divorce. Other cases, however, show husbands coming to Dār al-Iftā’ to investigate, in a post-facto manner, a great number of oath and conditioned divorce pronouncements they declared, but never thought it might possibly affect their marriages since using such pronouncements is widely spread practice. These husbands were mostly advised by religious friends or in some cases by their wives to take care of the religious-bond of their marriages, stop the use of these pronouncements, and seek a fatwa at Dār al-Iftā’ regarding their marriages. These practices show that the absolute right to divorce that husbands enjoy using have not been wisely used in the current Egyptian society, or in, as Rapoport describes, previous societies as well. The question is why would Egyptian husbands risk divorcing their wives to make a better sale, to get someone to believe they are right, or even to get

someone to do what they want them to do? The answer to this question is not, as some people may claim, “Because they can”, but it is, however, a part of a larger scale of problematic gender relations and social tension between married partners that is also intertwined with economic factors.

The frequency of divorce and its social, economic, and moral consequences in the Egyptian society forced muftis to use whatever means they have to constructively reconcile two disputing marital partners using their legal scholarship and their role as social mediators to stabilize their society through the preservation of marriages because marriage is considered “the key to social harmony<sup>40</sup>” according to Muslim jurists; muftis make the necessary efforts to preserve marriages that are threatened by these divorce practices. It is because of this complex social dilemma, Sheikh Jom‘a’s advice to muftis of the Dār al-Iftā’ was to only consider the pronouncements that were made for the purpose of ending the marriage in a divorce, and disregard pronouncements that are made for other purposes. In order to successfully conduct such an assessment of practice, muftis need to be aware of the social nature and cultural backgrounds of these practices as a whole, and not to uproot the fatwa case from its social practices.

To go back to the story told by Sheikh Jom‘a and its relation to this chapter, it is important to again emphasize that the case contained a *kināya* divorce and not *ṣariḥ*; this is very significant and relevant to our purpose, of identifying the special legal discourse Dār al-Iftā’ provides to dealing with the frequency of divorce, for the fact that in order to preserve the Egyptian marriages, the Dār al-Iftā’ of Egypt categorizes most of the oral

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40 Tucker E, Judith. *In The House of The Law*. California: University of California Press, 1998. P, 40.

divorce formulas Egyptian husbands pronounce as *kināya*. They use available legal interpretations that consider the changing of any of the proper *ṣariḥ* formulas' letters transforming it into a *kināya* formula, and thus, limits its efficacy to the intention of the one pronouncing it, namely, Egyptian husbands. By doing so, muftis of the Dār al-Iftā' are aiming to decrease the amount of divorces as much as possible so that they would preserve, as mentioned above, the pro-marriage position that they, as religious scholars, hold.

On the basis of this story and what it reveals, there are two major questions we need to address to understand the underpinnings of the practice of divorce in Egyptian society as well as the practice of Iftā' at the Dār al-Iftā'. First, what types of divorce pronouncements are established in the Islamic family schools of law? Which of them do Egyptian husbands use the most, and for what purposes do they use them?

The second major question is, what are the means and implications of the discourse taken by the Dār al-Iftā' in dealing with family law issues in terms of their legal scholarship, and in terms of their purpose of preserving the social relations?

In this chapter, I attempt to answer these two questions. I will start by briefly exploring the Islamic scholarships on the divorce legal system with a close focus on its formulas and efficacy conditions, followed by the Dār al-Iftā''s specific account regarding the category of *kināya* divorce. Next, I will summarize the Egyptians courts Personal Law codes for obtaining judicial divorces in order to compare and contrast the methods and means followed and provided by both courts and Dār al-Iftā' to the

members of the Egyptian society, which steer these members' choice to restore to either one of these two institutions. Throughout the chapter, I will present cases from my fieldwork at Dār al-Iftā' illustrate the divorce practices in the Egyptian society, muftis' discourse to deal with them, and their impact on the status of women. I aim to demonstrate that Dār al-Iftā''s interference in the marital disputes among Egyptian married couples provides them with an avenue to obtain not only legal advice, but also religious mediation device to deal with their social, moral, and economic problems while addressing these disputes. This will also emphasize the conjugal social authority muftis enjoy alongside with their religious authority.

While the main focus in this chapter is drawing a practical image of the *Iftā'*'s complex structure through understanding Dār al-Iftā''s discourse to divorce laws and practices, it will become evident that, first, preserving marriage is a major concern of muftis when dealing with divorce cases; second, petitioners' engagement in the fatwa sessions is shaped by their social positions in the society, and that they attempt to influence muftis' fatwas through emphasizing shared social enforcements that are in their most interest; third, the particular engagement of women in the fatwa sessions provided them with accessible space to obtain their marital rights, and also not however rendered their chance to obtain divorce without having to get their husbands' consent or go through the bureaucratic channels (courts); and finally, Dār al-Iftā' obtained its religious authority both from their religious legal expertise as well as the way they are conceived in the society.

## 2. Divorce, *ṭalāq*, in the Islamic Family Law System

Within the Islamic legal system, there are three major categories of divorce. The first is *ṭalāq*, repudiation (I will be referring to this type as “divorce” throughout the paper since it is the primary form of divorce); the second is *taṭliq*, juridical divorce; and the third is *khul’*, divorce for compensation. Each of these categories is recognized through different formulas, and is subject to a different set of rulings. I will briefly explain each category’s basic jurisprudential rulings, and how it is practiced and/or obtained in modern Egyptian society.

Divorce in the Islamic legal system is divided, in terms of the clarity of its formula, into explicit or direct, and allusive or indirect. Jurists refer to the first as *ṣarīh*, and to the second as *kinayā*.

### i. The *ṣarīh* Divorce: Definition, Formulas, and Rulings

The *ṣarīh* divorce is defined in Fiqh texts as “*ma la yaḥtamilu ghayra aṭṭalaq*,”<sup>41</sup> what does not carry meanings but divorce.” Traditionally, jurists recognized three main formulas as explicit: “*anti ṭaliq*, you are divorced”; “*ṭallaqtuki*, I divorced you”; and “*muṭallaqa*, divorced”. The pronouncement of any of these *ṣarīh* formulas requires only two conditions for its efficacy: *ikhtiār*, choice, and *taklīf*, legal competency<sup>42</sup>. It is worth

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<sup>41</sup> Bājūrī, Ibrahim. *Hāshyāt Al-Bājūrī ‘ala Faḥ al-Qarīb*. Egypt: Mustafa Al-ḥalabī, 1343 A.C. Vol. 2. P, 144.

<sup>42</sup> The characteristics and conditions necessary to define who is the legal competent to execute certain laws may include: Islam, freedom, sanity, puberty, gender, purity, physical ability, and financial capacities. These characteristics and conditions differ from one *fiqhi* section/chapter to another. A most noticeable

noting that by legal competency in divorce, jurists basically mean the following: A sane major married Muslim man, or woman of whom the right to divorce has been specifically granted to her in the marriage contract. Without this specific condition, women are not legally competent to declare any of the divorce formulas, either *ṣarīḥ* or *kināya*. This is one of the reasons why women are the ‘object’ figures in divorce while men are always the ‘subject’ as mentioned above. I will further discuss women’s right to divorce in the next section.

Particularly at Dār al-Iftā’ under consideration, there are two other forms of divorce recognized by muftis as *ṣarīḥ*: divorce issued by a court judgment, and divorce documented by a state official marriage-divorce notary, a *ma’zūn*. Muftis take it for granted that these two forms of divorce are final, valid, and accordingly effective<sup>43</sup> even if a husband claims not to have pronounced divorce. The reason told by muftis for this consideration is that the first, issued by court councils, is binding by the judge’s authority<sup>44</sup>, and the second is treated as *īqrār*<sup>45</sup>, testimony or admittance of divorce, which is a considerable legal evidential method when neither documents nor witnesses are

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division in the use of different set of characteristics for the legal competency is seen clearly between rituals ‘*ibādāt*’ and transactions *mu’āmalāt* (goods and commodities). The former deals with God’s claims *ḥuqūq Ellāh* and the latter deals, mostly with private claims *ḥuqūq al-’ibād*. Accordingly, a person can either be eligible for the execution of the law, *ahlyyat al’ada’*, or be eligible as a seat for obligation and laws, *ahlyyat al wujūb*. Each of these two types of eligibility is divided into full and partial and differs from one law to the other.

<sup>43</sup> In Fiqh terms: efficacy is the consequence of validity; ex: the selling contract is valid, as a consequence the buyer owns the goods and the seller owns the price. As for divorce, if divorce is validated, all its post rulings is effective such as the waiting period, the expenditure etc.

<sup>44</sup> Traditional jurists held the same position regarding the Qādī’s authoritative judgments but mostly in either annulment *faskh* or *khul’*, divorce for compensation.

<sup>45</sup> Iqrār’s definition: “Ikhbār ‘an ḥaq sābiq ‘ala al mukhbīr, reporting a previously established right/commitment upon the reporter” or basically ‘ishhad ‘ala al nafs, a testimony over the self.

For reference: Ar-Ramly, Shihāb Ad-Dīn. *Nihaāyat Al-Muḥtāj ‘ala Sharḥ Al-Menhāj*. Beirut: Dār al-Fikr, 1984. P, 65.

present. In this case, a husband goes to the ma'zūn, with no documents and witnesses, and admits that he has divorced his wife. Another example for this type of evidential method would be if someone admitted they have borrowed money from someone else where there are neither documents nor witnesses, and so consequently, they will need to give the money back to this person since they are the witnesses over themselves.

Although the *ṣarḥ* divorce, in Fiqh writings, is the common or basic type of divorce, it was not a main theme in the site under consideration for two reasons: *ṣarḥ* divorce is a straightforward evidential-based divorce, which decreases the possibility of disputing regarding its validity. Those who determinedly decide to divorce go directly to either the court or ma'zūn offices, and thus, they need no fatwas to establish their divorce. Second, as I will discuss in detail, according to Dār al-Iftā', the common slang divorce formulas pronounced by Egyptian husbands are not explicit divorce. Therefore, it is worth noting that muftis typically refuse to hear any case that was already determined at a court or admitted at a ma'zūn office. However, there were some explicit divorce cases that I encountered in the fatwa sessions that did not question the validity of the divorces, but dealt with post divorce settlements.

## ii. ***Kināya* Divorce: Definition, Formulas, and Rulings**

The *kināya* divorce is defined as “*ma aḥtamala aṭṭalaq wa ghayreh*, formulas that comprise the meaning of divorce as well as other meanings”. Jurists discussed so many possible *kināya* utterances such as “you are free,” “I leave you,” “I abandon you,” or “we are separated.” They then concluded that *kināya* does not have specific or limited

utterances; if a husband pronounced any of these statements or other ones and claimed he meant to divorce his wife, she would be divorced, and if he claimed not to have intended to divorce her then she is not divorced. Therefore, the efficacy of the *kināya* divorce requires, besides the choice and *taklīf* requirements, a declaration of a divorce intention at the time of pronouncing the divorce phrase. Jurists state that the husband has is believed in his consent of ether the absence or presence of the divorce intention because he is the only witness to it.<sup>46</sup> Women’s intention as well as the testimony of anyone who is present in the divorce incident is then not relevant in the *kināya* pronouncements. It is the husband who can only declare the required intention to end the marriage.

In a useful summary of the role of intention in divorce pronouncements, Paul Powers, quoted in Kecia Ali’s book *Marriage and Slavery*, states, “In terms of basic sincerity and effectiveness, explicit statements are valid and binding regardless of intent, allusive statements are valid and binding if so intended, and some statements are too ambiguous to count regardless of intent.”<sup>47</sup>

### iii. Oath-taking and Conditioned Divorce

A long-standing practice in Muslim societies created, besides the aforementioned forms of *ṭalāq*, divorce, two other forms: *ṭalāq mu‘allaq*, conditioned divorce, and *yamin ṭalāq*, oath to divorce. A husband, in both the conditioned and the oath divorces, does not declare a straightforward divorce statement, but rather suspends his statement on something else. More specifically in the conditioned divorce, the husband issues a

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<sup>46</sup> Bājuūrī, Vol, 2. P, 145

<sup>47</sup> Ali, Kecia. *Marriage And Slavery In Early Islam*. Cambridge: Harvard University Press, 2010. P, 136.

divorce from his wife if an event did or did not take place. His statement would basically be framed as “if..., then...”. The conditioned divorce can either be *ṣarīḥ* or *kināya* based on the formulas pronounced. For instance, “*law fa ‘alti fa antī ṭaliq*, if you do such and such, you are divorced<sup>48</sup>” is a *ṣarīḥ* conditioned divorce because it comprises two phrases: the first is the condition phrase, of which the divorce is suspended to, and the second, the effect phrase “you are divorced” is a *ṣarīḥ* formula. Changing the effect phrase to a *kināya* formula such as “... then, you are free” will create a *kināya*-conditioned divorce.

As for the oath-taking divorce, it is worth noting that *fiqh* texts do not include a section (*faṣl*) in the divorce chapter to discuss oaths to divorce, although they do mention it in the body of the divorce book in general. Rather, these texts give larger space to discuss divorce oaths under *al ayman wal nuzūr*, oaths and vows<sup>49</sup>. Therefore, some jurists consider it an oath to divorce and not a type of divorce, i.e. it follows, according to these Fiqh opinions the legal rulings for oath-taking which allows, if one so chooses, to renege it and pay the *kaffārā*, atonement, instead<sup>50</sup>, as we will see in the fatwa sessions. Other jurists, however, insist that the oath-taking divorce is a type of a conditioned

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<sup>48</sup> Bājūrī, Vol. 2. P, 147

<sup>49</sup> Examples for fiqh texts that discuss divorce oaths under the book of oaths and not the book of divorce: Abu Al-Ma‘alī, Al-Juwānī. *Nihāyat al-maṭlab fi derāyat al-madhab*. Bājūrī and Sherbini

<sup>50</sup> Taqī Ad-Dīn Ahmad Ibn Taymiyyah is the most famous jurist who argued against considering the oath-taking divorce as conditional, but rather he considers it as the oath by God, and accordingly the violation of the oath-taking divorce are subject to all legal rulings that apply to the violation to oath by God.

For a detailed account of Ibn Taymiyyah’s argument, see:

Primary source: Ibn Taymiyyah, Taqī Ad-Dīn. *Al-Ijtimā‘ Wal-Ifṭirāq Fi Alḥilf Bil-ṭalāq*, ed. Muhammad ‘Abd al-Razzaq Hamza. Cairo: Maktabat Ansa, 1347 A.C./1927-28.

Secondary source: Rapoport, Yossef. *Marriage, Money, and Divorce in Medieval Islamic Society*. Cambridge: Cambridge University Press, 2007. P, 96-10.

divorce because it compromises a conditioned formula; the husband would for instance say, “Divorce is on me if I speak to you,” or “I swear of my wife’s divorce, you won’t leave.” The Dār al-Iftā’ of Egypt considers the oath-taking divorce as an oath and not a conditioned divorce.

Thus, the *ṣarīḥ* and *kināya* divorces are the main categories of divorce in the Islamic legal system—the efficacy of the former depends on the choice and the legal competency of the pronouncer. The efficacy of the latter, however, depends on the declaration of an intention accompanying its allusive pronouncements, besides, the conditions of the choice and legal competency. Each of these categories, *ṣarīḥ* and *kināya*, may be conditioned upon an action/event. In this case, the establishment of the divorce, in addition to the fulfillment of the previously mentioned efficacy conditions, will depend on the occurrence of the condition clause. This exact feature of the conditioned divorce is what enables husbands to use it as means of controlling their wives actions. Knowing that engaging in a specific action—of which the divorce is hinged upon—might result in their marriage dissolution, wives find themselves in a situation where they must balance between a specific action and their marriage and thus think twice before they engage in such actions. Some wives, however, might find this situation as an opportunity to obtain divorce by easily engage in such actions as explained by Judith Tucker below.

Any divorce of any of the aforementioned types and forms may become irrevocable, in which husbands cannot return their wives to their marital bonds without contracting a new marriage as such in two main cases: a) after a divorce is fully effective

once or twice, i.e. by the end of the waiting period of a wife who is divorced a valid revocable divorce; and b) after the establishment of a third valid divorce, and in this case, the divorce is irrevocable immediately without the need to wait until the end of the *'idda*, waiting period. Of course these two cases are in addition to the judicial divorce and the divorce for compensation that are irrevocable from the moment they are issued, as will be presented. Otherwise, husbands are free to return their wives to their marital bonds without their wives' consent, and even without their knowledge.

Having set that up, it is important to also mention other issues related to the *ṭalāq* system in Islamic law. As seen, a married couple has up to two divorces to revoke; the third divorce will result in an ultimate separation between them unless the wife marries another man, consummates the marriage, divorce him, then decides to remarry her previous husband.<sup>51</sup> Thus, there are three possible divorces for one marriage, but is it possible to declare the three divorces at once? And what is required for returning to the state of marriage after the first or the second divorce?

### **The Thrice Divorce**

If a husband pronounces three divorces at the same time, either by repeating the divorce formula three times, such as to say “you are divorced, you are divorced, you are divorced,” or by adding a numeric adjective to his formula, such as to say “you are divorced thrice,” jurists disputed whether or not to consider his pronouncement as only one divorce or three, which will accordingly make the divorce immediately irrevocable.

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<sup>51</sup> For more on this issue, please see: Ali, *Marriage And Slavery In Early Islam*.

Dār al-Iftā', under consideration, follows that the pronouncement of thrice divorce to be considered only one divorce and not thrice. According to them, unless the three divorces have been officially documented in court or at a ma'zūn office<sup>52</sup>, the divorce is not irrevocable. In this former case, muftis affirm the documents' validity for the reasons previously discussed. Although considering the thrice divorce was a minority opinion among early jurists, there is a greater agreement among later jurists to count the thrice divorce pronounced at the same time as only one divorce because of the following reasons:

a) One reason is by the textual evidences that provide a legal base to this jurisprudential opinion, such as considering the thrice divorce forbidden for its violation or defiance to the Qura'nic texts (2:229 and 65:1-2 for) that determine divorce as three separate divorces, one after another, and not three divorces combined altogether. Another textual evidence for the invalidity of the thrice divorce is the Hadith narrated by Maḥmūd ibn Labīd in the Nasa'ī Hadith collection about Rukan ibn 'Adb Yāzīd, who divorced his wife thrice and the prophet Muhammad (PBUH) said to him while very angry, “[how dare you] violate the book of Allah and I'm among you!” The story continues in another narration by Ibn 'Abbas in Musnad ibn ḥanbal where the prophet's statement is as the following: “[how dare you] violate the book of Allah and I'm among you, they are once,

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<sup>52</sup>Note: the Egyptian juridical codes also considers the pronouncement of a thrice divorce as only one divorce. The article 3 under the divorce section in the Personal Law states of 2000 states: “divorce combined by number in utterance or in signal is considered only one divorce.”

For reference: The Egyptian Government Website. “The New Personal Law, Third Chapter: *Masa'il AlWilaya 'ala AlNafs*, Issues Related to Self-Guardian.” Web.  
[http://www.egypt.gov.eg/arabic/laws/personal/chp\\_three/part\\_one.aspx](http://www.egypt.gov.eg/arabic/laws/personal/chp_three/part_one.aspx)

take her back if you wish.<sup>53</sup>” By telling the man he has an option to take back his wife, the prophet already implied that the divorce is not a thrice-irrevocable divorce, but rather only one divorce.

b) The second reason why later jurists chose to follow the opinion that says three divorces pronounced once is only considered one is the frequency of divorce among married couples in Muslim societies, which threatens the stability of family system, which is not merely a marital system, but a socioeconomic one as well in these societies. Therefore, jurists developed a pro-marriage position to preserve the social family relations in their societies. Such concern of instability led jurists to consider minor opinions and even legal stratagems for the sake of harmonizing social practices and to bringing ease and stability to the members of these societies. This issue will be further clarified throughout this paper.

### ***Raj'a*, Taking the Wife Back**

As for the resumption of marital relations, *raj'a*, a husband may take back his divorced wife in a revocable divorce by means of explicit verbal declaration that he has taken her back to his marital bonds with or without witnesses or by means of any sexual interactions not excluded to intercourse; a kiss with the intention of resuming the marital relations with his wife is sufficient.<sup>54</sup> At Dār al-Iftā', muftis take into consideration the

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<sup>53</sup> There are also other linguistic and methodological approaches to prove the invalidity of the thrice divorce. For a detail discussion of these evidences, please refer to:

Shakir, Aḥmad. *The Divorce System in Islam, Nizam Aḥḥalāq Fil Islām*. Sunna library, 1998. P, 26-39

<sup>54</sup> For further clarification on the jurisprudential dispute in this matter, please see: 'Ali, p.140

verbal and the sexual interactions as valid *raj'a*. However, they prefer the verbal statement, and therefore, ask the husband to initiate it in the fatwa session. The most common statement they asked the husband to pronounce was “*arja tu zawjati ilā iṣmati*, I took back my wife to my marital-bond.”

### 3. Women’s Divorce: *Taṭliq*, Judicial Divorce, and *Khul’* Divorce for Compensation

The judicial divorce primary refers to a divorce issued by the court in response to a wife’s inquiry to obtain a divorce from her husband under certain conditions such as non-payment of maintenance. As for *khul’*, it is “a divorce desired by the wife in return for compensation paid to her husband.<sup>55</sup>” It is worth noting that according to Fiqh texts, although *khul’* is not necessarily restricted to the judge’s involvement in modern times particularly in Egypt, it is only done through the court for the fact that documented court judgments are nearly the only method of which women can prove they have obtained the *khul’* without being subject to any appeals from their husbands or the sate. Both *khul’* and *taṭliq* is, in principle, agreed upon among the majority of jurists of all the Sunni schools of law.

In her book, *Women, Family, and Gender in Islamic Law*, Judith Tucker concludes, after exploring the different types of divorce depending mostly on the Hanafī School of Law, that “Divorce was thus conceived as a man’s divorce,” however, she notes a wife may obtain the right to divorce if her husband delegated it to her.<sup>56</sup> It is true that this delegation of agency gives the wife the right to divorce, but in fact, the husband may

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<sup>55</sup> Tucker E, Judith. *Women, Family, and Gender in Islamic Law*. Cambridge: Cambridge University Press, 2008. P, 95.

<sup>56</sup> Tucker, *Women*, p. 91.

choose to break such delegation at any time. Besides delegation, women might add the right to divorce as a condition in the marriage contract, and this way, the right of divorce would be legally binding as any other contractual conditions and husbands may not cancel these conditions. Otherwise, women will need to obtain either *khul'* or *taṭlīq*.

Kecia 'Ali summarizes the issue of women's right to divorce in her book *Marriage and Slavery in Early Islam*:

The wife, bound by the marriage tie, did not share the power of unilateral divorce. Instead, her opportunities to dissolve the marriage were limited to judicial divorce for cause, grounds for which varied greatly depending on the school; delegated divorce, if authorized by her husband; and *khul'*, divorce for compensation, the main form of female-initiated divorce.<sup>57</sup>

In order to be more specific to the context under consideration, the Egyptian Dār al-Iftā', and because under the Egyptian law codes *khul'*, as well as judicial divorce, may only be obtained through courts, I will next the Egyptian juridical codes governing *khul'* and *taṭlīq*.

## ii. *Taṭliq and Khul'* in the Egyptian Court Codes

The juridical administration in Egypt since 1875 is a mix between Islamic laws and other civil laws, particularly the French codes. The personal law, however, is primarily based on the *Shari'ah* laws in principle, as stated in the Egyptian constitution, but depends in the general administration laws in its process. *Shari'ah* courts are under the administration of the civil court, and thus, it is subject to all of its bureaucratic legal

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<sup>57</sup> Ali, p. 146.

proceedings. The judges who investigate the cases presented to *Shari'ah* courts are “trained in *Shar'ah* presiding over family law cases within the National Courts.”<sup>58</sup>

According to the Civil Code (no.131/1948) drafted by ‘Abd al-Razzāq al-Sanhūrī, which is based on the Hanafi School of law, the wife may obtain an irrevocable divorce on the following grounds: serious or incurable defect of the husband; harm making cohabitation as husband and wife impossible; material or moral harm if the husband marries polygynously [if making cohabitation as husband and wife impossible]; non-payment of maintenance; the husband’s imprisonment for three years or more... A woman can also seek a divorce on the ground of incompatibility.<sup>59</sup>

These grounds remained, in principle, the major grounds to grant wives judicial divorces, but as such the criteria of which wives may prove them or the criteria of which the court estimates their reasonability is up to the judges to decide case by case. Even after the reforms and modifications followed the previous juridical codes. In this regard, Beth Baron in his research “Marital Bonds in Egypt,” which is part of *Women in Middle Easter History: Shifting Boundaries in Sex and Gender* book, talks about the new legislations in the Egyptian Personal Law of 1920-1929, that were a result of reform calls aimed to grant women wider grounds for divorce, and to guarantee that ending their marriages did not merely hinge on their husbands’ approval. He states: “A 1920 law that was supplemented in 1929 recognized four new conditions for juridical relief: if the husband had a chronic or incurable disease, failed to provide maintenance, deserted his

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<sup>58</sup> Na‘īm, Abd Allāh Aḥmad (ed.). *Islamic Family Law in A Changing World: A Global Resource Book*. St. Martin’s press: 2002. P, 169.

<sup>59</sup> Na‘īm, p.172

wife or maltreated her, she could apply to a court dissolution of the marriage. ... These articles sought to terminate unions that did not conform to the emerging ideal of companionate marriage. Yet effort to limit men's arbitrary ability to divorce their wives at will outside the court proved less successful<sup>60</sup>.

The 1929 law was further modified by the 1985 law that added more details about what is the "harm" that is considered valid ground for juridical divorce, including obliging husbands to state in the marriage contract any other current marriages other than the one being contracted. The most interesting addition, besides the laws that further defined the judicial divorce ground and the means to prove its existence, is the arbiters coded. In the article six of the Personal Law, the judge is required to appoint two arbiters<sup>61</sup>: one from the husband's family, and the other from the wife's family. The job of these two arbiters is to reconcile between the married couples. Article 10 of the same law states that if the two arbiters' reconciliation attempts failed, they should then suggest an irrevocable divorce to the judge. The arbiters are also requested to come to a suitable judgment regarding to the post-divorce financial settlements on the basis of the following:

1. If the harm is totally from the husband's side, the wife gets her full financial rights.
2. If the harm is totally from the wife's side, she shall pay a suitable divorce allowance.
3. If the harm is seen as mutual, the divorce is with no allowance, or the husband pays a suitable allowance.

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<sup>60</sup> Baron. Beth, "Marital bonds in Egypt." *Women in Middle Eastern History: Shifting Boundaries in Sex and Gender*. New Heaven: Yale University: 1991. 289-309. P, 285

<sup>61</sup> This law is based on the Qura'nic verse (4:35) "If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things".

4. If the arbiters failed to decide from which side is the harm, the divorce is with no allowance.

In the current Egyptian Personal Law of the year of 2000, which remarkably added the *khul'* as a means to women's dissolution of marriage, a modified description for the arbiters job was added in the article 19 to include that "if the arbiters failed to come to a conclusion, it is then up to the court to decide on both the divorce and the settlements."<sup>62</sup>

In addition to the required reconciliation attempts by arbiters, the article 18 further developed the role of the court itself in the reconciliation attempts between the married couple. It states that the court is not to issue a divorce before attempting to reconcile between the husband and his wife [usually done through *majālis ṣulḥ*, reconciliation sessions,], and if they do have kids, the court is obliged to make two reconciliation attempts instead of one, and to separate between the two attempts by a period of time that is not less than 30 days, but not more than 60 days.<sup>63</sup>

As for the articles that deal with *khul'* in the Egyptian Personal Law, article 20 of 2000 states that it is up to the married couple to agree on the *khul'* and its compensation, but if they fail to agree, the wife may be granted the *khul'* if she waives all of her post-divorce financial rights as well as giving the husband the dower stated in the marriage contract back. In the same article, the court is obliged not to pronounce the *khul'* statement unless it attempts to reconcile between the married couple, and appoint two

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<sup>62</sup> The Egyptian Government Website. "The New Personal Law, Third Chapter: Masa'il AlWilaya 'ala AlNafs, Issues Related to Self-Guardian." Web. <[http://www.egypt.gov.eg/arabic/laws/personal/chp\\_three/part\\_one.aspx](http://www.egypt.gov.eg/arabic/laws/personal/chp_three/part_one.aspx)>.

<sup>63</sup> Ibid.

arbiters for another reconciliation attempt in a period that does not exceed three months.<sup>64</sup>

It also states that *khul'* is counted as one irrevocable divorce, and that it is not subject to any appeals once established.

Based on these articles and what they construct, one may conclude the following important points in regard to presenting divorce cases by women in courts.

First, the Egyptian Personal Law indicates the complications that shall face any wife who desires to obtain a divorce without the need of her husband's agreement. Although these laws seem to draw a straightforward process of obtaining both judicial divorce and divorce for compensation, however, obtaining a judicial divorce for women requires more than going through the aforementioned process. There are many other factors that stand behind granting women their divorce. Such factors of the court include the court laws established, but most importantly, women need to be able to afford the court's bureaucratic system's demands of presenting a court case, which includes financial demands as well as public accessibility. Moreover, the ability to deal with the social pressure that face women wanting to obtain divorce from their husbands, which I shall point out in the study of the *iftā'* cases. Most importantly, obtaining a judicial divorce also requires proving the existence of one of the aforementioned juridical divorce grounds; the type and nature of proofs required in courts, as Ziba Mir-Hosseini points out, "vary from one case to another; they might involve a combination of the husband's

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<sup>64</sup> Ibid.

abandonment of marital life, non-support and maltreatment”<sup>65</sup> the establishment of these grounds, she proceeds, “becomes more complex and difficult when the husband is present and is contesting the divorce.”<sup>66</sup> All these factors significantly decrease the chances women have to obtain divorces by means through the court in Egypt.

The second important issue to understand regarding presenting a divorce case in the court system is that similar to seeking a fatwa at Dār al-Iftā’, presenting a case in court has a bargaining nature in its process and purposes. Mir-Hosseini also points out about this fact that courts are sometimes used as a means to achieve ends other than obtaining a juridical decision, namely negotiating rights and duties: “... the court system is used in different ways and for different purposes by men and women... women resort to court to improve their bargaining position vis a vis their husbands. Men come to court to offset – or preempt—their wives’ actions.”<sup>67</sup> It is then another mediation space of which judges, by means of their religious and legal authority, provide a means to those who wish to pressure the other partner through a negotiation mechanism to speed the process of gaining their most desired answers. It is, in this regard, important to mention that Mir-Hosseini is studying a different context than the one I’m looking for; her study is based mainly on the Iranian and Moroccan court cases from the 1990s, and that their laws and codes are different than the Egyptian ones, although it is also a combination of the Islamic legal system and the state law. Despite all these facts, the use of the court by married couples in her study’s context are greatly similar to the uses of the Egyptian

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<sup>65</sup> Mir-Hosseini, Ziba. *Marriage on Trial: A study of Islamic Family Law*. London: I.B. Tauris, 2000. P, 107.

<sup>66</sup> Mir-Hosseini, p.112.

<sup>67</sup> Mir-Hosseini, p. 50.

courts as well as Dār al-Iftā', which significantly validates my argument of the dual nature of the job of muftis, as well as judges, in their respected societies—there are inseparable relations between the legal norms and the social contexts they deal with. This point will become more evident by the end of the chapter.

The third issue is that courts, particularly the Personal Law courts that are based on *Shari'ah* laws, are clearly, as a religious institution, taking a pro-marriage position. This position appears in the laws regarding arbiters and *ṣulḥ*, reconciliation, sessions as well. The court codes, too, hold a particular interest in preserving the stability of “families” in their societies as it is clearly indicated, for instance, from article 18 of the 2000 code that obligates the court to double the efforts of reconciliation if the married couple have kids.

Lastly, the inaccessible nature of modern courts, particularly the Egyptian courts, raised the demands on alternative accessible institutions that enjoy the same sort of “religious authority” and “negotiation spaces” such as Dār al-Iftā'. Petitioners who seek consultations on their marital disputes, including women, increasingly consider Dār al-Iftā' as a more accessible option than the through court in hopes of easing the process of their desired goals in both obtaining legal answers or, as I pointed out in my introduction, negotiating rights and duties. The recent reforms and developments of Dār al-Iftā' further encourage Egyptians to resort to it regarding their marital disputes among other issues of their daily life.

#### 4. *Talāq*, Divorce at Dār al-Iftā' of Egypt

As indicated from the previous sections, Dār al-Iftā' neither deals with *taṭliq*, juridical divorce, nor *khul'*, divorce for compensation. It only receives divorce cases, and more specifically, *kināya* divorces. The reasons why they only deal with *kināya* divorces may be summarized as the following: a) they consider the common divorce pronouncements in Egypt as *kināya* and not *ṣarīḥ*; b) the *ṣarīḥ* cases are mostly those issued by the court or state official notary (ma'zūn); c) petitioners who come to Dār al-Iftā' for divorce cases are mostly coming to investigate the validity of their divorces and not to establish or initiate a divorce with the exception of a few number of women who wished to obtain a divorce outside the court system and attempt to do so by proving that their husband did declare an oral pronouncement of a divorce formula. These women actually failed to obtain such a divorce, as far as I have encountered in the fatwa sessions, because although they proved their husbands did indeed pronounce a divorce formula, muftis declare it as *kināya*, and thus it is up to the husband's intention whether they meant to divorce or not.

If the husband or the married couple consensually wants a divorce, they would directly go to the court or a ma'zūn for its establishment and post settlements. While the latter choice is clearly accessible to husbands with no restrictions, for wives it is limited to the grounds and conditions I explained earlier. Thus, it is important to keep in mind that particularly for women, their reliance on Dār al-Iftā' as an alternative arena for obtaining a divorce is greater because of their limited access to the court; they attempt, as I have encountered in the attended cases, to use the accessible spaces provided in Dār al-

Iftā' to achieve their desired solutions in marital disputes in general, and in obtaining divorce-related goals in particular. Although Dār al-Iftā', unlike the court, is legally nonbinding, it is religiously authoritative, and therefore, it is able to provide this sort of space for petitioners in general and for women in particular, but also with limitations of their own. In other words, Dār al-Iftā', with its clear position toward preserving social harmony and relations, is able to take the women's side in both their legal and social rights that correspond to their perceived social status. Examples of the wives' legal rights that came into question in the fatwa session are marital maintenance and equal treatment of multiple wives. Examples for women' social rights that also came out in the fatwa sessions are the rights to work and the right to communicate and engage in family and community activities. Dār al-Iftā', however, failed to support women who desired divorce basically because these women' desire opposed the marriage preservation stance muftis uphold. Thus, when comes a case where the mufti aims to preserve the marriage while the wife wants to obtain divorce, muftis in fact did not provide these women with an alternative avenue to obtain their divorce, because they would have to disconnect from their own stance, so, they preferred to support their perception of the social stability instead of disconnecting from it. With that in mind, I will next discuss in detail in the methods and strategies of giving a fatwa in marital disputes at Dār al-Iftā'.

#### **i. Dār al-Iftā'’s Account in *ṭalāq* Statements**

As we discussed, *ṭalāq* can either be *ṣarīḥ* or *kināya*. Jurists defined each of their formulas and efficacy conditions as well as the rulings they are subject to. Dār al-Iftā', under consideration, holds a distinct discourse in defining what makes a divorce

statement *kināya* and what makes a divorce *ṣarīḥ*. The key point in their discourse lies in the definition of the *kināya* divorce. We mentioned that jurists defined *kināya* as “*ma aḥtamala attalāq wa ghayreh*, formulas that comprise the meaning of divorce as well as other meanings”. Dār al-Iftā’ considers the changing of the proper pronunciation of any of the *ṣarīḥ* formulas transforms it into a *kināya* formula, and accordingly requires a declaration of a divorce intention for its efficacy. Based on this definition of *kināya*, which is strongly rooted in late Shafī’ī jurisprudence<sup>68</sup>, muftis at Dār al-Iftā’ consider the slang Egyptian pronunciation of the *ṣarīḥ* divorce formula, such as “anti *ṭaliq*, you are divorced” as “*enti tali*’, y divorca” as *kināya* divorce and not *ṣarīḥ* divorce. This of course includes conditioned divorce since the second phrase of a conditioned divorce formula—the effect—may also be pronounced as *kināya*, as mentioned previously. On the other hand, the Azhar Department of Research and Language, which also has a sub-department for *iftā’*, holds that the slang Egyptian pronunciation of a *ṣarīḥ* formula does not transform it into a *kināya* divorce for that it is merely an accented pronunciation of the same formula and not a different one. This position is also held by some of the Sheikhs at Dār al-Iftā’ who explicitly say that even if we disagree with the method of defining *kināya* in the Dār al-Iftā’ fatwas, yet, as muftis affiliated with the official fatwa institution, they follow the Dār al-Iftā’’s method when giving a fatwa in divorce cases at

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<sup>68</sup> An example to these late Shafī’ī texts:

Ash-Shirbīnī, Shams Ad-Din Muhammad al-khatīb. *Al-’Iqna’ fi ḥal alfadh’ abī shuja’*. Beirut: Dār al-kutub al-’ilmyyah. Vol, 2, P, 289.

He states, “if he [the husband] changed the letter (ط) into the letter (ت) it is then a *kināya*, as said some of the Shafī’ī late jurists, whether or not it [the changed letter] is form his own language”

Dār al-Iftā'. This attitude of muftis casts light on the power of the 'institutionalization' of *iftā'* as discussed earlier in the first chapter of this thesis.

Dār al-Iftā' defends their legal argument in defining the *kināya* divorce of the way they define it by two main factors: the first is that there are considerable *Fiqhī* resources that define the *kināya* divorce in the same way, and given the established rules of dealing with jurisprudential differences,<sup>69</sup> it is permitted that they choose the opinions that most respond to their society's needs and interests. The second is that Dār al-Iftā', recalling Sheikh Jom'a's story and the complexity of the *iftā'* structure in practice, deals with a society where *ṭalāq* is pervasive<sup>70</sup> among people who suffer from social, economic, and political pressures. Therefore, they take the task of finding the most suitable legal opinions to maintain their pro-marriage position, and to provide the community with answers that preserve their social relations. This sounds as a reasonable task achieved by reasonable means, which is partially true, but taking this approach also creates problematic issues.

The first is the use of two scholarly dishonorable doctrines, the first is *talfīq*, eclecticism—where a part of a doctrine of one school is combined with a part from another<sup>71</sup> to form a desired opinion— and the second is *ḥiyāl* (*sing. ḥīla*), legal stratagems—quoted by Wael Hallaq, according to Imam Shāṭibī (d.1388) *ḥiyāl* constitute “legal means by which one can arrive at juridical results otherwise prohibited by the

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<sup>69</sup> One of which *as-suyuti* stresses, he states “Whenever one is inflicted with a differed-upon issue, s/he shall follow the opinion which sets this issue as permissible”

<sup>70</sup> In a general fiqhi rule, it is stated that cases by which “ma ‘ammat bihi albalwa, cases that was spread to the extent that it is not avoidable anymore”, it is permitted to use weak legal opinions and legal stratagems.

<sup>71</sup> Hallaq, *History of Legal Theories*, p, 210.

law<sup>72</sup>.” If resorting to these two doctrines by individual jurists has already been criticized by their colleague jurists<sup>73</sup> because of these doctrines’ potential negative impact on the Islamic legal scholarships, resorting to such doctrines in an authoritative legal institution, such as Dār al-Iftā’, may in fact result in the normalization (and legalization) of such doctrines that override the preponderant legal doctrines for less authoritative ones for the sake of achieving desired legal results.

The permissibility of using a *marjūh*, less dominant legal opinion, over a preponderant one, however, has been discussed in the Adab Al-Fatwa treatises. While most of these texts insist on the obligation that muftis give fatwas based on *al-rājiḥ*, the preponderant opinion, of their respected *madhhab*, school of law, they also insist on the importance of putting into consideration the public interests of the community in which they are giving the fatwas. These two points may seem at first glance to be contradictory since looking after the society’s public interest may result in the non-application of the first point, which is to follow preponderant opinion. Hence, fatwa-giving seems to be governed by two contradictory principles, but in fact, they are not; rather, they deal with different spheres/cases, which is to say muftis are obligated to follow the preponderant opinions in the *madhhab* unless it conflicts the interests of the people and their needs, then they are permitted, even encouraged, to follow the most suitable *marjūh* opinions. A prominent text that discusses this issue is “‘Uqūd rasm al-muftī” by the Hanafi jurist Ibn

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<sup>72</sup> Hallaq, History of Legal Theories, p, 173.

<sup>73</sup> One example of such critiques is found in Imam Shāṭibī’s description of the jurists in his time as “far too lenient in the application of the law” for their excessive use of *ḥīyāl* while issuing *fatwas* to their communities. For more on Imam Shāṭibī’s critiques, please view: Hallaq, History of Legal Theories, p, 164-175.

‘Ābdīn (1198-1252). Ibn ‘Ābdīn begins his commentary, on his own *iftā*’ manual, by stating that it is an obligation on both Mujtahid muftis and Muqallid muftis to follow the preponderant opinion on the Madhhab, and cites a consensus on this issue. Shortly after and while discussing the ‘*Urf*’ as a principle factor in fatwa-giving, Ibn ‘Ābidīn states that it is forbidden to perform *iftā*’ in a society without a proper knowledge of its customs and traditions.<sup>74</sup> Another major writing in Adab al-Mufti is “Adab al-Fatwā wa-l-Muftī wa-l-Mustaftī” manual for Imam Al-Nawawī specifies, from among the knowledge of the society’s customs and traditions, the knowledge of the linguistic differences, especially if it differs from the mufti’s own. This notion might explain the particular method taken by Dār al-Iftā’ to determine the exact pronunciation of the divorce formulas in order to determine whether it is to be considered a *ṣarḥ* or *kināya* divorce.

Hence, the first problematic issue evolved from Dār al-Iftā’’s approach to *kināya* definition has its legal justification in the *iftā*’ tradition. Although, muftis of Dār al-Iftā’’s approach might seem to depart from the preponderant rulings of the classical scholarships of divorce, but as seen, it has a legal background to rely on.

The second problematic issue that evolves from Dār al-Iftā’’s discourse is related to their role as an institution that is deeply involved in the Egyptian society. As mentioned earlier, muftis at Dār al-Iftā’ offer a particular role in the Egyptian society that is not merely limited to legal consultation, but also a mediation arena for solving marital disputes emerged from, or related to, legal doctrines and social practices. In this role,

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<sup>74</sup> Ibn ‘Ābidīn, Assayed Muhammad Amīn. *Sharh Manzūmat ‘Uqūd rasm al-muftī*. Manuscript- unknown publisher. P, 3.

muftis attempt to use their legal expertise and their respected religious authority to preserve the social relations in the society through creating solutions to its marital disputes. In so doing, Dār al-Iftā' also preserves social practices that are intensely embedded in hierarchical practices toward women participating in these societies. These practices are part of a larger culture that promotes presumed roles and expectations to each of the married partners. Instead of attempting to use their authority to change these practices, muftis rather attempt to adjust their methods of giving-fatwas to respond to and even harmonize such practices. This does not deny that muftis were also able to refine some of the unjust practices toward women by providing them some sort of engagement and leverage in their authoritative religious institution. Women's response to muftis' attempts to engage them in the *iftā'* process and their use of these available engagement spaces were also remarkable; their insistence in accompanying their husbands to Dār al-Iftā' to investigate their divorce cases—although it is only the husband who is heard in his own pronouncements—to the extent that few women came alone; their insistence in receiving their marital rights through religious authoritative channels; as well as their insistence to fulfilling their religious requirements through making sure their existent marriages are valid. More examples to women's agencies in *istiftā'* will be shown below in the analysis of the actual fatwa cases.

## **ii. Presenting a Divorce Case at Dār al-Iftā' : The Fatwa Sessions**

As I mentioned in my introduction, I attended one hundred and forty fatwa sessions over the course of six full days. One hundred and fifteen out of the total were divorce cases. Among the divorce cases, there were thirty cases presented by husbands,

five presented by wives (all of which were refused to be seen initially until they brought their husbands with them with the exception of a young woman who's marriage had not been consummated yet), and the rest presented by both the wife and the husband either alone or with some other family member such as their parents or kids.

As discussed earlier, the fatwa corresponds to the *Istiftā'* question; petitioners are the ones responsible of helping the mufti to conceptualize the fatwa case by means of the facts stated in their question. With this in mind, the chances given to husbands to speak of the case are notably much higher than the chances given to their wives in marital disputes, particularly in divorce cases. The reason behind this is that the divorce is conceived as a man's divorce due to the fact that the legal capacity of initiating a divorce statement is limited to men, as clarified earlier, other than the fact that the *kināya* divorce depends on the husband's intention for its efficacy, and not merely the statement pronounced, all of which places the presentation of the divorce case in front of muftis totally in the husband's hand.

Whilst women's statements and intentions are not relevant in divorce, as I have encountered, however, a sort of engagement from the wives' side in the divorce fatwa sessions was present, but not in terms of declaring a statement or an intention, but rather in terms of attempting to convince the mufti that their husbands were out of their minds, in cases where women wanted to keep the marriage bonds, or attempting to convince the muftis not to believe the husband's denial of a divorce in cases when women were clearly attempting to depart from their marriages and obtain a divorce. The other cases of which women participated in the divorce fatwa sessions were in cases of the conditioned

divorce; they were, surprisingly, asked if they remembered the conditioned divorce at the time they fulfilled its “condition, i.e. the actions or events the divorce was suspended to.” Marital dispute cases, other than divorce, witnessed a greater engagement by women and larger negotiations as well. In the next section, I will closely analyze the attended divorce fatwa sessions to practically show how the Dār al-Iftā’'s social-legal mediation position is keen to preserving the social relations in the Egyptian society through the preservation of marriage by means of their legal expertise and their granted religious authority.

#### **a. Intention Determination Process**

Since Dār al-Iftā’ classified most of the pronounced divorce formulas by Egyptian husbands as *kināya*, the question of intention became an essential part of all the divorce cases. Muftis attempted, through conversation between them and the petitioning husbands, to determine the exact intention behind their pronouncements, and accordingly determine the establishment of the divorce. The typical question asked by muftis to husbands was: “What was your intention while pronouncing what you pronounced.” This question was usually followed by a set of other revised questions to help the husband understand what it means to declare a divorce intention, and to help the mufti investigate the declared intention by the husband. Some petitioners, however, were not able to understand what exactly did the muftis mean by the type of questions they asked. Petitioners were mostly confused between what is considered to be “intended” and “wanted.” In other words, the muftis were looking for the existence of the jurisprudential intention that accompanies the legal action, while husbands understood intention to mean what they want at the time of saying something.

Many of the petitioners, therefore, asked for clarification or a restatement of the question. In one particular case, case number (59), the husband asked the mufti: “When you say ‘intention’ what exactly do you mean?” The mufti responded: “By intention I mean that your heart is, at the moment you pronounced the divorce formula<sup>75</sup>, determined to divorce, and that you are aware of what this divorce would result in: the separation between you and your wife.” The husband’s response to the mufti’s previous modified version of the intention question was simply, “Then, the answer is NO, I did not.” I could not tell whether the petitioner realized that what the mufti described as an intention is not applicable to what he experienced, or that he found the jurisprudential intention, as defined by the mufti, seem to be very complicated so he just decided that he was not aware of this particular notion and level of determination when he pronounced the divorce.

I found the petitioners’ confusion of what “intention” means to be a normal result of the repeated and revised question posed to them by muftis who seemed to be so eager for a “no” answer so that they could preserve the marriage under question. In a number of cases, husbands’ first answer was “yes, I intended for the divorce,” but they ended up, after a back and forth modified set of questions, saying no. In case number (119) for example, the intention question proceeded as the following:

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<sup>75</sup> The mufti here is following the traditional Shafi‘ī definition of “*nīyah shar‘īyah*, jurisprudential intention” which is, as mentioned in Bājūrī’s, “*qaṣd yuṣaḥibūhu ‘amal*, an intent accompanying an action”. Accordingly, intention declared after or before any action is not jurisprudentially considered as valid. For instance, in rituals, the intention has to be declared in the first obligatory action. Examples are: in ablution, intention accompanies the washing of the face; in prayer, it has to accompany the *takbīr* as the first obligatory action, etc.

Husband: I said to my wife ‘entī ṭali’ , y divorca’  
 Amin al-Fatwa: What was your intention?”  
 Husband: I intended the divorce  
 Amin al-Fatwa: Or was it a reaction to what she said?  
 Husband: Yes, it was a reaction  
 Amin al-Fatwa: A reaction to end the situation, or to end  
 the marriage life?  
 Husband: Indeed, it was to end the situation not the  
 marriage, I want her

In a significant number of cases, women engaged in the intention conversation not as determiners, but as a secondary back-up sources to help the husband recall the situation in which he pronounced the divorce statement. These cases put the women in a position of anxiety and concern in order to maintain their marital relationships, in addition to being frustrated from their husband’s behavior.

In case number (110), for example, after the second repeated intention question, the wife, a middle-aged woman who complained about her husband’s repeated divorce, and was trying to reach a solution that would preserve the marriage, asked the mufti to further clarify to her husband the difference between intending to divorce while pronouncing the statement and intending to end the situation. She commented, “When he is really angry, he is no longer aware of what he is saying to the extent that I’m the one who later tells or reminds him that he pronounced the divorce.”

Furthermore, women would sometimes show the same interest of keeping their marriage by trying to indirectly convince the mufti that the husband did not intend the divorce. For example, in case number (35), a married couple who had come to question three separate divorce incidents, one of which was multiple (the husband said he repeated the divorce 30 times), the wife interrupted her husband’s positive answer to the intention

question and spoke for five minutes about the situation that accompanied their first divorce incident three years ago, and how it could not possibly be the case that the husband meant to divorce her. Her exact words were, “We were a new couple and there was nothing to make him hate my companionship (*‘ishrah*); it was just that I irritated him in front of his relatives by saying “if you are a man, divorce me” so he pronounced the divorce to save his face. Indeed, I’m not intervening his intention, but that is so it seemed to me.” The woman’s eagerness to help her husband remember his intention was followed by the mufti’s affirmation of the idea. Actually both, the wife and the mufti, failed to change the husband’s mind who, in turn, reaffirmed his divorce intention in this incident as well as their second divorce incident. The third thirty-times repeated divorce, though, was declared as invalid on the basis of extreme anger as well as the husband’s testimony he did not want to end the marriage.

With this in mind, it was not absent from the muftis’ minds that husbands may lie or at least play around their actual intention in order to salvage their marriages, and therefore, some of the muftis used methods, other than the question and answer dialogue, to help determine the validity of the divorce intention. The most interesting method I encountered was the mufti asking the husband to testify by God they did not intend to divorce their wives. The way this method was done is by either asking the husband to testify in his own words or to repeat a complete testimony formula the mufti provides him with. The formula provided states, “I testify, and God is my witness, that I did not intend to divorce my wife by saying what I have said.” Muftis here seem to be relaying

on the religious consciousness that brought the petitioner to the Dār al-Iftā' to consult religious authorities, and choosing not to continue in a legally invalid marriage.

In this regard, it is also worth noting that sometimes husbands did answer positively to the intention-repeated questions in a confident manner that they intended to divorce their wives, and accordingly, muftis validated their divorces. In more than three cases I attended, husbands admitted that they intended to divorce their wives. One out of the three cases was a third divorce incident, and therefore, the mufti declared it to be an irrevocable divorce, although his pronouncement in this third divorce was “*anti ‘aliy ḥarām, you are forbidden for me,*” which is with no dispute a *kināya* formula, and since the husband admitted that he intended to divorce her, the divorce was established. The other case was transferred into a group-*iftā'* session to investigate the husband's other previous two divorces in hopes of invalidating one of them. It is important to note here that since Dār al-Iftā' does not issue written fatwas to divorce cases, these husbands of whom their divorces were declared effective still need to document these divorce at the state official notary in order for them to be officially divorced and start the process of the post-divorce settlements.

Sometimes the basis of the muftis' *kināya* argument falls apart when facing a case from people who are from places where the pronunciation of the correct explicit *ṭalāq* formula are the common ones because of their Arabic accent, such as in upper Egyptian cities, and they claim not to have intended the divorce. In case (50), the petitioner was originally from *Qina*, a suburban Egyptian town that speaks a slightly different Egyptian accent than of other cities. In this city, they pronounce the letter Q (ق) nearly as the *fuṣḥa*,

classical Arabic, and accordingly they pronounce *ṭaliq* as *ṭaliq* and not *ṭali'*. The mufti kept questioning the husband on the exact formula he pronounced, but was not able to make a decision regarding this divorce case since the legal basis for considering it a *kināya* has been interrupted by the fact that the husband might have pronounced the *ṣarīḥ* formula without any changes. Ideally, and as known from their legal discourse, the fatwa should consider the pronounced formulas as a *ṣarīḥ* formula and disregard the claimed intention. The mufti, however, did not give a fatwa in this case and decided to transform it into a *lajna*,<sup>76</sup> a group session that gives fatwas collectively rather than individually in complicated cases such as this one. The reason why the mufti did not simply establish the divorce was because the husband insisted that he did not intend to divorce his wife, and it was their third divorce; therefore, the mufti attempted to reconcile between what he believes is the basis of the legal ruling of divorce, the declaration of the intention, and the preservation of an established marriage as well as the fact that since the petitioner's accent removed the legal grounds for considering his pronouncement as *kināya*, his pronouncement of an explicit divorce formula did not need efficacy or a declaration of an intention. Altogether these three factors complicated the fatwa session, which is why the mufti transferred the case to a group fatwa session where more experienced muftis can issue the fatwa. This case shows the complexity of the muftis' structured paradigm where his social role intervenes their legal scholarship, and thus, they go out of their ways in attempt for reconciliation. I was not present in the *lajna* fatwa session so I do not know

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<sup>76</sup> In some complicated cases, muftis had to set up another appointment for the petitioners but not with a single mufti but rather a group of three to four muftis by which they give the fatwa collectively. Unfortunately, I was unable to attend any of these group fatwa sessions.

the final fatwa given to this case, but I searched the fatwa collections of the grand Mufti, Sheikh Jom‘a, and found that he clearly stated that since some upper Egyptian cities pronounce the letter “Q,” their pronouncement of “*ṭaliq*” is explicit. This case further shows the particularity of the fatwa-giving structure to its context and the willing of muftis to further challenge their legal discourses for the purpose of preserving the family unit such as this.

Another example to foster the claim of muftis’ willingness to further challenge their legal scholarships for the interest of preserving social stability as they perceive is found in two cases of conditioned divorce, case number (118) and (127). In these two cases, wives’ intention of performing the actions or engaging in the events that the conditioned divorce is suspended to was brought up into the conversation; they were asked whether or not they remembered the conditioned divorce, and intentionally fulfilled its conditional actions in order to transform the conditioned divorce into a divorce. Muftis resorted to this type of exceptional consideration, wives’ intention to fulfill the divorce conditioned actions, after the husbands in these cases admitted that they intentioned the divorce, and muftis attempted to find another reason to invalidate the divorce through bringing up the second actor in the incident, namely, the wife.

Although I was not able to find textual sources for the invalidation of conditioned divorce, if the actor of the conditioned case has fulfilled it while forgetting the conditioned divorce, given Dār al-Iftā’ ’s emphasis on the intention in their legal discourse, they were able to use the second actor’s intention as a legal subterfuge in order to salvage the marriage. The women in the two cases responded positively to the question

that yes they were remembering that their husbands conditioned a divorce on these specific actions, but I asked the mufti what would have he done had they said they were forgetful— would the divorce be invalid then? The mufti responded by “yes, I would have put her intention into consideration” to my question, and clarified that the women’s forgetfulness of the conditioned divorce while performing the condition would act as a subterfuge to invalidate the marriage.

It was interesting to learn that Ron Shaham in his study on family courts in modern Egypt encountered court cases where women went to the court to report the fulfillment of the conditional events/actions in conditioned divorces declared by their husbands so that they would obtain a divorce. He further explained that women needed to bring evidences to prove such fulfillment even if the conditional actions were suspended to a third party and not to the wife herself. Some wives succeeded to prove such fulfillment while others failed to convince the court that the action was fulfilled or that a conditioned divorce was pronounced in the first place.<sup>77</sup> I did not encounter any cases of which wives reported a conditioned divorce in order to obtain a fatwa divorce, but as can be clearly indicated from Dār al-Iftā’ ’s account that these wives’ reports would not help them obtain a divorce unless their husbands admit to both the pronouncement of a conditioned divorce as well as the declaration of a divorce intention.

Thus, these two cases show, in addition to showing muftis’ challenge of the legal discourse, an exceptional type of engagement for women in divorce fatwa sessions. Here,

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<sup>77</sup> Shaham, Ron. *Family and the Courts in Modern Egypt: A Study Based on Decisions by the Sharī‘a courts 1900- 1955*. Leiden: Brill, 1991.P, 106.

we find, not only that muftis are able to provide answers using their legal expertise and social norms, but also that they are able to challenge both of them.

The question of intention as such brings together a strong interconnection of three integral spheres: first, the petitioners' consciousness and religious responsibility represented in their share of the *iftā'* process; second, the challenge of the legal doctrines in the *iftā'* process; and third, the muftis' faithfulness toward maintaining their societal relations.

### **iii. Women, Divorce, and Social Enforcements**

Besides the challenges and limitations women face in both institutions, Egyptian courts and Dār al-Iftā', there is the social stigma placed on wives who request divorces, as well as divorced women. These three issues curb women's chances to obtain divorce in Muslim societies in general, and in the Egyptian society in particular. Despite the accessible spaces women were granted in both institutions, and are made in the utmost use of them in solving their marital disputes and negotiating their rights, there are still arenas their accessibility are limited to the use and benefit of men, such as in Divorce because of the unilateral nature of its practices. As discussed earlier in this chapter, wives, unlike husbands, do not have unconditioned power of ending the marriage if she wishes to. Henceforth, the cases of which women have the right to divorce are both limited and conditioned legally and socially.

The Egyptian society places so much pressure on divorced women to the extent that women would rather keep the tie of marriage so that they will not suffer the psychological or social humiliation. As an illustration of the power of this social stigma

against women requesting divorce, case number (36) in a conditioned divorce fatwa session was of a wife who, explicitly eager to obtain a divorce based on a conditioned divorce that her husband claimed not to have intended, stated that she raised a *khul'* case to the court twice and had to withdraw it both times because of the family and friends' reaction of her doing so, them arguing that her action of obtaining a *khul'* shall negatively affects her kids' reputation. This reasoning, of course, is purely cultural and not legal. However, it is put into consideration in religious institutions that are strongly involved in the social lives of its clients such as Dār al-Iftā'. For this reason, the mufti, although suggested that she raise the court case if she needs a divorce, encouraged the wife to listen to her friends and family, and keep the bond of her marriage for the interests of her kids as well.

In addition, if women were able to pass the social challenges or were able to deal with it, either due to their personal capacities or social classes that significantly matter in this regard, another challenge would appear in front of them: the economic challenge; most lower and middle class women are unemployed and therefore they depend on their husband's financial maintenance. The latter factor is also one of the reasons, beside the inaccessibility of the court to women, why they would usually attempt to get their husband to divorce them instead of obtaining a judicial or *khul'* divorce. Ron Shaham further explains women's tendency to rather find suitable strategies to get their husbands to divorce them instead of resorting to the court by saying, "As a rule, women preferred this type of divorce [*ṭalāq* without involving the courts] because of its economic advantages (entitlement to deferred dower, maintenance for the waiting period, and the

maintenance for minor children in the mother's custody). Women wished to be separated from their husbands found sophisticated ways to bring their husbands to divorce them by a *ṭalāq*.<sup>78</sup>

While women do not favor the juridical divorces because of the economic factor, men, on the other hand, favor the juridical divorces for this very reason. Therefore, the husbands curb their uses of the absolute unilateral divorce right so that their wives would have to waive their post-divorce financial rights to obtain juridical divorce instead. Thus, the socioeconomic considerations in the Egyptian society play an impetus role in the divorce practices. Both married parties have a preferred type of marriage dissolution that would make them lose the least as possible. In a helpful summary, Ron Shaham tackles the socioeconomic underpinnings for the idea of the “preferred divorce” that leads the wife and husband to not opt for a certain type of divorce:

The strength of the extended family, which reduces the number of divorces in endogamous marriages; the efficacy of customary arbitration mechanism in reconciling spouses; the objections of the wife's father to her divorce, stemming from his reluctance to support her subsequent to her divorce and his wish to prevent future quarrels between her and her brothers' wives; the considerable economic burden that the divorcing husband has to endure; the fact that the divorced wife is entitled to her *jihaz* [household furniture] with her; and the wish of the divorcing husband to marry again, which obliges him to pay his new wife her dower.<sup>79</sup>

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<sup>78</sup> Shaham, p, 104.

<sup>79</sup> Shaham, p, 100.

As shown, some of these factors are social while other are economic, and they do not, in all times, only lead to a preferred divorce method, but also, and in most cases, lead to keeping an undesirable marriage to eschew dealing with them.

A good example that shows how women in the Egyptian society may as well be socially forced to keep their marriages instead of opting for a divorce, is evident in one of the five cases out of the one hundred and forty fatwa cases I attended, of a woman who came to Dār al-Iftā' alone without her husband to present her divorce case. As I mentioned, muftis refuse to give divorce fatwas in the absence of the husband, but in case number (46), a woman who may be in her 50s, insisted that the mufti hear her case even if he will not give a fatwa, but, as she said, would help to convince her husband, who refused to go to Dār al-Iftā' claiming they no longer had a chance to reconcile the marriage after he pronounced the divorce three times, to come and present the case. After she was done and the mufti requested that she brings her husband, she asked the mufti to talk on the phone with her husband to ask him to come, and he did.

It is evident then that because of all the above complex socioeconomic factors, husbands, on the one hand, have become reluctant to divorce, and on the other hand, have suppressed their wives' chances to both ending the marriage and receiving their full marital rights. Besides this result, the socioeconomic problems in the society created great tensions between married couples and families in the Egyptian society. As a result of these tensions, each of the partners attempt to use all of the available means to put pressure on the other partner in terms of fulfilling their rights and duties, or to control the

ongoing conversations/disputes about the entitlement of such rights and duties that belong to each of them.

In this tension process, divorce and divorce practices play a central role; husbands found in their unilateral right to divorce a means to control women's actions, particularly, in the conditioned and the oath divorces, which have been widely used for this purpose of obtaining social control through the use of a threat, and not as a dissolution of a marriage.

A significant percentage of the divorce cases presented by petitioners in front of muftis at Dār al-Iftā' are either oath or conditioned divorce. Approximately, seven out of every ten husbands in the cases I observed so far stated that they did not "intend" to separate from or divorce their wives; they rather intended to "threaten" them so that they would obey or agree with the husband in his preferred solution of their conversation. As a result, these husbands' claim saved their marriages because of the absence of the intention requirement of their *kināya* divorces. Here we can evidently encounter the interference of the institution of Dār al-Iftā' in the social conversation as mentioned earlier—Dār al-Iftā', with its pro-marriage position that led to their maverick discourse in dealing with Egyptian divorces, playing a role in also indirectly preserving social practices that suppress women's chances to obtain divorce as well as maintaining the gendered nature of marriage, and the presumed roles and responsibilities in the Egyptian society.

Although I encountered some cases where women were eager to prove the establishment of divorce in the attended fatwa sessions, it was almost impossible for them to do so since the intention condition for either the conditioned or the oath divorces, is

merely in their husbands' hands to determine, and thus accordingly, women were left with no means to practice the expanding male obligation method in this way. In case number (6), a wife showed a great deal of frustration after the mufti declared the invalidity of her husbands' divorce pronouncements, the mufti commenting: "You should then raise a case to the court in order to get a divorce, but the divorce formulas your husband pronounced are not valid divorces since they were combined with no intention to divorce." Of course, given the complex and overburdened structure of the court system in Egypt, it is clear that the suggestion given to this woman by the mufti is not going to help her end her unbearable marriage.

A single exception from the insistence on the preservation of the marriage in all the fatwa sessions I attended was found in case number (117). The fatwa trustee was a trained Azhari graduate in his late 20s. He received six years of training at Dār al-Iftā' after his graduation from al-Azhar University, Department of Islamic and Arabic studies. The petitioner was a young girl—I estimated her age as 18-20 years old—who mentioned she was engaged, but with a marriage contract, to a man who is 24. She came to Dār al-Iftā' to question the repeated divorce from her husband in an unconsummated marriage<sup>80</sup>. At first, and because of what I noted earlier that muftis do not hear divorce cases presented by the wife alone, the fatwa trustee asked her to bring her husband, or fiancé, to Dār al-Iftā' so that he can ask him about his intention. The girl insisted that he listens to

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<sup>80</sup> In Egypt, there is a tradition that some families require a marriage contract in the engagement for various reasons, some of which: showing serious commitment to the marriage, securing the woman's right in cases of separation, securing the paternity of any unintentional pregnancy before the announcement of the marriage consummation, and for some conservative families, it is a prerequisite for allowing the groom to talk and/or spend time with the bride to get to know her.

her explaining that she is in trouble. He then allowed her to talk, and thus she told her story complaining about her fiancé's repeated conditioned divorce pronouncements that aim to stop her from basically doing anything in life: visiting her friends, talking to people, dressing the way she wants, and even going to work after mentioning she works as a saleswoman. At that point, the fatwa trustee asked her if they have ever had sex, even without the knowledge of their families, but she ensured him that they had not and were waiting for the official wedding. The fatwa trustee explicitly told her that these conditioned divorces do not count as divorce because the goal was for control over her and not for divorce; the fatwa trustee also encouraged her to go to work and ignore his threats. He then confidentially asked the girl why would she want to be with a man who is as oppressed and trifle as this man, and the girl expressed that she is seriously thinking of leaving him, but for family considerations she wants to work it out. It is worth noting that the fact that the marriage was not consummated, and thus did not yet render a social family unit, it was indeed a major factor of such bravery of the fatwa trustee in breaking the policy of giving fatwa to divorce cases to wives in the absence of their husbands. So, it was not precisely a departure of the preservation of the marriage position because the marriage did not yet carry its social weight as a family unit.

This case, even if it is an exceptional one, is strongly significant to my argument; it shows that the young Azhari fatwa trustee was able to connect to the girl's relationship crisis, and even exceed the Dār al-Iftā' policy of not giving a fatwa in divorce to wives in the absence of their husbands in order to help her get out of a relationship that he believed was unjust to her. It also shows that the young girl, who is unsatisfied with her

unconsummated marriage, is still attempting to preserve it for the sake of her social situation.

As shown in this chapter, the fatwa sessions regarding divorce cases at Dār al-Iftā' of Egypt practically shows the interconnection between the legal and the social dimensions in the practice of *iftā'*. Through the combination of legal expertise, shared contexts, and mediation skills, muftis developed a distinct strategy to harmonize social practices. This strategy consisted of preserving marriages as means to maintaining stable families—that are considered the building blocks of the society—in hopes of maintaining a stable society. To maintain their stance of pro-marriage, muftis needed to further develop a discourse to deal with the frequency of divorce in the Egyptian society, which threatens the preservation of marriages. In their attempts to create such discourse, muftis were not only willing to use the diversity of the legal opinions in the four major Sunni schools, but also to challenge these legal opinions. A prominent example of muftis' challenge to the legal doctrines was perfectly seen in their account of the *kināya* divorce, where they used a creative reading of the legal doctrines that offered a solution to the non-establishment of the Egyptian divorce pronouncements.

Petitioners, as seen, are the starting point in the fatwa-giving; they played an active role in the legal interpretive process through posing their questions and concerns to muftis, and also, as shown, through the dialogical dilemma of the intention determination in divorce. Petitioners also used a variety of strategies to manipulate, or at least influence, muftis to their advantage, and to negotiate their desired fatwas. Petitioners, both women and men, use Dār al-Iftā', as an alternative (to the court) accessible religious authority to

negotiate their rights and obligations. Interestingly, although the divorce fatwa sessions depended on the husbands as the major actors in *ṭalāq*—being the one who pronounced it and intended/not intended it— the engagement of the wives in the sessions were present, for example, in cases where the couple and the mufti all reached a consensual decision to preserving the marriage, all collaborating in finding the possible way to do so. The wife was also, in some exceptional cases, the agency of the divorce case, as seen in the exceptional conditioned divorce cases. Thus, although women were “over-looked” in the fatwa sessions, but they are still important agencies in the *istiftā’*, this point will be further explained in the next chapter. The opportunities women have to obtain divorce are restricted because of the social, economic, and bureaucratic limitations. Muftis’ preserving marriages stance resulted in, for some cases, circumscribing the wife’s right to obtain a divorce. One may conclude, based on the majority of cases, that women wanting to preserve their marriages and/or obtain property rights have had full access to the Dār al- Iftā’’s authoritative support. However, women that do wish to terminate their marriages were not granted such access due to Dār al- Iftā’’s strong stance toward preserving marriages and by extension social and gender relations.

## Chapter Three: Power, Authority, and Negotiation

### 1. Power-negotiation correlation

The question of power and authority is essential to understanding the religious and social dynamics interplay in the practice of *iftā'* within its institutionalized form at Dār al-Iftā' of Egypt. As discussed in the previous chapters of this thesis, the authority and legitimacy Dār al-Iftā' enjoys is grounded in a combination between their legal authority—their ability to perform *Ijtihād* and produce fatwas—and their social position—their perception as authoritative mediators by the members of their society coupled with their correspondence to these members' demands and needs. The petitioners' role and impact in the process of legal interpretation and the issuing of fatwas is another issue tackled throughout the previous chapters, and is important to bring up here; these petitioners' involvement in such processes is possible because of the available negotiation spaces in both the process of fatwa-seeking and the process of fatwa-giving. The power and structure of these negotiation spaces is the main topic of this chapter.

Negotiation, the discussions between two or more parties with the purpose of resolving their differences or coming to mutual decisions, is an essential element in the practice of *iftā'* as encountered in the fatwa sessions at Dār al-Iftā'. Similar to the fact that *iftā'* is constituted through the interconnection of legal and social norms in specific societies, negotiation between muftis and petitioners and among petitioners themselves is also based on this complex interconnection. By means of negotiation, both muftis and petitioners bestow support and authority upon each other. In other words, petitioners in

marital disputes coming with their underpinning social relations in the Egyptian society use these negotiation spaces as a powerful tool to confer authority upon their social practices. Muftis, coming with their various legal scholarships, use the exact same spaces to confer legitimacy upon their religious and legal authority. Negotiation then, is an essential feature of *iftā'* and *istiftā'*. In this authorization and legitimization process, compromise from both parties is also made possible. In fact, the compromise plays an essential role in the marital disputes negotiation at Dār al-Iftā' as seen in previous chapters and will be particularly articulated in this chapter. The negotiation and compromise structure here is similar to what Hallaq describes, while explaining the mediation nature of pre-modern Muslim courts, as a “social fabric that demanded a moral logic of social equity rather than a logic of winner-takes-all resolutions... the creation of a compromise that left the disputants able to resume their previous relationships in the community<sup>81</sup>.”

On the basis of the above negotiation structure, it is a fact that fatwas, as authoritative religious norms, “reflect and direct social organization,<sup>82</sup>” and vice-versa; social norms, as the situated contexts of which law is practiced, reflect and direct fatwas. Although some may argue, as Mir-Hosseini reports, that Islamic law is “fixed and non-negotiable,” its legal process is in fact, as she explains “highly negotiable.<sup>83</sup>” Through her study of the nineteenth century marital court cases in Morocco and Iran, Mir-Hosseini argues and demonstrates that this negotiation is one of the main sources that enable

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<sup>81</sup> Hallaq, Introduction to Islamic Law. p, 60.

<sup>82</sup> Mir-Hosseini, p, 14.

<sup>83</sup> Mir-Hosseini, p, 14.

Islamic laws to connect to different cultural contexts. She also examines the practices of litigants in marital disputes to show how the power relations in family issues are sometimes sustained and in other times modified by the legal orders.<sup>84</sup>”

In fact, this negotiative power-authority structure is not unique to modern religious institutions as in modern courts, in Mir-Hosseini’s context, and Dār al-Iftā’ of Egypt in this thesis’s context; rather, negotiating power and authority has been explicitly or implicitly present in pre-modern Muslim societies as well. For example, Khaled Abou El-Fadl in his book, *Speaking in God’s Name: Islamic Law, Authority and Women*, talks about the role and authority of the *‘ulama*, religious scholars, in pre-modern Islam, and shows that negotiation was a very important instrument in maintaining their power and authority in the society. He states, “...throughout the classical period, Muslim jurists played a rather dynamic negotiative role in society. They often acted as a medium between the various social structures and political structures<sup>85</sup>.”

Another scholar who explained the social negotiation in Islamic religious institutions is Wael Hallaq in his *Introduction to Islamic Law*, in the context of discussing the mediation role of judges and muftis. He draw from his reading of the structure and development of court system in Islam that courts, judges and even witnesses were strongly connected to the social norms and relations; judges’ task, according to him, is to preserve these relations through their privilege role in the community. Hallaq states: “The Qadi mediated a dialectic between, in the one hand, the social and moral imperative – of

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<sup>84</sup> Mir-Hosseini, p, 15.

<sup>85</sup> Abou El Fadl, Khaled. *Speaking in God’s Name: Islamic Law: Authority and Women*. Oxford: One world, 2010. P,15

which he was an integral part – and, on the other, the demands of legal doctrine which in turn recognized the supremacy of the unwritten codes of morality and morally grounded social relations.<sup>86</sup> According to Hallaq, all members of the courts, including judges, muftis, who work as judges' consulters, witnesses, scribes, are said to be community inspectors<sup>87</sup>. Thus he then claims that courts system in pre-modern Muslim societies was the creature of society and thus is framed by the society's moral norms and social relations than it is to the legal ones. In short, the legal maxims and social norms related to involved parties; the presumed roles and responsibilities; authorities and privileges; communal and gender structures; as well as compromises and mediations, all interplay in the negotiation of marital disputes, both in Shari'ah courts and fatwa councils.

Employing negotiation spaces is a means for the married couple to resolve their disagreements, and to steer their ongoing conversations about their marital-related issues. How then does negotiation function between these marital parties that resort to a third religious authoritative party as the muftis of Dār al-Iftā'? In order respond to this question, we need to understand that power and authority—be their source social, religious, economic etc.— are the basic ground for negotiation; for each party to negotiate, they need to possess or rely on some sort of power or exchangeable benefits to use in their bargaining. The more power and authority each partner possesses, the more they may dominate the negotiation process.

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<sup>86</sup> Hallaq, Introduction to Islamic Law. p, 63.

<sup>87</sup> Hallaq, Introduction to Islamic Law. p, 64.

Provided that the social and legal privileges granted to each married partner vary based on each partner's presumed roles, power and authority in the marital disputes negotiation do not necessarily take an absolute form, i.e. it is not that one partner is in an absolutely powerful and authoritative position over the other, and thus, s/he dominates the negotiation process. Nevertheless, it is, as I have encountered in my fieldwork, a proportional power and authority. In other words, a partner may be more powerful than the other in a certain issue, and less powerful in another. In most of the *Istiftā'* cases, each aspect of the fatwa question is dominated by one partner. An example to this proportional power is, and as will be discussed in detail in this chapter, that wives were always the dominate partner in all marital support cases because they possess a legal and social claim over it, while husbands were the dominate partner in divorce cases because they possess the legal utilitarian claim over it.

There are three major factors of this proportional power and authority, which steer the marital disputes negotiation, and emerge from: a) the established legal rights and duties for both the husband and the wife; b) the social status for both the male partner and the female partner, i.e. the perceived roles and responsibilities for each; and c) equally central to the first two factors in steering the marital disputes negotiation is the third authoritative party involvement, which in our context is represented in the religious authority muftis provide to petitioners; muftis' involvement in petitioners' marital disputes also functions according to the first two factors: legal rights/duties, and presumed social relations.

With these three factors steering the negotiation spaces in mind, this chapter offers a more nuanced understanding of power and authority in the negotiation process in the *iftā'* and *istiftā'* at Dār al-Iftā'. In this chapter, I further analyze this negotiation-power correlation and its basic structure—the three factors I raised above—to show that, similar to the socio-legal compound structure of the making of fatwas regarding marital issues discussed in the previous chapters, the socio-authority compound structure of negotiating marital rights and duties exists. The perceived legal norms, and presumed social roles are equally interplayed in this type of negotiation. Muftis and petitioners use all these elements combined in their negotiation: the husband uses his social position as the male-dominant married partner in the negotiation of his marital disputes in the fatwa sessions as the wife also uses her legal and social rights preserved to her to negotiate in the same disputes.

A clear example to show the negotiation structure between petitioners themselves is one that Mir-Hosseini discusses in her book *Marriage on Trial* about the amount of *mahr*, dower, that is the main financial obligation the groom pays to his bride. She shows how *mahr* is negotiated between the two families by means of social and moral norms to support each family's position. She explains:

The bride's family argues, 'we won't give away a girl like this,' without a guarantee, a pledge; while the groom's side reminds them, 'A high *mahr* cannot bring marital happiness.' What prolongs the process of negotiation is the awareness on both sides that, despite all the maxims and

assurances, *mahr* is not a legal fiction; a woman can and will claim it when she needs to <sup>88</sup>

The bride's family, relying on their daughter's conceived legal right of the dower, is negotiating a high amount of dower, whereas the groom's family, not supported by any legal claims, resorted to a commonly recognized moral fact that money is not happiness. Although both families never explicitly said that the potential dispute in the case of non-fulfillment of marital responsibilities from any of the married couple along with its impact on the entitlement of dower payment, is their main concern while negotiating its amount, this scenario is clearly their motive.

Another example to illustrate this negotiation in the legal discourse between petitioners and muftis, besides the *kināya* cases discussed in the chapter on divorce, is particularly the two cases on conditioned divorce, case (118) and (127). In these two cases, husbands declared a conditioned divorce suspended on actions by their wives, i.e. "if you leave the house, you are divorced." Wives in the two cases fulfilled the condition, but did not mention whether they had intended to perform these conditioned actions to seek divorce or not. Muftis were willing to consider the absence of wives' intention to fulfill the condition of divorce, which is not legally relevant to the ruling, as a subterfuge to invalidate the conditioned divorce and preserve the marriage. Muftis were able to negotiate the legal discourses in order to preserve their stated goal of preserving their society's social relations. In doing so, muftis are able to also preserve their legitimate

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<sup>88</sup> Mir-Hosseini, p, 74.

authority in the society by providing this sort of suitable solutions to the petitioners who were, in these particular examples, eager to preserve their marriage as well.

## **2. Fatwa's Legal and Social Authority**

### **1. Negotiating the Legal Discourses**

A close reading to the attended fatwa sessions strongly points out to the interconnection between the social and the legal authorities in the practice of negotiation, both between muftis and petitioners, and between petitioners with each other. Petitioners use variety of strategies to negotiate the fatwas they are seeking so that it can become as close to what they desire it to be. Muftis also participate in this bargaining process not only as a third party that takes a petitioner's side, but also as law interpreters who attempt to raise the possibility of the accepting the major/preferred fatwas, which in turn elevates their legal authority, and preserve their scholarships. They attempt to achieve this end by means of, for example, stating that a specific fatwa is the "the major opinion," "the most agreed upon among jurists," or "the preponderant one."

In these negotiation attempts, there is an explicit claiming of presumed social privileges and perceived legal rights, and an implicit authority claiming agenda for each of the parties. It is important for muftis to be able to satisfy the petitioners' agendas in order to make a successful claim toward the muftis' own negotiation agenda. Therefore, both attempt to come to an agreement that would suit the petitioners' goal in their marital negotiation as well as the muftis' legal scholarships. Of course, a compromise in both claims is a must in such process. However, it is not always successful, as will be shown.

In cases where petitioners show frustration or discomfort from the given fatwa, muftis make necessary efforts to find other possible ones that comfort the petitioners' needs, and correspond to their own capacities, but that are within the available legal rulings and possible interpretations of the law. Khalid Mas'ud best described this notion of negotiation in *istiftā'* and its crucial role in the muftis' discourse to *iftā'*: "*istiftā'* ensured the discursive development of Fiqh... The mustaftī had a choice to go to another mufti if he is not satisfied with the fatwa. This choice placed the mustaftī in a bargaining position and forced the mufti to respond to the specific points raised in the *Istiftā'*."<sup>89</sup>

Mas'ud here is paying attention to the fact that fatwas are neither binding nor obligatory to follow, and as a consequence, petitioners have the option to seek another fatwa from a different mufti if they are not satisfied with the first one. Accordingly, if muftis at Dār al-Iftā' failed to meet the petitioners expectations, they will look for other sources in which they may find their desired answers. Although this sort of pick-and-choose method of dealing with fatwas is religiously disliked<sup>90</sup>, it is still practiced by some, and of course has the potential to affect the muftis' authority in their society. Therefore, muftis make their utmost efforts to be as connected to the petitioners' needs and desires as possible using the negotiable spaces in the law. This tendency of being connected to the members of the society helps muftis to achieve their goal of preserving the social relations of their petitioners, which are of great importance for them as was

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<sup>89</sup> Mas'ud, Muhammad Khalid. *The Significance of Istiftā' in the Fatwā Discourse*, Islamic Research Institute, International Islamic University, Islamabad, Vol. 48, No. 3 (Autumn 2009), pp. 341-366.

<sup>90</sup> For a discussion on the critique of using of *talfīq* in the legal reasoning, please see: Hallaq, Wael. *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-fiqh*. Cambridge: Cambridge University Press, 1999. P, 207-215.

repeatedly shown in the first chapter. In his article “Transcendence and Social Practice: Muftīs and Qāḍīs as Religious Interpreters,” Kevin Reinhert elaborates on the authority muftis obtain through the members of their societies by means of providing suitable fatwas by saying, “Muftis are the ones to whom the community delegates the task of finding and understanding the law and then passing that knowledge on in a form appropriate to the problems at hand.<sup>91</sup>”

Reinhert is pointing out to one of the most important aspect of the relationship between muftis and petitioners, which relies on expecting social and legal responsibilities from muftis. To further explain the negotiation and authority relationship between both muftis and petitioners, muftis provide petitioners with religious authority to strengthen their position in their marital negotiation. In the same manner, petitioners provide muftis with the social legitimacy for muftis’ religious authority by maintaining their conception of these muftis as authoritative. In an interesting elucidation of the relationship between authoritative religious leaders, such as muftis in our context, and the members of their communities, Hilary Kalmbach explains that although the authoritative religious figure may choose to compel their communities to follow these leaders’ orders—by using their religious authority—in fact, it is the communities that choose to follow the leaders they perceive as legitimate, which points out that these leaders’ authority is sourced in the “choice” of their communities to follow them. She states, “Holders of authority are seen as legitimate leaders of their communities, and these communities recognize this

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<sup>91</sup> Reinhart, A. Kevin. “*Transcendence and Social Practice: Muftīs and Qāḍīs as Religious Interpreters*,” *Annales Islamologiques* 27 (1993), pp. 5-25.

legitimacy by choosing to comply with their demands... an authoritative relationship involves followers recognizing the leader as legitimate.<sup>92</sup>” Thus, the authoritative relationship between muftis and petitioners is a shared reciprocal authority. This authority plays an essential role in steering the negotiation process in the *iftā’* and *Istiftā’* negotiation spaces.

In this regard, it is worth noting that negotiating legal discourses is in fact limited; there are cases that practically meet all the criteria that muftis challenge their scholarships for, but because of other factors that come into play, muftis are not able to accommodate these cases in their legal negotiation process. For instance, in case (24), a married couple came to question three court-documented divorces in hopes that they may be able to invalidate one of them so they may return to their marital bond. The husband claimed that the third divorce was under coercion by members of the wife’s family, and therefore, it should not be counted. The mufti explained to the husband that the type of coercion that might legally invalidate one’s action is only one that threatens one’s life, i.e. the choice would be either to document your wife’s divorce or be killed. The mufti proceeded, “since this is not the case in your divorce, and since you have already documented three divorces in the court, all of them are valid explicit-divorces, and we cannot do anything about them.” Thus, although the married couple are keen to preserving their marriage, which is a prime concern to muftis as well, the subordination to the official state system and the loyalty to their discourse regarding *ṣarīh*, explicit, divorce, which they count all

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<sup>92</sup> Kalmbach, Hilary. *Women, Leadership, and Mosques: Changes in Contemporary Islamic Authority*. Leiden: Brill, 2012. P, 6.

documented divorces as explicit and thus unavoidable, prevented the mufti from granting petitioners any legal negotiation spaces.

In case number (36), a woman, in the presence of her fiancé, told a story about her *'urft* marriage—unofficial and undocumented type of marriage where a man and a wife decide to marry with all the marriage conditions without registering their marriage at the state marriage registration office—that lasted for few years until she conceived a child at which point her husband left with the unofficial marriage contract; she gave a birth to this child two and a half years ago. In order to document her child, she raised a paternity case at the Egyptian court, but the husband appealed to the court, and refused to claim the this child as his own. The case was still in process for over two years, and the child does not have any official documents, and accordingly will not be able to go to school, etc. The *Istiftā'* question the woman posed to the mufti was the following: “Is it permissible for my fiancé, whom will soon be my husband, to officially register my child as his own so that we can issue a birth certificate for school and other purposes?” At that point, the fiancé showed his interest and his acceptance of officially registering the child under his own name. The mufti, however, was very firm and clear: “This is impermissible because it leads to *ikhtilāf an-nasab*, lineage confusion, which is forbidden in Islamic law. You should follow up with your court case and insist that your previous husband claims your child.” The two petitioners spent about fifteen minutes trying to explain to the mufti of the difficulties the child will face, and their hopeless court case in order to negotiate the fatwa they received, but the mufti, although showing sympathy to the case, was not able to provide them with their desired fatwa.

The mufti settled for giving advice that directed the petitioners back to the court while definitely knowing its near impossibility. The laws and judicial codes for paternity are in fact the most complicated ones in the Egyptian Personal Law for the fact that paternity is discussed in the Law under one specific case, which is the case of divorce or separation, and the wife and children's entitlement of alimony to be paid by the husband. There does not exist a paternity Law that "governs the issue of paternity as a separate legal dilemma."<sup>93</sup> As observed by Hind Ahmad Zaki in her case study of paternity lawsuits in Egypt, wives are always the ones who file these paternity cases and "since there is no specific law governing paternity in Egypt, women are often left to the mercy of the individual judge." There is also no such law that compels husbands to undergo DNA testing either<sup>94</sup>. As complicated as paternity cases for wives seems, it is even more complicated for the petitioner in the previous case because she doesn't even have proof of a marriage, and therefore, is why her case has been on-going for more than two years. This example particularly shows, besides muftis' negotiation limits, the competed authority of courts and fatwa councils; the mother's request to register her child with

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<sup>93</sup> Zaki, Hind Ahmad. *Law as a Tool for Empowering Women Within Marital Relations: A Case Study of Paternity Lawsuits in Egypt*. Cairo: The American University Press in Cairo, 2012. P, 34.

<sup>94</sup> Hind Zaki reports that she did not find a single judge in her study that ordered the husband to undergo the DNA testing in a paternity case. She also critically discusses the new draft of paternity law suggested by Muhammad Khalil Quoita that obliges husbands to undergo this test and discuss the steps and consequences of such law. However, it is worth noting here that Dār al-Iftā' under consideration refused the DNA testing idea and argued that it is impermissible for many reasons, one of which is that it is going to be used as a proof of *zina*, adultery, and this contradicts the notion of *satr*, preserving and covering Muslims' religious reputation. Another reason given in their detailed fatwa is that although DNA has been scientifically proves accuracy; it is still legally doubtful in the method of which it is performed. The main rule governing jurisprudential rulings is that "certainty is not to be removed by doubts" accordingly, the certainty of non-adultery is not to be removed by the doubt of adultery.

For a detail fatwa, please review, Dār al-Iftā' al-Miṣriyyah, the Egyptian Fatwa Council. "The Establishment of Dār al-Iftā': History and Development." Web. <http://www.dar-alifta.org/ViewFatwa.aspx?ID=4636&text=DNA>.

someone else's name is not only forbidden for its lineage confusion, but also illegal based on the Egyptian law codes. If the court found out that Dār al-Iftā' provided religious authoritative fatwas that conflict with its law codes in matters such as paternity or as the previous example of the court documenting divorce as explicit, it would certainly create conflicts in both the institutional relationships of both courts and Dār al-Iftā', as well as chaos in the society's legal system.

In addition to the fact that the jurisprudential schools followed by muftis, and the scope of their legal rulings is the major factor of such negotiation limits, it is also true that by preserving these legal limits, muftis are also preserving their religious legitimacy; failing to safeguard the legal system of which they are responsible for its interpretation would in fact negatively affect the perceived authority of muftis by the members of their society.

## **2. Negotiating the Social Practices**

After explaining the authority relationship between muftis and petitioners and how it influences the negotiation process in the legal solutions of marital disputes, I will explain here that this negotiation process did not only take place in choosing between the possible legal opinions, but also in the particular application of the chosen fatwa, this application negotiating incorporates the social positioning of petitioners.

The economic status of petitioners also played a role in negotiating the application of the fatwas. For instance, in regard to the sufficiency of money in an atonement penalty—feeding ten poor for a broken oath fatwa—the mufti and the petitioner discuss

the estimation of the money required for that penalty based on the petitioner's income and class status, as well as the current prices/expenses in the city. It is neither required that the petitioner asks about the exact amount s/he should pay, nor was the mufti required to provide such estimation<sup>95</sup>. Here, the mufti and the petitioner engage in a negotiation to agree on an amount that fulfills the already issued fatwa. In this process, the mufti relies on: a) his knowledge of the social contexts of the petitioners since he is a member of the same society; and b) his legitimate allowed interference in the petitioners' affairs since he is perceived in the society as a legitimate religious and social mediator.

Thus, negotiating the application of the given fatwa through contextualized social discussion is also essential in the practice of fatwa-giving in this sense. It also points out to the expected involvement of the mufti in petitioners' practices and relations. In case number (80), an adult married man and a young teenager presented the following *Istiftā'* case: the girl is the man's niece, whom was kicked out of her parent's household because of her 'inappropriate behaviors,' as reported by the uncle, who wants to host her in his own place. This uncle's wife, aware of the girl's parent's claim about her behavior, however, refuses to accept hosting the girl, and threatened the husband to leave the house if he insisted in bringing her to their place. The man's question—presenting this in the presence of his niece—was not whether the wife has the right to make such claim, but rather, as he puts it: “So now the girl is homeless and I'm afraid if I do not provide her a household she may deviate from the right path [meaning her behavior will get bad], so what should I do? Should I ignore my wife, who already left the house insisting the girl

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cannot stay, or leave the girl, who would then turn to a homeless, and maybe wrongdoer?” The mufti asked the young girl to wait outside until she is called back in, and when she left, he turned to the man and asked, “Be honest—is there any type of relationship between you and the girl that your wife is suspecting?<sup>96</sup>” The man assured that the girl is merely his niece and he treats her like a daughter. The mufti then asked the man to bring his wife to Dār al-Iftā’, and volunteered to talk to the wife to convince her to accept the young girl in her place until she finds another one.

As shown in this case, the *istiftā’* question was in fact a social situation rather than a religious legal one—although some legal-related issues, such as the permissibility of living with the girl alone, in a *khulwah*, was brought up by the petitioner in the conversation. The man, aware of the muftis’ power and legitimacy among the people of Egypt, attempts to use such authority to negotiate his dispute with his wife; brining a third authoritative party, who agrees with the man, to the conversation will indeed strengthen his argument with his wife. The mufti, in turn, did not hesitate to engage in a social affair that would solve the social situation of his petitioner. Driven by both the concern about preserving the petitioner’s marriage and the concern about the moral and religious development of the girl, the mufti showed willingness to join this social negotiation of the case presented.

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<sup>96</sup> The mufti’s question about the suspicious relationship between the man and his niece was surprising to me at first, until he explained to me later that he encountered several incest cases before and therefore he wanted to make sure he is not mediating between the man and his wife to convince her to accept a situation that is already wrong.

The following is another example from a fatwa session that also compromised a great deal of this type of negotiation. Case number six regarding a *nafaqa*, marital support fatwa, the mufti, as a response to the wife's complaint about the insufficiency of the money the husband provides to the family, discussed the amount of money that is sufficient for a good living for a family of petitioners' size until they agreed on an exact amount:

Mufti: "What do you do for living?"

Husband: "I'm an accountant and my salary is (...)."

Wife: "He barely pays for whatever we need, although he is in a well-off position."

Mufti: "So, how much money would satisfy you?"

Husband: "I'm saving money for any circumstances."

Mufti: "please raise the amount of money you give your wife."

Husband: "OK, I will add (...)."

Mufti: "Let them be (...) for that the living expenses is higher now and the kids' needs are much."

The fatwa session could have ended at obliging the husband to provide sufficient marital support to his family, but it continued to negotiate the sufficiency in order to avoid potential social disputes on what would be acceptable to fulfill this sufficiency, such as the wife claiming excessive amount of money to only be sufficient, or men claiming a deficient amount of money as sufficient. Petitioners in the session expected, and appreciated, the mufti's involvement in their social negotiation. Hence, the legal and social involvement anticipated altogether from muftis in the Egyptian fatwa council suggest that muftis need not only to have a strong knowledge of the law, but also to be strongly situated within the specific context in which they perform *iftā'* in order to be

able to successfully manage these negotiation processes. Meeting the petitioners' expectation is crucial to muftis for the maintenance of their legitimate authority as religious mediators, which is based on both their qualified legal scholarships as well as the support and appreciation the people of their society grant them.

### **3. The Obedient Wife and the Financially Supportive Husband in Egyptian Courts and Society**

The basic structure of the legal and social position of the female partner and the male partner of the institution of marriage in the Egyptian society is based on a reciprocal image of their rights and responsibilities. While the female partner owns the right to *nafaqa*, financial support, and owes the duty of *ṭā'ā*, obedience, to her husband, the male partner owns the right to obedience, and owes financial support to his wife. The Egyptian Personal Law codes, as stated on Law 25 in 1920, amended in 1929, 1979, and 1985, holds that “The wife’s *ṭā'ā* is a husband’s right while the *nafaqa* is a wife’s right.”<sup>97</sup> In fact, as a supportive evidence for this reciprocal nature of the obedience-financial support marriage structure, pre-modern and modern jurists disputed the entitlement of the disobedient wife to her owed financial support. In the same manner, but less affirmation and significance, they disputed the entitlement of the non-supportive husband to his owed wife obedience<sup>98</sup>.

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<sup>97</sup> Sonbol, Amira El Azhari. *Women, the Family, and Divorce Laws in Islamic History*. New York: Syracuse University Press, 1996. P, 282.

<sup>98</sup> Sonbol, p, 282.

The juridical and jurisprudential recognition and establishment of these reciprocal rights for both of the marital couple gives them an equal right to demand such rights, and accordingly gain the mufti's or the judge's support in obtaining and negotiating them.

Egyptian families, as Hanan Kholoussy shows in her book, *For Better, For Worse: The Marriage Crisis That Made Modern Egypt*, subscribed to the notion that the “husband alone was responsible for his wife’s financial support as long as she was obedient... a Muslim husband was required to provide regular maintenance (*nafaqa*) to cover her food and clothing expenses. For a woman of the highest class, he was also mandated to provide a servant or two.<sup>99</sup>” In the same manner, as Kholoussy puts it, “A proper Muslim wife was instructed to obey her husband fully.<sup>100</sup>” Clearly, in the obligation of *nafaqa*, the social class plays a big role on the expected application of the already established notion of *nafaqa*, which will also be encountered in muftis’ *nafaqa* fatwa sessions where they use the available social class information they have about the petitioners seeking fatwas in order to estimate the sufficient requirement for *nafaqa*. In the same manner, the definition of obedience also takes on different forms, but basically, refusing sex and abandoning the marital home are the most typical examples that will be discussed.

But did these very clear rights and duties of both marital partners effectively practiced in modern Egyptian society? Kholoussy points out to the fact that the husband’s duty to provide *nafaqa* was not necessarily applied properly in the society; men

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<sup>99</sup> Kholoussy, Hanan. *For Better For Worse: The Marriage Crisis That Made Modern Egypt*. California: Stanford University Press, 2010. P, 45.

<sup>100</sup> Kholoussy, p, 67.

sometimes were not always the “dutiful provider” to their families, and hence the Egyptian Legal system, in 1910, established an institution to further enforce this duty. In the 1875 Egyptian Islamic Code of Personal Law, it gave the wife the right to request a judge to imprison her husband up to thirty days if he refused to support her<sup>101</sup>.

As for the notion of women’ obligation to obey her husband, it was also not always the case, and therefore, similar to the developed institutionalization of *nafaqa*, *ṭā‘a* was also further developed in the Egyptian society by the state’s interference in the institution of marriage; the state courts have invented a legal institutionalized form of the obligation of obedience, which is, *bayt aṭṭā‘a*, the house of obedience, to compel disobedient women to obey. In fact, the only form of disobedience that the Islamic courts were able to implement was that of a wife moving out of her husband’s house without his permission since, practically, it was the easiest for husbands to prove to the judges<sup>102</sup>.

In her book, *Women, the Family, and Divorce Laws in Islamic History*, Amira El Azhary Sonbol argues that the nation-state contributed and reinforced the patriarchal order in the Egyptian society by their institutionalization of these marital rights in order to preserve the social structure. The system, as developed by the state-nation, has categorized the addressees of the law by their social units such as their gender or class, which is dangerous in many levels, one of which is the enforcement of hegemonic structure of social relations. Sonbol states, “By conceptualizing the law on the basis of sexual differences that are then justified by human nature arguments, the rest of the

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<sup>101</sup> Kholoussy, p, 46.

<sup>102</sup> Kholoussy, p, 67.

patriarchal order falls into place.<sup>103</sup>” Sonbol supports her argument by the fact that “codification,” which is a main feature of the State Law system, was not a main concern to Muslim jurists in their production of legal rulings; rather, their production of rulings was on the basis of debating the laws while dealing with case by case<sup>104</sup>, with this fact even clearer in muftis’ issuing of fatwas in our contexts. In order to reinforce this patriarchal order in their codification of the law, state-nation, as Sonbol argues, uses *talfiq* in its formation of the codes of the Personal Law in the first place. She states, “The Law was going to be essentially Hanafi law, except when it suited hegemonic order, then Maliki law was used.<sup>105</sup>” An example to illustrate this *talfiq* practices is shown in the case of sex and rape crimes, which should be placed under family and gender relations under the Personal Law, but it is rather placed under criminal law, and was given modern laws because they are “more lenient toward rapist.<sup>106</sup>”

This discourse taken by the Egyptian Personal Law and Shari‘ah court system in structuring the image of the marital partners’ rights and duties, and the attempts to institutionalize them as means of preserving the social practices is both problematic and hegemonic. It led to the legitimatization of social patriarchal practices as well as the limiting of negotiation spaces to its codes and articles, although judges as muftis may also find their ways to challenge these juridical codes as will be shown. Understanding this state-nation discourse is vital in understanding Dār al-Iftā’ ’s discourse in dealing

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<sup>103</sup> Sonbol, p, 278.

<sup>104</sup> Sonbol, p, 282.

<sup>105</sup> Sonbol, p, 279.

<sup>106</sup> Sonbol, p, 279.

with the same image of marital partners and their presumed roles and responsibilities for two main reasons: first, it will explain the competed and negotiated authority between courts and fatwa councils in providing suitable answers to the members of the society, as was discussed earlier in the introductory chapter, and when and why muftis of Dār al-Iftā' attempt to avoid conflicts with state laws or attempt to grant their petitioners alternative solutions from the courts. Second, it explains the petitioners' resorting to Dār al-Iftā' instead of the court to avoid the complexity of Egyptian courts structure. These two factors will be further clarified in the next section when discussing the fatwa sessions in regards to the obedient wife and the financially supportive husband.

#### **4. The Obedient Wife and the Financially Supportive Husband at Dār al-Iftā'**

The principle established in muftis' fatwas at Dār al-Iftā' regarding the reciprocal marital rights to each of the marital partner is similar to that of the judges' previously discussed judicial laws; the husband is obligated to support his wife, and is entitled to her obedience, and the wife is obliged to obeying her husband, and is entitled to his financial support. The only sort of differences between both the court and Dār al-Iftā' lies in their perception of the application of each right, which depends heavily on the nature and structure of each of them. For instance, Dār al-Iftā' as a non-binding legitimate religious authority, takes a negotiated and preached approach in employing this principle in their fatwa sessions. Courts, on the other hand, use a negotiated compelled approach—and as seen, institutionalized—in employing those rights in the society.

In her book, *In the House of the Law*, Judith Tucker practically shows this positional negotiation power interplay through her analysis of the Ottoman court records of family

issues such as marriage, divorce, and *khul'*. She casts light on the alertness of judges, as well as muftis who work in the courts, in their ensuring of the fulfillment of the legal and social positions to each marital partner. Identifying the social and legal situations for each marital partner enables judges to decide which side they should take in the negotiation process, when necessary. Throughout Tucker's chapters on divorce and marriage, we can see the emphasis on the following two main conceived themes in negotiating marital disputes: the first is the husband as the financial supporter of the family, and the second is the wife as the obedient partner.

**i. Muftis Responding to Women's Demands of Financial Support**

The principle of the husbands' obligation to support their wives was a major element of what Judith Tucker shows with regards to women's claims or cases on marital support, post-*ṭalāq* allowances, etc., which received a great deal of support by muftis and judges in her study. Despite this fact, Tucker points out that "women often ran up against the difficulty of proving their claims," as was pointed out in the second chapter that dealt with divorce in Egyptian courts. For instance, wives have the right to obtain a divorce on the ground of harm, but proving the existence of harm is a challenge. Another example Tucker discusses, which support the principle of male's financial obligations and in turn the female's financial rights, is related to *khul'* cases. In the *khul'* cases Tucker encountered, she found that muftis, taking the wife's side, insisted on ensuring the wife's explicit consent in *khul'* for the fact that *khul'* terminates some/or all of the wife's financial rights. Because the husband may attempt to "persuade his wife to agree to *khul'*,

or at most claim that a *khul'* had taken place,<sup>107</sup> muftis were extra careful about receiving such explicit consent from the wife in question. Moreover, with the present of the father, an example given by Tucker, the mufti will still request an explicit consent by the wife. Tucker states, “The muftis were careful to note that a *ṭalāq* divorce could not be taken for a *khul'* and used as a way to abridge a woman’s rights.<sup>108</sup>” This adherence to women’s financial rights within or after a marriage is emerged from a strong tendency and agreement toward her positional power in negotiating in this particular subject, namely her financial and property rights. This power is obtained through her perceived legal rights that muftis are keen to preserve as part of their bigger scale of preserving social relations through legal discourses.

Muftis at the Dār al-Iftā’ never failed to support this agreement. Examples encountered on my fieldwork varied from demanding the fulfillment of basic needs and living expenses to negotiating specific post-*ṭalāq* allowances, and up to demanding gratuitous financial gifts responding to equal giving to multiple wives. For instance, in case number (61), a *niqabi* wife—the wife wearing a veil—who was accompanied by her husband, presented a case against him on the grounds that when he married another woman (with her knowledge) and granted the new bride a house to own, he did not grant her, the petitioner, a similar house. The question was framed as the following: “Isn’t it my right to demand a similar one?” The mufti’s response affirmation what she expressed: “Yes, it is your right.” The husband attempted to explain that his new wife needed the

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<sup>107</sup> Tucker, p, 99.

<sup>108</sup> Tucker, p, 96.

new house, but quickly failed in his attempt because the mufti was clear in stating that starting from the moment the man remarried, both wives should be treated equally. As established in the Islamic Fiqh, jurisprudence, texts, it is an obligation upon husbands to give equal financial duties to their wives to the extent that it was made a condition of polygamy (Q 04:03- 4:129). Particularly this case shows the extent of which muftis are willing to support women's claims of any financial rights even if it is not merely *nafaqa*, but also property rights over their husbands. Women then were able to use the accessible religious authority provided by Dār al-Iftā' to negotiate their financial rights to the extent of demanding equal distribution of gifts in a polygamous marriage, which the wife, in the previous case, accepted in the first place. Had this wife restored to the court instead of Dār al-Iftā' for her request, she wouldn't have been granted any sort of judicial support because the principle of financial equality for multiple wives has not been coded in the Personal Law. The Personal Law merely necessitates that the husband provides a suitable household for his wife/wives, but it does not mention that these houses or any other property rights should be equally provided to multiple wives.

This last point shows how Personal Law courts, although supposedly based on Shari'ah laws, fail to provide specific religious rulings because of their interest in applying Shari'ah laws is judicial and not necessarily religious. On the other hand, Dār al-Iftā' —also based on Shari'ah laws, but more connect to the social practices of the religious laws—are more responsive to these sort of laws because their interest in providing solutions to their petitioners is not only legally based, but also religiously based. Thus, the husbands' financial legal duties, which muftis take for granted, help

them to decide to take the women's side in cases where wives request such rights over their husbands.

These financial rights settled to women by muftis, despite the owed obedience in return to receiving them, provided women with enhanced position in regard to protecting their independent economy status. As explained by Maya Shatzmiller in her book, *Her Day In Court*, —which study the payments to women involved in marriages in medieval Granada—because of the fact that Islamic legal system has provided women with a full legal competency over properties and established financial rights, such as *nafaqa*, dower, alimony, etc., women's position in the society were improved as a result of the interaction between social practices and economic status in Muslim societies.

Importantly, Shatzmiller also showed, through examining the archival records of Granada courts, that women in this era did enjoy legal and financial rights that provided them an integral role in the society as well as a protected economic status, specially by means of the separation of property within marriages that did not allow husbands to have access to their wives' properties<sup>109</sup>. Hence, the legalization of women's financial rights in Shatzmiller's context has helped women to guarantee obtaining them through Granada courts. Similar to Shatzmiller's context, the legalization of these financial rights in Egyptian courts, besides the religious ratification bestowed upon them in the institution of *Dār al-Iftā'*, as well as the social affirmation to the same notion, have altogether

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109 For a detailed account of Shatzmiller's argument: Shatzmiller, Maya. *Her Day In Court: Women's Property Rights in Fifteenth-Century Granada*. Cambridge: The Islamic Legal Studies Program, Harvard Law School, 2007.

provided an avenue to Egyptian women to obtain their legally, religiously, and socially established financial rights.

**ii. Muftis Responding to Husbands' Request of Wives' Obedience**

Muftis are no exception in their position regarding the principle of women's obligatory obedience. Obedience is an essential element of how women are conceived in the society and the religious institutions. Moreover, it is not only obedience to the husband by the wives, but also to the closest male relative, the father in the first place. Despite the fact that father's obedience in the Islamic jurisprudence is not limited to daughters, but indeed sons as well, in the Muslim societies such as Egypt, the emphasis is always on the daughters' obedience. Since this chapter is dedicated to the marital negotiation, my focus in this section is specific to the wife's obligatory obedience to her husband. I would also like to bring to attention to what was discussed in the second chapter that the wife, according to jurists, is not legally competent to divorce, and therefore, she has no reciprocal right to divorce her husband. This position places wives—as the object of the divorce not its actor—in a weaker position in the negotiation process that was mostly limited to muftis and husbands regarding the latter's divorce. Wives had no space to participate in this negotiation except as an indirect device to backing up the husband with necessary information about the divorce incident. Even this role is restricted to wives who wished to preserve their marriages, and not to those who wished to obtain a marriage dissolution; if the backing up information the wife voluntarily offers is not helping in this regard or rather may result in the establishment of the divorce, they were not put into consideration.

The case number (35), which has been discussed in the previous chapter, was a good example to this limited engagement of a wife in the divorce negotiation. The wife in this fatwa session wished to save her marriage while the husband seemed reluctant about accepting the mufti's fatwa of invalidating his pronouncement. The mufti supported the wife's narrative of the divorce incident—she claimed the husband was very angry and irritated by her behavior, and that his pronouncement was a response to that, while the husband insisted he was aware and intended to divorce her—in this case because it would lead to the preservation of the marriage. Calling attention to this incident again is to emphasize that there are two major cases where muftis, as a third party in the marital negotiation, took the husband's side in such negotiation: first, in the divorce cases where husbands declared large number of divorce pronouncements, including oaths, and claimed not to have intended them, and muftis supported their side to preserve their marital bonds disregarding whether this choice was also supported by the wife or not; and second, in the cases of disobedience-claims by the husband against his wife.

In fact, although there was not a single case in the attended sessions that was primarily set for the purpose of presenting an obedience case by the husbands, in the majority of marital cases husbands took the opportunity to complain about their wives' disobedience while at the fatwa session. Muftis were clear that it is an obligation over the wife toward her husband to obey him unless what he asks for is forbidden. For example, in case number four, an unaccompanied wife in her fifties asked the muftis if she has to obey her husband who forbids her from going to perform pilgrimage claiming that he does not want her to travel. The mufti's response was that she does not have to obey him

at all, and that it is even forbidden on him to prevent her from such a thing. You should explain why she doesn't have to obey him in this scenario.

In case number five, however, a young couple with two members of their family—the wife's brother and another unidentified—came to question a conditioned divorce, and after receiving the fatwa, the husband began to present an obedience dispute case; he complained about his wife's disobedience in general, and her dress code in particular—in the session the wife was wearing a headscarf, jeans pants, and a long-sleeved top all in black. The mufti, after listening to the husband's complaints and the wife's objections to his complaints along with her own complaints—she had complained about her husband's drinking and her dislike of sexual behaviors—decided to take the husband's side in this negotiation, and began to talk to the wife about the importance of fulfilling the obligation of obedience to her husband, and to listen to his orders in all their affairs including her dress code if it bothers him if she wishes to preserve her household.

An interesting example given by Sonbol in the breaking of *tā'a* as a means to obtain juridical divorce in an Ottoman court was fascinating in its significance of portraying the strong relationship of obedience to the institution of marriage in the first place. In her example, she illustrates a court case of a husband who was ordered to pay his wife's *nafaqa* and in return, he demanded his wife's *tā'a*, and forbid her from going to the supermarket without his permission. The wife, who clearly was not interested in continuing her marriage, went to the supermarket, brought neighbors as witnesses of her action, and presented her case to the Ottoman court that granted her a divorce on the basis

of “breaking her *tā‘a* to him [the husband], that is, breaking the marriage contract.<sup>110</sup>”

This example is difficult to imagine its possibility in Dār al-Iftā’'s fatwa sessions since Dār al-Iftā’ neither holds the compulsory authority courts enjoy, nor it is responsible of investigating the facts presented in its cases, such as bringing witnesses. This example is significant in its indications about the strong linkage between obedience and the institution of marriage to the extent that breaking obedience may result, with the interference of a juridical authority, to breaking the marriage as a whole. Another significant point of this example is the fact that wives, both in courts and fatwa councils, are able to use these religious institutions’ negotiated feature to obtain their desired solutions despite the fact that both enforce and reinforce patriarchal nature upon the marital relations in the society.

Based on the presented cases from the fatwa sessions as well as those through the court, in regards to both the obedient wife and the financial supportive husband, it is now easier to understand the important interference of the religious and state authorities in the formation and application of marital relations in Muslim societies. Equally important is the understanding of the impact of the different nature of each of these institutions—*shari‘ah* courts and Dār al-Iftā’—on the different nature of their interference in the marital relations among Egyptians. In other words, although both authorities hold the same conjugal image of what is owned and owed to each partner in the marriage, they vary in their ways of implementing this image. On the one hand, *shari‘ah* court, as a binding and legalized institution, pays attention only to what has been codified in its legal

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<sup>110</sup> Sonbol, Amira El Azhari. *Women, the Family, and Divorce Laws in Islamic History*. [Syracuse University Press. 1996], p. 281

system as solutions to cases of disputes; what constitutes disobedience and what constitutes non-payment of *nafaqa*, and the criteria of deciding on both constituted laws, will be further modified by the possibility to prove it in a considerable methods of evidentially accepted by the Egyptian courts admissions that *shari'ah* courts are also subject to, as mentioned in previous chapters. Dār al-Iftā' on the other hand, as a highly negotiated and accessible religious institution, is able to offer a different and wider sort of interference both in terms of providing religious solutions that respond to the community's religious needs as well as negotiating the particular application of these solutions without having to be restricted to specific fatwas or a legal system.

### **iii. Women: Agencies of the Family and the Law**

Women resorting to Dār al-Iftā' were able to claim financial and moral rights over their husbands in the fatwa sessions. They were also able to negotiate these claims in favor of their own desired solutions. Yet, negotiating rights was not the only type of engagement women were able to dominate in the *Iftā'* process; women were also able to pursue greater negotiation spaces outside their “legal and social rights zone,” i.e. they aimed to steer the fatwa session that is not solely related to their perceived roles and responsibilities as mentioned earlier in this chapter, but in the direction they desired—be it the interest of their families, the interest of their husbands, or, most significantly, the interest of their religious piety through the correct practice of the law.

Women had the chance to participate in the details of the *Istiftā'* case as well as negotiating the given fatwa, such as the particular atonement payment in the following

case where in a very interesting and funny session; a middle-aged couple presented a case about a conditioned divorce. The husband had said, “If she [his wife] have done so and so, she is forbidden upon me” and then discovered she has already done that thing. As routine, the mufti asked the husband about his intention, and after the husband’s affirmation not to have intended the divorce, the mufti invalidated the pronouncement, and the session was about to close until the wife requested to speak about past divorce incidents that the husband did not mention.

The following is the summarized dialogue:

Wife: There were also other incidents where he pronounced different divorce oaths.

Husband interrupting her: You know I repented and I won’t do it again.

Mufti: What were they? Do you [the husband] remember any of them?

Wife: I do remember everything he said.

Husband: [to his wife] The mufti is busy and we should go.

Wife: I need to talk to him about all of the other oaths as well.

She proceeded to tell of five oaths for divorce, and the mufti addressed them all. He declared them all invalid, but since they are broken oaths, the mufti requested that the husband pays a *kaffārā* for each, and he specified the amount of money for each one.

Wife: Isn’t it possible that we can reduce this amount? We cannot really afford that money.

Mufti: You may fast if you can’t pay the *kaffārā*.

Wife: Do I have to fast as well or only him [the husband]?

Mufti: Only the husband has to fast.

The woman, as far as I could tell, was not eager to prove or validate a divorce. On the contrary, she was trying to make sure that her marriage was not affected by the

husband's repeated divorce oaths. Therefore, she made necessary efforts to help the mufti understand the exact incidents, and to decide on the cases. She also helped her husband, who seemed very scared of the oaths he had taken for fear that they might end his marriage to the extent that he did not want to present them in the session, to get a suitable response to his oaths and the required atonements.

In case number (51), a married couple presented a case of *zihār*, oath of continence, taken by the husband, which renders marital intercourse illicit until an atonement is paid by the husband. After the mufti gave the fatwa of an estimated amount of money the husband should pay as atonement before he engages in intercourse with his wife, the wife began to negotiate the estimated amount of money suggested by the mufti claiming that her husband is poor, and the family cannot afford paying the entire amount in a short period of time. It is clear that the woman did wish for the atonement to be paid soon enough so that she and her husband would be able to go back to their normal marital relation.

In case number (31), a young married couple were unofficially separated on the basis that the husband declared three divorce statements of which they thought, without asking, were irrevocable divorces. The husband came to Dār al-Iftā' alone, in a previous session that I did not attend, and asked about the statement he had pronounced, and the mufti invalidated them. In the session I attended, however, the husband brought his wife to the mufti because she did not believe him, although was very hopeful it was true, to verify that the divorce was not established. Actually, cases of separation between married couples who do not obtain official divorce exist in a surprisingly large number in

Egyptian societies due to many factors such as not wanting to deal with divorce settlements, the social stigma of being “divorced”, which is significantly more distrustful for women than men, etc.

These cases show that Dār al-Iftā’ was able to provide women access to religious-authoritative spaces to obtain their rights and to negotiate their marital disputes as well as engage in other negotiation spaces whenever they desire to acquire other specific religious or family related goals.

Other cases showed mutual desired fatwas between the married couples or decisions that were made prior to their visit to Dār al-Iftā’ where their visit was for the purpose of seeking consultations with regards to the validity of their mutual solutions, and the method to acquire and apply it. The following is an example of a husband and his wife who came to Dār al-Iftā’ asking about the process of cancelling an oath divorce, i.e. the husband declared a divorce oath on something, and he is willing to withdraw his oath.

In case number (98), the fatwa question raised by the wife in the presence of the husband was as following:

The wife: my husband said to me, “if you go to search for a job, then you are divorced” and I did not, what then should we do to cancel this condition?

Mufti: [to the husband] This is not a divorce and you can take back your oath and pay the atonement.

As shown through this example, although it is the husband who plays the larger role in the marital disputes in general—divorce cases in particular—women are able to find places in which they could engage in the *Iftā’* process, and use the accessible religious

authority of Dār al-Iftā' to obtain desired results or to use it as a pressure tool to negotiating these desired results, again, only when they are aligned with the Dār al-Iftā''s methods and aims.

In this respect, Mir Hosseini raises some fundamental questions about the use of courts as means to achieve an end even outside the courts, drawing from this premise that courts are not only used to seek juridical judgments, but also used as a bargaining method of which people attempt to negotiate rights and duties, and that may result in the ending of the dispute outside the court order:

The court system is used in different ways and for different purposes by men and women. The larger number of cases brought by women is a reflection of the unequal nature of martial rights and obligations. Women resort to court to improve their bargaining position vis-à-vis their husbands. Men come to court to offset – or preempt—their wives' actions... 30 per cent of *nafaqa* and 42 per cent of *ruju*' cases ended in *tanazul*, withdrawal of the case, indicating that an agreement was reached outside the court<sup>111</sup>

Courts, and similarly fatwa councils, thus, are primarily used as arenas for negotiating marriage and other marital relations especially by women.<sup>112</sup>

It is crucial that we understand, based on what is explained throughout this chapter, that both the interpretive and bargaining features of *iftā'* depend primarily in the following aspects: first, a shared social and cultural ground between muftis and the petitioners allows both to push and pull in a dialogue and negotiated manner over mediated solutions in order to satisfy each of the parties involved. It is worth noting that

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<sup>111</sup> Mir-Hosseini, p. 50

<sup>112</sup> Mir-Hosseini, p. 53

despite the choice granted to petitioners to seek different fatwas had the fatwa they received is not desirable, petitioners at Dār al-Iftā’'s fatwa sessions seemed to be willing to accept advices given to them by muftis almost all the time. This is indicated in some phrases said by petitioners such as: “I married him on the basis that he is religious, and that the Islamic law is our judge,” said a wife in one session; “We came here so you would be our final judge,” said a couple in another session; and “We are going to do just as you say,” said several wives/husbands. Sometimes at the end of the fatwa sessions, petitioners would declare a promise that none of them will reject or reconsider what the mufti says. As Hussien ‘Ali ‘Agrama observed, despite the fact that fatwas are non-binding, petitioners voluntarily do follow the given fatwa. He states, “People do not have to obey the fatwas they receive. There are no institutionalized enforcement mechanisms for them... [yet] those who received a fatwa tended to follow it even if this caused them difficulty or some unhappiness.<sup>113</sup>” This tendency by the petitioners gives much significance to the negotiation process at the fatwa sessions since it makes them more eager to succeed in their negotiation with the muftis as well as making the muftis keen to meet the legitimacy devoted to them by the petitioners’ commitment to their fatwas.

Second, there are strong set of shared presumptions of prescribed roles and responsibilities for each marriage partner between muftis and *mustaftīs*. For this reason, as seen, muftis in many sessions advised wives to obey to their husbands, and advised and husbands to satisfy the financial needs of their wives in order to maintain their

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<sup>113</sup> ‘Agrama. ‘Ali Hussein. Ethics, *Tradition, Authority: Toward an anthropology of the Fatwa*. (The American Anthropological Association: Vol. 37, No.1, pp. 2-18) p. 4

marriages. That is to say, there is a continued attempt to preserve a deeply rooted social structure and legitimate authority in both the relationship between muftis and petitioners, as well as between the married partners.

Third, the religious piety that motives petitioners to resort to religiously authoritative figures to solve their disputes and to ensures their practices are in line with their religious belief and commitments. The recognition of people's religious needs is significant to the understanding of the reasons behind using Dār al-Iftā' as a means to negotiating their disputes, and to the understanding of their willingness to negotiate and compromise between their desired fatwas as well as the applications of such fatwas. In this regard, Hilary Kalmbach points out that “the increasing popular demand for religious instructions has led to the expansion of religious preaching<sup>114</sup>” and thus, the issuing of fatwas became essential to the society.

#### **iv. Religious Preaching Based on Social Expectations**

It is worth noting that all husbands who presented divorce cases in the sessions I attended, including those that were conditioned and oaths, received a great deal of rebuke and preaching advice because of their unacceptable behavior in their impetuous use of divorce. The head of the oral fatwa department particularly pointed out to me that this preaching is an essential part of the *Iftā'* at Dār al-Iftā' for that they also hope to be able to refine such behaviors. The percentage of the cases that mentioned they have come before to Dār al-Iftā' in previous similar divorce incidents (about 40%) indicates that

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<sup>114</sup> Kalmbach, p,

such rebuke is not necessary effective or successful. The reason for its unsuccessfulness, as it seems to me, is that the ground that allows them to use their unilateral divorce right as a social control is not removed by such rebuke. This ground is mainly presented in two things: the privilege male-authority that the society is granting to husbands as the male partners in marriages, and the reconciling legal solutions to *Dār al-Iftā'* provide that grant husbands domination over their marital bonds. Provided that *Dār al-Iftā'* discourse, also indirectly, reinforces the patriarchal and male dominant structure in the society by putting the divorce and all its relevant practices on the hands of husbands leaving no room for women to safeguard their space of power in divorce while granting her a space of negotiation and power over marital issues than divorce, such as maintenance, and other property rights.

Women also had their share of such rebuke and religious preaching, but it was different as their social roles and expectations are also different. Women were always advised to be obedient to their husbands, and to tolerate the disliked behaviors, which may include verbal and physical violence or shortcomings in the family's needs that their husbands may cause to them because of these husbands' greater responsibilities to work and support the family. The fatwa session number (98) witnessed these two types of preaching to the husband and the wife. In the session, the fatwa trustee, who is in his thirties, and the petitioners, also in their thirties, engaged in a long discussion—one of the longest ones I have attended—after they were already given the fatwa about understanding the piety conditions of being a good husband and a good wife. The fatwa trustee's advice to the husband, after having already rebuked him for his five divorce

pronouncements, was the following: “Husbands should be responsible, serious, and fulfill their household’s financial needs aside from treating their wives with *Ihsān*, perfected goodness.” The fatwa trustee supported his advice with hadiths such as, “The best of you is the one who is best to his wife,”<sup>115</sup> and, “Treat them [women] with goodness.”<sup>116</sup> The husband affirmed his agreement to the fatwa trustee’s advice by nodding his head, and directly said, “And please, Sheikh, tell her she should also stop annoying and disobeying me because that is why I get maddened and pronounce the divorce.” The fatwa trustee turned to the wife and acknowledged what the husband just said. Then, the mufti used hadiths as well as the socioeconomic situation in Egypt to support his advice that the wife should be obedient to her husband, and pardon his behavior—at this point, and from other similar sessions, I assumed that even if the husband did not request that his wife be advised as such, the fatwa trustee would have done so anyway because as I said, this was pretty much a typical end of each session: giving a religious advice to the *mustaftī*, again and as clarified, based on their social roles as well as their legal duties.

I particularly chose this case as an example of the preaching part of the Dār al-Iftā’'s fatwa sessions because its fatwa trustee, whom I only attended few cases with because of his cases’ unusual length compared to other cases, is also an Imam at a local mosque in Cairo. Being an Imam whose first job is giving the Friday prayer ceremony, which is mainly based on preaching, is significant in this fatwa trustee’s fatwa sessions as they were longer than other sessions, included prepared preaching speeches, and, equally

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<sup>115</sup> Sunan Ibn Majah. Book 9, Hadith 2053. USC-MSA web English reference: Vol.3, Book9, Hadith 1977

<sup>116</sup> Sahih al-Bukhari 3331, book 60, Hadith 6. USC-MSA web (English) reference: Vol. 4, Book 55, Hadith 548.

important, requested an oath by Allah on the truthfulness of the facts presented to him by the petitioners in their cases.

The preaching part of the fatwa-giving is not unique to Dār al-Iftā' under consideration. Rather, it is deeply rooted in the etiquette of fatwa giving, *adab al-futūā*, manuals<sup>117</sup> that emphasize the essentiality of giving religious piety advice to the *mustaftī*, as well as emphasizing the importance of the polite receiving of this preaching advice by the *mustaftī*. Some of these manuals dedicate an entire chapter to discuss the piety conditions that both muftis and *mustaftīs* should adhere to. Dār al-Iftā' includes this essential point in their paper work and in their brochures, which they also give to *mustaftīs*. This notion ensures the religious authoritative element embedded in the Dār al-Iftā''s relation to the *mustaftīs*.

To conclude, the nature of negotiation spaces in *istiftā'* is similar to the nature of *iftā'*; it consists of threefold structure of social, legal, and religious aspects. Muftis provide petitioners with these negotiation spaces in an attempt to connect fatwas to these petitioners' needs and expectations. Muftis, who enjoy a triple-dimensional authority, interfere in the Egyptian marital disputes at three levels, a legal level, a social mediation at a very personal level, as well as a religious preaching where they tackle the piety criteria petitioners, who are Muslims, should meet.

The nature of marriage within its legal form, in courts, its social form, in Egyptian families, and its religious form at Dār al-Iftā' consists of a reciprocal structure that give

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<sup>117</sup> For a detailed discussion on the role of religious preaching in the fatwa giving, please refer to, Al-Shawkānī, Al-Nawawī, and Ibn 'Ābidīn.

the husband the obedience right over his wife and demand his financial support, while giving the wife the right of financial support over her husband and demands her a full obedience to his orders. This marriage structure is a manifestation to the social dimension impact on the legal dimension and vice versa. As members of the Egyptian society, muftis hold a consistent adapted image of gender relations, and hence, they directed their efforts to enforce this image. Negotiating marital disputes, as encountered at the fatwa sessions at Dār al-Iftā' was in large a reflection of the above marriage and gender relations' structures. Due to the legal codification of socially accepted religion-based roles and responsibilities, the marital partners' chances of receiving an authoritative legal fatwa from the mufti are increased.

Despite the fact that muftis are not willing to question the social relations structures, muftis went out of their ways to reconcile between the married couples for the sake of preserving marriages and ending disputes before having to resort to courts and its bureaucratic channels. It was worth noting that because of the competitive authority relations between courts and fatwa council—two official state institutions—muftis avoided any potential conflicts with the courts' codes and orders. In turn, petitioners resorting to Dār al-Iftā' were in fact hopeful to end their disputes or obtain a desired solution without having to go through courts' bureaucratic channels. Besides attempting to solve their disputes, petitioners also appeal to Dār al-Iftā' to fulfill their religious desires to seek guidance from legitimate religious authorities, such as muftis.

## Conclusion

To recapitulate, fatwas are constructed through the interconnection between textual and contextual interpretations; while muftis bring the textual knowledge to the *iftā'* process, *mustaftīs* bring the contextual situations of the *istiftā'*. Both, muftis and *mustaftīs*, bring their societal commonalities, interpersonal commitments, and respective powers to the *iftā'* process. During this *iftā'-istiftā'* compound, the process of negotiation is intertwined to improve the claims over disputed rights and duties for the parties involved. The interpretive method of *iftā'* then is grounded in the shared components between muftis and *mustaftīs*. These components can only be fully understood through the interactive dialogues in fatwa sessions, which bring a vivid aspect that is usually overlooked in studies dedicated to fatwas and *iftā'*, namely, the involvement of individuals in the *iftā'* process.

An example that illustrated the above *iftā'* structure was presented in the interference of Dār al-Iftā', as an authoritative religious institution, in marital relations in the Egyptian society. Through their fatwa counseling services, muftis aimed to maintain social stabilities and gender relations. During the society preservation attempts, muftis adapted to the social patriarchal assumptions that give each married partner privileges in correspondence to their gender position in the society; female obedience in return to male financial obligations. Similar to the fact that these reciprocal privileges are translating the social and gender structures, they are also a translation of the legal and religious stances in both the Egyptian Personal Law codes and the legal religious fatwas.

Through a synthesis of theoretical research and data from interactive *iftā'*-*istiftā'* sessions at Dār al-Iftā', this thesis demonstrates that not only that fatwa sessions, similar to court cases, combine the syntheses of negotiated legal-social structures in a society, but also add a vital element to such syntheses, which is the religiosity element; since fatwas are non-binding legally, as Muslims, petitioners still aim to follow the leads of muftis in hopes of fulfilling their religious demands. Hence, the role of muftis as highlighted throughout this thesis is of a three-dimensional nature: legal, social, and religious.

The research in Islamic legal interpretation mostly focuses, in its theoretical form, on the Islamic jurisprudential methods and principles, and, in its practical form, on court cases. The research on fatwas, however, is not justly studied in the legal interpretation. Limiting the focus to the study of court cases and jurisprudence texts overlooks important aspects that should enhance our understanding of the structure of legal interpretation—such as the consideration of the interactive dialogues as essential to the legal interpretive methods—, Muslim societies—such as the role of the individuals' interpersonal aims in the formation of the law—, and gender studies—given the immense number of women who face marital issues but cannot afford to access courts for legal advice, or can, but, chose to resort to fatwas for religious considerations.

For this reason, I suggest that the research in Islamic legal interpretation shifts its attention to the study of *iftā'* as an institution that brings textual and interpersonal dimensions. The model of studying *iftā'* as presented in this thesis shall not overlook the interactive role and impact of ordinary Muslims, particularly women, in influencing the

development of the law, the role of muftis as social mediators, as well as the influence of the society on muftis and *mustafīts*.

This model of studying fatwas can benefit not only the research in Islamic legal interpretation, but also the research in social and gender studies in Muslim societies. The findings of this thesis, then, are useful to the study of *iftā'* and fatwas as to identify the lacunae in the scholarship of studying *iftā'* and suggest a modified model to study fatwas that can potentially be developed in extended academic research, such model shall fill the lacunae in the scholarly research in *iftā'* and fatwas. This model operates under developing a reconstructed discourse to the study of fatwas to include all the previous elements; petitioners, particularly women, as agencies of the law; muftis as social and religious interpreters. The ultimate purpose of this discourse is to demonstrate that the powers and authorities of texts and contexts are equally embedded in the Islamic legal interpretation.

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