

MARRIAGE AND DIVORCE IN EARLY TWENTIETH CENTURY  
OTTOMAN SOCIETY: THE LAW OF FAMILY RIGHTS OF 1917

A Ph.D. Dissertation

by  
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Ankara  
June 2014

To my parents *Ayşe Altınbaş, Şakir Altınbaş*, and  
my sister *Mine Nur Altınbaş*

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Graduate School of Economics and Social Sciences  
of  
İhsan Doğramacı Bilkent University

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in

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İHSAN DOĞRAMACI BİLKENT UNIVERSITY  
ANKARA

June 2014

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## ABSTRACT

### MARRIAGE AND DIVORCE IN EARLY TWENTIETH CENTURY OTTOMAN SOCIETY: THE LAW OF FAMILY RIGHTS OF 1917

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June 2014

As a result of reforms, related socioeconomic changes, and wars, at the turn of the 20<sup>th</sup> century, problems related to family matters were demanding in the late Ottoman Empire. People were confused over issues of marriage, divorce, alimony, and inheritance. Muslim jurists and politicians thus eventually became aware of the need for change in Islamic family law. Besides, legal modernization and the use of law as a tool for social control—for the processes of nation building, the creation of the Ottoman citizen, and the establishment of a new family structure—in the late Ottoman Empire had changed the Ottoman legal culture and required a reform in all areas of Islamic law including the family law.

Despite their importance, the issues of family law remain understudied for the late Ottoman Empire. The general historiography focuses on visible political institutions, diplomatic events, and intellectual currents. Besides, an equation of the West with progress and modernity and of the East with stagnation and tradition, which still dominates much of the discussion on family law reform, obscures the possible explanations. Hence, the main objective of this work is the presentation and exploration of the legal, political, sociocultural, and economic contexts of the family law reform and the reformed law's application in the new Ottoman legal culture to examine the compatibility between legal innovation and the needs of state and society.

**Keywords:** Family Law, legal modernization, legal culture, twentieth century, Ottoman history, sijills, marriage, divorce, reform, modernization.

## ÖZET

### ERKEN YİRMİNCİ YÜZYIL OSMANLI TOPLUMUNDA EVLİLİK VE BOŞANMA: 1917 AİLE HUKUKU KARARNAMESİ

Altınbaş, Nihan

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Tez Yöneticisi: Yrd. Doç. Dr. Akif Kireççi

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Reformlar, onlarla bağlantılı sosyo-ekonomik değişiklikler ve savaşlar nedeniyle yirminci yüzyılın başında Osmanlı İmparatorluğu'nda aile kurumu ile ilgili konular -evlilik, boşanma, nafaka ve miras- gündemde idi. Toplumdaki aile hukuku ile alakalı sıkıntıları gidermek ve sorunlara cevap verebilmek maksadı ile Müslüman âlimler, hukukçular ve politikacılar için çalışmalar yapmaktaydı. Öte yandan, hukuktaki modernleşme ve hukukun toplumu kontrol aracı olarak kullanılması -ki bu sayede ulus-devletin kurulması, Osmanlı vatandaşının yaratılması ve yeni aile yapısının oluşturulması mümkün olabilmişti- Osmanlı hukuk kültürünü de değiştirmişti. Değişen hukuk kültürü ise İslam hukukunun diğer tüm alanlarında olduğu gibi aile hukukunda da değişiklikler yapılmasını gerektiriyordu.

Aile Hukuku, geç dönem Osmanlı İmparatorluğu'nda arz ettiği öneme rağmen yeterince çalışılmamış bir konudur. Genel tarih yazımında, politik kurumlar, diplomatik olaylar ya da entellektüel akımlar görece daha çok yer almıştır. Öte yandan, yapılan çalışmalarda, ilerleme ve modernliğin Batı, durağanlık ve geri kalmışlığın Doğu ile özdeşleştirilmesi Osmanlı Aile Hukuku araştırmalarını bir ölçüde yanlış yönlendirmiştir. Bu çalışmanın ana amacı, 1917 Aile Hukuku Kararnamesi'nin hukuki, politik, sosyo-kültürel eksenlerini incelemek ve yenilenmiş Aile Hukuku hükümlerinin geç Osmanlı hukuk kültürü, devleti ve toplumu için uygun olup olmadığını değerlendirmektir.

**Anahtar Kelimeler:** Aile hukuku, hukuk kültürü, yirminci yüzyıl, Osmanlı, sicil, modernleşme, reform, evlilik, boşanma.

## **ACKNOWLEDGEMENTS**

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One of the most valuable gains of this research is the friends I have made at Bilkent University. I thank them and my older friends, for sharing the ups and downs and mostly the joys of life, and for the many travels we have made ever since we were very young. For this dissertation, however, I should first thank my father, Şakir Altınbaş, and my mother, Ayşe Altınbaş. During all these years, my parents have never criticized me or my sometimes unattainable ideals, but have only supported me to their capacity, knowing that I would eventually find the “right” path. Without their and my sister Mine Nur Altınbaş’s love and support, I would not be the same person I am, and this dissertation might not be at all.

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## TRANSLITERATION

### Ottoman

ا	a, e
ب	b
پ	p
ت	t
ث	s
ج	c
چ	ç
ح	h
خ	h
د	d
ذ	z
ر	r
ز	z
ژ	j
س	s
ش	ş
ص	s
ض	z
ط	t
ظ	z
ع	‘
غ	ğ
ف	f
ق	k
ك	k

ل	l
م	m
ن	n
و	v
ه	h, e, a
لا	la
ى	i, y

## LIST OF ABBREVIATIONS

- BOA Prime Ministry Ottoman Archives
- CUP Committee of Union and Progress
- DH. EUM. AYŞ. Dâhiliye Nezâreti Asayiş Kalemî Belgeleri
- DH. EUM. ECB. Dâhiliye Nezâreti Emniyet-i Umumiye, Ecânib Kalemî
- DH. EUM. KADL. Dâhiliye Nezâreti Kısım-i Adli Kalemî
- DDH. HMŞ. Dâhiliye Nezâreti Hukuk Müşavirliği Belgeleri
- DH. İUM. Dâhiliye Nezâreti İdâre-i Umumiye Belgeleri
- DH. İD. Dâhiliye Nezâreti İdarî Kısım Belgeleri
- DH. KMS. Dâhiliye Nezâreti Kalem-i Mahsus Müdüriyeti Belgeleri
- DH. MKT. Dâhiliye Nezâreti Mektubî Kalemî
- DH. ŞD. MLK. MRF. Şûra-yı Devlet Evrâkı Hülâsa Kayıt Defterleri
- DH. SN. THR. Dâhiliye Nezâreti Sicill-i Nüfus İdare-i Umumiye Belgeleri
- DH. ŞRF. Dâhiliye Nezâreti Şifre Kalemî Belgeleri
- DIA Diyanet İslam Ansiklopedisi
- EI<sup>2</sup> Encyclopedia of Islam, Second Edition

HR HM İŞO Hariciye Nezareti Hukuk Müşavirliđi İstiřare Odası Belgeleri

İA İslâm Ansiklopedisi

MV Meclis-i Vükelâ Mazbataları

OLFR Ottoman Law of Family Rights of 1917

ŞD. Şûra-yı Devlet Belgeleri

## CHAPTER 1

### INTRODUCTION

#### 1.1 Approach and scope of the work

The transformations and upheavals in late Ottoman society, and the changes ushered in by legal and social reforms, altered Ottoman legal culture, state administration, and the way people lived their lives, including Ottoman family structure. Required thus was a different application of family law, one more in touch with the times. By exploring the legal, political, sociocultural, and economic contexts of the 1917 Ottoman Law of Family Rights (here after OLFR) and contextualizing the history of the law reform, this dissertation demonstrates how essential the family law reform was for the late Ottoman Empire. In so doing, this study bridges the methodological gap between law and history and approaches both disciplines from the viewpoint of social and cultural history to illuminate context and the otherwise invisible impact of modernization on Ottoman people's lives.

The present work mainly examines the above-mentioned contexts of the OLFR in late Ottoman Istanbul from the beginning of the 20<sup>th</sup> century to 1920s, as well as the OFLR's application in Istanbul courts. However, despite this focus, the research also scrutinizes Ottoman legal modernization. Therefore, the analysis of the OLFR is preceded by an exploration of the reforms and changes in the legal,

political, social, cultural, and economic arenas that influenced state administration, the application of laws, and people's lives, including their perceptions and expectations. For that matter, the legal reforms' historical background and the modernization of law in the late Ottoman Empire are also explored.

Because legal modernization and issues surrounding family law are the main concerns of the present work, the impact of Ottoman modernization in general lies beyond its scope. My topic's analysis will thus be based on the historical developments from the Tanzimat period to World War I, the work chronologically limited within the 20<sup>th</sup>-century Ottoman Empire from 1900 to the 1920s, and concentrated on Ottoman Istanbul.

## 1.2 Literary review

Turkish mainstream legal historiography generally analyzes the Ottoman Law of Family Rights of 1917 within, macro-analyses of the effects of modernity. These studies thus merely tend to touch on the OLFR in passing, neglecting important details about changes in the Ottoman state and society resulting from reforms. The literature also generally does not question why late Ottoman society needed the OLFR, and how it affected people's lives. The current work therefore also attempts to fill in a gap in legal historiography.

The general literature on the history of Islamic Law in the Ottoman Empire is rather limited.<sup>1</sup> Regarding the specific literature on the OLFR, Mehmet Akif Aydın's

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<sup>1</sup> See Iris Agmon, *Family and Court Legal Culture and Modernity in Late Ottoman Palestine*, (New York: Syracuse University Press, 2006); Hamza Aktan, "İslam Aile Hukuku," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 2*, edited by Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992); Ahmet Akgündüz, *Mukayeseli İslam ve Osmanlı Hukuku Külliyyatı*, Diyarbakır: Dicle Üniversitesi, 1986; Gürsoy Akça Himmet Hülür, "Osmanlı Hukuku'nun Temelleri ve Tanzimat Dönemi'ndeki Hukuksal Yeniliklerin Sosyo-Politik Dinamikleri," *Türkiyat Araştırmaları*

book<sup>2</sup> and articles,<sup>3</sup> as well as Ebru Kayabaş's master's thesis, are the most comprehensive works.<sup>4</sup> In her thesis, Kayabaş agreed with Gülnihal Bozkurt,<sup>5</sup> Halil Cin,<sup>6</sup> and Deniz Kandiyoti,<sup>7</sup> according to whom the reform of the OLF<sup>R</sup> constituted a step towards the westernization and secularization of society, through which women gained a legal standing in the public sphere. Gülsüm Deniz<sup>8</sup> did not deal with the OLF<sup>R</sup> in detail, but her work proves useful in that she provides valuable information on discussions surrounding the possibility of *Ijtihad* after the Tanzimat.

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*Dergisi*, Amira El Azhary Sonbol, "Adults and Minors in Ottoman Sharia Courts and Modern Law," in *Women, the Family, and Divorce Laws in Islamic History* edited by Amira El Azhary Sonbol, (New York: Syracuse University Press, 1996); J.N.D Anderson, *Islamic Law in the Modern World*, (New York: New York University Press, 1959); J.N.D. Anderson, "Law as a Social Force in Islamic Culture and History," *Bulletin of the School of Oriental and African Studies, University of London* 20, (1957); J.N.D. Anderson "Law Reform in the Middle East," 32 (1956); *International Affairs*, Ülkü Ansay Azrak, "Tanzimat'tan Sonra Resepsiyon," Gülnihal Bozkurt, *Batı Hukukunun Türkiye'de Benimsenmesi Osmanlı Devleti'nden Türkiye Cumhuriyeti'ne Resepsiyon Süreci (1839-1939)* (Ankara: Türk Tarih Kurumu, 1996), Neşet Çağatay, "İslam Hukuku'nun Ana Hatları ve Osmanlıların Bunun Bazı Kurallarını Değişik Uygulamaları," Nihat Dalgın, *İslam Hukukunda Boşanma Yetkisi*, John L Esposito, *Women in Muslim Family Law*, (New York: Syracuse University Press, 1982); Hayrettin Karaman, *Mukayeseli İslam Hukuku* (İstanbul: İz Yayıncılık, 2009); Aneelies Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," in *Social History of Women and Gender in the Modern Middle East*, ed. Margaret L. Meriwether and Judith E. Tucker (Boulder, Colo: Westview Press, 1999); Dora Glidewell Nadolski, "Ottoman and Secular Civil Law," *International Journal of Middle East Studies* 8 (1977); İlber Ortaylı, "Osmanlı Aile Hukuku'nda Gelenek Şeriat ve Örf", in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 2*, edited by Hakkı Dursun Yıldız. Ankara: Emek Gazete ve Matbaacılık Ltd., 1992; İbrahim Sivrikaya, *Osmanlı Devleti'nde Hukuk Kaidelerinin Gelişimi ve Tanzimat'dan Sonraki Uygulanışı*, (İstanbul: Yayla Yayıncılık, 1972); Milen V Petrov, "Everyday Forms of Compliance: Subaltern Commentaries on Ottoman Reform, 1864-1868," *Comparative Studies in Society and History* 46 (2004); Avi Rubin, "Legal Borrowing and its Impact on Ottoman Legal Culture in the Late Nineteenth Century," *Continuity and Change* 22 (2007); Joseph Schacht, *An Introduction to Islamic Law* (London: Clarendon Press, 1996); June Starr, *Law as a Metaphor: From Islamic Courts to the Palace of Justice* (Albany: State University of New York Press, 1992); Sami Zubaida, *Law and Power in the Islamic World* (London: Tauris, 2005); İhsan Yılmaz, *Muslim Laws, Politics and Society in Modern Nation States Dynamic Legal Pluralisms in England, Turkey and Pakistan* (Aldershot: Ashgate, 2005); İhsan Yılmaz, "Secular Law and the Emergence of Unofficial Turkish Islamic Law," *The Middle East Journal*, 56, (Winter 2001).

<sup>2</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku* (İstanbul: Marmara Üniversitesi İlahiyat Fakültesi Vakfı Yayınları, 1985).

<sup>3</sup> Mehmet Akif Aydın, "Osmanlılarda Aile Hukukunun Tarihi Tekâmülü," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 2*, edited by Hakkı Dursun Yıldız. (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992); Mehmet Akif Aydın, *Türk Hukuk Tarihi*, (İstanbul: Hars Yayıncılık, 2005).

<sup>4</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*; Ebru Kayabaş, "Hukuk-ı Aile Kararnamesi." (M.A. thesis, İstanbul Üniversitesi Sosyal Bilimler Enstitüsü, 2002).

<sup>5</sup> Gülnihal Bozkurt, *Batı Hukukunun Türkiye'de Benimsenmesi Osmanlı Devleti'nden Türkiye Cumhuriyeti'ne Resepsiyon Süreci (1839-1939)*, (Ankara: Türk Tarih Kurumu, 1996).

<sup>6</sup> Halil Cin, *İslam ve Osmanlı Hukuku'nda Evlenme* (Konya: Selçuk Üniversitesi Basımevi, 1988); Halil Cin, *Eski Hukukumuzda Boşanma*, (Ankara: Ankara Üniversitesi Basımevi, 1976).

<sup>7</sup> Deniz Kandiyoti, "End of Empire: Islam, Nationalism and Women in Turkey," in *Women, Islam & the State*, ed. Deniz Kandiyoti (London: Macmillan Press, 1991), 36.

<sup>8</sup> Gülsüm Deniz, "İslam Hukuku'nda Yenileşme ve Tanzimat Sonrası Osmanlı İmparatorluğu'nda Aile Hukuku ile İlgili Yenilikçi Düşünceler," (M.A. thesis, Erciyes Üniversitesi, 1992).

For her, the Ottoman Law of Family Rights is a *tajdid* case, which solved the tangled problems around marriage and divorce issues in the Ottoman Empire.

Ziyaeddin Fahri Fındıkoğlu<sup>9</sup> has provided information on the era from a first-person point of view. In an article, Mehmet Ünal<sup>10</sup> explained the historical events that led to the establishment of the OLFR. However, Mehmet Akif Aydın's work has proved most useful for my overall project. In addition to employing a variety of court registers, state documents, and journals of the era, I follow Aydın in highlighting historical events of the era to demonstrate that Islamic Family Law was by no means uniform or stagnant in the late Ottoman Empire. Exploring variety of court registers allowed me to show the differences between the wording of the OLFR and its implementation in the daily lives of the late Ottomans, something Aydın did not do..

Several scholars have contributed to the study of legal modernization in the Ottoman Empire and the Middle East. Although most of them deal with the issue generally and rarely focus on the OLFR, their works are worth mentioning. In his book *Women in Muslim Family Law*, John Esposito explored the history of family law reform in the Middle East, and how the ideas of Rifaah Badawi Rafi al-Tahtawi, Muhammad Abduh, and Qasim Amin influenced other intellectuals of the Muslim world regarding the reform and/or renewal of Muslim family law. According to Esposito, these three figures-provided the ideological and intellectual background for the reformers of Ottoman family law.<sup>11</sup>

In her article, Annelies Moors discussed the flexibility and fluidity of Islamic family law within its patriarchal nature. However, according to Moors and Mervat

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<sup>9</sup> Ziyaeddin Fahri Fındıkoğlu, "Aile Hukukunun Tedvini Meselesi," Ebul'Ula Mardin'e Armağan, (İstanbul: İstanbul Üniversitesi Hukuk Fakültesi Yayınları, 1944).

<sup>10</sup> Mehmed Ünal, "Medeni Kanunun Kabulünden Önce Türk Aile Hukukuna İlişkin Düzenlemeler ve Özellikle 1917 Tarihli Hukuk-u Aile Kararnamesi." *Ankara Üniversitesi Hukuk Fakültesi Dergisi* 34 (1978): 195–231.

<sup>11</sup> John L. Esposito, *Women in Muslim Family Law*.

Hatem,<sup>12</sup> the nationalist ideologies of the late 19<sup>th</sup> and 20<sup>th</sup> centuries have increasingly turned the family into a highly charged political symbol, rendering family law a symbol of Islamic identity in Muslim countries. Moors argued that, perceiving the strong need to modernize and strengthen the empire, Ottoman rulers in the 19<sup>th</sup> century instigated numerous reforms to codify law texts and thus increase state supervision in the courts. In this way they also renewed family law.<sup>13</sup>

Likewise, Ellen Fleischmann focuses on discussions on women in Iran, Turkey, Egypt, and Greater Syria in the early 20<sup>th</sup> century. In these countries, women's status became a potent barometer of a society's modernity. The discussions in these countries also encompassed technological progress, secularism, the rule of law, women's emancipation, and monogamy, eventually leading to the reform of family law in the Ottoman Empire.<sup>14</sup> In the final part of my research I tried to examine similarities in the processes of family law reform in the Ottoman Empire and in Egypt, also encompassing discussions on technological progress, secularism, the rule of law, women's emancipation, and monogamy.

Robert Eisenman has argued that the Ottoman Land Code of 1858, the Mecelle, and the OLFR constitute the important legislative movements in the Middle East known as Islamic modernism. Eisenman blamed the nationalistic fervor of the Committee of Union and Progress (hereafter CUP) rulers for the rather abrupt promulgation of the OLFR in the middle of the war.<sup>15</sup> In her works, Deniz Kandiyoti has contextualized the OLFR within the nationalist political and social history of the CUP elites' vision, which included the new family and women in the late Ottoman

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<sup>12</sup> Mervat Hatem, "Modernization, the State and the Family in Middle East Women's Studies," in *Social History of Women and Gender in the Modern Middle East*, ed. Margaret L. Meriwether and Judith E. Tucker, (Colorado: Westview Press, 1999).

<sup>13</sup> Aneelies Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," 144.

<sup>14</sup> Ellen L. Fleishmann, "The Other "Awakening": The Emergence of Women's Movements in the Modern Middle East, 1900-1940," in *Social History of Women and Gender in the Modern Middle East*, ed. Margaret L. Meriwether and Judith E. Tucker (Boulder, Colo: Westview Press, 1999).

<sup>15</sup> Robert H. Eisenman, *Islamic Law in Palestine and Israel* (Leiden: E.J. Brill, 1978).

Empire.<sup>16</sup> In her article, Elizabeth White noted that the OLFR was the earliest reform that permitted women to ask for separation, without limiting the husband's right to repudiate a woman's request for divorce on specific grounds, whether these were mentioned in the marriage contract or constituted others generally considered valid.<sup>17</sup>

In his book *Brief History of the Late Ottoman Empire*, Şükrü Hanioglu mentioned the OLFR as one of the temporary laws confirmed by imperial decrees. In fact, the OLFR was one of the important decisions confirmed without any discussion in the chamber.<sup>18</sup> In his book, which provides useful information about the economic and social contexts of the OLFR, Yavuz Selim Karakışla details the situation of late Ottoman women, their plight and the necessity to earn their own living during World War I.<sup>19</sup> Karakışla has provided a detailed account of the economic, social, and political contexts of the late Ottoman Empire, which caused much suffering for women whose husbands were at war or missing. Although he does not discuss the OLFR in detail, the social background he details indicates the necessity of a new family law for women.

In his various works, İlber Ortaylı has examined the Ottoman family and family law, relating the OLFR to these considerations.<sup>20</sup> Alen Duben and Cem Behar have provided a detailed account of Istanbul for the period studied in the present work. The writers discuss family-related issues including polygamy, relating to these debates the promulgation of the OLFR.<sup>21</sup> Likewise, in her book, Fanny Davis has

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<sup>16</sup> Deniz Kandiyoti, *Women, Islam and the State* (London: Macmillan Press, 1991).

<sup>17</sup> Elisabeth H. White, "Legal Reform as an Indicator of Women Status in Muslim Nations," in Lois Beck and Nikki Keddie, eds., *Women in the Muslim World* (Cambridge: Harvard University Press, 1978).

<sup>18</sup> Şükrü Hanioglu, *A Brief History of the Ottoman Empire* (Princeton: Princeton University Press, 2008).

<sup>19</sup> Yavuz Selim Karakışla, *Women, War and Work in the Ottoman Empire: Society for the Employment of Ottoman Muslim Women (1916–1923)* (Istanbul: Ottoman Bank Archive, 2005).

<sup>20</sup> İlber Ortaylı, "Osmanlı Aile Hukuku'nda Gelenek Şeriat ve Örf," 460-461.

<sup>21</sup> Alen Duben and Cem Behar, *Istanbul Households Marriage, Family and Fertility 1880–1940* (Cambridge: Cambridge University Press, 1991).

introduced a colorful picture of the era, exploring the representation of the Ottoman family and of Ottoman women in novels, journals, and travelers' notes. She also noted late Ottoman intellectuals' views regarding the promulgation of the OLF. <sup>22</sup>

Unlike the works mentioned so far that dealt with Ottoman modernization processes in general and regarded the OLF as part of this process, J. N. D. Anderson has focused on the law's local application and analyzed its impact on the other Muslim countries, for example, in the law of the Druze community, the Syrian Law of Personal Status, and the law of Turkish Cypriots. <sup>23</sup> In *Beyond the Code*, Lynn Welchmann examines the rules governing Muslim personal status for Palestinians in the West Bank, with comparative reference to Gaza. She mentions the OLF as the first codification of Islamic Law on marriage, divorce, and related matters, and scrutinizes the OLF's text and application in Palestine. <sup>24</sup>

Elizabeth Brownson's doctoral thesis is also one of those regional works to deal with the OLF. She examines the *nafaqa*, female-initiated divorce, and child custody cases between 1925 and 1939) from Jerusalem and its environs to demonstrate how Palestinian Muslim women were active participants in the Sharia court system, which employed the OLF. In her gender-focused study, the OLF emerges as the law that improved women's rights in marriage and divorce from in relation to those they had under classical Hanafi law, the most patriarchal of the four Sunni schools. <sup>25</sup> While these regional studies proved of great assistance to my project

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<sup>22</sup> Fanny Davis, *The Ottoman Lady a Social History from 1718 to 1918* (Connecticut: Greenwood Press, 1986).

<sup>23</sup> J.N.D. Anderson, "The Family Law of Turkish Cypriots," *Die Welt des Islams, New Series* 5 (1958): 161–187; J.N.D. Anderson, "The Personal Law of the Druze Community." *Die Welt des Islams, New Series* 2 (1952): 1–9; J.N.D. Anderson, "The Family Law of Turkish Cypriots," "The Syrian Law of Personal Status," *Bulletin of the School of Oriental and African Studies, University of London* 17 (1955): 34–49.

<sup>24</sup> Lynn Welchmann, *Beyond the Code Muslim Family Law and Sharia Judiciary in the Palestinian West Bank* (Hague: Kluwer Law International, 2000).

<sup>25</sup> Elizabeth Brownson "Gender, Muslim Family Law, and Contesting Patriarchy in Mandate Palestine, 1925-1939" (PhD dissertation, University of California, 2000).

theoretically, I could not draw from them insights about the context of family law reform in Ottoman Istanbul.

The study of Islamic legal discourse that flourished as a result of the Cultural History and Gender approach<sup>26</sup> shattered the perception of Muslim women as oppressed, as well as purely patriarchal understandings of Islamic societies.<sup>27</sup> In their works, Leslie Peirce and Iris Agmon—in the context of 17<sup>th</sup>-century Anatolia and 19<sup>th</sup>-century Damascus, Jaffa, and Haifa, respectively<sup>28</sup>—showed that women avidly used the courts to claim their rights. Their studies revealed that in the context of *shari'a*, gender boundaries were not as inflexible as assumed and subject to negotiation.<sup>29</sup>

Judith E. Tucker, another leading scholar of legal studies employing gender as an analytical tool, has suggested that departing from the prior application of law, the OLF<sup>30</sup> did not necessarily move in the direction of expanding women's rights.<sup>30</sup> She has devoted two articles<sup>31</sup> to comparing the OLF to prior applications in family law, and her work has proved most useful to my research in regard to classical

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<sup>26</sup> Until the advent of this approach, *Women Worthies, Political and Institutional History* and *Social and Economic History* played an important role in showing that women were as fully capable of holding power and authority akin to the ones that were enjoyed by men. Using these approaches, historians retold well-known historical events by recognizing the parts played by women. It was the task of the *Social and Economic Historians* to restore women to history and document their roles as peasants, workers, merchants, or slaves. Social and Economic historians shattered the myth of Muslim woman's passivity and isolation in some kind of secluded, unchanging traditional world. {AU: I am not sure why you capitalize and italicize some of these descriptors here. I don't think it is necessary.}

<sup>27</sup> Margaret L. Meriwether and Judith E. Tucker, "Introduction," in *A Social History of Women & Gender in the Modern Middle East* eds Margaret L. Meriwether and Judith E. Tucker, (Oxford: Westview Press, 1999), 15.

<sup>28</sup> Leslie Peirce, *Morality Tales: Law and Gender in the Ottoman Court of Aintab* (University of California Press, 2003); Iris Agmon, *Family and Court Legal Culture and Modernity in Late Ottoman Palestine*.

<sup>29</sup> Barbara Stowasser, *Women in the Qur'an: Tradition and Interpretations* (Oxford: Oxford University Press, 1994).

<sup>30</sup> According to Tucker, the codification of legal rules governing the issues of marriage and divorce eliminated the possibility of selecting among the varied texts of the Islamic law that might be empowering women.

<sup>31</sup> Judith Tucker, "Legacies of Legal Reform: Muftis, the State, and Gendered Law in the Arab Lands in the Late Ottoman Empire," *New Perspectives on Turkey* 24 (2001): 1–16; Judith Tucker, "Revisiting Reform: Women and the Ottoman Law of Family Rights, 1917," *Arab Studies Journal* 4(1996): 4–17.

Hanafi law and the diversity within the Hanafi School. Much like Tucker, I have employed court cases to show how women could maneuver within the courts to achieve their objectives. I have, however, also bound my analyses into an overview of the generally changing legal culture in the late Ottoman Empire.

### **1.3 Structure**

The four main chapters of this work scrutinize the family law reform in the late Ottoman Empire at different, complementary levels, creating a comprehensive and integrated picture of family law reform. Chapters 2 and 3 scrutinize the importance of the OLF to the late Ottoman state and society, respectively. Both chapters have two sublevels dealing with the legal, political, sociocultural, and economic contexts of the family law reform. Starting with how reforms and legal modernity changed the late Ottoman legal culture and administration requirements, I explore the emerging need for a reform to family law in terms of the CUP's ideological aspirations. I also take into account regular Ottomans' lives during this time of change and reform.

Chapter 4 sheds light on the major actors who challenged each other regarding how family law reform should be enacted: these encompass the circles of the chief religious authority of the Ottoman Empire,<sup>32</sup> Meşihat, and the cadres of the CUP. The chapter explores the promulgation of the OLF, and the law's eventual annulment, and the roles played by these diverse actors.

Chapter 5 of the present dissertation explores the content of the Ottoman Law of Family Rights of 1917, as well as its application in the Istanbul courts from 1915 to 1923. With the help of court proceedings of the period, I compare the application

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<sup>32</sup> I henceforth use the Ottoman "Meşihat" for the chief religious authority of the Ottoman Empire.

of family law before and after the introduction of the OLF, again taking into consideration sociocultural and economic context in late Ottoman Istanbul. The court records aptly manifest the human stories behind the law, revealing the essential need for the OLF at this time.

I conclude my work with chapter 6 by exploring similarities in processes of family law reform in the late Ottoman Empire and in Egypt, leaving room for future research. The chapter aims to show that the codification of Islamic family law was not a neutral process devoid of political or ideological impact. Although the historical times called for a legal change, reforming family law caused the disruption of centuries-old legal and social traditions.

#### **1.4 Sources**

Because of the importance of legal, political, sociocultural, and economic context for the present study, primary reference sources range from various state documents to newspapers, journals, and travelers' notes.

The exploration of the contexts for the family law reform required mainly the use of state-related documents. Questions regarding Ottoman legal modernity, governmentality, population control, processes of nation-building, the creation of the Ottoman citizen, and state control over the legal system are scrutinized via documents of the *Meclis-i Vükelâ Zabıt Ceridesi*, *Dâhiliye Nezâreti* (The Ministry of Interior), *Hariciye Nezâreti* (Ministry of Foreign Affairs), to be found in the Prime Ministry Ottoman Archives. (The texts of the Body of Regulations of Population Matters, *Sicill-i Nüfus Nizamnâmesi*, and Population Law, *Sicill-i Nüfus Kanunu*, are found in the *Düstûr*.)

State documents located in the Prime Ministry Ottoman Archives have also been used to establish the political and sociocultural contexts of the family law reform. I have drawn on the journals *Türk Kadını*, *Kadınlar Dünyası*, *Süs*, *Bilgi Yurdu Işığı*, *İçtihad*, *İnci/Yeni İnci*, *İslam Mecmuası*, *Mizan*, *Sebil'ür Reşat*, *Sırat-ı Müstâkim*, *Siyanet* and *Volkan*, as well as on novels of the time, to gather more general contextual information, especially about the ideology of the late Ottoman rulers, the everyday life of Ottomans, and the situation and status of women.<sup>33</sup>

Reading these journals enables us to compare and contrast the responses of people with various ideas to the family law reform. The issues of polygamy and the veiling of women, of interest to intellectuals and reformists, were discussed mostly in books,<sup>34</sup> periodicals, and newspapers. In addition to these sources, travelers' notes also provided firsthand information about marriage in the Ottoman Empire, and Ottomans' approach to polygamy.<sup>35</sup>

The Meşihat and the cadres of the CUP took different paths on the road to the promulgation of the OLF. The *Defters* of the Meşihat, the decisions of the *Darü'l Hikmeti'l-İslamiye*, and the fetvas they issued reveal a great deal about these circles' concern regarding the plight of women as a result of missing husbands and the repercussions of wartime conditions in general. Likewise the journal of the Meşihat, *Ceride-i İlmiyye*, provides information about the questions people had regarding legal matters and the Meşihat's answers.

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<sup>33</sup> Halide Edip Adivar, *Handan* (İstanbul: Can Yayınları, 2012); Yakup Kadri Karaosmanoğlu, *Kiralık Konak* (İstanbul: İletişim, 2010), and also various novels of Ahmet Mithad Efendi, Nabizade Nazım and Halit Ziya Uşaklıgil.

<sup>34</sup> *Avrupalılaştırmak- Felaketlerimizin Esbabı*, Tüccarzade İbrahim Hilmi, 1332 (1916), *Bizde Kadın*, Ahmed Cevad, 1328 (1912), *Kadınlarımız*, Celal Nuri, 1331 (1913), *Taaddüd-ü Zevcat ve Zeyl*, Fatma Aliye-Mahmud Esad, 1318 (1898), *Vazife ve Mesuliyet*, Ahmed Rıza, 1324 (1908).

<sup>35</sup> Lucy Mary Jane Garnett, *Turkey of the Ottomans*, (New York: Sir I. Pitman & Sons, 1911), 206-207; Sir Edward Pears, *Turkey and Its People* (London: Methuen & Co.Ltd., 1911), 68; Marmaduke Pickthall, *Harpte Türklerle Birlikte* (İstanbul: Yeditepe Yayınevi, 2009), 91.

To shed light on how the office of the Grand Regent (Qadı),<sup>36</sup> Şeyhülislam,<sup>37</sup> and the CUP government negotiated and interacted during the preparation of the family law reform bill, I used the *Meclis-i Mebusan Zabıt Ceridesi* and the *arz* and *irades* sent back and forth between the Meşihat and the *Sadaret*.

For the CUP cadres, I made use of the application procedures for the OLFR, available in state documents housed in the Prime Ministry Ottoman Archives.<sup>38</sup> For the body of regulations and the text of the OLFR, different issues of the *Düstûr* were used. To scrutinize the innovations introduced by the OLFR, I explored various *sijills* from the Istanbul courts.<sup>39</sup> Concerning the annulment of the OLFR, state documents helped trace the reactions of non-Muslims,<sup>40</sup> while the views of opposition Muslim conservatives' were explored especially through *Sebil-ür Reşat* and *Sırat-ı Müstâkim*.

Case studies regarding the application of the OLFR are gathered from various Istanbul courts' proceedings, *sijills*. I employed the *sijills* to assess whether a law introduced into the harsh conditions of warfare changed Ottoman marriage and divorce patterns, to see if Ottoman women managed to ameliorate their plight, and to explore how people interacted in the new legal culture. For that purpose, articles of the OLFR are analyzed in chapter 5, via examples from the Istanbul courts between 1915 and 1923.<sup>41</sup>

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<sup>36</sup> I hereby use Qadı for Ottoman regent.

<sup>37</sup> I hereby use Şeyhülislam for Ottoman Grand Qadı.

<sup>38</sup> İ.DUİT, MV, DH SN THR, DH MB HPSM M.

<sup>39</sup> Anadolu Sadareti, Galata, Beykoz,

<sup>40</sup> HR. HMŞ. İŞO.

<sup>41</sup> The courts are Anadolu Sadareti, Beykoz, Galata, Üsküdar, Evkaf

## CHAPTER 2

# POLITICAL AND LEGAL CONTEXTS OF MARRIAGE AND DIVORCE IN THE LATE OTTOMAN EMPIRE

In this chapter, the aim is to shed a light on the processes of reform, on concurrent social and political changes, and on the effects of previous centuries' wars in the Ottoman Empire with regard to their impact on family and family law reform. I will explore first how people reacted to modernization and the new legal culture by considering legal and political contexts in this chapter, and sociocultural and economic contexts in the following one, elaborating on why family law reform and the codification of Islamic family law were needed in the late Ottoman Empire. For that purpose, I will be using state archives,<sup>42</sup> court records (sijills) from the Istanbul courts from the 1900s to 1923, and some journals of the era (*Sebil'ür-Reşat*, *Sırat-ı Müstakim*, *Kadınlar Dünyası*, *Türk Kadını*, *İçtihad*, *Türk Yurdu*) as primary sources.

### 2.1 Political context of marriage and divorce

The final century of the Ottoman Empire brought turmoil for almost all its citizens. During the wars many people died, and women were left alone in the middle of starving cities surrounded by economic problems. The ruling political party, the

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<sup>42</sup> Prime Ministry General Directorate of State Archives, Başbakanlık Osmanlı Arşivleri (BOA).

CUP, introduced Westernist policies related to women and family to solve some of these problems. Women's movements at the end of Ottoman Empire also had an impact on the CUP's Westernist agenda concerning family politics, which eventually gave way to the promulgation of the new family law.

### **2.1.1. Rule of the Committee of Union and Progress (CUP)**

The last phase of the Ottoman Empire was a period of political, social, economic, and cultural change and turmoil. Along with the people of the Balkans, Istanbulites much suffered from the nationalistic movements of the 19<sup>th</sup> century. This nationalism had most of the Muslim population flee the Balkans for Istanbul, where they lived in difficult conditions.<sup>43</sup> According to Yavuz Selim Karakışla, the Balkan Wars (1912-1913) made for the overture of World War I, and during the four years of the world war, the Ottoman Empire fought on several fronts in three continents. By signing the Mudros Armistice on October 30, 1918, the Ottoman Empire literally lost the war.<sup>44</sup> As a result, the multinational forces composed of British, French, and Italian soldiers occupied Istanbul in 1920, as set forth in the Sèvres Treaty signed after the armistice.<sup>45</sup>

The Balkan Wars and World War I brought great difficulty for the Ottoman economy. Hunger and epidemics caused population loss, and thousands of people were forced to migrate. Fires were also common during that era, making many

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<sup>43</sup> Alen Duben and Cem Behar, *Istanbul Households Marriage, Family and Fertility 1880–1940*, 13.

<sup>44</sup> Yavuz Selim Karakışla, *Women, War and Work in the Ottoman Empire: Society for the Employment of Ottoman Muslim Women (1916–1923)*, 39.

<sup>45</sup> *Ibid.*, 39.

Istanbulites homeless.<sup>46</sup> The Ottoman Empire in the early 20<sup>th</sup> century thus faced a disaster in the early 20<sup>th</sup> century, if not chaos.

The Committee of the Union and Progress (CUP), organized by the Young Turks first as a secret organization, emerged as the ruling political party during the Second Constitutional Period. CUP members had revolted against the sultan Abdülhamid II on July 23, 1908, to restore the Constitution; hence Ottoman constitutional political life resumed.<sup>47</sup> Tarık Zafer Tunaya has defined three periods for the CUP: 1909-1912, when it came to power; at this time the power of the legislature was amended and the Second Constitutional Period began with the sultan's powers restricted and a truly constitutional system established.<sup>48</sup> Then followed the period of rule, 1913-1918; and finally the period of the armistice, 1918-1922.

The establishment of the *Hürriyet ve İtilaf* Party in 1911 also marked another significant point for the CUP, as CUP rulers took every measure to dispose of the opposition party. For that purpose, the Talat and Enver Pashas in 1913 organized the Babiali Baskını, after which the CUP became the only party on the Ottoman political scene.<sup>49</sup> According to Şükrü Hanioglu, the CUP was the harbinger of constitutional revolution, yet once in power, CUP rulers developed distaste for strong legislatures. Like the sultan, they were concerned about the ability of a strong parliament to undermine the regime and aggravate ethnoreligious conflict.<sup>50</sup> However the CUP did not abolish the parliament. Instead, the rulers skillfully used the press to restrict freedom of speech and to consolidate their power.

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<sup>46</sup> Alen Duben and Cem Behar, *Istanbul Households Marriage, Family and Fertility 1880–1940*, 23.

<sup>47</sup> İhsan Yılmaz, *Muslim Laws, Politics and Society in Modern Nation States Dynamic Legal Pluralisms in England, Turkey and Pakistan*, 3.

<sup>48</sup> *Ibid.*, 92.

<sup>49</sup> Tarık Zafer Tunaya, *Türkiye'de Siyasal Partiler* (İstanbul: İletişim, 2009), 395-399.

<sup>50</sup> Şükrü Hanioglu, *A Brief History of the Ottoman Empire*, 163.

Justin McCarty argues that the Young Turks had long searched for formula to modernize and westernize the Ottoman Empire. They were revolutionaries and reformers in that they wanted to change the state and society radically. But the disastrous results of the wars required an end to political rivalry and strong leadership in the political arena.<sup>51</sup> A series of military defeats threatened the empire, and the cities of the empire were crowded with the refugees and the wounded. These harsh conditions made people accept one-party rule by the CUP, which started in 1913 after the *Bâbüâli Baskını*.<sup>52</sup>

Although the Turks were the last group to embrace nationalism, Turkish nationalism became the fastest-growing ideology in the late Ottoman Empire, especially after the Balkan Wars.<sup>53</sup> Stanford Shaw states that Turkish nationalism developed as a result of the loss of 83% of the empire's European territories.<sup>54</sup> At that time, most of the empire's non-Turkish subjects had already become nationalists and declared the Turks as their enemies.<sup>55</sup> In fact, Muslim Albanian support of the rebels during the Albanian revolt changed the Turks' approach to Ottomanism.<sup>56</sup> Rising Arab nationalism also stirred its Turkish counterpart.

After 1913, the CUP pursued an intensive policy of economic<sup>57</sup> and cultural Turkification,<sup>58</sup> and even some of the reformers wanted to relinquish the Ottoman

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<sup>51</sup> Tarık Zafer Tunaya, *Türkiye'de Siyasal Partiler*, 399.

<sup>52</sup> Stanford J Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey Volume II: Reform, Revolution, and Republic: The Rise of Modern Turkey, 1808-1975*, 289.

<sup>53</sup> Roderic Davison, "Nationalism as an Ottoman Problem and the Ottoman Response" in *Nationalism in a Non-National State: The Dissolution of the Ottoman Empire*, eds. William W. Hadad and William L. Ochsenswald (Ohio: Ohio University Press, 1977), 25-26.

<sup>54</sup> Stanford J Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey Volume II*, 287-289.

<sup>55</sup> İhsan Yılmaz, *Muslim Laws, Politics and Society*, 87.

<sup>56</sup> Stanford J Shaw and Ezel Kural Shaw, *History of the Ottoman Empire and Modern Turkey Volume II*, 247.

<sup>57</sup> The Young Turks' aim was to save the nation, for saving the nation according to them meant saving the Ottoman state. (See: Aykut Kazancıgil, "Türkiye'de Modern Devletin Oluşumu ve Kemalizm," *Toplum ve Bilim*, 17 (1982): 82) However, the Ottoman state was deficient in providing the necessary capital for such economic progress. According to Zafer Toprak, in the early days, the CUP decided to

state and create a secular Turkish nation.<sup>59</sup> The most influential Turkish nationalist was Ziya Gökalp (1876-1924). According to McCarty, Gökalp and other nationalists emphasized the importance of Turkish folk culture, pre-Islamic Turkish history, a pure Turkish language uncorrupted by Arabic and Persian, and the political traditions of the central Asian Turks. They encouraged the diminishing role of Islam in the public sphere and its replacement by nationalistic fervor.<sup>60</sup>

The situation of the Ottoman Empire at the turn of early twentieth century required a strong and centralized state apparatus, made possible by administrative and political reforms.

### **2.1.2 Administrative and political reforms: Centralization, bureaucratization, and governmentality**

The Ottoman rulers in the course of the 19<sup>th</sup> and 20<sup>th</sup> centuries instigated numerous reforms aiming at strengthening the central state apparatus and its bureaucracy. The area of family law was gradually affected by these reforms and their resulting changes.<sup>61</sup> The legal measures regarding the population and the CUP's family politics rule will be explored in this section using state documents as primary sources.

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bring foreign capital to the empire, a policy which achieved success from 1908 to 1913. However, with the commencement of World War I, the idea of transferring foreign capital was denounced. Moreover, it was argued that foreign capital made the Ottomans lose their economic independence, becoming only a source of human capital. Hence the CUP rulers abolished capitulations and boycotted of European products, which eventually became part of their national economy project.(See: Zafer Toprak, *Türkiye 'de Milli İktisat 1908-1918* (İstanbul: Doğan Kitap, 2012), 86-87).

<sup>58</sup> Deniz Kandiyoti, "End of Empire," 34.

<sup>59</sup> June Starr, *Law as a Metaphor*, 13.

<sup>60</sup> Justin McCarthy, *The Ottoman Turks An Introductory History to 1923* (New York: Longman, 1997), 209.

<sup>61</sup> Kate Flemming, "Women as Preservers of the Past: Ziya Gökalp and Women's Reform," in *Deconstructing Images of the Turkish Woman* edited by Zehra Arat, (New York: St. Martin's Press, 1998), 152.

The reform period in the late Ottoman Empire marked the beginning of the modern notion of *governmentality*, whose objective is to manipulate a population into advancing its welfare and productivity.<sup>62</sup> That notion considered education, industry, and economic policy matters of state concern, to be implemented and regulated through bureaucracy and law. According to Sami Zubaida, with the 19<sup>th</sup>-century reforms in the Ottoman Empire, the aim was to create a centralized modern state, with formalized institutions and practices of law as integrated within state bureaucracy. The codification of law texts, state supervision, and enhanced government control over the legal system, meant an increase in bureaucratization and standardization.<sup>63</sup>

The centralized modern state is usually defined as a nation-state with a notion of “common citizenship” before the law.<sup>64</sup> In the Ottoman Empire, citizenship had been in the process of becoming internalized since Mahmud II, who once said that he did not differentiate among his subjects unless they were at mosque, church, or synagogue.<sup>65</sup> In fact, the new notion of justice, *adâlet*, that also thrived during the reign of sultan Mahmud II, emphasized Ottoman subjects’ equality before the law. Actually, the notion *adâlet* ultimately gave way to the emergence of the notion of citizenship.<sup>66</sup> From the time of the sultan Mahmud II to the Second Constitutional Period, personal ties based on kinship were thus slowly replaced by notions of homogenous national belonging (citizenship) in the late Ottoman Empire.<sup>67</sup>

The Ottoman legal system operated differently than modern law applied by nation-states. In the Ottoman legal tradition, equating Muslim and non-Muslim

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<sup>62</sup> Sami Zubaida, *Law and Power in the Islamic World*, 128.

<sup>63</sup> Aneelies Moors, “Debating Islamic Family Law: Legal Texts and Social Practices,” 151.

<sup>64</sup> Sami Zubaida, *Law and Power*, 141.

<sup>65</sup> Reşat Kaynar, *Mustafa Reşit Paşa ve Tanzimat* (Ankara: Türk Tarih Kurumu Yayınları, 1954), 52-53.

<sup>66</sup> Sami Zubaida, *Law and Power*, 125.

<sup>67</sup> Aneelies Moors, “Debating Islamic Family Law: Legal Texts and Social Practices,” 151.

Ottoman subjects before the law contradicted Islamic Law, which protected non-Muslims but did not see them as equal to Muslims.<sup>68</sup> The Ottoman legal system let Jewish and Christian communities, like Muslim ones, practice their own (religion-based) family law. The modernization of the legal system would clearly go against such a differentiation, having a common law for all people.

During the Tanzimat period, the idea of the unification of all Ottoman subjects, *ittihad-ı anâsır*, offered a solution to the problems of the Ottoman Empire. The Law of Ottoman Citizenship, *Taabiyeti Osmaniye Kanunnâmesi* promulgated in 1869, was inspired by the French citizenship law of 1851. The law set the conditions for Ottoman citizenship and denaturalization in nine articles.<sup>69</sup> The concept of citizenship became more precise during the Second Constitutional Era.<sup>70</sup> In fact, the model of the citizen (*vatandaş*) was created during the Young Turk era, and the relationship between the citizen and the state was regulated with the Constitution.<sup>71</sup>

The Second Constitutional Period was also when CUP rulers constructed “a common secular Ottoman identity.” They believed that religious and ethnic differences polarized society, which was considered harmful to the well-being of the country.<sup>72</sup> To boost the newly constructed secular Ottoman identity, new national celebrations and commemorations, such as *îyd-i Millî-i Osmanî* (Ottoman National Fest), *Meclis-i Milli'nin Yevmi Kûşâdı* (the Anniversary of Parliament's

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<sup>68</sup> Sami Zubaida, *Law and Power*, 125.

<sup>69</sup> Füsün Üstel, “II. Meşrutiyet ve Vatandaşın ‘İcadı,” in: *Modern Türkiye’de Siyasi Düşünce: Tanzimat ve Meşrutiyet’in Birikimi*, ed. Tanıl Bora and Murat Gültekinil (İstanbul: İletişim Yayınları, 2001), 166.

<sup>70</sup> Ariel Salzmann, “Citizens in Search of a State,” in *Extending Citizenship, Reconfiguring States*, ed. Michael Hanagan and Charles Tilly (New York: Rowman and Littlefield Publishers, 1999), 37-66.

<sup>71</sup> Tarık Zafer Tunaya, *Türkiye’de Siyasal Partiler*, 399.

<sup>72</sup> Füsün Üstel, *Makbul Vatandaşın Peşinde II Meşrutiyet’ten Bugüne Vatandaşlık Eğitimi*, (İstanbul: İletişim, 2004), 30.

Inauguration), *Mektepliler Bayramı* (Schoolchildren's Day), *Çocuklar Bayramı* (Children's Day), and *İdman Bayramı* (Gymnastics Day), were invented.<sup>73</sup>

For administrative purposes, state officials kept records of non-Muslim people as well; like Muslims, they had also become objects of the bureaucratic Ottoman state.<sup>74</sup> In the classical Ottoman system, all records of Muslim and non-Muslim people were kept for one reason: tax collection. During CUP rule, with its new applications of the modern state, records, such as those of marriages and divorces, were kept strictly for the purposes of government. Records of foreigners who married Ottoman citizens and thus received modern citizenship were kept to keep track of the notion of citizenship. In cases of divorce, foreign men and women were denaturalized, and archival documents indicate that, especially foreign women were sometimes required to leave the country after divorce, having signed legal documents stating that they would not come back.<sup>75</sup>

The common Ottoman identity/citizenship was deemed so important that even the non-Muslim population living on the periphery of the empire was taken into consideration. For instance, the situation of youth in Beirut was scrutinized. The governor of Beirut complained that Muslim and non-Muslim youth who were well educated and spoke foreign languages had come under the influence of foreign powers. He proposed government employment for these young people to ensure their loyalty to the Ottoman state.<sup>76</sup>

In line with notion of *governmentality*, keeping demographic records of Ottoman subjects became really important for the Ottoman authorities especially

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<sup>73</sup> Füsün Üstel, *Makbul Vatandaşın Peşinde*, 28–29.

<sup>74</sup> İlber Ortaylı, "Osmanlı Aile Hukuku'nda Gelenek Şeriat ve Örf," 460–462.

<sup>75</sup> "Osmanlı ile izdivâc etmiş kadınların eş vefâtı ya da boşanma durumunda asıl taabiyetlerine rücû edebilmeleri için... gereken şerâitin uygulanması, elinden Osmanlı ülkesini terk edeceğine ve bir daha dönmeyeceğine dair senet alınması..." ŞD MLK MRF 2846, 4Ü, A4, 18 October 1916.

<sup>76</sup> DH KMS 63 59, A1, 6 April 1914.

during the Second Constitutional Period. As part of this practice, for instance, many provinces asked that the Ministry of Interior punish those who did not record births, deaths, and marriages.<sup>77</sup>

The Marriages of Ottoman citizens living abroad were also of concern to the Ottoman state. For instance, a lengthy document from 1916 explored the marriage of Muslim Ottoman male citizens to foreign non-Muslim women, that of Muslim Ottoman women to foreign Muslim men, and the—then forbidden—marriage of Ottoman Muslim women to Iranian men, as well as the situation of those married in a foreign country with children. Ottoman archival records provide an abundance of evidence about communications between different consular officials and the *Bab-i Ali* between 1911 and 1914 regarding various questions concerning Ottoman citizens' marriage and divorce. These records are a key component to understanding the background within which the OLF was issued.<sup>78</sup>

*Governmentality* also meant that the population's health became a state concern. The state controlled the health of both men and women (widowed and virgins) through doctors. For instance, venereal diseases had become common in the late Ottoman Empire, and the state took measures against their spread. Every man and woman who wanted to get married needed to apply to a Sharia court, where they were checked by doctors. However, the medical examination of women, especially virgins, caused tension in some parts of the empire. For instance, the Karasi governor asked the Ministry of Interior whether midwives could perform the medical examination of women. The Ministry of Interior declared that only doctors could

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<sup>77</sup> “Devletlü efendim hazretleri, nüfus memuriyetden vâki olan talep ve iddia üzerine birçok köy ve mahalle imam ve muhtarlarının doğum vefâyat ve münekehat vukuâtını vaktiyle vermediklerinden dolayı haklarında nakdîceza muamelesine tevdi edildikleri evrakı müdevvereden anlaşıldı. Bunlardan celp ve sorguya çekilenler karye mühürleri ... uygulamanın nasıl olacağını ...” ŞD 1812 17, A3, 27 June 1904.

<sup>78</sup> HR HM. İŞO 16 9, A 21, 22 October 1914.

examine people, but virgins were only to have their ears, noses, and throats checked, so that their self-esteem would not be degraded.<sup>79</sup> Hence, even tradition would not have the authorities' compromise on state health policy; and thus control.

The notion of common Ottoman citizenship also had an impact on issues of marriage for all Ottoman subjects. According to Cem Behar, there was no tradition of systematically keeping demographic records in the Ottoman Empire before the reform period. Births, deaths, marriages, and divorces were neither systematically recorded nor were the records centralized for any purpose—religious, legal, or political.<sup>80</sup> This changed with the reforms. For example, in a document dated 1913, a demographic survey of Istanbul was made and a detailed table showed the number of men and women, specifying if they were Muslim, non-Muslim (Latin, Protestant, Assyrian, Chaldean, Maruni), Greek, Armenian, Jewish, Bulgarian, Serbian, etc. The tables also listed marriages, divorces, and the population increase or decrease.<sup>81</sup>

Population records were important also in relation to the army. In fact, military recruitment had become a very serious matter in the late Ottoman Empire. The non-Muslim population had faced recruitment earlier, however, creating many problems aroused for the empire. For instance, an archival document dated April 1915 indicates that the Greek Catholic Metropolitan Basilyos, the Maruni Metropolitan Budrus, and the Greek Orthodox Metropolitan Gerasimos from Beirut telegraphed the Ministry of Interior and complained that on the eve of Easter, many deacons were recruited to the army by municipal police officers. In the letter the clerics complained

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<sup>79</sup> “*Hastalık teşhisi ve rapor verilmesi gibi önemli hususların ebelere bırakılması kâbil olmayacağından evlenecek kız ve kadınların muayenesinin yalnız tabipler tarafından icrâsı ve ancak bakirelerin ağız burun muayenesi ile iktifa ve gurur ve kadınlık haysiyetlerini kırmayacak şekilde muayene icrâ edilmesi ve dulların ise imkânı müsaîd olduğu halde ve derecede tamamen muayenesi lüzumu kararlaştırılmış olarak ...*” DH İ UMM 19-1 1-24, 14 February 1918.

<sup>80</sup> Cem Behar, “Neighborhood Nuptials: Islamic Personal Law and Local Customs- Marriage Records in a Mahalle of Traditional İstanbul (1864–1907),” *International Journal of Middle East Studies* 36, (2004): 537–559.

<sup>81</sup> DH EUM MTK 81 33, A9, 6 December 1913.

that this situation had interrupted their religious ceremonies. The Metropolitaus asked for the mercy of the state, for the recruitment of deacons went against the Ottoman tradition. The Ministry of the Interior ordered the province of Beiruth to investigate the issue. In reply, the governorship of Beiruth claimed that those recruited were registered as deacons, but were also involved in commerce and other non-religious activities. After the investigation, the officials noted that some among the recruited had already paid the exemption of their military service; the rest, however, were forwarded to the army service.<sup>82</sup>

During the Second Constitutional Period, the Ottoman state wanted to keep all of its subjects under control. The Latin *millet's* position in the empire was therefore also a matter of concern for the authorities. In the Ottoman Empire, the Latin *millet* did not have their own church, so they used foreign churches for their marriages, baptisms, and other religious ceremonies. In a letter sent from the Ministry of Justice to the Ministry of the Interior, it was said that Latin people's marriages, births, and baptisms could not be recorded, for the churches they used did not follow the Ottoman rules of population regulation. The Ministry of Justice asked that a warning be sent to these churches. Besides, as a precaution, the children of

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<sup>82</sup> "...Dünkü Paskalya bayramının farz ihtilafları ile meşgulken kiliselerimizin ayakoslarının derdest eden zabıta memurlarının gelmesi ile azim ityanda kaldık. Büyük kısmının istifvaziyla mümkün olan kiliselerimiz ayakoslarının derdestine nazar sarfedilmesi hakkında irade-i seniyye adil kanun tevfiikiyle adil emirlerin itâ buyrulmasını sormaya mecbur olduk. Muta olarak evâmiri şerifim bihanın gecikerek verilmesi hâlinde ibadetimizin vacipleri sekteye uğrayacak. Ortaya çıkan işbu meselemizin önemini arz edip benaberin suveri..."

Rum Katolik sayda metropoliti Basilyos, Marunî Metropoliti Budrus, Beyrut Rum Katolik Metropoliti Vekili Matta, Rum Ortadoks Metropoliti Gerasimos...

...28 Mart 1331 adet 43 Beyrut'taki ruhani reislerin diyakozlar hakkındaki müracaatı askere alma şubesinden tahkikat icra edildi. Bunların diyakoz olarak verdikleri defter isimleri kayıtlı şahıslar kar ve kesible meşgul ve ruhani şeraite gayri hâizdirler. Bunların büyük kısmı nakdi bedel vermişlerdir. Bedel vermeyenler sevkolunmuştur. Beyrut Vâlisi Bekir Sami." DH İ UM 88-1, 3-26, 10 April 1915.

Latin couples who did not register their marriage or of a husband who still had to do his military service would not receive certificates of proof.<sup>83</sup>

In 1916, the problem of the certificate of proof for Latin people was solved. The Ministry of the Interior declared that the word “Latin” denoted a race: these people were Christian and Catholic. However, it was not appropriate to place them under Greek or Armenian Catholic people’s churches. Therefore, the *Latin Vekâlethanesi* would be accepted as a spiritual authority, and it was made responsible for giving certificates of proof to Latin people.<sup>84</sup> The authorities paid attention to the specificity of the Latin *millet*. However, they also wanted to keep their marriage-divorce-birth-death issues under control, for they constituted the Ottoman population along with other *millets*.

Even before the CUP period, population control by the state produced a Body of Regulations, *Sicilli Nüfus Nizamnâmesi*, on September 2, 1881.<sup>85</sup> These regulations required Muslims and non-Muslims alike to get a license to get married from either from sharia court if Muslim, and from non Muslim religious leader, if a

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<sup>83</sup> “...Mezkûr cemaat efradının mezhep ihtiyaçları ecnebi ruhaniyeler marifetiyle ecnebi kiliselerinde ifâ edilmekte olarak hükümete müracaat edilmek lazım gelen hususları ise Latin vekâletine havale edilmiş ve Osmanlı tebaasından olan bir cemaate ait bu gibi meselelerden dolayı hariciye nezareti celilesi aracılık yapma ve sefaretler vesilesi ile mezkûr kiliseler idaresine tebligat yapması esasen uygun olmasa da o güne tebligatın kesin etki etmesinden ümit edilememiş olmasına nazaran ecnebi kiliselerinde nikâhları kıyılıp oralardan vekalethaneye haber vererek kayıt ve tescil ettirmeyen zevc ve zevcelerinin çocuk doğurma, intikal ve askerilik gibi şahsi muamelelerinden dolayı ilmühaber almak üzere vekalethaneye müracaatları zamanında ilmühaber verilmemek tedbiri alınarak kendilerinin ve benzerlerinin nikâhlarını kayıt ve tescile mecbur edilmeleri gereğinin mezkûr vekalethaneye ve ecnebi kilieslerinden kendisine tebliğ olunman nikâh vukuatının nizam gereği meşru olabilecek gecikmeden dolayı da mazur görülmesi uygun görülmesi hususunda...” DH SN THR, 30 73, A3, 17 October 1912.

<sup>84</sup> “Ber vech-i meşruh Latinlerin riyâset ve teşkilâtı ruhaniyeleri bulunmadığına göre ruesâyı mezhebiyye marifetiyle lazımül ibkâ işlerincede Latin vekâlethanesi bir ruhani daire makamında bulunduğundan nikâh ve talak gibi hususlar hakkında oradan verilecek ilmühaberlerin de kabulü tabii ve zaruridir. Ol babda..” DH SN THR 66 65, 3 February 1916.

<sup>85</sup> Düstûr, Tertib-i evvel, Cilt 2, Dersaadet, Matbaa-i Amire.

non Muslim. In addition, eight days after the marriage ceremony, the person who had married them was required to inform the population officer with a certificate.<sup>86</sup>

The 1881 Body of Regulations made clear that local judges should refrain from recording marriage agreements unless the marrying parties produced a regular license. On June 11, 1902, another Body of Regulations of population matters was issued. The second Body of Regulations confirmed the first. On August 27, 1914, the two regulations were replaced with the Population Law, *Sicill-i Nüfus Kanunu*,<sup>87</sup> which also confirmed the two preceding regulations on matters of marriage and divorce.<sup>88</sup> When the OLF was abrogated, the Population Law of 1914 was put into force again.<sup>89</sup> The Population Law tried to control and record men's right to divorce: a husband was required to prepare a certificate of proof for divorce with two witnesses and to hand it to the Census Bureau after it was validated by the *muhtar* and the *imam*.<sup>90</sup> The law attempted to limit, control, and record a man's use of the right of divorce.

The Body of Regulations and the Population Law were meant to make marriage and divorce more systematic and controllable.<sup>91</sup> In fact, the Ottoman state documents prove quite revealing of this intent. For instance, a letter sent from the province of Edirne to the Ministry of the Interior inquired about what was to happen to people who were married without a proper license. The letter specifically inquired

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<sup>86</sup> Cem Behar, "Neighborhood Nuptials: Islamic Personal Law and Local Customs- Marriage Records in a Mahalle of Traditional İstanbul (1864–1907)," 537–559.

<sup>87</sup> *Düstür*, Tertib-i sani, Cilt 6, Dersaadet, Matbaa-i Amire, 1334.

<sup>88</sup> Mehmet Akif Aydın, "Osmanlılarda Aile Hukukunun Tarihi Tekâmülü," 437.

<sup>89</sup> In a document sent from the Ministry of Justice to the Ministry of Interior the issue was clarified: "...*Hukuk-u Aile Kararnamesi'nin ilğâsıyla bu babda Hukûk-u Aile Kararnamesi'nin neşrinden evvel geçerli kanunlar va hükümlerin eskisi gibi geçerli olmasına dâir kaleme alınan kanuni layiha esbâb-ı mucibesıyla birlikte babı âli canibi samisine takdim kılındı. Kanun çıkıncaya dek Hukuk-u Aile Kararnamesi'nin mezkûr hükmünün muhafazasının lazım olduğu adliye nezâreti celilesinden cevaben ezber kılınmıştır. Ol babda.*" DH İ UM E50 33, A3, 10 April 1919.

<sup>90</sup> Halil Cin, *Eski Hukukumuzda Boşanma*, 124.

<sup>91</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 138-139.

about certain couples married without a license: since the marriage was not registered, the couples' children could not be given an Ottoman identity document, *tezkire-i Osmâni*. The Census Bureau replied that the marriage partners should belatedly follow the regular marriage procedures and that their children should be given an Ottoman identity. It also mentioned that those who solemnized a marriage without a license would be punished.<sup>92</sup> Likewise, in another document, the province of Aleppo was warned about the same matter by the Census Bureau on April 20, 1914.<sup>93</sup>

A letter from governor's office of Aydın province to the Ministry of the Interior on April 20, 1913, asked about the situation of those unable to pay the charge of marriage registration, either because they did not have enough money, because they were doing their military service, or because they were visiting other places.<sup>94</sup> Another document of the Ministry of the Interior sent to the Ministry of Justice explained that *imams* who performed a marriage ceremony without a granting letter from the Sharia court would be punished.<sup>95</sup>

The CUP rulers were strict in applying the Population Regulations and Law. In 1912, the governor of Aydın asked the Ministry of the Interior whether it was

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<sup>92</sup> “*İzinnâme almaksızın evlenenlerin münâkehat ve talak vukuâtı usûlü dairesinde imamlar tarafından ilmühâber verilerek evvelce o muamelenin icrasından sonra doğan çocukların tezkire-i Osmaniye itâsı zaruri olduğu ve izinnamesiz akd icra edenler hakkında dahi takibat-ı kanuniye icrası sicilli nüfus müdüriyeti ifadesiyle beyan olunur efendim. Ol bâbda..*” DH SN THR 16 33, A4, A2, 20 January 1911.

<sup>93</sup> “*Vaktiyle izinnâmesiz akdedilen münekehat vukuâtının ve evlenenlerden mütevellit çocukların mahalle ve köy karyelerinden götürülecek ilmühâberler üzerine nüfusça kayıtlarının icrası zaruridir..*” DH SN THR 51 8, 20 April 1914.

<sup>94</sup> “*Devletlü efendim, âdemi iktidarlarından ve askerde ve başka diyarda bulunmalarından sebeple münekehat ilmühâberlerinin parasını tahsil edemeyenler hakkında olunacak muamelenin sorulup anlaşılmasına dair Menteşe Mutasarrıflığı'ndan gelen tahrirat ve keyfiyetin nezaret celilerinden sorulmasına dair il nüfus müdürlüğünden yazılan derkenar örnekleri leffen takdim kılınmış olmakla gereğinin...*” BOA, DH SN THR 42 40, 20 April 1913.

<sup>95</sup> “*Garip ve meskenleri meçhul hocalar tarafından izinname alınmadan nikâh akdi icra edilmekte olduğu ve bunların hüviyetleir meçhul olması hasebiyle haklarında ceza kanunu icrası kesb etmenin zorluğu beyanıyla bu babda ne vecihle muamele yapmak lazım geldiği mamuret'ül aziz vilayetinden alınan tahriratta sorulmuştur...*” DH İD 63 23, 1331 M 13, A4, 22 December 1912.

possible for the Armenian people to get a certificate of birth, death, marriage, and of change of location from the *Murahhashane*, as they used to do. The governor answered that it was an ancient concession that the Armenian *Murahhashane* dealt with the above-mentioned issues of the non-Muslim people. The new order had cancelled this practice, so that the Census Bureau kept rejecting these certificates, causing a delay in procedures. In reply, the Census Bureau told the governor that according to the 22<sup>nd</sup> article of the Population Regulation, *Sicilli Nüfus Nizamnâmesi*, it was imperative that non-Muslim certificates of birth, death, and change of location were given by the ecclesiastical or rabbinical authorities of the neighborhood; the certificate of marriage and divorce should be given by the local head of the religious community, *ruhâni lider*. Therefore it was not legal to act against this article of the regulation.<sup>96</sup>

The state's intervention into its subjects' marriage affairs, and hence the control on the population, intensified gradually until March 15, 1917, when the Ministry of the Interior officially announced that Muslim or non-Muslim foreign citizens' family law, guardianship, and competency cases could be heard in Ottoman courts, if both sides agreed, or if one of the sides was an Ottoman citizen.<sup>97</sup> Actually,

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<sup>96</sup> “..Malumunuz olduđu üzere gayri Müslim milletine ait bu gibi muamelelerin murahhashaneler tarafından icrası lüzümü patrikhanelere bahş ve ihsân olunan kadim bir imtiyaz gerekliliđi bulunduđu derkârdır. Bununla beraber murahhashanelerce sicillerin tertibi düzeni hasebiyle mezkûr vukuatların vakti zamanyla muntazam bir surette cereyan ede gelmekte olması ve mahalle muhtarları çođunlukla bu olaylardan haberdar olmadıkları gibi ellerinde de muntazam defterde bulunmaması bu vazifenin muhtarlara yüklenmesi hâlinde vukuâtın nüfus sicillerine kaydı tahririnin birçok gecikmeye uğrayacağı. Buna binaen kişilerin mağduriyetinin...”

7 Aralık 1912 tarih ve 1323, 4289 nolu tahrirat-ı behiyeleri cevabıdır. Her karye ve mahallede sicilli nüfusa alakalı doğum ve vefâyat ve tebdili mekân vukuâtı muâmelatını imam ve muhtarın ile gayri Müslim cemaatin karye veya mahalle papaz ve haham veya muhtarları ve nikâh ve talak vukuatı muamelelerini dahi yalnız imamlarla gayri Müslim cemaatin mahalle ruhâni reisi tarafından verilecek ilmühaberler üzerine icra olunacağı sicilli nüfus nizamnamesinin 22. maddesi hükmünden olduğuna göre bunun haricinde muamele ifâsinin caiz olmayacağı sicilli nüfus idareyi umumiyeti ifadesi ile beyan olunur ol babda.” DH SN THR 39 39, 19 October 1912.

<sup>97</sup> DH EUM ECB 34 48, A1, 15 March 1917.

this announcement was the last step before the OLFR, the promulgation of which changed the procedures of marriage in the late Ottoman Empire.

As explored in the primary sources, the Ottoman state developed a sensitivity and concern for its population during the reform age, which was intensified due to the family politics of the CUP during the Second Constitutional Period. The CUP's concern for the population eventually developed into an effort to control it through family law. At the beginning of the reform period, the area of family law concerned reformers. Yet they did their best to keep the marriage issues of all Ottoman subjects under control, for economic and political changes necessitated those family records be kept with care.<sup>98</sup>

### **2.1.3. The CUP's women and family politics: The Ottoman state's intervention into the marriage affairs of its subjects**

From its beginning until its demise, the Ottoman Empire controlled the marriage and divorce of its population to varying levels.<sup>99</sup> According to İsmail Hakkı Uzunçarşılı, it was quite certain that marriages had earlier been solemnized by regents, qadis,<sup>100</sup> or officially appointed deputies.<sup>101</sup> The qadı's central part in solemnizing marriages continued after the Tanzimat period with the Sicilli Nüfus Regulations and the Population Law.<sup>102</sup>

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<sup>98</sup> İlber Ortaylı, *Osmanlı Toplumunda Aile* (İstanbul: Pan, 2000), 126.

<sup>99</sup> Saim Savaş, "Fetva ve Şer'iyye Sicillerine Göre Ailenin Teşekkülü ve Dağılması," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 2*, ed. Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 510.

<sup>100</sup> I hereby use 'qadı' for Ottoman regent.

<sup>101</sup> İsmail Hakkı Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı* (Ankara: TTK, 1988), 112-113.

<sup>102</sup> Mehmet Akif Aydın, "Osmanlılarda Aile Hukukunun Tarihi Tekâmülü," 437-438.

According to İlber Ortaylı, during the Tanzimat era, the reformers tried to regulate the family lives of the Ottomans with ferman and *tenbihs*, advice.<sup>103</sup> The Ottoman state put widows, the mothers of twins or triplets, or women without financial means on a salary, regardless of their religion. Ortaylı tells the story of a woman who was a state beneficiary and gave birth 26 months after her husband's death. Likewise, even the father of triplets, Hristos, living in Sofia, was given a salary. Besides, the state took care of orphans either by providing them a salary or by placing these children with volunteer families.<sup>104</sup>

In 1844, the Supreme Council of Judicial Ordinances, *Meclis-i Valâ-yı Ahkâm-ı Adliyye*, decided that the marriage of girls aged 30 or above should be made easier by reducing marriage expenditures. For these girls, their male guardian's allowance would also not be sought.<sup>105</sup> To make marriages easier, a bride's dowry, *başlık*, was forbidden with a ferman of 1844.<sup>106</sup> The *başlık* had been causing great problems in some parts of the empire, because it was expensive for some grooms. Hence they kidnapped the brides, a situation that further complicated problems for the authorities. It seemed best for all that *başlık* was forbidden. However, the problem of the *başlık* seemed to have continued, as Şeyhülislam Hüseyin Hüsnü in 1912 wrote an official letter to the Ministry of the Interior saying that other than *mehr*, neither the bride nor her guardians could claim anything from the groom. He also said that it was better if the authorities also reduced marriage expenditures.<sup>107</sup>

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<sup>103</sup> İlber Ortaylı, *Osmanlı Toplumunda Aile*, 126.

<sup>104</sup> Mehmet Akif Aydın, "Osmanlılarda Aile Hukukunun Tarihi Tekâmülü," 464

<sup>105</sup> Saim Savaş, "Fetva ve Şer'iyye Sicillerine Göre Ailenin Teşekkülü ve Dağılması," 140-141.

<sup>106</sup> Şerafettin Turan, "Tanzimat Devrinde Evlenme," *İş ve Düşünce Dergisi*, 12 (1956): 14-15.

<sup>107</sup> "Devletlü efendim hazretleri, kadınların evlenmeleri için gerek kendileri gerek evliyası vesaire taraflarından mehirden gayri başlık vesaire namlarıyla meşru olarak bir şey talep ettirilmemesi ve şerâite hilaf olarak fazla masraf edilmemesi fetvahanenin ifadesiyle tamimen şeri hâkimlere yazı ile bildirilmiş olduğundan nezareti celilerince de bu babda mülki memurlar tebligat gereğinin ifa buyrulması yolunda..." DH MUI 89 20, 9 May 1912.

The other obstacle to marriage was the high rates of *mehr*,<sup>108</sup> which also concerned the state authorities. In 1863, the amount of *mehr* was ordered to be determined according to the people's income levels. The decree of 1863 classified the *mehr* amounts for poor, middle-class, and rich families differently.<sup>109</sup> The Ottoman state continued to take care of *mehr* problems: for instance, an Ottoman woman, Seher, from Vidin, Bulgaria, petitioned her ex-husband because he did not pay her *mehr* and her son's *nafaqa* after they got divorced. Her husband, Süleyman, was a soldier doing his military service in the Second Army. He got married while he was living in Vidin, but two years later, he got divorced and moved to Lapseki. Seher claimed that her husband had not sent her any money during the past six years. Her petition opened a lengthy correspondence between the Second Army, the Ministry of the Interior and Biga *Mutasarrıflığı*. As a result of the investigation Süleyman was found to be living in Lapseki. He told authorities that he had sold his barber shop in Vidin and left all the money with his ex-wife.<sup>110</sup>

İlber Ortaylı asserts that the Young Turks were different to the men of the Tanzimat in that they were looking for solutions for the internal and external crises of the empire while also trying to transform society.<sup>111</sup> The political agenda of the ruling party, the CUP, required a nuclear family, with nationalist inclinations. In the nuclear family, a well-educated, preferably working mother would bring up future generations conscious of homeland and nation.

The first step towards establishing the nuclear family and the new woman was education: new values and symbols of the nation were to be instilled in children

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<sup>108</sup> In Islamic family law, the bride price, *mehr*, is a necessary payment by a husband to the wife for marriage. This payment however, is neither a fee nor a compensation; it is more like a present for a woman's economic security, during and after marriage, if her husband divorces her. In this essay, I hereby use the word *mehr* for the Ottoman bride price.

<sup>109</sup> Şerafettin Turan, "Tanzimat Devrinde Evlenme," 15.

<sup>110</sup> DH MKT 894 31, 1332 B 20, the correspondences are from 25 September 1904 to 12 April 1905.

<sup>111</sup> İlber Ortaylı, *Osmanlı Toplumunda Aile*, 140.

through education.<sup>112</sup> According to Füsün Üstel, Ottoman children before the reform period were educated and socialized under the aegis of their communities and families. However, during the Young Turk period, the state assumed the responsibility of educating children. As future mothers of the Turkish nation, female members of the nation needed first to be transformed into good citizens.<sup>113</sup>

Actually, the concern of the CUP rulers with the new family model was related to a vision for a healthier and more viable nation. Nationalist/feminist discourse on women and family thus became instrumental.<sup>114</sup> The discourse of CUP rulers on family can be traced in women's journals of the period. For instance, various articles in *Kadınlar Dünyası* frequently mention the importance of the family as the nucleus of the Turkish nation;<sup>115</sup> the importance of women as mothers of future generations;<sup>116</sup> the importance of allowing women to get proper education, so that as mothers they could instill their sons with national pride;<sup>117</sup> the importance of women as mothers of future soldiers of the Turkish nation;<sup>118</sup> and the importance of free choice in marriage, so that men and women could find happiness in their marriages.

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<sup>112</sup> Cüneyd Okay, *Meşrutiyet Çocukları* (İstanbul: Bordo, 2000), 12.

<sup>113</sup> Füsün Üstel, *Makbul Vatandaşın Peşinde II Meşrutiyet'ten Bugüne Vatandaşlık Eğitimi*, 32.

<sup>114</sup> Deniz Kandiyoti, "Introduction," 9.

<sup>115</sup> "Millet dediğimiz kitleyi oluşturan küçük ailelerdir. Aile ise izdivaçla teşekkül eder. Yarın necip vatan muhterem Türk analarının yetiştirdiği evlada teslim olacaktır..." Mukadder İrfan, "Bizde Aile Teşkili," *Kadınlar Dünyası*, 65, 20 June 1913.

<sup>116</sup> "Kadınlar orduyu teşkil edecek nesli doğuracak. Fakat bugünkü hal kadının ailede mutlu olmasına mani: evlenince eline kepçe, yüzüne siyah perde dört duvar arasında yaşamaya başlıyor. Mademki aile yarının zinde kavi faal neslini doğuracak ne yapmak lazım ki aileyi islah edelim? Bir Cermenin, Slavın rekabetine türkü de sokalım, bu duyguyu çocuklarımızda uyandıralım?..." Nesrin Salih, "Bizde Aile Hayatı Niçin Yok?," *Kadınlar Dünyası*, 75, 20 June 1913.

<sup>117</sup> "Bugün çok iyi bilmek gerekir ki yalnız askeri kuvvet ile bir millet galip gelmez. Biraz mütefennin olmak gerekir. Kadınlarımızın tarihlerini anlamaları, ecdadı, fütuhatlarını takip etmeleri gerekir. Ancak o zaman o analardan doğacak çocuk düşmanlarına kin besleyerek büyür, intikam alır..." Mehpere Osman "Hukûk-u Nisvân Cemiyeti," *Kadınlar Dünyası*, 76, 1 July 1913.

<sup>118</sup> "Hanımlar vatanın dışarı olduğu felaketler en çok biz kadınları düşündürmeli. Yarının vatanseverleri, kurtarıcıları bizim kucağımızda iken fikren silahlanmalı. Biz şimdiye kadar vatana layık selim vücutlar yetiştiremedik. Vatana çok borçluyuz. Vatansever evlatlar yetiştirmemiz lazım..." Feride, "Kadınlar Dünyasına," *Kadınlar Dünyası*, 4, 20 April 1913.

Another situation that affected family life was the death of married soldiers on the war fronts and the delayed announcement of their deaths to their families. Many soldiers were killed during the wars. However, their deaths were not announced straight off, and their fiancées or wives were made to wait for them. The state intervened into this unpleasant situation in 1912, when the Ministry of the Interior ordered that the death of soldiers should be announced to their families instantly, so that their fiancées or spouses could marry someone else.<sup>119</sup>

The state also took care of the families of its soldiers while they were on military duty. For instance, the wife of a soldier, Ali, was kidnapped by a bunch of vagabonds. The Ministry of the Interior ordered an urgent action taken against these vagabonds, and general precautions taken for the well-being of both soldiers and their wives and fiancées.<sup>120</sup>

The situation of the non-Muslim population also concerned of the state. For instance, Katrian, the daughter of Tador from Varna, wrote a petition against her husband, Nikola, the son of Kosta, stating that he had left her and their four sons to marry another woman in Sorodiç, Salonica. However, the Greek Church did not permit polygamy. Therefore, the Ministry of the Interior intervened and ordered action to be taken for the dissolution of Nikola's second unlawful marriage. The order of the ministry also attempted to secure the *nafaqa* of Nikola's four children and first wife.<sup>121</sup> In another document, Kati, daughter of Enko, claimed that her

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<sup>119</sup> “İzmir Seferihisar kâimmakamlığından bu kere alınan tahriratta uzak mahallerde vefat eden asker efradı vukuatı muntazam olarak bildirilmediğinden bu gibilerin nikâhı altında bulunan kızlar ilâ nihaye izdivaç edemediklerinden ve bu suretle neslin devamı sekteye uğradığından bahisle bu babda devamlı olarak vukua gelen müracaat ve şikâyete son verilmek üzere...” DH İD 63 16, 1330 A4, 9 May 1912.

<sup>120</sup> DH İD 63 16, 9 May 1912.

<sup>121</sup> “Devletlü efendüm hazretleri, zevci Osmanlı tebasından Selanik vilayeti dâhilinde Sorodiç kazasının Morfin karyesi ahâlisinden Nikolas veledi Kosta memleketine gidüp bir daha dönmediğinden ve kendisini ve çocuklarını mâişetsız bırakıp memleketinde başka bir kadın ile evlendiğinden bahisle 4 nefer evladının mâişetlerinin temin ettirilmesi ve Hristiyan mezhebince çok eşlilik olmadığından ikinci

husband, Manuel Dimitri Papadopoulos, hairdresser at Alexandria, left her and their son without a livelihood. Kati and her son needed help and asked whether her husband could be found. The Ministry of the Interior started an investigation. Dimitri, however, could not be found and the Egyptian authorities were informed about the situation.<sup>122</sup>

During and after World War I, the political and economic situation had a great impact on people's lives. The state authorities sometimes acted as protectors of their subjects' marital circumstances. For instance, in 1919, Armenian women married to Muslim men were told to get divorced by religious leaders of the Armenian *millet*. The Ministry of the Interior in 1919 ordered the Armenian women's protection against pressure from religious leaders to governors in Edirne, Erzurum, Ankara, Aydın, Bitlis, and Van; as well as to the *mutasarrıfs* of Karahisar, Erzincan, Diyarbakır, Sivas, Trabzon, Kastamonu, Konya, Kütahya, İçel, Eskişehir, İzmit, Bolu, Canik, Çatalca, Karasi, Kayseri, and Niğde.<sup>123</sup>

In the late Ottoman Empire, children and youth gained greater importance than before. "The youth as a foundation of the Ottoman/Turkish army" was an important subject for CUP rulers: from a child's upbringing by his mother to his health during puberty and his well-being while fighting on the fronts was a concern for the authorities. In fact, the CUP authorities believed that through education and educated mothers, a child's proper upbringing was taken care of.

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*nikâhın feshi için Varna'da mukim Kabtida binti Todor tarafından verilen dilekçede sorulmuş olduğundan iktizasının ifâ neticesinin inbası Varna Şehbenderliği'nden gelen 27 Temmuz 1911 tarihli ve 376 numaralı yazışmada bildirilmiş olmakla gereğinin icrası hususunda...*" DH H 33 56, A2, 12 August 1912.

<sup>122</sup> DH H2, 33-1, 2A, 13 November 1911.

<sup>123</sup> "İslamlarla evlenen ve zevçlerinden ayrılmak istemeyen Ermeni kadınlar haklarına zor kullanılmaması ve aralarında ayrılık hususunda ruhani reisler ile mümessiller tarafından müracaat ve ısrar olursa keyfiyetin öncelikle emirde Bakanlığa işarı tebliğ olunur. Dâhiliye nazırı." DH ŞRF 99 110, 10 May 1919.

For the CUP, the health of the population was a serious matter. The Ottoman state took measures against the spread of venereal diseases, especially among the youth and soldiers. One reason for this measure was the increase of prostitution in the late Ottoman Empire, especially among the youth. Along with prostitution, venereal diseases such as syphilis also spread in society.<sup>124</sup> Abdullah Cevdet, a medical doctor and an ardent Westernist, wrote an article to the *Times* newspaper on September 11, 1919, about the spread of venereal diseases in Turkey in general and in Istanbul in particular. In the article, he stated that forty thousand people were afflicted with venereal diseases in Istanbul. The reason for the spread of these diseases was an increase in prostitution, which resulted from the material and spiritual losses incurred during the last days of the empire. In the article, it was also stated that the authorities used to keep Muslim women's chastity under control. Politicians, though, could not come up with solutions for either poverty or prostitution. The conservatives claimed that not veiling properly and wearing obscene clothes caused an increase in prostitution. Yet the same article argued that women who did not veil properly were still chaste, whereas veiling could be a cover-up for prostitution.<sup>125</sup> The article went on talking about a lack of medicine and the incompetency of Ottoman doctors in this regard. At the end of the article, the Indian statesmen, who were from Ağahan group, were despised, for the Indians stood up for the Ottoman state as it was the center of Islamic civilization.<sup>126</sup>

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<sup>124</sup> "Fuhuş Vesikalarını Geçirenlere Cevabımız," *Sebil'ür Reşat* 17, 435-436, 14 August 1919.

<sup>125</sup> DH İ UM 19-9 1-46, A4, 23 October 1919.

<sup>126</sup> "İstanbul basını önceden zührevi hastalıkların Türkiye'de bilhassa İstanbul'da son senelerde endişe sebebi olarak artmasına dikkat çekmektedir. Frengi anadoluda ve hususen ekser nüfusu türk olan Kastamonu ve Konya vilayetlerinde çoktan beri yerleşmiş olduğu halde istanbulda 1913 senesine kadar yayılmış değildir. Güvenilir bir Türk kaynağından alınan malumata göre hâlihazırda İstanbul ve merkeze bağlı yerlerde zührevi hastalığa yakalandığı için tedavi görmüş bulunan kadın ve kızların adedi 40bine varmıştır ki bu derece müstevli olan bir hastalığın neticeleri ve teşirâtına dair uzun uzadıya bahis edildiği ve frengi ile paralel olarak çoğalan verem hastalığına sütunlar tahsis edildiği halde bunların sebeplerine yani son senelerde türkiyede ve hususiyetle istanbulda fuhuşun dikkate değer biçimde arttığından ve harbi umuminin sebep olduğu iktisadi ve manevi çöküşten söz edilmemekte-

The above article caused a lot of tension in the Ottoman Empire. Especially the Association of Medical Doctors criticized Abdullah Cevdet for not being scientific, lacking information, and misinforming the *Times* about the situation in the Ottoman Empire. They said that claiming that almost half of the Istanbulite population suffered from syphilis went beyond the tolerable, and also went against national advantage. State authorities should therefore immediately refute the article.<sup>127</sup>

Although Cevdet's argument was refuted, for the CUP rulers, prostitution and venereal disease still posed a great threat to the Ottoman Army. For that reason they wanted to address this problem immediately. The problem of wandering prostitutes in the city was also one of the reasons for the spread of disease. For instance, an official order sent from the Ministry of the Interior to the Bolu *Mutasarrıflığı*, asked officials to organize a regular examination of prostitutes by doctors. Yet as soon as they came out of the hospital, they were back on the streets and transmitted their diseases to the youth, the eminent members of society and the army's foundation. Besides, curing venereal disease was costly to the state. The best way to keep disease under control and protect the youth was to isolate the prostitutes from society. However, reformatory schools should be established within Bolu, so that prostitutes

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*dir... bugünkü türk politikacılar gerek payitahtında ve gerek sâir mahalde fuhuş ile veyahut bunun esas sebebi olan fakirlik ve izdiham ile mücadele etmeye bir yol ve çare bulamıyor. Muhafazakârlar mevcut ahlak düşüklüğünü Müslüman kadınların örtünmeye riayet etmemelerini bağlıyor.... Çok Osmanlı tabiblerinin yetersizliği ve hastane ve ilaçların noksanlığı alkoliün artması ve ciddi tedbirler alınmasını gerektirmektedir....Bu hale göre Ağahan derecesindeki Hint ricâli ve elâzımından zatların Türk hukukunun müdafasını deruhte ederek İstanbul'un İslam medeniyetinin merkezi ve İslam faziletinin tecelligahı olduğu meâlinde başvekâlet makamına sunulan dilekçeye imza vermelerine acımak gerekir."* (an expert form the Times Newspaper dated 11 September 1919) DH İ UM 19-9 1-46, A4, 23 October 1919.

<sup>127</sup> DH İ UM 19-9 1-46, A4, 23 October 1919.

could be educated. In these schools, the prostitutes could learn religion and get a vocational training, so that they could have decent lives.<sup>128</sup>

Apart from the spread of diseases, the situation of soldier's wives and fiancées was another concern for the rulers, for it affected the soldiers' morale. The Ministry of the Interior revealed that often, while the soldiers were fighting on the fronts, far away from their hometowns, their wives or fiancées were kidnapped, raped, their parents were tortured, and their houses seized. If their wives and fiancées were not kidnapped, they were sometimes forced to marry other men.<sup>129</sup> This situation was depressing for soldiers on duty. In addition, some of these soldiers might even escape and get revenge on those who harmed their families. They might even commit murder. Therefore, such events, which demoralized soldiers, should be taken care of by the state, and the fiancées should be made to wait until soldiers were discharged from the army.<sup>130</sup>

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<sup>128</sup> "...O yüzden hastaneden ayrılmalarını müteâkip elden ele dolaşarak şerâiti fenniye ve sıhhiye hilafında birleşmeler sevkiyle memleketin güzide fertleri ve ordunun temeli olan gençlere hastalık bulaşacağı derkar olan illet ve bu illete yakalananları tedavi masrafları aşıkâr olduğundan bu hastalığın yayılma sebebi olan bu sokak ülfetlerinin uygun bir mahalde hükümet ve belediyece tecrit altına alınması ve korunması hakkında sağlık heyetinden bundan evvel alınan rapor ve birkaç mahalde ihtiyar heyetince ile zabıttan gösterilen lüzum üzerine mezburelere.....Ahlâken ve maişeten sefil halde bulunan bu gibi kadınların ıslah haliyle beraber kendilerine dinin farzlarını ve telkini ve meslek talimi suretiyle istikballerini temin için liva dahilinde bir ıslahhane tesisi ve açılışı liva umum meclisince uygun görülerek bunun için 1330 senesini bütçesine kâfi meblağ ayrılmasına ve sosyal meslelerimizin büyüğünden olan şu madde için babı aliden tatbiki hakkında hazırlıklara başlanmış olduğunun mezkur muavinliğe cevap olarak yazılması zammında..." DH İD 65 46, A 3, 22 January 1914.

<sup>129</sup> Ali Osman from Bayburt petitioned to the Ministry of War because his wife was married off to someone else while he was on duty in the army. The Ministry of War conveyed his petition to The Ministry of Interior so that necessary action could be taken. DH İ UM EK 50 51, 15 April 1919.

<sup>130</sup> "Osmanlı askerlerinin uzak kıtalarda bulunmalarından istifade ederek memleketlerindeki nişanlı ve nikâhlularını bazı şahısların işgal veya ebeveynlerini suikast veya hanelerini ihrak ve mallarını gasp etme gibi tehditlerle başkası ile evlenmeye zorlanmakta olduğundan bahisler askeri efradın hukukunun zabıta askerleri tarafından takip olunarak muhâfazası... Efradı askeriyenin memleketlerinde bulunan nişanlılarının başkası ile evlenmekte olduğu yapılan şikâyetlerden anlaşılmakta olup hâlbuki memleketlerini terk ile askeri görevini yapan efradın nişanlılarını başkalarının nikâhına almamaları askerlik nazarından pek ziyade tesir hissine ve talep edilen faydalar ortaya çıkartacağı gibi aksi hâlin ortaya çıkması dahi kötü tesir ortaya çıkartarak ekser efradın kaçarak nişanlılarını alanlardan intikam almak için cinayet bile işlemelerine sebep olacağı emsâli ile müsbit olduğundan bu kötü tesirler ve mahzurlara meydan verilmemek için bilfiil askeri hizmette bulunan ferdlerin nizami hizmetlerini tamamlayıncaya değin nişanlıları başkası ile evlendirilmeyip dönüşlerini intizar edilmesi zammında lazım gelen..." DH HMS 23 61, A7, 16 Temmuz 1912.

The situation of the fiancées and wives waiting for their men caused another problem. Many girls were forced to wait either as a result of a misunderstanding or by the ill will of soldiers, even if they were not engaged. To protect women from such unpleasant situations, the Census Bureau commenced the practice of recording marriages or engagements. The parents of both sides should approve their children's engagement and the document should be stamped with a seal by the *muhtar*.<sup>131</sup>

As social, cultural, and economic contexts changed, Muslim women's view of marriage started to change as well. Marrying a non-Muslim, and/or a foreigner had also become an option. The state kept intervening into their affairs. In 1921, the Şeyhülislam filed a complaint to the Ministry of the Interior about two Muslim Istanbulite women who were married to non-Muslim foreigners, for it went against Islamic law and morals of society. One of them, the letter indicated, was married to a British officer and had run off to England because her father opposed their marriage. Another one, Hamiyet Hanım, was married to an Austrian captain, Paronden, whom she met during the First World War in Germany. They were married in Germany. The parents of Hamiyet gave their consent to her marriage because their daughter passionately loved Paronden. The Şeyhülislam then asked the Ministry of the Interior to take precautions against meetings between Muslim women and foreign officers in Beyoğlu and Kadıköy.<sup>132</sup> This document is important in that it reveals that some

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<sup>131</sup> “Nişanlanmak keyfiyeti öteden beri devam etmeyen bir hal olduğundan dolayı bir takım genç kızların evlenmesi duçar olmuş; askeriye sınıfına dâhil delikanlılar evlenecek kızların çocukluk dönemlerinde aralarında şaka ile verilen söze binaen veya mal, aradaki düşmanlıktan doğan sebeplerle kendilerine nişanlı olduğu iddiasında bulunmaktadır. İş bu bakireler askerde nişanlıları olduğu gerekçesiyle çıkan tâliplerine verilmemekte bir takım haberleşme ve tetkikat nedeniyle izdivacı ertelemekten başka pek çok masraf yapılmaktadır. Bu hâlin önünün alınması ve düşmanlık sebebiyle bu hâlin önünün alınabilmesi ve genç kızların evliliklerinin ertelenmemesi için önceden askere alınan delikanlıların askere sevkleri esnasında hiçbir kız ile nişanlı ve nikâhlı olup olmadığının sorulması nişanlı ve nikâhlı ise tarafların velileri ve muhtarlar celp ve ifade alınarak ciheti askeriye ve nüfus idarelerindeki defterlere yazılması hem kendileri hem de veli ve muhtarları tarafından mühürlenmesi usulünü temin etmek kâfi olacağı bazı taraftan işar olunmuştur...” DH HMS 23 61, A7, 16 Temmuz 1912.

<sup>132</sup> “...Mâruzu daîleridir ki, Kadıköy’de Cevizlik adlı mahallede Apollon Sineması civarında ikamet etmekte olan Anadolu Demiryolları ve Tramvay Şirketi avukatı Gümülcineli Arif beyin kerimesi önce-

sections of Ottoman society had changed drastically. For a woman like Hamiyet Hanım marriage had become a personal choice based on love rather than on religion or family wishes.

The place of women, the state of the family, and the legal disadvantages of women were highly discussed issues in the late Ottoman Empire. The nationalist ideologue of the CUP, Ziya Gökalp, proposed the establishment of a new family, which was nuclear in structure and based on the equality between the sexes.<sup>133</sup> According to Gökalp, women should be properly positioned in three distinct realms—socioeconomic life, education, and legal standing—so that the idea of nationalism could flourish.<sup>134</sup>

Like his contemporaries, Gökalp believed in legal solutions to social problems. Gökalp eventually became the spearhead of a movement that worked for the promulgation of a modern Ottoman civil code. The new civil code was supposed to provide a legal foundation for the egalitarian, conjugal family system that Gökalp and the CUP cadres had been advocating.<sup>135</sup> The CUP cadres resolved the tensions surrounding the Ottoman family and new women by eventually providing a legal solution: the Ottoman Law of Family Rights of 1917.<sup>136</sup>

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*den tanıştığı bir İngiliz zabıtı ile bundan iki sene evvel tıp fakültesi genel sekreteri dr. İsmail Derviş beyin kerimesi Avusturyalı bir zabıtla evlendiği anlaşıldığından bahisle İslam hükümlerine ve Şeri Aile hukukuna tecavüze teşkil eden bu gibi gayri meşru hareketlerin birçok Müslüman tebaya sahip olan batı devletlerince bile tasvip edilemeyeceği ve İslam şiarı ve hassasiyetlerine riayet hususun onlarca da iltizam edileceği bu cihetle bir an evvel bu gayri meşru hadiseye son verilmesi ve bu gibi hallere sebep olmamak için İslam kadınlarının Beyoğlu ve Kadıköy ve buna benzer mahallerde ecnebi zabıtlar ile ahbablık kurmalarının engellenmesi hususunda lazım tedbirlerin alınmasının savbı âli devletlerine yazı ile haber verilmesi Dar'ül Hikmet'il İslamiye'den ifade edilmiş olmakla gereğinin ifâsına...*" DH EUM AYŞ 56 6, A4, 26 August 1921.

<sup>133</sup> Kate Fleming, "Women as Preservers of the Past," 128.

<sup>134</sup> Ibid., 128.

<sup>135</sup> Alen Duben and Cem Behar, *Istanbul Households*, 212.

<sup>136</sup> Ziyaeddin Fahri Fındıkoğlu, *Essai sur La Transformation du Code Familial en Turquie* (Paris: Editions Berger-Levrault, 1936), 37-38.

The CUP rulers idealistically put forward policies they believed would save the empire. Having internalized the notion of governmentality, they took care of and controlled the population as best as they could. The CUP's policies on women and family were sometimes too much for some people to take. The CUP was, however, consistent in its policies, eventually embodied in the OLFK.

## 2.2 Legal context of marriage and divorce

David Nelken explains legal culture as one way of describing relatively stable patterns of legally oriented behaviors and attitudes. In fact, legal culture is a concept that is used for capturing webs of meanings and points of interplay between various interpretations in and outside the legal sphere.<sup>137</sup> From the reign of the sultan Mahmud II to the Second Constitutional Period, with the reforms, the promulgation of new laws, and the regime change that introduced the Constitution into the Ottoman state, Ottoman legal culture also changed. With the standardization and bureaucratization, the state's control over the legal system increased. The attempts at the codification of legal status, along with an increase in centralized bureaucratization, meant that Ottoman legal procedures started to change too.<sup>138</sup>

Kalman Kulcsar argues that law is an instrument of social control and a mode of organizing beliefs and values in a given territory.<sup>139</sup> In theories of legal modernity, personal law is no longer important for the territorial nation-state. Hence, to enhance the state's control over the legal system and to use law as an instrument of social

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<sup>137</sup> David Nelken, "Using the Concept of Legal Culture," *Austrian Journal of Legal Philosophy*, 29, (2004): 7-9.

<sup>138</sup> Aneelies Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," 150-151.

<sup>139</sup> Kalman Kulcsar, *Modernization and Law Theses and Thoughts*, (Budapest: Hungarian Academy of Sciences, 1987), 64.

control, laws applied across spatial, religious, and ethnic areas must be codified and unified.<sup>140</sup>

As Kulcsar argues, the law had become an instrument of social control and a mode of organizing beliefs in the late Ottoman Empire. With Ottoman legal modernization, the personal laws of the different religious communities lost their importance, especially under the CUP government, as the territorial nation-state rather than humankind became the point of reference.

The laws of modern nation-states drew on motives and sanctions that superseded religious sanctions and inspirations.<sup>141</sup> For the reformers of the late Ottoman Empire, religious law was not acceptable because it kept people away from acting in compliance with the developmental aims of the state. Hence, the religious law applied in the Ottoman Empire to both Muslims and non-Muslims was gradually reformed, so that the empire could catch up with the necessities of the new administrative system of government.

In a time of extensive bureaucratization, recording-keeping, and population control, the traditional *qadı* court was not effective enough to handle family law procedures, for the Ottoman legal culture had changed. Legal reforms in the late Ottoman Empire eventually encompassed the area of family law, which had been sacred to some people in the late Ottoman Empire. The following section explores changes in the Ottoman legal culture and Ottoman bureaucracy to show that the new legal context of the Ottoman Empire required a different approach to family law and its administration as far as the modern Ottoman state was concerned.

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<sup>140</sup> İhsan Yılmaz, "Secular Law and the Emergence of Unofficial Turkish Islamic Law," 114.

<sup>141</sup> Ibid., 115.

### 2.2.1. Legislative movements and the codification of Islamic Law

In Islam, the divine is manifested concretely as specific law. Besides, there is no distinction between the law, on the one hand, and religion and morals, on the other.<sup>142</sup> Because the law is an embodiment of the divine will, with an eternal, immutable reality set as a model of perfection, not obeying the laws of Islam brings personal destruction to a believing Muslim.<sup>143</sup>

The law in Western Christian civilization is characterized by its mutability. However, in Judaism, Islam, and Hinduism, changing any aspect of law is like changing the religion itself; therefore the law of these religions covers all aspects of human life, both personal and social.<sup>144</sup> For that reason, Seyyed Hussain Nasr argues that to discuss or to change Islamic Law cannot be done by anyone except those competent in the Sharia law.<sup>145</sup>

In the Ottoman Empire before the reform age, the sultans did not consider themselves qualified to interpret Islamic Law, let alone reform it.<sup>146</sup> However, during the reform age, the rules of Islamic law on family matters such as polygamy, divorce rights, the rules of custody, and some aspects of inheritance posed problems for some Muslims with modern sensibilities.<sup>147</sup> For those modern-Muslims and Ottoman reformers trying to find solutions to women's difficulties, especially during the wartime, a new family law was required, the rules of which would give way to the establishment of the nuclear family, which also reflected the CUP's views.<sup>148</sup>

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<sup>142</sup> J.N.D. Anderson, "Law as a Social Force in Islamic Culture and History," 13.

<sup>143</sup> Seyyed Hossein Nasr, *Islamic Life and Thought*, (Albany: State University of New York Press, 1981), 25.

<sup>144</sup> *Ibid.*, 24.

<sup>145</sup> *Ibid.*, 25.

<sup>146</sup> Mehmet Akif Aydın, "Osmanlılarda Aile Hukukunun Tarihi Tekâmülü," 434.

<sup>147</sup> Sami Zubaida, *Law and Power in the Islamic World*, 147.

<sup>148</sup> *Ibid.*, 151.

Before the reform age, in the Ottoman traditional legal system, members of the *qadı* historically epitomized the Sharia court as an institution.<sup>149</sup> Although the hierarchical administrative structure was headed by the grand vizier, who was responsible for the general welfare of the capital and its inhabitants, the *qadı* supervised all judicial matters in the classical Ottoman city.<sup>150</sup> The *Meşihat*, the highest religious authority in the Ottoman Empire, which ranked second under the grand vizier, supervised each *qadılık*.<sup>151</sup> Yet the real power was still in the hands of the *qadıs*, because the court decisions required not only legal and religious knowledge but also local knowledge.<sup>152</sup>

The *qadıs*'s possession of local knowledge was important because the nature of Sharia was closely related to how the legal craft was actually practiced. However, during the reform period, the court's work underwent standardization, changing the interaction of staff and litigants substantially. The legal adjustments of the reform period stripped the *qadı* of their traditional powers in the local community.<sup>153</sup> Hence with codification of the law texts, the Sharia was cut out of its traditional locus, which was its specialty.<sup>154</sup>

In the Ottoman Empire before the reform age, non-Muslim Ottoman people were subject to their own religious laws in the field of private law and subject to Islamic Law in the field of public law. Islamic Law was not applied to non-Muslims except in cases where a non-Muslim came into litigation with a Muslim or where

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<sup>149</sup> Iris Agmon, *Family and Court Legal Culture and Modernity in Late Ottoman Palestine*, 68.

<sup>150</sup> Zeynep Çelik, *The Remaking of Istanbul Portrait of an Ottoman City in the 19th Century* (Seattle: University of Washington Press, 1986), 42.

<sup>151</sup> Each *qadılık* was further decentralized into semts, quarters, or mahalles, neighborhoods. While the *qadı*, who supervised all judicial matters, controlled the *qadılık* as a whole, he delegated his duties to the naibs in the semts, quarters, and imams in the mahalles, neighborhoods.

<sup>152</sup> Clifford Geertz, *Local Knowledge*, (New York: Basic Books, 1983); Brinkley Messick, *The Calligraphic State: Textual Domination and History in Muslim Society*, (Berkeley and Los Angeles: University of California Press, 1993).

<sup>153</sup> Iris Agmon, *Family and Court Legal Culture and Modernity in Late Ottoman Palestine*, 69.

<sup>154</sup> Sami Zubaida, *Law and Power in the Islamic World*, 133.

both parties agreed to be judged by Islamic Law. The constitutional and legal reforms changed the picture almost completely because Muslims and non-Muslim subjects were suddenly granted the same legal rights.<sup>155</sup> For instance, in a document of the Ministry of the Interior in 1913, it was explained that the cases of child care, *hidâne*, among non-Muslims will be dealt with in Sharia courts.<sup>156</sup> Even such a particular aspect of personal law became the concern of the state here, because the reformists believed that achieving the legal unity of the Ottoman Empire was of utmost importance.

Western law was introduced in the Ottoman Empire during the first half of the 19<sup>th</sup> century.<sup>157</sup> According to Joseph Schacht and June Starr, Islamic Law was still the fabric that held the Ottoman Empire together during the reform period.<sup>158</sup> It continued to be an integral part of Ottoman thought until the beginning of the 20<sup>th</sup> century.<sup>159</sup> In fact, the Ottomans sought to reconcile the reforms with the demands of the Sharia. For instance, *Hatt-ı Şerif of Gülhane*, the initial imperial proclamation from the sultan, justified the introduction of new laws, which were strengthening the state and preserving Islam.<sup>160</sup>

The reforms of the 19<sup>th</sup> century introduced new concepts and practices of politics and law, which step by step modernized state structures and society.<sup>161</sup>

During the reign of sultan Mahmud II (1808-1839), a series of military, educational,

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<sup>155</sup> Gülnihal Bozkurt, *Batı Hukukunun Türkiye’de Benimsenmesi Osmanlı Devleti’nden Türkiye Cumhuriyeti’ne Resepsiyon Süreci (1839–1939)*, 284.

<sup>156</sup> “Gayri Müslim fertler arasında hâsıl olan hidane ve nafaka-ı sığar davalarının şeri mahkemelerde görülmesinin lüzûmu hakkında önceden Şuray-ı Devletçe kabullenilen ve Meclis-i Vekâletçe uygun görülüp Meşihat Makamı ile Adliye Nezaret-i Celîlesi tebliğ edilen kararı hâvi tezkireyi samiyenin bir sureti li-eclil malumat tamimen ve leffen gönderilmiştir. Dâhiliye nazırı namına müsteşar” DH MB HPSM 9 2, A2, 21 October 1913.

<sup>157</sup> Şerif Mardin, “Some Explanatory Notes on the Origins of Mecelle,” *The Muslim World* 51(1961): 274-279.

<sup>158</sup> Joseph Schacht, *An Introduction to Islamic Law*, 64; June Starr, *Law as a Metaphor*, 5.

<sup>159</sup> June Starr, *Law as a Metaphor*, 12.

<sup>160</sup> Lynn Welchmann, *Beyond the Code*, 35.

<sup>161</sup> Judith Tucker, “Legacies of Legal Reform,” 3.

and administrative reforms based on Western models started: reorganized were the army, government, financial system, land tenure, provincial administration, and education in the Ottoman Empire.<sup>162</sup> The secular intervention into Islamic Law in fact started during the reign of Mahmud II.<sup>163</sup> During his reign, religion was defined as distinct from state functions, and hence religion gradually separated from the government.<sup>164</sup> Because the role of religion in politics had diminished, a new concept of justice, *adâlet*, emerged, which was a form of justice outside the will of a ruler and the jurisdiction of the Sharia.<sup>165</sup> The emergence of the *adâlet* marked the beginning of law-making by institutions, which was in accordance with rational considerations of utility.<sup>166</sup>

Between 1838 and 1908, the Ottoman Empire went through an intense phase of economic and sociopolitical transformation and modernized the old system.<sup>167</sup> Followers of the sultan Mahmud II, sultan Abdülmecid (1839-1861) and sultan Abdülaziz (1861-1876) also approved of reforms based on Western models. During the reign of sultan Abdülmecid, the *Hatt-ı Şerif of Gülhane* commenced the Tanzimat era. The Tanzimat Charter, which made the reformation of the Ottoman state

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<sup>162</sup> İhsan Yılmaz, *Muslim Laws, Politics and Society*, 85-86.

<sup>163</sup> Mahmud II even limited the functions of the qadı courts to issues of inheritance, family law, and waqfs. However, increasing bureaucratization of the empire required that family records were strictly kept. As a result of this procedure, the number of trials recorded increased and families from different religious communities became dependent on law instead of living in their closed worlds. See: İlber Ortaylı, "Osmanlı Aile Hukuku'nda Gelenek Şeriat ve Örf," 462.

<sup>164</sup> The authority of the Şeyhülislam had been shaken during reign of Mahmud II, yet the Meşihat and the religious scholars were still esteemed in the Ottoman Empire and they acted as a balancing power against the absolute rule of the sultan. See: Enver Ziya Karal, *Osmanlı Tarihi VII. Cilt* (Ankara: Türk Tarih Kurumu, 2003), 137-139. The office of the highest religious authority in the Ottoman Empire, Meşihat, was transformed and made responsible only of the Sharia courts. See: Niyazi Berkes, *The Development of Secularism in Turkey*, (Montreal: McGill University Press, 1964), 98.

<sup>165</sup> Sami Zubaida, *Law and Power in the Islamic World*, 125.

<sup>166</sup> Niyazi Berkes, *The Development of Secularism in Turkey*, 94-99.

<sup>167</sup> According to Justin McCarthy, it took Ottomans a while to recognize that the European powers were ahead of them and that they were more advanced in technology. In the 17<sup>th</sup> century, early reformists recognized the need to reform the Ottoman State, yet their vision was quite limited in that they thought that only going back to the old system would solve the problems that the state had faced. Justin McCarthy, *The Ottoman Turks*, 174-180; Zeynep Çelik, *The Remaking of Istanbul Portrait of an Ottoman City in the 19th Century*, 31.

according to European model an official policy, was signed in 1839. The Tanzimat Charter defined and codified the relationship between the sultan and people of the Ottoman Empire, and introduced concepts of equality, liberty, and human rights<sup>168</sup> into Ottoman political discourse.<sup>169</sup> The *Hatt* assured the subjects of the Ottoman Empire that their basic rights would be respected.<sup>170</sup> The *Hatt-ı Şerif* was followed by a second imperial edict, *Hatt-ı Hümayun*, in 1856, which redeclared the equality of Muslims and non-Muslims, while simultaneously reaffirming the privileges given to non-Muslims.<sup>171</sup>

Hence, with the Tanzimat Charter, the religious freedoms of minorities were guaranteed, the abjuration of Islam no longer required a death sentence, non-Muslims could become members of the assembly and be recruited, mixed courts were established for non-Muslim and Muslim cases, torture was abrogated, taxes were evened out between Muslims and non-Muslims, and foreigners were allowed to buy property in Ottoman lands.<sup>172</sup> Actually, this *Hatt* gave way to the establishment of

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<sup>168</sup> For instance, in 1846 Slave Bazaars were closed down. Even sultan Abdülaziz declared that he would not establish a harem for himself. See: Ehud R. Toledano, *Osmanlı Köle Ticareti 1840-1890*, (İstanbul: Tarih Vakfı Yurt Yayınları, 1994); Enver Ziya Karal, *Osmanlı Tarihi VII. Cilt* (Ankara: Türk Tarih Kurumu, 2003).

<sup>169</sup> According to Enver Ziya Karal, because, the power of the sultan was limited, the *Meclis-i Ahkam-ı Adliye* was made responsible of preparing the law codes and supervising the state expenditures, the Tanzimat was a constitution just as the other 19<sup>th</sup> century constitutions of Germany, Austria and Spain. (See: Enver Ziya Karal, *Osmanlı Tarihi VII. Cilt*.) However, according to Zeynep Çelik, concepts of liberty, equality and human rights were important concepts and they remained as quick adaptations from French vocabulary. They did not accommodate the subjects of the Ottoman Empire but the international commercial bourgeoisie in the Empire. For Çelik, that rather than working for the benefit of the masses, these concepts accommodated the international commercial bourgeoisie. Likewise, Deniz Kandiyoti argues that the Tanzimat Charter introduced rather painful processes of negotiation and compromise between foreign powers, the Ottoman elite and these who felt threatened by changes in the order coming with modernity. See: Zeynep Çelik, *The Remaking of Istanbul*, 32; Deniz Kandiyoti, "End of Empire", 27.

<sup>170</sup> İhsan Yılmaz, *Muslim Laws*, 89.

<sup>171</sup> Gülnihal Bozkurt, *Batı Hukukunun Türkiye'de Benimsenmesi Osmanlı Devleti'nden Türkiye Cumhuriyeti'ne Resepsiyon Süreci (1839-1939)*, 284; İhsan Yılmaz, *Muslim Laws*, 89

<sup>172</sup> Roderic Davison, *Reform In The Ottoman Empire*, (Princeton: Princeton University Press, 1963), 55.

secular mixed courts composed of Muslims and non-Muslims to first to hear commercial cases between people of all religions.<sup>173</sup>

The establishment of a non-religious state began in 1839 under the reformist-minded rulers.<sup>174</sup> The Ottoman legal system also underwent sweeping reforms in this period: with the charter of Gülhane and Tanzimat, for the first time in the history of the Ottoman Empire, secular courts were established and secular laws were compiled.<sup>175</sup> Legal codes inspired by European codes such as the Ottoman Land Code of 1858, Mecelle of 1869-76, and Ottoman Law of Family Rights of 1917 were introduced to govern commercial, penal, and civil matters in the newly established secular courts. In fact, these three codes initiated the important legislative movements in the Middle East of *Islamic Modernism*.<sup>176</sup>

According to Sami Zubaida, the first step in codification was the introduction of a new commercial law.<sup>177</sup> After the treaty of 1838, a commercial tribunal spawned in the Ottoman Empire. They were informal courts organized by merchants that were ruled in accordance with European practice.<sup>178</sup> In order to deal with the unofficial commercial codes, a new commercial code was enacted in 1850, which was drawn from the French code of 1807. The commercial courts were the first courts to operate

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<sup>173</sup> Lynn Welchmann, *Beyond the Code*, 35.

<sup>174</sup> June Starr, *Law as a Metaphor*, 78.

<sup>175</sup> *Meclis-i Vâlay-ı Ahkâmı Adliyye*, which was responsible for consultancy, giving decisions, judging officers and resolving state-citizen disputes, was established in 1837 by sultan Mahmud II. After the Tanzimat this assembly took the responsibility of executing Tanzimat Reforms. According to İhsan Yılmaz, even though the secular and criminal courts were established, the true beginnings of a secular legal system can be said to start in 1868 when the *Meclis-i Vâla* was divided into two separate organs: The Council of State, *Şurây-ı Devlet*, a legislative body and a court of appeal *Divân-ı Ahkâm-ı Adliyye*, which was also divided into civil and criminal sections. The *Divan-ı Ahkam-ı Adliyye*'s name was changed to *Adliye Nezareti* later on. See: İhsan Yılmaz, *Muslim Laws*, 89-91; Bülent Tanör, *Osmanlı Türk Anayasal Gelişmeleri 1789-1980*, (İstanbul: Yapı Kredi Yayınları, 1998).

<sup>176</sup> For details of Islamic Modernism see: Joseph Schacht, *An Introduction to Islamic Law*, 93; Noel Coulson and Doreen Hinchcliffe, "Women and Law Reform in Contemporary Islam," J.N.D Anderson, *Islamic Law in the Modern World*.

<sup>177</sup> Sami Zubaida, *Law and Power in the Islamic World*, 130.

<sup>178</sup> Niyazi Berkes, *The Development of Secularism in Turkey*, 130.

outside the recourse of Sharia and *Qanun*, and they were responsible to the Ministry of Commerce.<sup>179</sup>

Another area modernized was penal law. In 1858, an entirely new penal code was enacted.<sup>180</sup> Land law was another area to be modernized. In 1858 a new land law was enacted according to which, in the case of a landowner's death, the land was to pass on to his/her son and daughter equally.<sup>181</sup>

According to Avi Rubin, the 19<sup>th</sup> century reform movement, the Tanzimat, provided the main thrust for the establishment of a new court system, namely the *Nizamiye* (regular) courts in the mid-1860s.<sup>182</sup> According to Eisenman, by 1864, the provincial administration started to be regulated according to the French model, which required first instance and appeals courts to be instituted. These courts were called *Nizamiye* courts.<sup>183</sup> The *Nizamiye* courts<sup>184</sup> addressed criminal cases and commercial disputes formerly under the jurisdiction of the Sharia courts. The Ministry of Justice and Religious Affairs, *Adliye ve Mezâhib Nezâreti*, was in command of the jurisdiction of the secular *Nizamiye* courts, which were regulated by codified laws.

In the newly established courts, *Nizamiye*, judges were competent in commercial law. Yet for administrative and bureaucratic purposes, the Islamic Law

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<sup>179</sup> Sami Zubaida, *Law and Power in the Islamic World*, 130.

<sup>180</sup> *Ibid.*, 131.

<sup>181</sup> For a detailed discussion on *Arâzi Kanunnâmesi*, see Ömer Lütfi Barkan, *Türkiye'de Toprak Meselesi*, (İstanbul: Gözlem Yayınları, 1980). To this code further codes and procedures were added in 1861 and 1863. According to İhsan Yılmaz, Ottoman Penal Codes of 1840 and 1858, the Ottoman Commercial Code of 1850 and some other laws and regulations of European origin were legal transplants. See: İhsan Yılmaz, *Muslim Laws*, 88.

<sup>182</sup> Avi Rubin, "Legal Borrowing and its Impact on Ottoman Legal Culture in the Late Nineteenth Century," 279.

<sup>183</sup> Robert H. Eisenman, *Islamic Law in Palestine and Israel*, 14.

<sup>184</sup> *Nizamiye* Courts were largely inspired from the French Law. According to Peter Cruz, French law had an enormous impact on legal elites throughout the world in spite of Napoleon's ultimate defeat. French Law for Cruz was a true legal achievement that is comparable to Justinian codification of the sixth century. See: Pete Cruz, *A Modern Approach to Comparative Law* (Deventer and Boston, 1993), 55.

of Obligations had to be codified. For the first time in Muslim history, Islamic Hanafi law was codified.<sup>185</sup> The Mecelle Commission was established for that purpose and codified the Hanafi *Fiqh* on transactions, contracts, and individual obligations. In the Mecelle, isolated Hanafi opinions that were more in keeping with the needs of times were included side by side with majority opinions.<sup>186</sup>

Actually, the Mecelle, which was compiled as a legal handbook or a digest, was the most original work of the Tanzimat era's codification movements.<sup>187</sup> Along with the majority opinions, the Mecelle included the Hanafi madhhabs's minority opinions that were in keeping with the times. For this compilation, the Islamic Law device of *talfiq*, which meant combining doctrines of more than one school for the same subject matter, was used.<sup>188</sup> The codified laws, the Mecelle's content, and its form were a joint venture between conservatives and reformists.<sup>189</sup> Being the first codified civil law of the Ottoman Empire, the Mecelle was applied on a territorial basis to all people without distinction.

However, the Mecelle left out discussions of family law,<sup>190</sup> for various reasons: First, the Ottoman Empire was multi-religious, and each religious community had its own rules and regulations organizing family matters. Therefore, at the time, it was not easy to codify a family law.<sup>191</sup> Second, the leaders of non-Muslim communities in the Ottoman Empire strongly opposed what they deemed a disenfranchisement of rights. Third, according to Fahri Ziyaeddin Fındıkoğlu, during

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<sup>185</sup> İhsan Yılmaz, *Muslim Laws*, 91.

<sup>186</sup> Robert H. Eisenman, *Islamic Law in Palestine and Israel*, 3.

<sup>187</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 131-132

<sup>188</sup> Robert H. Eisenman, *Islamic Law in Palestine and Israel*, 3.

<sup>189</sup> Leon Ostrorog, *The Angora Reform* (London: University of London Press, 1927), 79.

<sup>190</sup> İhsan Yılmaz, *Muslim Laws*, 93.

<sup>191</sup> Halil Cin, *İslam ve Osmanlı Hukuku'nde Evlenme*, 285-287; Sabri Şakir Ansay, *Medeni Kanunumuzun 25. Yıldönümü Münasebetiyle Eski Aile Hukukuza Bir Nazar Hukuk İnkılabımızı Aydınlatan Tarihi ve Teşrii Vesikalar* (Ankara: Ankara Üniversitesi Hukuk Fakültesi Yayınları, 1952), 1-5; Ömer Lütfi Barkan, "Din Devlet İlişkileri" (Cumhuriyetin 50. Yıldönümü Semineri, Ankara, Türk Tarih Kurumu, 1975).

the time of the Mecelle's compilation, the reform of the family law was not an urgent matter.<sup>192</sup> The social structure of the empire and the Ottoman family had not changed much at the time. Hence there was no need to reform the rules governing it.<sup>193</sup> Yet during the Second Constitutional period, the Mecelle proved insufficient as a civil code and the need for a new family law was recognized.<sup>194</sup>

The introduction of new legal codes could be considered as the start of the Sharia courts losing their dominant status, which had proved the backbone of the Ottoman judicial system.<sup>195</sup> Starting with the reform period, the codified law practiced in civil courts eventually disembedded and deritualized the Sharia in the late Ottoman Empire.<sup>196</sup> Actually, codification meant disengagement from theocracy, because institutions and rules that had not existed in Islamic Law were now introduced to Ottoman legal culture. For instance, the commercial law of 1850 recognized interest; the penal code of 1851 made the state responsible for punishing the perpetrators, whereas in the old application, a person could grant pardon to the criminal. Likewise, the penal code of 1840 removed the capacity of governors and the grand vizier to punish arbitrarily.<sup>197</sup>

Since the Tanzimat, reforms had affected Ottoman legal culture, yet the fields of personal status and family laws remained unchanged. The Muslim clergy, *ulema*, claimed the spheres of personal status and family law to be their own.<sup>198</sup> In fact, in the late Ottoman Empire, both Muslim and non-Muslim religious authorities claimed the sphere of personal status as their own. It was the Muslim and non-Muslim

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<sup>192</sup> Fahri Ziyaeddin Fındıkoğlu, *İçtimaiyyat* (İstanbul: İstanbul Üniversitesi İktisat Fakültesi Yayınları, 1958).

<sup>193</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 132-135.

<sup>194</sup> Robert H. Eisenman, *Islamic Law in Palestine and Israel*, 36.

<sup>195</sup> Avi Rubin, "Legal Borrowing and its Impact on Ottoman Legal Culture," 279.

<sup>196</sup> Sami Zubaida, *Law and Power in the Islamic World*, 133.

<sup>197</sup> Ahmet Mumcu, Coşkun Üçok, Gülnihal Bozkurt, *Türk Hukuk Tarihi* (Ankara: Turhan, 2010), 322-329.

<sup>198</sup> Deniz Kandiyoti, "Introduction," 39.

authorities' pressure that also led to the establishment of a dual judicial system. Hence while the newly established secular courts, *Nizâmiye*, operated under the aegis of the Ministry of Justice, the religious courts remained under the jurisdiction of the *Şeyhülislam*.<sup>199</sup>

After the Western-based systems of law were introduced in addition to Muslim law, a truly dualist legal structure emerged in the Ottoman Empire.<sup>200</sup> Following the introduction of the new laws and decrees, the state did not destroy the traditional institutions: new legal institutions coexisted alongside the traditional ones.<sup>201</sup>

During the Second Constitutional Period, the CUP totally tried to subordinate the judicial system to the state. The CUP government took a major step to eliminate the dual structure of Islamic and secular institutions. Actually, the CUP's concern with making the law an engine of state control through legal reforms came at the expense of the traditional legal system.<sup>202</sup> To overcome the obstacles to increased state control, the CUP openly asserted the dominance of the state over religion by making Islamic judges paid officials of the state, by making their decisions controllable through appeals courts, and by overseeing the training of the members of the religious courts.<sup>203</sup>

In an attempt to weaken the power of the local judges, qadıs, in the provincial legal institutions, the CUP shortened the judges' terms of service, started paying their salaries from the state treasury, and took measures to prevent them from having a

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<sup>199</sup> Deniz Kandiyoti, "End of Empire," 27.

<sup>200</sup> June Starr, *Law as a Metaphor*, 21.

<sup>201</sup> Niyazi Berkes, *The Development of Secularism in Turkey*, 179-190; İhsan Yılmaz, *Muslim Laws, Politics and Society*, 86; İhsan Yılmaz, "Secular Law," 118.

<sup>202</sup> Judith Tucker, "Legacies," 15.

<sup>203</sup> Jun Akiba, "A New School for Qadıs: Education of the Sharia Judges in the late Ottoman Empire," *Turcica* 35 (2003): 125; Justin McCarthy, *The Ottoman Turks*, 324.

deep involvement with local forces.<sup>204</sup> Finally, with the aim of uniting different judicial bodies and reducing the power of religious law, the CUP rulers put all the courts under the aegis of the Ministry of Justice. The rule of the CUP thus eventually achieved legal unity in the Ottoman Empire.<sup>205</sup>

The CUP rulers were also concerned about the duality of legal institutions regarding non-Muslim communities. For instance, a document of the *Meclis-i Vükela*, zabıtname number 537, discussed which court should be responsible for alimony cases of non-Muslims, for the Greek Patriarchate had petitioned. The patriarchate demanded that the Sharia courts not interfere with such cases, even if the couple had agreed on it. The assembly decided that the Ottoman government ruled over all Ottoman subjects. Besides, there was no mention of alimony responsibility with the patriarchate, neither in the Patriarchate nor in the Metropolitan Charters, *berats*. Therefore the Sharia courts could continue to handle such alimony cases as they used to do.<sup>206</sup>

In theories of legal modernity, uniform law is accepted as a condition of progress towards a strong centralized state. Hence the modern state tolerates no rival

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<sup>204</sup> Iris Agmon, *Family and Court*, 70.

<sup>205</sup> Bülent Tanör, *Osmanlı Türk Anayasal Gelişmeleri 1789-1980*, 164.

<sup>206</sup> "...Ne patriklik ve metropolitlik beratlarında ne de patrikhane nizamnamesinde hatta zevcata ait nafaka davalarının bile devairi ruhaniyyece görülmesini içeren hiçbir kayır ve işaret görülmediği ve önceki kararların ittihazından önce adı geçen resmi daireler tarafından o babda itası olagelmiş makbul sayılan, yürürlükte olan kararnameler dahi hususi emir hükmünce nafakanın esas ve miktarı hakkında itiraz vuku bulmadıkça infaz ve icra edilip itiraz vukuunda tarafeyn şer'i mahkemeye yollandığı halde yazılan olarak ortada olan dilekçeler üzerine kabul olan bahsedilen kararların kaydıyla nafakanın mâlum sebeblerce zevciyat maddesinden ileri gelen nafakalar hakkında ruhâni dairelerin salahiyeti teyid edilmiş olmasına nazaran patrikhanenin bu babda iddiası nafakaten evladın zevciyete alakalı meselelerin furuundan dallarından addedilmesi esasına dayanıyor ise de evlad ve akrabalara lazım gelen nafaka mezkûr sebeplerden yakınlık maddesine yani zevceynin tamamen başka bir sebebe binaen bulunduğundan ve meşihat makamının yazılı cevabında gösterdiği vecihle nafaka olarak... bulunduğundan mezkûr müsadaât istisnai bir ahval olarak tefsir edilmesi yoluyla bu müsaadenin genişlemesine gerek olmadığına binâen önceden zikredilen deavinin önceden olduğu gibi şeri mahkemede görülmesi lüzumu malumdur..." MV 137 49, 1328 S6, A2, 17 February 1910.

in terms of law, such as minority laws.<sup>207</sup> As Agmon argues, the reforms that started with the Tanzimat, aimed to unify the administrative structure of the empire, rationalize its governing methods by creating hierarchies of authority down to provincial levels. The centralized state controls its domains, while eliminating power groups and clusters that compete at different levels with the central government.<sup>208</sup>

By establishing a number of secular courts, the responsibilities of the Sharia courts were restricted only to matters of personal status involving marriage, divorce, child custody, and family affairs. Hence, only the realm of family law was left under the jurisdiction of the Sharia. However, Islamic family law was also eventually codified in the Ottoman Empire when the Ottoman Law of Family Rights of 1917 was promulgated, utterly narrowing the jurisdiction of the Islamic courts.<sup>209</sup>

During the reform age, achieving legal unity in the Ottoman Empire was very important for the reformers and they took every legal measure toward that purpose. For instance, until the advent of the reform period, the Sharia, the sole legal system dealing with family law courts, remained responsible for the provision of orphans and the supervision of their legal rights. Starting from the 19<sup>th</sup> century, the Ottoman state was accepted as being responsible for the poor and needy people.<sup>210</sup> During the CUP period, the state even took over responsibility for orphans from the Sharia courts and established the Authority for the Supervision of Orphan Properties, *Emvâl-i Eytam Nezâreti*.<sup>211</sup> Although historians like Carter Findley argue that the Sharia family law remained untouched by the Tanzimat reforms,<sup>212</sup> according to Iris Agmon a procedural innovation such as establishing the *Emvâl-i Eytam Nezâreti* was

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<sup>207</sup> İhsan Yılmaz, "Secular Law," 114.

<sup>208</sup> Iris Agmon, *Family and Court*, 9.

<sup>209</sup> Judith Tucker, "Legacies," 15.

<sup>210</sup> Mine Ener, *Managing the Egypt's Poor and the Politics of Benevolence, 1800-1952*, (Princeton: Princeton University Press, 2003).

<sup>211</sup> Iris Agmon, *Family and Court*, 148.

<sup>212</sup> Carter Findley, *Encyclopedia of Islam*, 1991, s.v. "Mahkama."

an indirect reform of Islamic family law.<sup>213</sup> Hence the Ottoman legal modernization was realized.<sup>214</sup>

### 2.2.2. Application of Islamic family law prior to the reform period

From the beginning of the reform period, the Ottoman state had narrowed the jurisdiction of the Islamic courts through a series of measures. However, the promulgation of new law codes and the codification of Islamic Law brought about confusion in Ottoman society, even shattering the belief that Islamic laws governing family matters were sacred and closed to change.<sup>215</sup>

According to J. N. D. Anderson, who is one of the most prominent scholars in the field of Islamic Law, in the classical texts, a Muslim family is patriarchal, and potentially polygamous.<sup>216</sup> Under Islamic Law, women are under threat of repudiation, for men have with right to divorce their wives at will. Besides, custody rights also favored men, in that mothers only had the right of custody for very young children.<sup>217</sup> However, only to mention the privileged male position in Islamic Law

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<sup>213</sup> Iris Agmon, *Family and Court*, 148.

<sup>214</sup> The entire secular court system evolved during the Tanzimat Period was eventually incorporated into the constitution. In 23 December 1876, the first Ottoman constitution was promulgated, which started the first constitutional period of the Ottoman Empire. The Constitution, *Kanun-i Esasi*, was actually the first constitution of an Islamic state in history. The basic concept in the *Kanun-i Esasi* was that it recognized a legislative assembly that was partially elected by the people. The Constitution was somewhat restrictive in the exercise of powers though. One year after the enunciation of the constitution, the first regular law school, the Istanbul Law Faculty was established in 1875 to train the judges, advocates and public prosecutors for secular law courts. (See: Gülnihal Bozkurt, *Batı Hukukunun Türkiye’de Benimsenmesi Osmanlı Devleti’nden Türkiye Cumhuriyeti’ne Resepsiyon Süreci (1839–1939)*. With the *Kanun-i Esasi*, the parliament was divided into two chambers: the first one was an elected *Meclis-i Mebusan* (Chamber of Deputies) and the second one was *Meclis-i Ayan* (Chamber of Notables) appointed directly by the sultan. *Şurây-ı Devlet* (Council of State) was retained as the supreme court of appeal for administrative law cases and was to continue its legislative function. A new high court, *Divânı Ali* was also established to hear cases against the member of the government, *Meclis-i Mebusan* (Chamber of Deputies) (See: İhsan Yılmaz, *Muslim Laws*, 92)

<sup>215</sup> Aneelies Moors, “Debating Islamic Family Law: Legal Texts and Social Practices,” 150. J.N.D. Anderson, “Law Reform in the Middle East,” 39; Judith Tucker, “Legacies,” 3.

<sup>216</sup> J.N.D. Anderson, “The Eclipse of the Patriarchal Family in Contemporary Islamic Law,” in *Family Law in Asia and Africa*, ed. J.N.D. Anderson, (London: Allen and Unwin, 1968), 221–234.

<sup>217</sup> Aneelies Moors, “Debating Islamic Family Law: Legal Texts and Social Practices,” 141.

would be misleading. While men have greater advantages in many respects, they have to bear the financial burden of supporting their wives and family members.<sup>218</sup>

Also, under Islamic Law women have full property rights almost undifferentiated from those of men; and marriage had no impact on a woman's legal standing, in that it did not remove her from the public sphere as far as her ability goes to buy, sell, and contract as a free individual. Even before the reform period women living under Islamic Law enjoyed legal access to the public sphere, unlike her contemporary sisters living under Western law.<sup>219</sup>

In Islamic courts judges were not the instruments of applying a law privileging males.<sup>220</sup> Judith Tucker has investigated the potential flexibility of Islamic family law by using *fatwa* collections and court documents, *sijills*, of 17<sup>th</sup>- and 18<sup>th</sup>-century Syria and Palestine. The practice of Islamic family law in Syria and Palestine showed that gender difference was a natural state of affairs. However, the man's domination over women was to some extent balanced by his obligations to uphold the elements of the Hanafi School that worked to women's benefit, and by modifying the legal provisions that might be harmful to women.<sup>221</sup>

For Tucker, *muftis* and *qadis* provided protection to women in many ways. For instance, in the case of illicit sexual intercourse, they recognized a child as legitimate if the couple married up to one month before birth. In another case, they rejected the return of a bride to her family if she failed her virginity test on her wedding night. The *muftis* argued that virginity had nothing to do with the marriage

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<sup>218</sup> Elizabeth Brownson "Gender, Muslim Family Law, and Contesting Patriarchy in Mandate Palestine, 1925-1939" 9.

<sup>219</sup> Judith Tucker, "Legacies," 7.

<sup>220</sup> Elizabeth Brownson "Gender, Muslim Family Law," 9; Ronald C. Jennings, *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries: Women, Zimmis and Sharia Courts in Kayseri, Cyprus and Trabzon* (Istanbul: Isis Press, 1999), 61-62.

<sup>221</sup> Judith Tucker, "Legacies," 7-8.

institution and that only the woman herself could testify about her virginity. The muftis, Tucker wrote, denied husbands or brothers the right to judge whether a woman had previously committed unlawful sexual intercourse or not.<sup>222</sup>

Along with Tucker, in the early 1990s, academics working in the area of women's studies in the Middle East were in favor of rewriting the Muslim past to include the voices of women. According to this view, if Islam was interpreted with linguistic skill and pure logic, it would become clearer that Islam demanded an absolute protection of women's legal rights, especially in the area of family law. However, if this demand was not met, it was not the fault of true Islam, but of local, patriarchal cultures.<sup>223</sup> Annelies Moors has also argued that recent studies on the history of Islamic Law have criticized the one-sided evaluation of Islamic family law as a rigid and patriarchal institution. Besides, these studies have also drawn attention to legal mechanisms that women used to their advantage in Islamic courts.<sup>224</sup>

For Moors, before codification, Islamic law was capable of accommodating individual needs and allowed for fluidity and flexibility, thanks to its plurality of authoritative texts.<sup>225</sup> For instance, the *qadis* in Ottoman courts had books of *fiqh*, *kanunnâmes*, *irâde*, *ferman* and *defters* of sijills at their disposal. Therefore, they did not encounter any difficulty in finding an appropriate consultation while deciding on a matter.<sup>226</sup> The *qadis* also had *sakk* collections, which were written by experienced court personnel and circulated throughout the empire for centuries. The *sakk* collections included a wide range of documents produced by the Sharia courts, such as court decisions (*ilam*), title deeds (*hüccet*), and imperial decrees (*ferman*). The

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<sup>222</sup> Ibid., 8-9.

<sup>223</sup> Elizabeth B. Frierson, "Women in Late Ottoman Intellectual History," in *Late Ottoman Society The Intellectual Legacy*, edited by Elisabeth Özdalga, (London: Routledge, 2005), 138

<sup>224</sup> Annelies Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," 143-144.

<sup>225</sup> Ibid., 144.

<sup>226</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 79.

*sakk* collections also included exemplary cases intended to guide judges in their daily work.<sup>227</sup> As a matter of fact, Muslim legal pluralism, which entailed a diffuse legal system and a multiplicity of sources of law, were actually lived in the Ottoman Empire.<sup>228</sup>

However, times had changed and new circumstances required that the application of Islamic family law be adapted to the prevailing conditions.<sup>229</sup> The reformist intellectuals and jurists claimed that it was urgent to codify Ottoman family law. In the next section, I will explore how intellectuals handled the family law reform discussions in Muslim countries in general and in the late Ottoman Empire in particular.

### **2.2.3. Discussions of family law reform in the Muslim World during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries**

Some of the intellectuals in the Ottoman Empire and in Egypt were debating the issue of women and family in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. According to these thinkers, modernism encompassed technological progress, secularism, the rule of law, women's emancipation, and a monogamous family system.<sup>230</sup> For these intellectuals, women's issues were misjudged and women were mistreated. A reform of the existing family law was required to render the present conditions suitable to women.<sup>231</sup>

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<sup>227</sup> Avi Rubin, "Legal Borrowing and its Impact on Ottoman Legal Culture in the Late Nineteenth Century," 289; Süleyman Kaya, "Mahkeme Kayıtlarının Klavuzu: Sakk Mecmuaları," *Türkiye Araştırmaları Dergisi* 3, (2005).

<sup>228</sup> İhsan Yılmaz, *Muslim Laws*, 31.

<sup>229</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 155.

<sup>230</sup> Robert H. Fleischmann, *Islamic Law in Palestine and Israel*, 98.

<sup>231</sup> John L. Esposito, *Women in Muslim Family Law*, 50.

Actually, the idea of reforming Islamic family law was planted in Egypt in the 19<sup>th</sup> century. The Egyptian intellectuals Rifa'ah Badawi Rafi at-Tahtawi, Muhammed Abduh and Qasim Amin claimed that changes in society required the necessity of legal reform from a Muslim perspective.<sup>232</sup> Tahtawi emphasized the necessity of adapting Islamic Law to new social circumstances. Adaption would occur through using the principle of *takhayyur*, which was a method of Islamic jurisprudence according to which a Muslim in a specific situation could go outside of his own school of law and follow the interpretation of another.<sup>233</sup> In fact, what Tahtawi proposed was largely used by the reformists in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries in the Ottoman Empire. It was actually the path followed for the Ottoman Law of Family Rights of 1917.

The mostly discussed subject of Islamic family law was a husband's unfettered power to repudiate his wife at will. According to Coulson and Hinchcliffe, a husband divorcing his wife without a good cause is morally reprehensible in Islamic Law, yet it is still a matter for the husband's conscience, as divorce is legally valid in any case.<sup>234</sup> The other discussed matter to be reformed by *takhayyur* was that under the Hanafi School, women are denied the right to get divorce, no matter how ill they have been treated. Actually, according to J. N. D. Anderson, it was the miserable lot of Muslim wives that forced the extension of reform to the sacred sphere of family law, for Muslim Hanafi women could not get a judicial dissolution of their marriages, and a legal reform was supposed to extend female rights and their access to divorce.<sup>235</sup> With a legal reform, Muslim women would be granted the right

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<sup>232</sup> Ibid., 50.

<sup>233</sup> Ibid.

<sup>234</sup> Noel Coulson and Doreen Hinchcliffe, "Women and Law Reform in Contemporary Islam," 41-42

<sup>235</sup> J.D Anderson, *Islamic Law in the Modern World*.

to obtain the dissolution of their marriage by employing the Maliki Schools' principles on divorce.<sup>236</sup>

Muhammad Abduh belonged to the second generation of Egyptian reformists. In fact, he has been called the father of Muslim modernism, for he realized the necessity of finding an Islamic rationale for reforms.<sup>237</sup> However, according to Esposito, Abduh realized the waywardness of the Muslim society in dealing with issues of women and Quranic reforms: the Muslims erred in the education and training of women; women were not given their rights. However, denying women's rights was truly against Islam. In failing to follow the guidance of Islam regarding women's rights, Muslims went against it.<sup>238</sup>

Esposito explains that Muhammad Abduh emphasized the deleterious effects of polygamy on family life. Abduh argued that polygamy had been permitted in the Prophet's time as a concession to the prevailing social conditions. The true intent of the Qur'an, according to Abduh, was monogamy. According to the Qur'an (surah IV: 3 and IV: 129), more than one wife was only permissible when justice and impartiality were guaranteed. However, establishing impartiality and equality among the wives was almost impossible. Therefore, Abduh concluded that the ideal type of marriage established by Quranic norms was monogamy.<sup>239</sup>

Another Egyptian reformist, Qasim Amin, in the meantime focused on the plight of Muslim women. Amin deemed the plight of women as the cause behind the deterioration of the Muslim family and society. He also criticized arranged marriages, the wife's inability to initiate divorce, and the husband's unlimited rights of divorce. Like Abduh, Amin saw the original intent in the Qur'an as monogamy.

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<sup>236</sup> Noel Coulson and Doreen Hinchcliffe, "Women and Law Reform in Contemporary Islam," 41.

<sup>237</sup> John L. Esposito, 50.

<sup>238</sup> Ibid.

<sup>239</sup> Ibid.

Polygamy was permitted only under special conditions, though it was a reprehensible act.<sup>240</sup> Amin wrote two books, *Tahrir al-Marah* (The Emancipation of Women) and *al-Marah al-Jadidah* (The New Woman). According to Esposito, with these two books, Amin rightfully acquired the title feminist, for he became a source of inspiration to many feminists in the Muslim world.<sup>241</sup>

#### 2.2.4. Discussions of Family Law Reform in the late Ottoman Empire

During the reign of Mahmud II, a circle of protégés in the bureaucracy and Ottoman intellectuals emerged who supported the reorganization of the state through the introduction of technical, administrative, educational, and cultural reforms.<sup>242</sup> The reformist bureaucrats and intellectuals were educated abroad, cultivated relations with foreigners, and reflected on their own societies from a broader international context. Robert H. Fleishmann argues that in time, the reformist male bureaucrats and elites focused their attention on women, for they feared women, being the bearers of tradition and religion, would retard society as a whole.<sup>243</sup> Having such fears in mind, the Ottoman reformers began to promote women's education and openly criticized social, cultural, and religious practices they deemed oppressive for women.<sup>244</sup>

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<sup>240</sup> John L. Esposito, 51.

<sup>241</sup> Ibid.

<sup>242</sup> Justin McCarthy, *The Ottoman Turks*, 296.

<sup>243</sup> Robert H. Fleischmann, *Islamic Law in Palestine and Israel*, (Leiden: E.J. Brill, 1978), 100.

<sup>244</sup> For instance, the writer Ahmet Mithat Efendi, who was a late Ottoman Empire prolific intellectual and writer, attacked forced marriage, concubinage and polygamy in his novels and labeled them to be social ills of a Muslim society. See: Orhan Okay, *Batı Medeniyeti Karşısında Ahmet Mithat Efendi*, (İstanbul: Milli Eğitim Basımevi, 1991).

Robert H. Fleischmann, *Islamic Law in Palestine and Israel*, 99.

One might argue that the Ottoman women were not living in a timeless world untouched by historical changes.<sup>245</sup> Yet the reformist Ottoman elites were convinced about applying an agenda for progress to Ottoman women.<sup>246</sup> Women's rights, women's education, veiling, and polygamy were their main concerns.<sup>247</sup> The reformists inscribed themselves in an instrumentalist framework, suggesting that changes in women's conditions would benefit the Ottoman society as a whole.<sup>248</sup> Hence, they turned the status of Muslim women and the Muslim family into a symbol of the late Ottoman society's modernity and level of progress.<sup>249</sup>

The late Ottoman reformists argued that the Ottoman family law had to be renewed and that oppressive and derogatory practices against women such as polygamy would have to be eliminated. As a requirement of legal modernity, family law had to be codified and be more easily applicable in the bureaucracy. Despite the changes in legal culture and the transformation of Ottoman society, the most needed

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<sup>245</sup> According to Judith Tucker, the *false idol* of 'progress' for women was also imported from the West. For Tucker, to accept that Muslim women's history and their progress started with the acquaintance with Western thought is tautological and free of any process of verification. The paradigm of modernization, rules of which were fixed by the Europe, had an image of Islam that was monolithic. In this monolithic belief system, women lived in a timeless world untouched by historical changes. Hence, if Muslim women were to progress, it could have been possible only by denying the indigenous tradition/religion. The linear path to progress, Tucker argues, was accepted to start with the penetration of Western ideas, which gradually permeate and transformed the Eastern societies. (See: Judith E. Tucker, *Women in Nineteenth-Century Egypt*, (Cambridge: Cambridge University Press, 1985), 3.)

<sup>246</sup> In the late Ottoman Empire, Islamist thinkers such as Fatma Aliye Hanım and Mehmet Akif Ersoy argued that Islam was not an obstacle to the development of women and the observation of their rights in the society. They brought examples from the Islamic history, mentioning the importance of female figures such as Fatima, the daughter of the Prophet Muhammad and Aisha, the wife of the Prophet Muhammad. Fatma Aliye Hanım and Mehmet Akif frequently quoted the verses from the Quran and the Prophet's sayings, which praised and exalted women and womanhood. Islamist Feminists are also employing Islamic history to find examples for their arguments about Muslim women's education and social life. See: Fatema Mernissi's book *The Veil and the Male Elite*, and *Forgotten Queens in Islam* are one of the prominent examples of this genre. See: Fatema Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam*, (United States of America: Perseus Books, 1991); Fatema Mernissi, *The Forgotten Queens of Islam*, (Minneapolis: The University of Minnesota Press, 2006).

<sup>247</sup> Deniz Kandiyoti, "Introduction," 3.

<sup>248</sup> Deniz Kandiyoti, "End of Empire," 28.

<sup>249</sup> Robert H. Fleischmann, *Islamic Law in Palestine and Israel*, 98.

family law reforms were not an easy process for the reformers. The possibility of reforming family law led to tension within late Ottoman society.<sup>250</sup>

Among the late Ottoman Empire intellectuals, the Westernists were united around the conviction that the superiority of the West did not simply reside in its advanced technology, but also in its rationalistic and positivistic outlook. Hence, according to the Westernists, Ottoman society should get rid of religious obscurantism and stifling superstitions.<sup>251</sup> However, the Westernists were heterogeneous in their approaches toward belief. Westernists to varying degrees held Islam responsible for the backwardness of society and the debased condition of women.<sup>252</sup> They found a solution to the problems of the Ottoman Empire in transforming women's issues such as veiling, education, and involving women in economic life. A change in marriage patterns was also necessary and should accompany the changes mentioned.<sup>253</sup>

One of the most ardent supporters of positivism, a medical doctor, Abdullah Cevdet, was also a pronounced Westernist. He was influenced by Ribot's Darwinist approach and claimed mothers to be guilty of social degenerations and flawed races.<sup>254</sup> According to Abdullah Cevdet, in order not to have flawed races, Islamic practices and customs should be abandoned, for they worsened conditions for Muslim women. In a similar vein, Salahaddin Asım, another Westernist, claimed that the religion of the ancient Turks was more suitable to modern Turks. In the ancient

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<sup>250</sup> However, in the Ottoman Empire not only conservative people opposed the law reform. European powers were also very much worried about the reforms, for they thought their intervention into the internal affairs of the Ottoman Empire would be hampered by the law reforms. Hence, the European powers objected the application of procedural law to Muslims and non-Muslims alike, for the new reforms undermined the capitulations and the privileges of the non-Muslims. (See: Gülnihal Bozkurt, *Batı Hukukunun Türkiye'de Benimsenmesi*, 288–290.)

<sup>251</sup> Deniz Kandiyoti, "Introduction," 3.

<sup>252</sup> Deniz Kandiyoti, "End of Empire," 33.

<sup>253</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 4.

<sup>254</sup> Şükrü Hanioglu, *Bir Siyasal Düşünür Olarak Abdullah Cevdet ve Dönemi* (İstanbul: Üçdal Neşriyat, 1981), 185.

Turkish civilization, women were respected more than they were in Islam.<sup>255</sup> Although it was a must for women to contribute to the nation's social and economic progress, in their current situation, which Asım defined as being "female animals," women were treated only as instruments of fertilization.<sup>256</sup>

Among the Westernists, Rıza Tevfik was the most moderate. Regarding issues like veiling, women's education, and religion, he wrote that a society could not change in a day. It might take years for a society to transform itself and get rid of the traditions and values that had shaped it over centuries. Therefore, according to Tevfik, while reforming the laws that governed Muslim life, a reformer should be careful not to intrude into the lives of people.<sup>257</sup>

Like Rıza Tevfik, Celal Nuri was also rational, and even was the most critical intellectual among the Westernists. He first questioned whether European culture was a good thing to be adopted or not. While European science and technology should be adopted without hesitation, European culture could not be adopted per se, since the traditional and religious values of Ottoman society should be respected and taken into consideration.<sup>258</sup> Celal Nuri argued that the Ottomans should be able to find a way to Westernize without Europeanizing the society totally, just like Japan did.<sup>259</sup>

Celal Nuri also argued that Islam provided women with social and economic rights. Therefore Islam could not be held responsible for the inferior position of women in Muslim societies. It was not Islam but religious conservatism and the

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<sup>255</sup> Salahaddin Asım, *Osmanlı'da Kadınlığın Durumu* (İstanbul: Arba, 1989), 22-23.

<sup>256</sup> *Ibid.*, 16.

<sup>257</sup> Rıza Tevfik, "Muhasebe-i İctihad, Muhasebimizde Sui Tefehhüme Yer Vermeyelim," *İctihad* 96, (6 May 1330).

<sup>258</sup> Celal Nuri İleri, "Şime-i Husumet," *İctihad*, 88, (9 Kanun-i Sani 1329), quoted in Mustafa Gündüz, *II. Meşrutiyet'in Klasik Paradigmaları: İctihad, Sebül'r-Reşad ve Türk Yurdu'nda Toplumsal Tezler* (Ankara: Lotus, 2007), 122.

<sup>259</sup> Mustafa Gündüz, *II. Meşrutiyet'in Klasik Paradigmaları*, 122.

misinterpretation of the religion that gave way to the plight of women in Ottoman society.<sup>260</sup> According to Celal Nuri, because of creeping ignorance and superstition, Muslim women could not enjoy their God-given rights. It was highly possible that they were not even aware of them, he argues.<sup>261</sup>

Celal Nuri in his book *Kadınlar (The Women)* suggested that family law reform should conform to what he considered to be the true spirit of Islamic Law. First, a man should be prohibited from divorcing his wife for trivial reasons. The new family law should confirm that even if there is a good reason for divorce, the wife should get more compensation than her dowry.<sup>262</sup> The other issue that Nuri questioned was the age limit of marriage: for brides and grooms to be physically mature enough, the age for marriage must be raised in the Ottoman Empire.

According to Nuri, if family law was to comply with the true spirit of the Sharia, both marriage and divorce should be taken out of the hands of the *imams* (local judges) and placed under civil jurisdiction, with civil records kept bureaucratically by state authorities.<sup>263</sup> Since, if not recorded in time, *mehr* and other records to be kept by the judge for the benefit of both the bride and groom could be forgotten. Unfortunately, forgotten records worked mostly to the disadvantage of women. If a woman's husband was without remorse, he could get away from a marriage he did not want without giving her *mehr*, which actually was a wife's God-given right. Nuri explained that some clueless *imams* solemnized illegal marriages

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<sup>260</sup> Celal Nuri İleri, *Kadınlarımız*, (İstanbul: Matbaa-i İc̄tihad, 1331).

<sup>261</sup> Ibid., 154. Also a contemporaneous intellectual Ahmet Rıza argues that regarding divorce and polygamy, people do not obey the rules of the Sharia, but follow their personal desires. These people do not care about the society's good or family's well being and ruin their offspring's psychology.

“*Taaddüdü Zevcat hakkında şerâitin vâzetmiş olduğu şerâite riayet olunmuyor. Evlenme ve boşanma işlerinde yalnız nefsin eğlencesi, şahsın istifadesi aranıyor. Ailenin hukuku, cemiyetin menfeâti, çocuğun ahvâli ruhiyesi gözetilmiyor.*” See: Ahmet Rıza, “Vazife ve Mesuliyet–Kadın,” in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 3*, ed. Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 1040.

<sup>262</sup> Celal Nuri İleri, *Kadınlarımız*, 154-155.

<sup>263</sup> Ibid., 191-193.

and allowed men to divorce their wives without respecting women's rights. All in all, Celal Nuri argued, such a travesty of justice could only be surmounted by reforming the family law.<sup>264</sup>

Women's issues in Islam were also considered by the Russian Muslims. The Ottoman nationalists and nationalist writers of the *Türk Yurdu* took Muslims living in Russia as an example. The renowned scholars of Kazan, Ayaz İshaki, Musa Carullah, and Alimcan Barudi brought new perspectives with regard to the place of women in Islam. According to these modernist Muslim scholars, women's issues in Islam were crucial. They prepared a detailed report on the issue and presented it first in 1916 at a congress in Kazan and later in 1917 in Moscow at the General Congress of Russian Muslims. In the latter, they discussed the evils of polygamy and other taboo issues in Islam. They were criticized severely by the conservative Muslim scholars of Turkistan. However, the nationalist writers of the *Türk Yurdu* praised both the scholars and the congress.

Likewise in 1917, a nationalist ideologue, Ziya Gökalp, stated in the congress of the CUP that a radical reform of the family law must occur in the Ottoman Empire.<sup>265</sup> Accompanied with other intellectuals' thoughts against polygamy, other family law related issues urged the authorities to reform the family law in the Ottoman Empire.<sup>266</sup> And shortly after the congress in Moscow, the Ottoman Law of

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<sup>264</sup> “Nikâh için şer’an câiz olan kuyud ve şurut bizde örfen unutuluyor. Mihreyn asla düşünülmeden takdir ediliyor. Halbûki yirmi, otuz sene ve belki daha ziyade sene izdivaçtan meydana gelen evlad ve ahfas geldikten sonra bile bila zulüm bila sebep vuku bulan talaklarda, zevci gaddar zevce-i mağduresinin eline bir iki bin guruş nafaka verip işten sıyrılıyor. Etat civil, yani kuyud-u medeniye bulunmaması nedeniyle münekehata, vefâyat ve tevellüdat-ı husûsi ile iftirakatı bir herc ü merci elinde bırakıyor. Bir takım echel, mürtekip imamlar nikâh üstüne nikâh kıyıyorlar, sahte talak şahitleri buluyorlar...” Celal Nuri, “Türk Kadınının Vaziyeti Hazırası,” in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 3*, ed. Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 1065.

<sup>265</sup> Uriel Heyd, *Türk Ulusçuluğunun Kökenleri* (Ankara: Kültür Bakanlığı Yayınları, 1979), 42.

<sup>266</sup> Tarık Zafer Tunaya, *İslamcılık Cereyanı* (İstanbul: Baha Matbaası, 1988), 103.

Family Rights of 1917 was promulgated. Conservative writers<sup>267</sup> of the *Sebil'ür-Reşad* claimed that the OLFRR had many similarities with the suggestions made at the General Congress of Russian Muslims.<sup>268</sup> While those of the *Sebil'ür-Reşad* criticized the family law, the writers of the *Türk Yurdu* embraced it, for the new family law proved crucial to the modernization of Ottoman society and to ameliorating the status of women in the Ottoman Empire.<sup>269</sup>

This chapter explored the legal and political contexts of the family law reform in the late Ottoman Empire. The rule of the CUP, administrative and political reforms, and changes in the legal culture as a result of the reforms all had an impact on people's lives and on the sociocultural and economic contexts of the law reform, which is explored in the next chapter.

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<sup>267</sup> Ideas of the conservative Muslims is discussed in the Chapter III in detail.

<sup>268</sup> Mustafa Gündüz, *II. Meşrutiyet'in Klasik Paradigmaları*, 449-450

<sup>269</sup> "Türklük Şuûnu, Ahkâm-ı Aile Kararnamesi" *Türk Yurdu* 6, 148, 22 Teşrinisani 1332 quoted in Mustafa Gündüz, *II. Meşrutiyet'in Klasik Paradigmaları*, 449-450

## CHAPTER 3

# **SOCIAL, CULTURAL AND ECONOMIC CONTEXTS OF MARRIAGE AND DIVORCE IN THE LATE OTTOMAN EMPIRE**

In this chapter, I will explore the social and cultural contexts of the marriage institution in the late Ottoman Empire. Education, urban transformation, social and cultural life are the determinants of this chapter, all of which had an impact on marriage, the type of marriage—arranged or by choice—and other marital issues for the late Ottoman Istanbulites. Exploring these realms will clarify the issues related to the promulgation and application of the OLF.R.

### **3.1 Social and cultural contexts of marriage and divorce**

#### **3.1.1. Education in late Ottoman Empire**

Education was one of the most important determinants of the social and cultural context of marriage in the late Ottoman Empire. Almost all Ottoman intellectuals agreed on the necessity of women's education, so that women could fulfill their roles in society and family. Depending on an intellectual's ideological inclination, the extent and scope of a woman's ideal education differed, however. In this section, I will explore education and how it changed expectations for both men

and women in late Ottoman society; the importance that the CUP cadres attributed to education for breeding nationalist future generations; and how all these concerns together eventually created a mind-set of reform, which required a new family law. The values of missionary schools, the educated new elite's worldviews, the CUP's approach to education, and commentaries on education in the press will be explored

### **3.1.1.1 Missionaries and education in the late Ottoman Empire**

Missionaries with an agenda of their own had established schools in the Ottoman Empire. However, the students who received an education in these schools had different life expectations and perspectives than their peers. So the way they perceived marriage also differed from that of previous generations. In this section, the aim is to explore the missionary education's impact on the Ottoman youth's perception of marriage, so that the essentiality of the OLFR to the new generation of Ottomans can better be understood.

The Tanzimat reforms paved the way for the penetration of European commerce and increasing missionary activity in Istanbul. The missionaries that came to Ottoman lands directed their attention mostly to education, for they believed education was a means of diffusing the light and progress of Christian civilization to other backward regions and cultures.<sup>270</sup> According to Pelin Başçı, the missionaries were convinced that the Ottoman Empire was backward, that life was dark for the inhabitants, rule despotic, and people were crude and lacked modern facilities. Hence

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<sup>270</sup> According to Pelin Başçı, a total of 23.474 students were studying in missionary schools by 1910: there were a total of six board colleges for both boys and girls with 1219 students, as well as 424 kindergartens and primary and secondary schools. See also: Uygur Kocabaşoğlu, *Anadolu'daki Amerika* (İstanbul: Arba Yayınları, 1991); Uygur Kocabaşoğlu, *Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi*, s.v. "Amerikan Okulları"; Pelin Başçı, "Shadows in the Missionary Garden of Roses: Women of Turkey in American Missionary Texts," in *Deconstructing the Images of "The Turkish Woman,"* ed. Zehra Arat (New York: St. Martin's Press, 1998), 118.

the evangelization and modernization of the Ottomans was considered a must for them.<sup>271</sup>

On the surface, the missionaries acted as if their aim was to educate open-minded, liberal students, yet they projected a universal and unchangeable image of women's nature.<sup>272</sup> For instance, missionaries turned some schools in the Ottoman Empire into *organizational bases for Muhammadan women's liberation*, such as the high school in Üsküdar. In fact, according to Pelin Başçı, it was as if the missionaries wanted to melt all the oriental, Muslim women in the hot tin pot of modernism, and to some extent of Christianity.<sup>273</sup>

Başçı argues that missionaries put special emphasis on Muslim women's education, for they believed that education would symbolically unveil Muslim women from the surrounding darkness. For that purpose, innovative techniques and positivist education became standard education in the Ottoman Empire.<sup>274</sup> If educated, the missionaries believed, the oriental women would unveil themselves from the actual *hijab*. The teachers at the Üsküdar High School, Ellen Deborah Ellis and Florence Palmer, were also supporters of the feminist movement in the Ottoman Empire. In their article "The Feminist Movement in Turkey," published in the *British Journal of Contemporary Review*,<sup>275</sup> Ellis and Palmer declared that the awakening of

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<sup>272</sup> Pelin Başçı, "Shadows in the Missionary Garden of Roses: Women of Turkey in American Missionary Texts," 119.

<sup>273</sup> In 1914 an article, "The Shadow of Islam", published by O.E.Brown explains the destitution of women of the Near East. According to the writer, these women were awaiting salvation from their Christian sisters. For the writer, the presence of a veil indicated the lower and subordinate place held by all women in the Muslim world, where the relationship of the sexes was the sorest spot in the lives of these little veiled creatures. See: Pelin Başçı, "Shadows in the Missionary Garden of Roses," 107.

<sup>274</sup> Esra Danacıoğlu, "Anadolu'da Amerikan Misyoner Faaliyetleri, 1820-1914," (Master's thesis, Hacettepe University, 1987).

<sup>275</sup> Pelin Başçı, "Shadows in the Missionary Garden of Roses," 111.

the Muslim women in the Ottoman Empire was a remarkable phenomenon. The women should unveil<sup>276</sup> to remove the barrier between themselves and the world.

However, according to June Starr, opening up a number of missionary foreign schools in Istanbul resulted in the division of Ottoman society.<sup>277</sup> The Muslim women educated in these institutions had different ideas on love and marriage from that of their peers. Besides, the educated male elite looked down on women, who were not well educated, all of which had an impact on the institution of family and marriage expectations in the late Ottoman Empire. In the next section, I will explore newly transformed marriage expectations of both male and female elites' as a result of the reforms and education in the late Ottoman Empire.

### **3.1.1.2. Educated male and female elite and their marriage expectations in the late Ottoman Empire**

A new generation of Ottoman youth, educated with Western manners and perceptions, required his/her counterpart for marriage. However, males had more opportunities than females to get an education, which also had an impact on their marriage prospects. All in all, for the new generation of Ottomans living in big cities brought up with Western inclinations, the family law in use was not satisfactory in some respects.

In the late Ottoman Empire, a new generation of Ottoman elites and intellectuals had encountered the West in various ways. They were trained in

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<sup>276</sup> The unveiling of Muslim women for missionaries, Başçı explains, was an achievement to be proud of. Halide Edip Adivar was obviously the Muslim woman they adored, for she successfully internalized missionary education and the values of them, at least partly. Duygu Köksal argues that Halide Edip Adivar respected Christianity out of admiration and respect for the simplicity, tastefulness and orderliness of the missionary life. Köksal also finds similarities between the missionary concept of ideal womanhood and Halide Edip's vision of women in the service of her country.

<sup>277</sup> June Starr, *Law as a Metaphor*, 9–10.

modern, secular Ottoman schools opened during the reform age. Almost all of them spoke at least one European language, which increased their contact with the West.<sup>278</sup> Having been educated abroad, these male elites and intellectuals turned their attention to the situation of women and concluded that uneducated Ottoman women were backward and retarding Ottoman society as a whole.<sup>279</sup> Besides, uneducated women had fallen out of grace in regards to marriage, for these new Ottoman male elites demanded their true counterparts. They did not want uneducated women who would be ignorant mothers and shallow partners, creating unstable marital unions. Enlightened intellectuals and elites, both men and women, according to Deniz Kandiyoti, believed they would feel more comfortable in the nuclear family structure, which was based on stable monogamous unions, the free choice of spouses, and egalitarian relationships among family members.<sup>280</sup>

The Ottoman women's lack of education had even pushed some Muslim men to marry Christian women. This situation was problematized in women's journals. In *Kadınlar Dünyası*, Fatma Zerrin Hanım observed that Turkish men were getting married to Christian women at an increasing level. These men had been made admirers of Western culture through the education they received, leading them to despise Ottoman women.<sup>281</sup> However, another writer, Hatice Hanım, argued that Christian women were not able to raise nationalist children; marrying them would thus hurt the Turkish nation. Besides, such multireligious marital unions usually meant that children were raised by foreign governesses, a situation that would also harm the future Turkish nation. Hatice Hanım offered Muslim Ottoman women's

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<sup>278</sup> İhsan Yılmaz, *Muslim Laws*, 88-90.

<sup>279</sup> Ellen L. Fleishmann, "The Other "Awakening": The Emergence of Women's Movements in the Modern Middle East, 1900-1940," 100.

<sup>280</sup> Deniz Kandiyoti, "Introduction," 10.

<sup>281</sup> Fatma Zerrin, "Tehlikenin Büyüğü," *Kadınlar Dünyası*, 63, 19 June 1913.

education as a solution, for if women could receive a good education, Christian women would no longer be the only option as marriage partners.<sup>282</sup>

The authorities did not remain insensitive to call for women's education by Ottoman citizens. After the 1908 revolution, many institutions for female education and vocational training were opened.<sup>283</sup> The CUP rulers believed in the positive contribution of women's education to the nation's economy and general well-being. They made the education of women part of their national project. In the next section, I will explore the role of education during the CUP period with respect to its contribution to the construction of the new, nuclear family in the late Ottoman Empire.

### 3.1.1.3. The CUP and education

Women were given an unprecedented role during the CUP period: they were made responsible for changing, developing, and elevating the whole nation via their control over the family. Women's education gained importance for the CUP rulers because believed that education could make women the mothers of the Turkish nation.

Ziya Gökalp, ideologue of the CUP, argued that in the Ottoman Empire, women were neglected especially in social life, presenting this as a reason for why

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<sup>282</sup> "Erkekleri dinen haiz oldukları bu haktan vazgeçirmek mümkün olmadığına göre kadınlarımızın onların bu meyle rağbetini azaltmaları gerek. Hâlbuki yüksek tahsil yapmış, Avrupalarda yetişmiş erkeklere mukabil koca imparatorlukta sade darülmullimat ve idadi var kız mektebi olarak. Anadolu'da ise neredeyse hiç okul yok. Ayrıca kızları 10-12 yaşında mektepten alıyorlar. Dedikodular iftiralardan yüzünden kızlar okuyamıyor. Ülkemize gelen felaketlerin öcünü alacak, çiğnenen mukaddesatımızı kurtarıp milli nefsimizin intikamını alacak Türklüğü müdafaa edecek gençlerin yetişmesi için kızlarımızın, kadınlarımızın iyi tahsil alması gerekiyor." Hatice, "Kadının Lüzümü Tahsili," *Kadınlar Dünyası*, 88, 13 June 1913.

<sup>283</sup> During the reign of the sultan Abdülhamid II, girls' education and training were taken seriously into consideration. However, this period is beyond the scope of this work.

the Ottoman Empire lagged behind other contemporaneous states.<sup>284</sup> For Gökalp, a woman was the cornerstone of her family, and an educated woman would make her family stronger. Stronger families would make a nation mighty. Besides, in the construction of Turkish national identity, Islam played a small part for Gökalp. He believed that religion was responsible for the demeaning status of women in the Ottoman Empire, which could be overcome only by education.<sup>285</sup> Therefore Ottoman women absolutely needed to receive a good education.

In line with Gökalp's arguments, educational opportunities for women were furthered during the CUP period.<sup>286</sup> Many educational institutions and vocational schools were established: the *İdâdiye* became accessible to girls in 1911, and the University of Istanbul opened its doors to women in 1916.<sup>287</sup> In addition, the CUP rulers Enver and Cemal Pashas also supported the missionary education activities and the building of schools for the education of Muslim Turkish women.<sup>288</sup>

However, the impact of nationalism on education becomes visible especially after the Balkan Wars. In the school textbooks of the Second Constitutional Period, the endless love for the homeland, *vatan*, was forced onto students, hoping to instigate in them an ambition to reconquer the lost territories of the Ottoman Empire.<sup>289</sup>

The importance of finding an ideal life companion was also emphasized in the school textbooks of the Second Constitutional Period. Young men were advised

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<sup>284</sup> Hikmet Yıldırım Celkan, "Türk Ailesinin Yeni Dönemlerde Ele Alınışı," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 1*, ed. Hakkı Dursun Yıldız (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 255.

<sup>285</sup> Kate Fleming, "Women as Preservers of the Past," 134.

<sup>286</sup> Fanny Davis, *The Ottoman Lady a Social History from 1718 to 1918*, 55.

<sup>287</sup> Bernard Lewis, *Modern Türkiye'nin Doğuşu* (Ankara: Türk Tarih Kurumu, 2004), 225.

<sup>288</sup> Pelin Başçı, "Shadows in the Missionary Garden of Roses," 111.

<sup>289</sup> Numerous poems and stories were written to create patriotic Turkish and Muslim children. With textbooks, periodicals, stories, and poems, Turkish Muslim children were made Turkish nationalists as World War I approached. Cüneyd Okay, *Meşrutiyet Çocukları*, 45-50.

to find brides who could raise nationalist children.<sup>290</sup> This form of education and ideological indoctrination during the CUP period also held sway over women, in that their perception of marriage changed as well. In time, women started to demand the right of divorce or of a monogamous marital union, something that could to some extent be satisfied by a new family law.

Through education and indoctrination, the CUP rulers administered their family politics, aiming to establish a national nuclear family. However, the education of the youth had also been the subject of lengthy discussions among the Ottoman intelligentsia, which will be explored in the next section.

#### **3.1.1.4. Education in the press and novels in the late Ottoman Empire**

In the press and literary works, the theme of the importance of women's education and work was treated overtly. Westernist, Islamist, or nationalist intellectuals approached the subject from different perspectives and discussed them widely. However, all discussions in the press inevitably had an impact on women and their perceptions of life and marriage. In this section, I will explore the printed news media and literary works to explore their impact on Ottoman women.

During the age of reform, elites and intellectuals reconsidered the influence of education on women's lives. Namık Kemal and Şemseddin Sami, for instance, were enthusiastic about women's education, as the latter constituted half of the human race.<sup>291</sup> Among the intelligentsia, feminists and Westernists were mostly worried about women's education level, because they believed that women's education was

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<sup>290</sup> Ekin Enacar, "Education, Nationalism and Gender in the Young Turk Era (1908–1918)" (M.A thesis, Bilkent University, 2007), 149.

<sup>291</sup> Mustaf Nihat Özön, *Namık Kemal ve İbret Gazetesi: İnceleme* (İstanbul: YKY, 1997); Tezer Taşkıran, "Şemseddin Sami ve Kadınlar," *Türk Yurdu*, (1955): 946-950.

one of the solutions to the problems in late Ottoman society. Ayşe Kadiođlu has argued that Westernists and feminists deemed women agents of the possible establishment of a Westernized society; therefore it was vital that Ottoman women were educated and got rid of the shackles of religion.<sup>292</sup>

The Westernists mostly held Islamic norms responsible for the plight of women, in that they believed the religion excluded women from social and cultural life. For instance, Kılıçzade İbrahim Hakkı claimed that offspring brought up by such excluded and uneducated women could not be counted on for the progress of the nation.<sup>293</sup> Another Westernist, Ahmet Rıza, argued that progress in science and knowledge changed how people earned their lives. Besides, it had almost become an art to live in the new Ottoman society. Therefore, it was a necessity to teach basic sciences and information to women, so that they could survive in the new conditions.<sup>294</sup>

The Islamist writers' worried mostly about missionary education, for they believed that missionaries were among the reasons for the decay of Ottoman society. According to the writers in *Sebil'ür-Reşad*, wandering missionaries and teachers of missionary schools were spreading false beliefs about Islam and confusing minds.<sup>295</sup> For instance, Şeyhülislam Mustafa Sabri complained about the fact that students in the missionary schools were trained by nuns. He observed a tendency for a wish to

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<sup>292</sup> Ayşe Kadiođlu, "Cinselliđin İnkârı: Büyük Toplumsal Projelerin Nesnesi Olarak Türk Kadınları," in *75 Yılda Kadınlar ve Erkekler*, (İstanbul: Türkiye Ekonomik ve Toplumsal Tarih Vakfı, 1998), 89-100.

<sup>293</sup> Hamdi Can Tuncer, "Kılıçzade Hakkı'nın Tesettüre ilanı Harbi" *Toplumsal Tarih* 66 (1999): 34-36, 35

<sup>294</sup> "Ulûm ve fûnûn terakkisi sayesinde husule gelen birçok ihtiraat-ı fevkalade heyet-i içtimaiyeyi beşeriyede usulü maişeti deđiştirdi. Cemiyet içinde yaşamak başlı başına bir sanat oldu. Bu tahavvülî nazara alarak kadına, hususan valideye şu asırda bilmesi gereken şeyleri öğretmek, büyük şehirlerin adatına, hayatı içtimâiyyesine göre eğitmek lazımdır.." Ahmet Rıza, "Vazife ve Mesuliyet-Kadın," in *Sosyo-Kültürel Deđişme Sürecinde Türk Ailesi Vol 3*, ed. Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 1036.

<sup>295</sup> Mustafa Gündüz, *II. Meşrutiyet'in Klasik Paradigmaları*, 253.

become a Christian among these female students, who were told about the benefits of confession in Christianity, and lack of it in Islam.<sup>296</sup> Likewise, another writer of *Sebil'ür-Reşad*, Mehmet Fahrettin, stated that in the missionary schools, Muslim children were converted to Christianity through influence. According to Fahrettin, ever since the Middle Ages, Europe had been against Islam, and now, through education by missionaries, Muslim children were drifting away from their religion. Fahrettin once came across a girl telling her parents that she was brought up with the manners of a Parisian woman and that she was educated to live in Paris; hence it was high time for her to go and live there. Fahrettin complained that missionary schools should never have been allowed and that the governesses and clergymen in these schools should not have been entrusted with educating and raising Muslim children.<sup>297</sup>

Islamists strongly argued against the idea that Islam was the reason for the backwardness of Ottoman society. For instance, İsmail Hakkı argued that in Islam, reason and a person's health ranged among the most important things. For him, a civilization could progress only through reason and morals. Hence, there was no use in blaming Islam for backwardness. Hakkı also argued that the veiling of women did not block their education. He said that in some parts of the world women were not veiled, some even living almost nude, yet that these societies were still backward.<sup>298</sup>

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<sup>296</sup> "...ecnebi elinde talim ve terbiye gören hanım kızlardan bazıları Hıristiyan kadınların rahipler vasıtası ile günah çıkartmalarına imreniyor ve beğenilmeye hiç de layık olmayan bu usûlün Müslümanlıkta yokluğunu mahrumiyet kabul ediyorlar..." Şeyhülislam Mustafa Sabri, "Aile Hayatı, Tesettür Meselesi, Kadın Hukuku," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 3*, ed.Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 1107.

<sup>297</sup> "Pek çok Müslüman kız misyonerlerden aldığı eğitimle dininden uzaklaşmakta, Hıristiyan gibi davranmaya başladı. Hatta kendilerini eleştiren anne babalarına " siz bizi İstanbul için değil, Paris için yetiştirdiniz, Paris terbiyesi verdiniz, Paris tahsili ettirdiniz. Biz de Paris'e gidiyoruz" diyorlar; misyoner eğitimi tesiri ile evlerini terk ediyorlar.." Mehmet Fahrettin, "Feminizm Meselesi 1, Bizde Nisaiyyun Nasıl Türedi?" *Sebil'ür-Reşad* 1-8, 13-195, 30 May 1912; Mehmet Fahrettin, "Feminizm Meselesi 2, Bizde Nisaiyyun Nasıl Türedi?" *Sebil'ür-Reşad* 1-9, 14-196, 6 June 1912.

<sup>298</sup> "...Mamâfih dinin terakkiye mani olduğunu düşünenler çoğalmıştır. Bazıları kadınların tesettürü ilme men diyor. Ancak bir takım kavimlerde kadınlar da hiç tesettür olmadığı gibi terakki de yok-

An anonymous *Sebil'ür-Reşad* writer stated that Islamic history had seen lots of women in the *ulema*, such as the wife of the Prophet Muhammad Aisha and Aisha Ahmed'ül Kurtubiyye. The writer stated that there was no hadith ordering men to refrain from teaching women how to read and write. People should read Islamic history and be proud of these women scholars, rather than prevent women's education.<sup>299</sup>

The mostly feminist writers of *Kadınlar Dünyası* were worried about the well-being of women themselves, for it depended on their chance to get an education and earn a living. But many people of bad will gossiped about educated women. For instance Aliye Cevat, an Istanbulite woman who lived in Kabataş, claimed that young girls were being tortured by ignorant residents of the neighbourhood because they went to high school and/or university.<sup>300</sup> Another writer, Sacide, complained that if a woman got a good education, people called her a prostitute. These ignorant people continuously gossiped about the students of *Dar'ül Muâllimat* and *İnâs İdâdisi*. However, Ottoman society needed educated women who could also earn their own living, especially in times of hardship.<sup>301</sup> Nationalism was the other concern of the writers in *Kadınlar Dünyası*. For instance, Hatice, who was a teacher in Konya, said that a nationalist feeling could only be instilled in children by educated mothers. Therefore it was a must to teach women, so that Turkey could catch up with progressive nations.<sup>302</sup>

The writers in *Kadınlar Dünyası* were also concerned about the marriage choices of the well-educated male elite, for, as mentioned before, these men did not

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tur..." İsmail Hakkı, "Geri Kalmışlığımızın nedeni Dinimiz midir? Usulsüzlük müdür? Daha Başka Bir şey midir?" *Sebil'ür-Reşad*, 17, 429-430, 17 July 1919.

<sup>299</sup> "Kadınların Okuyup Yazma Meselesi," *Sebil'ür-Reşad* 12, 288, 6 March 1914.

<sup>300</sup> Aliye Cevat, "Kızlar Hürdür, Serbesttir," *Kadınlar Dünyası*, 82, 24 June 1329.

<sup>301</sup> Sacide, "Kızlarımızın Çeyizi ne Olmalıdır?" *Kadınlar Dünyası*, 97, 22 July 1913.

<sup>302</sup> Muallime Hatice, "Köylü Kadınları," *Kadınlar Dünyası*, 51, 6 June 1913.

want uneducated Muslim women for marriage. H. Vasıf claimed that educated Muslim men preferred Christian women to marry and criticized the fact that there were not enough educational institutions in the Ottoman Empire for women. As a result, it became a necessity for women to go to Europe to get an education. Vasıf considered Lausanne the best among all European cities.<sup>303</sup> However, other writers, such as Melihe Cenan and Nahide Asaf Süleyman, were against Muslim Ottoman women's education in Europe. Süleyman mentioned that the girls who had gotten used to living in Europe would have difficulty adjusting to living in Istanbul again.<sup>304</sup> Cenan therefore suggested that instead of sending girls to Europe, parents should work for the establishment of a university in Istanbul.<sup>305</sup>

The writers in *Türk Kadını*, on the other hand, were concerned about the educational curriculum given to Ottoman women. A male writer of the journal, Necmeddin Sadık, claimed that the Ottoman education program was transferred from foreign education curriculums without a second thought. Courses such as sewing were added to foreign curriculums to make them look Ottoman. Women were taught difficult courses in physics, chemistry, biology, yet they graduated without knowing how to do housework, cook, or raise a child. For Sadık, such an education would only result in depression among these female students, for they could neither adopt themselves to life nor to marriage, if they would ever marry.<sup>306</sup>

Perihan Saide, another writer of *Türk Kadını*, approached the education issue from a different perspective. Perihan Saide complained that in Istanbul, female education turned students into atheists. However, atheism was a great dilemma,

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<sup>303</sup> H. Vasıf, "Avrupa'da Tahsili Nisvan," *Kadınlar Dünyası*, 89, 14 Temmuz, 1913.

<sup>304</sup> Nahide Asaf Süleyman, "Mükerrem Belkıs Hanımefendi'ye Avrupa'da Tahsili Nisvan Yazısı Üzerine," *Kadınlar Dünyası*, 82, 7 July 1913.

<sup>305</sup> Melihe Cenan, "Avrupa'ya Gitmek Meselesi," *Kadınlar Dünyası*, 93, 18 Temmuz 1913.

<sup>306</sup> Necmeddin Sadık, "Kızların Terbiyesi" *Türk Kadını*, 6, 1 August 1918.

which could cost society dearly. The writer had lived in America and Europe for a while and had observed that female students who studied Darwin and Marx at school went to church on Sundays, for they believed that no one could live without a religion. However, in Istanbul the old methods of religious education had alienated female students from religion. Perihan Saide suggested the introduction of new methods of religious training, so that female students would not end up becoming atheists.<sup>307</sup>

As explored from the primary sources, education clearly changed the perceptions and worldviews of Ottomans, especially concerning family and marriage. For the new generation of both male and female elites, who could also get education in Europe, and the female elite for whom education had become a must course taken in life either for better marriage prospects or to get a job, the traditional family structure and marriage seemed to now hold numerous disadvantages.

### **3.1.2. Urban transformation in the late Ottoman Empire and its impact on the Ottoman family, marriage, and divorce**

In his book *Beş Şehir* (Five Cities), the famous writer Ahmed Hamdi Tanpınar explains that in the course of 15 years, from 1908 to 1923, Istanbul lost its old identity. The Young Turk revolution, wars, fires, financial crises, the dissolution of the Ottoman Empire and the declaration of the Turkish Republic in 1923 all

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<sup>307</sup> “ *Bize din değil ilim lazım diyen muâllimlerin Amerika’yı görmesi lazım. Orada laboratuvarında bilimle uğraşan, Darwin, Marx okuyan felsefe okuyan pek çok genç kız pazar sabahları koşa koşa kiliseye gider, ibadet eder. O kızlar dinsiz yaşanacağına inanmazlar. Genç kızlara dini öğreten yok. Dinin eski tarz eğitimi gençleri cezptemiyor. Dini okutanlar dinle fennin ihtilâfını kendileri bile halledemediğinden talebeyi ürkütüyorlar... Dinimiz amelî mantıklı bir surette tedris edilmeli. Zirâ dinsizlik buhranı mühimdir; tüm noksanlarımızın esasını dini terbiyenin alınması ile giderilecektir..” Perihan Saide, “Genç Kızlarımızın Dertleri,” *Türk Kadını*, 10, 26 September 1918.*

completely transformed Istanbul's identity.<sup>308</sup> Yet Istanbul had been changing long before the Young Turk revolution. In fact, between the declaration of the Tanzimat reforms and the Young Turk revolution, three urban design schemes had been drafted for Istanbul, for all of which foreign engineers and architects were commissioned.<sup>309</sup> These plans, along with other architectural changes, gradually transformed the city.

Urban transformation in the late Ottoman Empire had an impact on the lives of people. In the newly constructed parks, parades, and bazaars men and women could mingle, had a chance to meet, and could socialize. In these places they were able to get to know their future wives or husbands. With time, their perception of arranged marriages and divorce thus changed. The new urban space in cities and the lifestyle that came along with it inevitably had an impact on Ottoman family structures. In this section, I will explore the impact of urban transformation in relation to its impact on Ottoman family life and marriage-divorce patterns.

### **3.1.2.1. Dissolution of neighborhoods, *Mahalles* and the qadı court**

The legal reforms of the Tanzimat era required and created a Western-style urban administration. In fact, the Tanzimat's centralization programs that required the physical improvement of cities were made possible by building codes and regulations.<sup>310</sup> In this section, I will explore the impact of the Tanzimat reforms on the urban space to explore how the new urban space changed the lives of people and their marriage attitudes.

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<sup>308</sup> Ahmet Hamdi Tanpınar, *Beş Şehir* (Ankara: Milli Eğitim Yayınevi, 1989).

<sup>309</sup> Zeynep Çelik, *The Remaking of Istanbul 30*; Alen Duben and Cem Behar, *Istanbul Households Marriage, Family and Fertility 1880–1940*, 25.

<sup>310</sup> *Ibid.*, 33.

Before the reform age, the *mahalle*,<sup>311</sup> neighbourhood, was the smallest administrative unit in the Ottoman Empire. According to Zeynep Çelik, the *mahalles* of Istanbul were organic developments that grew around religious cores such as mosques, churches, or synagogues. The residents of a mahalle formed a kind of organic living arrangement: they met at social gathering places such as the local mosque or coffee house, deciding on issues regarding their community as a whole.<sup>312</sup> However, from 1838 to 1908 urban growth patterns and city planning activities aimed at the modernization of the Ottoman Empire were undertaken, which dissolved the social system of the *mahalles*.<sup>313</sup> People even left their *mahalles* for the apartment life in new neighborhoods if they could afford it.<sup>314</sup>

The *mahalles* of Istanbul were divided along religious lines before the reform period. Municipal services were thus left to ethnic and religious communities in the smallest administrative unit of the empire. In fact, social programs such as public health, education, and even security were in the hands of autonomous communities. Moreover, before the advent of the reform period, the *mahalles* constituted center of economic and social life, developed around communal solidarity.

Urban qadıs were responsible for the people living in the *mahalles*.<sup>315</sup> However, the introduction of codification, the systematization of public administration, and the centralization of control that came with the Tanzimat reforms ended this traditional system.<sup>316</sup> As a result of the administrative reforms, the administrative powers of the qadıs were taken away and administrative jurisdiction

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<sup>311</sup> I hereby use the word mahalle for Ottoman neighbourhood.

<sup>312</sup> Zeynep Çelik, *The Remaking of Istanbul*, 42.

<sup>313</sup> *Ibid.*, 31.

<sup>314</sup> Alen Duben and Cem Behar, *Istanbul Households*, 30.

<sup>315</sup> *Ibid.*

<sup>316</sup> Zeynep Çelik, *The Remaking of Istanbul*, 33.

was transferred to new ministries.<sup>317</sup> Qadıs no longer represented the local urban communities of the *mahalles*.<sup>318</sup> In addition, the duties of the centralized government covered all aspects of *mahalle* life.

The city planners of Istanbul in the 19<sup>th</sup> century came up with more regularized city plans resembling the plans of European cities because of the frequent fires that plagued Istanbul during the 19<sup>th</sup> century.<sup>319</sup> Yet it was the Young Turk revolution that initiated the construction of the newly planned public works. In fact, the Young Turk revolutionaries also carried out an extensive city-building program, along with establishing a police force, a fire brigade, and public transportation in Istanbul with the aim of creating an urban image based on a European model.

With the newly applied city plans and the opening up of public places, the urban space changed drastically, especially in certain districts of Istanbul. In the new urban spaces, women became more visible. Frequently women and men visited public promenades, parks, and other places for entertainment. Besides, as part of the state's administrative reforms, public transportation had been made easier by the establishment of the *Şirket-i Hayriyye*, the steamship company, in 1851, and the *Dersâadet Tramvay Kumpanyası*, the company of streetcars, in 1871.<sup>320</sup> These newly introduced transportation methods closed distances between public places, making it ever easier for men and women to mingle. Especially after the 1908 revolution

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<sup>317</sup> Ibid., 42-50.

<sup>318</sup> İlber Ortaylı, *Tanzimat'tan Cumhuriyet'e Yerel Yönetim Geleneği* (İstanbul: Hil Yayınları, 1985), 100-104.

<sup>319</sup> Zeynep Çelik, *The Remaking of Istanbul*; Alen Duben and Cem Behar, *Istanbul Households*, 25.

<sup>320</sup> Cem Emrence, "İstanbul Tramvayında Sınıf ve Toplumsal Kimlik (1871-1922)", *Toplumsal Tarih* 93(2001): 6-10.

women became more visible in public spaces, and their participation in public life became a hotly debated subject among reformists and their critics.<sup>321</sup>

The dissolution of the *mahalle* structure and the beginnings of apartment life in new neighborhoods also had an impact on how people perceived life. New lifestyles in new neighborhoods, accompanied by the construction of public spaces and entertainment facilities, introduced a chance to socialize and to develop different life habits than those of previous generations. In the next section, I will explore the mingling of men and women in the new urban spaces to see its impact on marriage prospects and the requirements for a new family law.

### **3.1.2.2. Mingling of men and women in new urban spaces**

The mingling of men and women in the urban spaces of the late Ottoman Empire reached such an extent that the issue became a hotly debated subject in the press. In this section, my aim is to explore the discourse showing the new mind-set of the educated and modernized Istanbulite population.

The Islamist, Westernist, feminist, and nationalist intelligentsia approached the mingling of men and women in public spaces differently. Mehmet Şemseddin, who was a conservative critic, argued that by presenting their beauty to people, women were devaluating themselves. For Şemseddin, women should have known that they were not just pompous dolls.<sup>322</sup> Likewise, the Şeyhülislam Mustafa Sabri

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<sup>321</sup> Zehra Arat, "Introduction: Politics of Representation and Identity," in *Deconstructing the Images of "The Turkish Woman"*, ed. Zehra Arat (New York: St. Martin's Press, 1998), 9.

<sup>322</sup> Mehmed Şemseddin, "İslam Hanımı," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 3*, ed. Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 1105.

"...kadın kendini teskin-i evvâk için halk olunmuş bir oyuncak telakki ederek süslü bebekler gibi şahsını teşhire kalkışırsa ailenin ihtimaline, cemiyetin infisahına, millet için de her manasıyla elim bir dejenerasyona intizar etmek icâb eder." Mehmed Şemseddin, "İslam Hanımı," *İslam Mecmuası*, 55, 3 January 1918.

argued that young men hoped they could have interactions with women when they mingled with them in cafés, restaurants, and theatres. Besides, it was profitable for some shop managers to have women in public spaces. Sabri gave the example of a Greek shop owner whose wife worked as a cashier at his shop. Obviously, this manager had more customers than the rest of the shops in his neighborhood, but Sabri advised to question the ethics of this situation.<sup>323</sup>

In the Islamist journal *Sırat-ı Müstakim*, the Meşihat's contention about girls' education was published in 1915. The Meşihat circles argued that Muslim girls were attending mixed-sex foreign schools without veiling. These girls entertained themselves with boys at resorts, walking hand in hand and the like. This situation went both against religion and national benefit: thousands of soldiers found themselves devastated at the fronts because of such girls and women. Authorities should therefore take the necessary action of punishing the parents of these children for having brought them up like that.<sup>324</sup> Likewise, Süleyman Nazif, who was a Westernist intellectual, accused debauched women of causing moral decay and social unrest in Istanbul. For Nazif, these women were the reason of the Ottoman Empire's retreat and eventual loss in the Balkan Wars.<sup>325</sup>

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<sup>323</sup> Şeyhülislam Mustafa Sabri, "Aile Hayatı, Tesettür Meselesi, Kadın Hukuku," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 3*, ed.Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 1115-118.

<sup>324</sup> "...bir müddetten beri İslam kadınları İslami tesettüre uygun olmayan halde, hatta bazı İslam kızları ecnebi mekteplerde erkeklerle beraber açık gezdiklerine, açık saçık eğlencelere iştirak ettiklerine rastlanmış... İslama ve milli menfaate uygun değil. Bu halata acilen tedbir alınması gerek. Binlerce vatan evladı muharebe meydanında kahroluyor nisvânın bu halinden. O kızların bu hallerine izin veren velileri de İslam düşüncesine ve milli ahlaka zarar veriyor. Onlara da verdikleri zarara uygun ceza verilsin." Meşihat, "Tesettür Mesele-i Mühimmesi Hakkında," *Sebil'ür-Reşad* 14, 346, 26 August 1915.

<sup>325</sup> Süleyman Nazif, "İstanbul Eğleniyor," *İçtihad* 1597, 73, 7 August 1913 quoted in Mustafa Gündüz, *II. Meşrutiyet'in Klasik Paradigmaları: İçtihad, Sebil'ür-Reşad ve Türk Yurdu'nda Toplumsal Tezler*, 174.

The demonization of women by some conservative writers was quite common. In another article, Ferid Vecdi<sup>326</sup> gave Roman civilization as an example. The writer blamed women's visibility in the public spaces of Rome for the destruction of that once glorious civilization.<sup>327</sup> In another article, Vecdi argued that women should be veiled and should not leave their homes often, for they were more suited to do housework by birth. Japanese women who never interfered with their men's jobs should be taken as an example. According to the writer, feminists who thought that a civilization could prosper by seminude women walking on the streets were deadly wrong.<sup>328</sup>

In various articles published in *Sebil'ür-Reşad*, the government was also criticized for not taking the necessary action against women's entertainment at resorts. For instance, two Muslim women were spotted on the backseat of a runabout, driven by two foreign men wearing hats at Direklerarası, Beyoğlu. The two women were veiled, yet their bosoms and arms were visible. The writer complained that Istanbul was becoming "Byzance" because of such people. Even a Caucasian witness to the occasion said that "if these women were in his country, they would have eggs thrown at them. They, Caucasians were the captives of Russia, but here, Istanbul, was the city of the Caliph."<sup>329</sup>

The conservatives also hotly debated concerts, theatres, and cinemas where men and women were entertained together. For instance, a concert given at the Türk

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<sup>326</sup> The article was translated from arabic to turkish by Mehmet Akif.

<sup>327</sup> Ferid Vecdi, "Müslüman Kadını, Tesettür Kadınların Esaret Nişanı mıdır, Hürriyeti midir?" *Sırat-ı Müstakim* 96, 11, 23 February 1911.

<sup>328</sup> "Nisaiyyat," *Sebil'ür-Reşad* 11, 280, 22 January 1914.

<sup>329</sup> "Saat 5-6 civarı, açık otomobil, içinde iki Müslüman kadın, başlarında örtü ama Direklerarası'nın ışık tufanında parlıyorlar, dikkat çekiyorlar, göğüsler, kollar açık, dirsekleri arabadan çıkmış, eller çenelerin altında etrafa bakıyorlar. Önde iki şapkalı frenk otomobili sürüyor.. Halkın tepkileri: "bu kadar şehvet esiri olmuş millet Bizans'tan başka yerde görülmez" Kafkas biri "bu halde kadın bizde olsa yumurta atarlar hâlbuki biz Rus esaretindeyiz burası dar-ül Hilafet" Direklerarası Hanımların Otomobile Gece Piyasaları," *Sırat-ı Müstakim* 5, 106, 16 September 1910.

Ocağı proved scandalous for the Meşihat circles, for it was held in front of a hundreds-strong mixed-sex audience: Zehra Hanım was playing tambour and Şeref and İrfan Hanıms were playing oud alongside other male members. The concert was reported to be criticized by most of the Muslim countries, for it truly went against Islamic rules. The Meşihat circles asked the Ministry of the Interior to prevent the reoccurring of such events; and the ministry ordered police headquarters to take the necessary precautions.<sup>330</sup>

While the demonization of women continued by some conservatives, it should also be mentioned that some women misunderstood their newly attained freedoms. For instance, in 1910, a couple of women harassed the Şeyhülislam Musa Kazım on a Haydarpaşa steamboat. The Şeyhülislam was sitting in the men-only cabin of the steamboat. Having been informed about his presence, these women caused uproar, used abusive language, and forced the Şeyhülislam to leave his cabin. The event was investigated by the police and the Ministry of the Interior.<sup>331</sup>

The times were, in fact, a transition period for both women and men in the late Ottoman Empire. On the one hand, women were expected to work and participate in public life without neglecting their household duties, while on the other

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<sup>330</sup> “Devletlü efendim hazretleri, İsmail hakkı bey tarafından Beyazıd’da küşâd olunan musiki Osmanlı hanımlar dershanesi yararına tahsis edilmek üzere Kevser hanende Zehra tanbüri şeref ve udi irfan hanımların ve diğer erkek musiki erbabından oluşan bir heyet tarafından Kanunievvelin 12 gününde Beyazıd’da Türk Ocağı konferans salonunda ve kadın ve erkek yüzlerce dinleyicinin karşısında icra edildiği evrakı havâdisde tesadüf edilmiş ve bütün İslam ülkelerinin tevehhünü nazar eylemiş olduğu hilafet dairesinde edep İslam şartlarına külliyen muhalif olan ve insanları hayrette bırakacağı tabii olan bu gibi şeylerin tekrar etmemesi ve bununda sanat hayatında çok parlak bir ilerleme namıyla anularak evrakı havadiste yayınlanması hilafet makamının İslam âlemine karşı sahip olduğu mukaddes mevkiinin şerefinin ihlâlüne ve bu gibi İslam edebine aykırı hallerden dolayı..” DH KMS 57-2/20, 5 December 1919

<sup>331</sup> “Bu raporda zikrolunan kadınlar mezkûr günde Şeyhülislam efendi hazretlerinin Haydar Paşa vapurunda ikâmet eyledikleri yan kamasına adeta zorla girerek Şeyhülislamı kamaradan çıkmaya mecbur etmişlerdir .... Kadınlar evvela kamara kapisında bir hayli gürültü ederek kadınlara mahsus kamaranın karşısında kamara olduğunu ve bu kamara erkeklere mahsus olup içerisinde de Şeyhülislam efendini bulunduğu kendilerine söylendiği halde bu hanımlar kötü lisan ile Şeyhülislam efendinin çıkmasının lazım geleceğini ve ister istemez kendilerinin bilhassa yukarıya gireceklerini beyan etmiş ve kamaraya girmişlerdir..” DH EUM KADL 1 18, 26 October 1910.

hand no suitable opportunities for work and entertainment had been prepared for them. Ethem Nejad in the journal *Türk Kadını* pointed to that situation. He said that women used to visit their neighbours as an entertainment in the past, but that walking on the streets while flirting with men had become a form of entertainment for women recently. The upper-class women's situation was even more pathetic, for these women in their summer resorts at Princess Island were drinking with men and gambled until dawn. Nejad said that if the country wanted women to work and participate in public life, more suitable entertainments and resorts should be prepared for them.<sup>332</sup>

Edhem Nejad also criticized the new fashion of leaving children to the responsibility of governesses among Muslim women. These women were languishing at Gülhane or Sultanahmet Parks or watching a movie at Şehzadebaşı rather than taking care of their children. Nejad mentioned some New York women, whom he had met during his visit to the United States eight years earlier. These women were mostly the wives of academicians; they were well off. Yet they still took care of their own children, entertaining them at Central Park instead of leaving them to governesses. Nejad claimed that “it would be for the best if Muslim mothers took care of their children themselves, if the Turkish nation is to prosper.”<sup>333</sup>

In the late Ottoman Empire, women who were walking on the streets—even at midnight—attending mass meetings, jumping off from streetcars, fighting with

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<sup>332</sup> “..Şimdiye kadar konu komşuya gitmekle eğlenen hanımlarımıza bu iptidâi eğlenceler yetmiyor. Parklarda, Kadıköy civarında oda tuvaletleriyle gezmek ve arkalarında dolaşan beyefendilerin attıkları sözleri dinlemek pek kaba adi eğlence olduğunu bildikleri halde başka zevk membaı olmadığı için terk edemiyorlar. Nezih hanımlarımız ramazan geceleri Şehzadebaşı'nda Üsküdar'da bazı kadınların erkeklere iğne batırmak suretiyle icat ettikleri eğlenceye nefretle bakıyor..... Yüksek tabaka ise benzer. Adalardaki köşklere kadın ve erkek eğlence âlemleri işitilir. Saz söz ahenk..yüksek zengin aile konaklarında içki masasının yanına kumar masası da kuruldu artık. Gece yaralarına kadar kumar oynayan hanımlar bitap düşüyor...” Ethem Nejad, “Kadın Erkek Eğlencede de Birlikte,” *Türk Kadını*, 9, 12 September 1918.

<sup>333</sup> Edhem Nejad, “Evladsız Anneler,” *Türk Kadını*, 4, 4 July 1918.

police, and speaking loudly were shocking not only to conservative people, but even for some women. Nezihe Rikkat in *Türk Kadını* criticized such women. She argued that a woman who did not know how to make omelettes could become a bank or post office clerk or could study at university. For Rikkat, these women were becoming men.<sup>334</sup> Mutia Sabri, who was a student at university, replied to Nezihe Rikkat to say that these teachers and clerks were career women. They were not becoming men, but they were trying to help their families financially. She asked Rikkat what women should do instead of working. Should they stay keep at home playing oud or piano and wait for the return of their fathers or husbands dreamily, while the nation required the contribution of both men and women citizens?<sup>335</sup>

As explored from the primary sources, urban change affected people relations between men and women, which, in turn, affected the way they conceived of themselves and their marriage expectations. The next section explores the changes in social and cultural life in late Ottoman Empire Istanbul and how they contributed to the emergence of a new kind of family.

### **3.1.3. Social and cultural life in late Ottoman Empire Istanbul**

Printed materials such as journals and books had a strong impact on Ottomans since the Tanzimat reforms as well. Actually, newspapers, books, and telegraphs were much used by the Ottoman ruling class and intellectuals to disseminate their

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<sup>334</sup> Neziha Rikkat, "Erkekleşme," *Türk Kadını*, 13, 28 November 1918.

<sup>335</sup> "Kadınlar erkekleşmiyor; meslek sahibi olmaya başlamaları hayatın doğal akışının sonucudur. Darülfünunlu muallime, memure saf ve nezih birer meslek kadınıdır; varyete kumpanyasının erkekleşmiş kadın pehlivanı değildir Bu durum hayatın tabii bir neticesi değil mi? Eskiden piyano çalıp kocasının hayali ile yaşayan kadın bugün gaip ettiği zevcinin babasının kardeşinin boşluğunu doldurmaya çalışıyor." Mutia Sabri, "Nezihe Rikkat Hanımefendi'ye," *Türk Kadını*, 14, 12 December 1918.

ideas.<sup>336</sup> During the 19<sup>th</sup> century, the number of popular newspapers, magazines, and novels modeled on European prototypes increased. These publications conveyed information on European manners and morals. According to Alen Duben and Cem Behar, these publications often criticized Ottoman family life, women's position in society, and the education of children. Writers often advised more Westernized manners.<sup>337</sup>

The modernization and Westernization of the Ottoman Empire, which began during the reign of sultan Mahmud II, had an impact on Ottoman households. The upper and middle ranks of the Istanbulite population were affected first. Besides, after the Crimean War many Europeans flooded to Istanbul, along with the Europeanized Turks that migrated from Egypt.<sup>338</sup> According to Ahmet Hamdi Tanpınar, the consumption styles of Europeans and Europeanized Turks were gradually emulated by affluent people in Istanbul.

However, conservative people felt reserved about the changes. Ahmet Cevdet Paşa, a renowned scholar who was the head of the Mecelle Commission, warned people against the possible degeneration of society as a result of modernization endeavors. Paşa believed that modern manners would eventually destroy the morals and traditions of Ottoman society.<sup>339</sup> The conservatives also argued that not properly following Islamic practices during the modernization process could cause crises in Ottoman society.<sup>340</sup>

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<sup>336</sup> Şerif Mardin, "Tanzimat'tan Sonra Aşırı Batılılaşma," in *Türk Modernleşmesi* ed. Mümtaz'er Türköne and Tuncay Önder (İstanbul: İletişim, 2006), 21-79.

<sup>337</sup> Alen Duben and Cem Behar, *Istanbul Households*, 21.

<sup>338</sup> *Ibid.*, 202.

<sup>339</sup> Ekrem Işın, "Tanzimat Ailesi ve Modern Adâb-ı Muaşeret," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 1*, ed. Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 220.

<sup>340</sup> Şefika Kurnaz, *II. Meşrutiyet Dönemi'nde Türk Kadını* (İstanbul: Milli Eğitim Bakanlığı, 1996), 27-30.

Such a juxtaposition of old and new styles of living created a dualism in late Ottoman society.<sup>341</sup> Some conservative people were unwilling to change, but the reforms and their consequences held sway over most people. How people perceived, accepted, or resisted the changes, especially those related to family and women's issues, differed. In the next section, I will explore the viewpoints of late Ottoman intelligentsia to explore the road to family law reform in late Ottoman society.

### **3.1.3.1. Women, family, marriage, and feminism**

As more women got involved in public life and worked, discussions on feminism abounded in the Ottoman press. An increase in women's share in the public sphere raised tensions among intellectuals of the period, and women and family became hotly debated topics among Islamists, nationalists, and Westernists. In this section, I will explore women's activities in social life, work, and women's organizations in the late Ottoman Empire to see their impact on the promulgation of the OLFR.

The reform movements of the Ottoman Empire since the Tanzimat Charter had affected women's lives greatly. Especially after the 1908 revolution, women had entered into public life more widely.<sup>342</sup> During the Second Constitutional Period (1908-1919), dozens of women's organizations were founded, for which the Balkan Wars and World War I acted as a catalyst.<sup>343</sup> Along with the proliferation of women's associations, the opening of universities to women, and the increasing incorporation of women into the labor force were also witnessed during the Second Constitutional

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<sup>341</sup> Ahmet Hamdi Tanpınar, *XIX. Asır Türk Edebiyatı Tarihi* (İstanbul: YKY, 2009), 133–137; Alen Duben and Cem Behar, *Istanbul Households*, 202–204.

<sup>342</sup> Zehra Arat, "Introduction: Politics of Representation and Identity," 8

<sup>343</sup> Robert H. Fleischmann, *Islamic Law in Palestine and Israel*, 103.

Period.<sup>344</sup> As Şükrü Hanioglu argues, however, women's movements were strictly an elite activity in the late Ottoman Empire, although the number of women participating in associations and the workforce were far greater than in previous periods.

Nicole van Os observes that Muslim feminists of the Ottoman Empire were elite women who did not have many problems with their gender roles in society. Rather, they searched for ways to overcome women's problems within the boundaries of a social system they belonged to.<sup>345</sup> İlber Ortaylı argues that the feminist discussions in the late Ottoman Empire went beyond limits of the Muslim world in general and of the Ottoman Empire in particular, because no structural reforms had been made for women to become truly equal owners or even workers.<sup>346</sup> Mostly, women writers, teachers, and activists of the late Ottoman Empire came from urban upper-class backgrounds.<sup>347</sup>

Fahri Ziya Fındıkoğlu asserts that the wars of the 19<sup>th</sup> and 20<sup>th</sup> centuries drew Ottoman women into charity work.<sup>348</sup> The elite women of the late Ottoman Empire organized associations with many objectives.<sup>349</sup> They wanted to perform charity work, educate and train women for work, and help defend the country by supporting soldiers. According to Fleishmann, the first wave of organizations was both

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<sup>344</sup> Mervat Hatem, "Modernization, the State and the Family in Middle East Women's Studies," 69.

<sup>345</sup> Nicole A.N.M. van Os, "Osmanlı Müslümanlarında Feminizm," in: *Modern Türkiye'de Siyasi Düşünce: Tanzimat ve Meşrutiyet'in Birikimi*, ed. Tanıl Bora and Murat Gültekinil (İstanbul: İletişim Yayınları, 2001), 339.

<sup>346</sup> İlber Ortaylı, *Osmanlı Toplumunda Aile*, 104.

<sup>347</sup> One of these women frankly stated that they were a minority of educated women detached from the majority of women in the society. See: Zehra Arat, "Introduction: Politics of Representation and Identity," 8.

<sup>348</sup> Ziyaeddin Fahri Fındıkoğlu, *Hukuk Sosyolojisi* (İstanbul, 1958), 241–242.

<sup>349</sup> Serpil Çakır lists the names of the associations: *Cemiyeti Hayriye-i Nisvaniye, Teali-i Vatan, Osmanlı Hanımları Cemiyeti, Osmanlı Türk Hanımları Esirgeme Derneği, Kadınları Çalıştırma Cemiyet-i Nisvaniyesi, Mamulât-ı Dâhiliye İstihlâki Kadınlar Cemiyet-i Hayriyesi, Osmanlı Müdafâ-i Hukuk u Nisvan Cemiyeti*. For further information of the women's associations see Serpil Çakır, "Meşrutiyet Devri Kadınlarının Aile Anlayışı," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 1*, ed. Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 988.

religiously oriented and had feminist aspirations.<sup>350</sup> Actually, these organizations had conflicting goals, such as rendering women capable of bringing up their children according to the principles of modern pedagogy and encouraging them to earn their own living by working for themselves.<sup>351</sup>

The newspapers and magazines created a platform for the elite and mostly educated women to speak out. These publications also provided means for nonelite women to express themselves. *Vakit yahut Mürebbi-i Muhadderat* (1875), *Âyine* (1875), *İnsaniyet* (1880), *Hanımlar* (1883), *Şükûfezar* (1886), *Mürüvvet* (1888), *Parça Bohçası* (1889), and *Hanımlara Mahsus Gazete* (1895) were some of the newspapers and periodicals of the Hamidian era. The first newspaper designed for women was *Teraki-i Muhadderat*, which was a supplement of the *Terakki* newspaper. The *Teraki-i Muhadderat* published letters of women readers on various issues such as polygamy, women's position in the family, and even inferior seats reserved for women in steamships.<sup>352</sup> Although these women constituted a minority in society, they nevertheless introduced issues related to women's general public and political agendas.

The sultan Abdülhamid II himself also encouraged the publication of some of these papers, such as *Hanımlara Mahsus Gazete* and *Mürüvvet*.<sup>353</sup> The Hamidian press usually supplied women with notions of housework, the education of children, and family matters. In fact, during the Hamidian era, the main concern of the state was to turn young women into modern wives and mothers.

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<sup>350</sup> Robert H. Fleischmann, *Islamic Law in Palestine and Israel*, 103.

<sup>351</sup> *Ibid.*, 103.

<sup>352</sup> Serpil Çakır, *Osmanlı Kadın Hareketi* (İstanbul: Metis, 1996), 24-25.

<sup>353</sup> *Ibid.*, 26-28.

Aynur Demirdirek categorizes women's publications of the constitutional period into two.<sup>354</sup> In the first category, the journals reflected a Westernized lifestyle, focusing on topics such as child care, family, housework, and health. They also attempted to educate women readers on how to serve both the family and society. In the second category of publications, the aim was to put women's conditions and demands on the public and political agenda. Here, women wrote about the circumstances they wanted to change. They demanded education, employment, marriage by choice, and a change in attire.<sup>355</sup> Zehra Arat argues that they even had some influence on the passing of the OLF.<sup>356</sup>

Şükrü Haniöglu argues that, in contrast to the Hamidian era, the postrevolutionary women's press was more liberal and discussed a broader range of issues, such as feminism.<sup>357</sup> For instance, in his book *Principles of Turkism*, Ziya Gökalp devoted a section to Turkish feminism. Gökalp argued that in the nomadic Turkish tribes, women held a position equal to that of men. Like Gökalp, Halide Edip Adıvar, a prominent Turkish feminist, also argued that feminism was inherent in Turkish culture,<sup>358</sup> obvious from the pre-Islamic social life of the Turkish societies. Like Gökalp, other nationalist intellectuals also advocated that Muslim women should be emancipated for the development of the Muslim world. Among them,

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<sup>354</sup> Names of some of these journals are *Şükûfezar* (Bloomed Garden, 1886), *Hanımlara Mahsus Gazete* (The Newspaper for Women, 1895), *Demet* (A Bunch, 1908), *Mehâsin* (Virtues, 1908-1909), *Kadın* (Woman 1911-1912), *Kadınlar Dünyası* (Women's World, 1913-1914; 1918-1921), *Kadınlık* (Womanhood, 1914) for details see: Aynur Demirdirek, "In Pursuit of the Ottoman Women's Movement," in *Deconstructing the Images of "The Turkish Woman"*, ed. Zehra Arat (New York: St. Martin's Press, 1998)

<sup>355</sup> Aynur Demirdirek, "In Pursuit of the Ottoman Women's Movement," 66-71.

<sup>356</sup> Zehra Arat, "Introduction: Politics of Representation and Identity," 8.

<sup>357</sup> According to Haniöglu, during the Hamidian era, the place was sponsoring newspapers such as *Hanımlara Mahsus Gazete* for promoting a new idealized image of Muslim women and wives, who raised obedient and pious children. Şükrü Haniöglu, *A Brief History of the Ottoman Empire*, 183.

<sup>358</sup> According to Gökalp, in the pre-Islamic period women were equal to men because their religion was not an ascetic one. It was through an encounter with Iranian and Greek Orthodox religions that Turkish women came to be regarded as inferior. Likewise, Ahmed Cevad also blamed Iranian and Greek influences on the social degradation of Turkish women. See: Kate Flemming, "Women as Preservers of the Past," 132-134.

Adivar went even further to claim full citizenship rights of women, including the right to vote and enter into parliament.<sup>359</sup>

Nebile Akif in *Kadınlar Dünyası* said that in the French Declaration of Human Rights, it was said that human beings were born equal. This article was also quoted in the Ottoman Constitution of 1876. Although it was a constitutional right, women were still held like captives in the Ottoman Empire. However, if justice and equality could not be established among all citizens, a society would deteriorate. Therefore, according to Nebile Akif, women should be free in the Ottoman Empire.<sup>360</sup>

The writers in *Kadınlar Dünyası* proved vociferous. An anonymous article argued that it had always been men like Abdullah Cevdet who stood up for women. However, it was high time that women stood up for themselves, for only a woman herself could justly evaluate her plight.<sup>361</sup> In another anonymous article, a writer complained that for years women had demanded freedom in the media and in mass meetings without understanding the real nature of it. Freedom meant that both men and women had their own rights, were able to decide and act accordingly in life. Hence, men and women should be equal before the law and women should not stop until they got what they wanted.<sup>362</sup>

Feminist writers in *Kadınlar Dünyası* were also very much interested in history. They examined women of ancient Judea/Israel, India, Egypt, Greece, Sparta,

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<sup>359</sup> Ayşe Durakbaşa, "Kemalism as Identity Politics in Turkey," in *Deconstructing Images of the Turkish Woman*, ed. Zehra Arat (New York: St. Martin's Press, 1998), 140-141.

<sup>360</sup> "...Fransızların insan hakları beyannâmesinde insanlar hür olarak doğarlar deniliyor. Kânuni Esâsimiz de buradan iktibas edildiğinden bu kanun kabul ediliyor. Buradan tüm Osmanlıların hür doğduğu ve hayatı boyunca bu hürriyetten istifa edeceği ortadadır. O halde niçin kadınları hür yaşatmıyorlar? Bu zulümdür. Cemiyet fertleri arasında istisnasız adalet temin edilmez, herkesin hakkı iade olunmaz ise o cemiyet payidar olamaz, sükût eder, düşer..." Nebile Akif, "Hikmeti İçtimaiyye ve Nisvan," *Kadınlar Dünyası*, 93, 17 July 1913.

<sup>361</sup> "Hukuk-ı Nisvan," *Kadınlar Dünyası*, 1, 17 April 1913.

<sup>362</sup> "Kadınlar da Hürdür İnsandır," *Kadınlar Dünyası*, 40, 26 May 1913.

Athens, Corinth, Italy, Gaul, and Arabia. In the histories of these countries, they looked for a proper example of aspiration with regard to marriage issues. In the articles published between April 5 and 15, 1919, they mentioned that in ancient Israel, women were the captives of men, and even their property. In India, unmarried women were not accepted as human beings; and widowed women were banned from eating and drinking. In Egypt and Greece women and men lived separately and couldn't become life companions. Spartan women were obliged to give birth to strong male babies to be the future heroes of Sparta. The ancient Italians introduced young males and females to each other so that they could pick a spouse to marry. In Galicia, women were married to men the elders thought best for them. Romans indulged in hedonism, did not marry, and gave away any child born. In ancient China there was arranged marriage. However, a husband could send back his wife if he did not like her. A Chinese man could be polygamous and could treat his wives as his property. An average Arab man was usually sexually active between the ages of 13 and 80, whereas his wife's sexual life was usually short-lived. Articles argued that, rather than committing adultery, Arabs preferred to be polygamous. However, Islam restricted the number of wives to four and stipulated equality among the wives.<sup>363</sup>

In *Türk Kadını*, Müfide Ferid said that feminism was the equality of men and women in terms of civil, social, and political rights. She said that as soon as women realized their capacities, they rebelled. Because of economic hardship, no men were able to finance their families on their own, and this situation forced women to work. Working women also realized their economic and social rights and demanded them. Hence, today Turkish women were not captives anymore. Besides, no men could make them captives again, for the men did not have the financial means. For Müfide

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<sup>363</sup> "Hukuk-u Nisvân 1-12," *Kadınlar Dünyası*, 2-12, 5 April 1919-12 April 1919.

Ferid, only if men and women were equal, could a society become well established and healthy. She brought up examples from ancient Indian, Egyptian, Jewish, Greek, Roman, Gallic, and Christian civilizations and argued that during a society's decay, women were given the role of men's puppets, with their rights restricted severely. She also wrote about a Prussian scholar who once said that women could not get an education, for their brains were smaller than men's. The Prussian scholar told his disciples to weigh his brain when he died, so that he could prove his argument. However, his brain weighed 1.195 grams, which was 5 grams lighter than an average female brain.<sup>364</sup>

In their search for a perfect type of marriage, the writers of *Kadınlar Dünyası* could not find an example to aspire to. Their search was nonetheless meaningful because it allowed them to criticize the current marital situation of Ottoman women. They were looking for new ways to make women's lives better. These women demanded rights such as those of divorce and monogamy, which made the OLFR essential to them.

For the conservatives, women represented ethical values and the honor of society. Religious values and Islamic ethics were deemed necessary for the protection of women's moral purity.<sup>365</sup> However, the conservative writers opposed the idea of giving women their full rights. For instance, Sadrazam Halim Paşa was

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<sup>364</sup> "...Batıda kadın eksiktir, akılsızdır dedikten sonra ruhsuzdur diyenler bile olmuş. Kadınlara eşya gibi bakmışlar. Bundan 15 sene evvel Profesör Biskof, meşhur Prusya âlimi kadınlar erkekler gibi tahsil görmek isteyince kadınların beyninin erkek beyninden daha hafif geldiğini bu sebepten erkek gibi ilim tahsil edemeyeceğini ileri sürmüştü. Hatta öldüğüm zaman benim beynimi tartın; muhakkak 1350 gr. gelir demiş. Ölmüş; beynini çıkartıp tartmışlar. 1195 gr gelmiş yani vasat kadın beyninden de 5 gr. düşük çıkmış..." Müfide Ferid, "Feminizm," *Türk Kadını*, 20, 17 April 1919.

<sup>365</sup> Elif Küçükalioğlu Gözdaşoğlu, "Imagi-nation of Gendered Nationalism: The Representation of Women as Gendered National Subjects in Ottoman-Turkish Novels (1908-1938)", (PhD diss. Bilkent University, 2005), 186.

against furthering the rights of women, for he argued that this would degenerate not only Islamic morality but also Ottoman society and customs.<sup>366</sup>

The writers in *Sebil'ür-Reşad* took the rights of women and feminism seriously and argued that the situation must be seen as a clash of Eastern and Western thought. The conservative writers were convinced that feminism was an import to the Muslim world, thanks to the activities of missionaries and missionary schools.<sup>367</sup> Besides, Ferid Vecdi argued that Muslim women were far beyond their contemporaries in Europe regarding rights and their reputation in society. He claimed that Europeans who argued that Muslim women were suffering should take a careful look at their own women.<sup>368</sup>

Another conservative writer, Mehmed Şemseddin, argued that among all religions, only Islam assessed the value of women in the way it was meant to be. According to Mehmed Şemseddin, the Greek and Roman civilizations, which were accepted as the basis of European civilization, forced women to live like slaves. Mehmed Şemseddin went on to explain the glorious history of Islam, and gave examples of women scholars, of whom he felt proud. According to Mehmed Şemseddin, Muslim women were endowed with every right, thanks to Islam.<sup>369</sup> Contemporary women should take these scholarly women of Islamic history as an example, rather than drifting away from their religion with alien feminist aspirations.

Likewise, a Westernist writer, Rıza Tevfik, argued that women were endowed with rights in Ottoman society. For him, Ottoman women did not have to struggle for

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<sup>366</sup> Ayşe Kadioğlu, "Cinselliğin İnkârı: Büyük Toplumsal Projelerin Nesnesi Olarak Türk Kadınları," 92.

<sup>367</sup> Mehmed Fahreddin, "Feminizm Meselesi 1," *Sebil'ür-Reşad* 1-8, 31 May 1912.

<sup>368</sup> Ferid Vecdi, "Kadınlara Hürriyet-i Mutlaka Vermek İsteyenlerin Elinden Vay O Biçarelerin Başına," *Sebil'ür-Reşad* 11, 23 October 1913; Ferid Vecdi, "Müslüman Kadını," *Sırat-ı Müstakim* 93, 4, 17 September 1908.

<sup>369</sup> Mehmed Şemseddin, "İslam Hanımı," 1102-1103.

their rights like their peers did in Europe. The fact that Ottoman women could not enjoy their rights fully was not the fault of religion, but of misunderstandings and the change of values with time. Tevfik also argued that men's exploitation of their right to divorce was again not the fault of Islam, but due to their lack of values and breeding. In fact, Islam gave women the rights to inherit, own property, and equality in marriage. Besides, according to Islam, the right to divorce depended on many conditions. Hence, it was not fair to blame Islam for the present plight of women.<sup>370</sup>

Islamist writers were preoccupied with the misunderstanding and misapplication of religious codes regarding women's issues. Some of the Westernist writers agreed with them on that issue. However, other Westernists criticized religion and required the removal of it from people's lives. While male writers discussed these issues, elite Ottoman feminists—without challenging current gender roles<sup>371</sup>—looked for ways to ameliorate the situation and position of women in Ottoman society. All these discussions among the intelligentsia are revealing of the fact that Ottoman society was in a process of change and required new family laws.

### **3.1.3.2. Women, family, and marriage issues in literary works of the late Ottoman Empire**

For Nükhet Esen and Berna Moran, the passage to the nation-state from the Ottoman Empire, the participation of women in working life, and moral decay as a result of long-lasting wars were all reflected in the literary works of the late Ottoman Empire.<sup>372</sup> In several novels, the Turkish writers employed mostly themes of love

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<sup>370</sup> Rıza Tevfik, "Kadın Meselesi Etrafında," *İctihad*, 94, 5 March 1914.

<sup>371</sup> Nicole A.N.M. van Os, "Osmanlı Müslümanlarında Feminizm," 339-340.

<sup>372</sup> Nükhet Esen, "Türk Ailesindeki Değişimin Romanımıza Yansıması," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 2*, ed. Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 660.

and marriage by choice.<sup>373</sup> Some writers, like Ahmet Mithad Efendi, strongly advocated changes to women's position and denounced practices of forced marriage, concubinage, and polygamy as social ills.<sup>374</sup> Ahmet Mithad Efendi also talked about warm, attentive relations and the spirit of mutual support in the Ottoman family and criticized the European family for lacking these qualities.<sup>375</sup>

According to Emel Aşa, Fatma Aliye Hanım, who was one of the most prominent women intellectuals of the late Ottoman era, made an implicit argument in her novels that divorce was not a good thing that could happen to any woman. Besides, what Aşa exposed in her novels was that divorcees in Ottoman society had to face discrimination and scorn. So most unhappy women continued their unfortunate lives rather than getting divorced.<sup>376</sup> Like Aşa, Nükhet Esen also argues that divorce was not very frequent in the late Ottoman Empire, for a divorced woman fell from the grace of society and sometimes faced rejection even from her own family. Hence, only if her family accepted her return to the homestead could a woman get divorced in Ottoman society.<sup>377</sup>

However, according to Esen, in the novels, even if women could not get divorced easily or preferred not to become divorcees, they were strong and able to bring up their children even without the support of the father. Praised was a woman

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<sup>373</sup> Berna Moran, "Tanzimat'tan Cumhuriyet'e Roman," *Tanzimat'tan Cumhuriyet'e Türkiye Ansiklopedisi* vol 1, (İstanbul: İletişim, 1985), 11; Alen Duben and Cem Behar, *Istanbul Households Marriage, Family and Fertility 1880–1940*, 88.

<sup>374</sup> Deniz Kandiyoti, "End of Empire," 26.

<sup>375</sup> Orhan Okay, *Batı Medeniyeti Karşısında Ahmed Midhat Efendi* (Ankara: Baylan Matbaası, 1975), 222.

<sup>376</sup> Emel Aşa, "İlk Türk Kadın Romancısı Fatma Aliye Hanım'ın Romanlarında Aile ve Kadın," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 2*, ed.Hakkı Dursun Yıldız (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 66-67.

<sup>377</sup> Nükhet Esen, "Türk Ailesindeki Değişmenin Romanımıza Yansıması," 668.

in novels of the late Ottoman Empire who could stand on her own and raise her children, even if her husband had left her for another woman or married over her.<sup>378</sup>

The literary works of the Ottoman Empire often portrayed unhappy women who had to keep living unhappily because they did not have the means to survive on their own. Some women who were not portrayed in novels also faced difficulties in real life. Their problems could be even graver, because they also faced poverty as a result of economic hardship resulting from the turmoil of the last days of the empire. Calls for education and women's ability to work were thus quite sensible. Through education and working, women could better participate in social and cultural life, which would inevitably change their perceptions of marriage and divorce.

### **3.1.3.3. Fashion, dance, extravagance and marriage**

The new generation of Ottomans who were well educated, spoke foreign languages, and had lived in Europe also developed new entertainment habits, such as partying, dancing, attending concerts, and going to movies like Europeans. They also had a strong fashion sense. Having developed a different lifestyle, the new generation of Ottomans perceived family life and marriage differently than previous generations. In this section, I will explore the newly developed entertainment habits of the new generation of Ottomans.

As a result of the increasing trade with Europeans in port cities like İzmir and Istanbul, and the visiting and even settling of traders, cities' social and cultural milieus changed. In various quarters a European-style urban culture developed,<sup>379</sup> and women became freer and more visible. This situation alarmed reformers and

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<sup>378</sup> Ibid., 666.

<sup>379</sup> Elizabeth Brown Frierson, "Unimagined Communities: State, Press and Gender in the Hamidian Era," (PhD diss., Princeton University, 1996), 229-230.

some intellectuals, since, for some people, the morality of society depended on women's behaviors.<sup>380</sup>

Along with trade, cultural products also influenced women. According to Fanny Davis, an Ottoman Muslim girl faced a dilemma.<sup>381</sup> She was nourished on the romantic French novel, which mostly shaped her thoughts. But she was also surrounded by the norms and traditions of her society and cultural milieu. However, women who looked for romance or romantic love were conceived of as a threat to Ottoman society by some conservative people. In many novels, the degrading impact of free love, sex, and the destruction of morality and family were explored, and mostly women were held responsible for the moral degradation and the corruption of the society.<sup>382</sup>

Women visible on the streets and indulging in entertainment were criticized both by certain writers and state authorities. For instance, in *Türk Kadını*, Necmettin Sadık criticized elite Istanbulite women for gambling. In villas or seaside mansions, some elite women played cards until dawn. According to Sadık, rather than wasting their time by gambling, these women should be involved in cultural activities and contributing to society.<sup>383</sup>

Many elite women living in port cities also developed an interest in European fashions during the 19<sup>th</sup> century. Many stores selling high fashion items were opened in Istanbul and Izmir. In time, fashion trends from afar permeated Ottoman society, and even some conservative middle-class women had adopted European fashions.<sup>384</sup>

In the popular promenades of Istanbul, most of which were located around the *Pera*

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<sup>380</sup> Ibid., 171.

<sup>381</sup> Fanny Davis, *The Ottoman Lady a Social History from 1718 to 1918*, 79.

<sup>382</sup> Alen Duben and Cem Behar, *Istanbul Households*, 103.

<sup>383</sup> Necmettin Sadık, "Bir Sual Münasebetiyle," *Türk Kadını*, 8, 19 August 1918.

<sup>384</sup> Nancy Micklewright, "Women's Dress in Nineteenth Century Istanbul: Mirror of a Changing Society," (PhD diss., University of Pennsylvania, 1986), 1-3.

district, fashionable Ottoman women competed with each other. Certain places like *Direklerarası*, *Divanyolu*, *Laleli*, and *Aksaray*, along with *Pera*, had become places where the status of each woman was being contested in terms of fashion.<sup>385</sup>

Issues of fashion and beauty ranked among the hotly debated topics in some journals of the late Ottoman Empire. The writers in *Türk Kadını* regarded fashion a serious matter to consider and elaborate on. One of the writers, Perihan, said that World War I did not have an impact on fashion. She complained that what was accepted as high fashions in the Ottoman Empire were items that had grown out of vogue in Europe. Because readers of the *Türk Kadını* could not follow the fashion journals of Paris or Vienna, they had no up-to-date information about high fashion. Therefore the editors of *Türk Kadını* had decided to write a regular column to inform their readers.<sup>386</sup>

The writers in *Türk Kadını* were very conscious of beauty and fashion. Even a male writer, Ahmet Edip, said that there must be a ratio between a woman's height and weight. A woman should do sports and should not eat chocolate or drink coffee, for they would fatten her. Therefore, if a woman wanted to look beautiful, she should do sports regularly and eat less.<sup>387</sup> In a similar vein, another male writer of the journal, Mehmed Arif, talked about importance of a woman's having a specific room for her clothes and dresser. This room should be kept clean all the time, so that the smell of her makeup would not hang in air.<sup>388</sup>

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<sup>385</sup> Ebubekir Sofluoğlu "Osmanlılar'da İsrâf ve Kadın," *Tarih ve Toplum*, 207 (2001), 20.

<sup>386</sup> "...Harp çok şeyi az çok sarstığı halde modaya ilişmedi. Hatta kumaş fiyatları artıkça moda salgın gibi herkesi sardı. Osmanlı'da moda kabul edilen renkler ve şekiller ekseriya Avrupa'da modası çoktan geçmiş şeyler. Okuyucular Paris ve Viyana'da ki matbuâtı takip edemediğinden terzilerin yeni dediği şeyi kabul etmek zorunda kalıyor.." Perihan, "Moda" *Türk Kadını*, 2, 6 June 1918.

<sup>387</sup> Ahmet Edip, "Çirkinlik," *Türk Kadını*, 2, 6 June 1918.

<sup>388</sup> Mehmed Arif, "Tuvalet Masası ve Şeraiti," *Türk Kadını*, 8, 29 August 1918.

Zeliha Osman of *Kadınlar Dünyası* also mentioned the importance of women dressing up handsomely and smartly applying makeup. Because many Turkish men preferred to marry foreign women, it was almost a responsibility for Turkish women to look beautiful. Turkish men, she said, lately stayed away from veiled women and called them *ahmaq*, stupid, and made jokes about veiled women. By looking like Western women, Turkish women could regain Turkish men. Besides, if Turkish men did not want to destruct the purity of Turkishness, they should change their minds, the writer argued.<sup>389</sup>

In the article “About Fashion” in *Türk Kadını*, however, the extravagance of French women was criticized. The writer said that French women indulged in fashion to such an extent that even the famous priest François Orson had to preach to them about the disadvantages of that indulgence.<sup>390</sup> Also, in another article, women were advised to dress plainly but elegantly, especially during war. Since the war had affected the budgets of households negatively, women should be observant of their budgets.<sup>391</sup>

The conservative writers of *Sebil’ür-Reşad* criticized women for indulging in fashion-related activities, for those writers deemed fashion as extravagance. In an article dated 1919, it was argued that being mothers, women had many responsibilities towards their children, families, and country. A Muslim woman should protect her honour. However, indulgence in fashion and showing off on the streets had degraded her.<sup>392</sup> In another article in the journal, Mustafa Nazmi accused

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<sup>389</sup> Zeliha Osman, “Türk Kadınları,” *Kadınlar Dünyası*, 53, 26 May 1918.

<sup>390</sup> “Moda Hakkında,” *Türk Kadını*, 3, 20 June 1918.

<sup>391</sup> “Kadınlık Şuûnu Sade Giyinen Hanımlar Cemiyeti,” *Türk Kadını*, 3, 20 June 1918.

<sup>392</sup> “Milletin fertleri dini ve milli terbiyeyi ilk defa kadın şefkatinden aldığı gibi fedakârlık, diğerkâmlık, vatanperverlik gibi güzel huyları yine annelerine borçludur. Kadın yalnız evladını değil, kocasını, kardeşini hatta babasını hayatın sarsıntılarına karşı teselli eden, donatandır. Sefahate düşmüş pek çok erkeği kurtarıp aile babası yapan yine kadındır. Cemiyetin yarısı kadınlardır. Ona bu pâyeyi ilk defa İslam vermiş, ona vazifeler yüklemiştir. Ancak son senelerde kadınlığın yükseltilmesi nâmına

Istanbulite women of devastating their families because of their fashion extravaganza, neglecting housework, walking seminude on the streets, and disrespecting religion. The writer advised those Istanbulite women to take peasant women—who woke up early, fed their families, went to fields with their husbands, rode donkeys, took care of animals, prepared food supplies for winter, and even carried weaponry to soldiers fighting at the front—as an example.<sup>393</sup>

A late Ottoman critic and intellectual Ahmet Rıza, warned Muslim Ottoman women against the ills of libertinism, smoking and drinking. For Rıza indulging in such activities would not make a woman free, but debauched. Besides, he argued that such women would hinder the development of women’s rights movements.<sup>394</sup> Rıza thought that Ottoman women misjudged the liberties of American or European women. Only a small portion of these women would go to theatres, lounge around, shop, or party. These were small, wealthy elite. However, the rest of Western women had to work in factories, face extremely tough working conditions, and eventually got sick and died. These women did not even have the luxury of a concubine, who lived in the average Ottoman household.<sup>395</sup>

İbrahim Hilmi, another late Ottoman intellectual, seconded Rıza’s thoughts by arguing that a modern woman worked, not looked like her Western counterpart. For Hilmi, wearing obscene clothes did not make a woman modern, nor did lounging in cafés, mingling with men, or becoming a man’s mistress. These were the ills of European civilization, from which Ottomans should refrain. Hilmi talked about a twenty-year-old American woman traveler, whom he met during his visit to Aleppo.

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*atılan yanlış adımlar nedeniyle kadınlar düşmüş. ... Sebebi ise memleketteki koyu cehâletle taklitçiliktedir. Kadınlar son senelerde taşkın bir biçimde moda iptilâsına uğramışlardır. ... Kadınları düşüren de moda iptilâsı ve süslenme gayretidir...* “Kadınların Vaziyet ve Vazifeleri,” *Sebil’ür-Reşad* 17, 429, 17 July 1919.

<sup>393</sup> Mustafa Nazmi, “Taşrada İslam Kadını,” *Sebil’ür-Reşad* 11, 415, 1 May 1919.

<sup>394</sup> Ahmet Rıza, “Vazife ve Mesuliyet–Kadın,” in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 3*, ed. Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 1037.

<sup>395</sup> Ahmet Rıza, “Vazife ve Mesuliyet–Kadın,” 1037.

Hilmi and the young American lady visited Baalbek together and had a lengthy chat, at the end of which Hilmi became a fan of hers, because she was very well educated, had good manners, and had the courage to mingle with a man. She was at the same time able to protect her chastity. She was the ideal type to which every Ottoman woman should aspire.<sup>396</sup>

Like Rıza and Hilmi, Şükûfe Nihal, who was a writer at *Türk Kadını*, criticized women for wearing too much makeup and indulging in fashion extravaganzas. However, Nihal's approach was different from that of conservative or Westernist writers. For Nihal, wearing too much makeup and indulging in fashion extravaganzas were signs of stupidity and ignorance. She argued that only a well-educated and wise woman could draw admiration also with her makeup and smart dress. Therefore, mothers should warn their daughters about the makeup and fashion issues; for Turkish women should preserve their nobility.<sup>397</sup>

Palmira Brummett argued that even in cartoons of the late Ottoman Empire women dressing in Western fashion were associated with immorality and unrestrained sexuality.<sup>398</sup> There was a conservative backlash to such women. In August 1910, the Meşihat wrote an official letter to the Ministry of the Interior saying that measures must be taken against those women, who did not comply with the conventions of the beautiful religion of Islam. The Ministry of the Interior then

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<sup>396</sup> İbrahim Hilmi, "Aile Hayatımızda Avrupalılaştırmanın Tesiri," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 3*, ed. Hakkı Dursun Yıldız. (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 1077-1079.

<sup>397</sup> Şükûfe Nihal, "Mekteplerde Kıyafet," *Türk Kadını*, 7, 15 August 1918.

<sup>398</sup> Palmira Brummett, "Dressing for Revolution: Mother, Nation, Citizen, and Subversive in the Ottoman Satirical Press," in *Deconstructing the Images of "The Turkish Woman"*, ed. Zehra Arat, (New York: St. Martin's Press, 1998), 54.

ordered the head police of Istanbul to take the necessary precautions and warned the families about such cases.<sup>399</sup>

As explored through the primary sources, many Ottoman women living in big cities were exposed to fashion and extravagant entertainment during the late 19<sup>th</sup> century. They wanted to look beautiful, dress smartly and fashionably, which was also what their male counterparts demanded. For good or bad, Ottomans living in big cities changed in terms of lifestyle and perspectives, and so did their approach to veiling and marriage issues, which I will explore in the next section.

#### 3.1.3.4 Veiling and marriage

The issue of veiling was widely discussed in the late Ottoman Empire. The issue was controversial, and intellectuals of the late Ottoman Empire were very much confused about it. Even if they were not confused, the style of veiling and the necessity of covering a woman's face was uncertain to some, especially to women. For instance, Semiha Peyami Hanım, a writer for *Kadınlar Dünyası*, claimed that the face of women was not forbidden and that Muslim women were not obliged to cover their faces according to the Quran.<sup>400</sup> Another writer for *Kadınlar Dünyası*, Mehpâre Osman, argued that when women walked on the streets with a covered face, they attracted more attention. Non-Muslim women were not veiled, yet nobody taunted them.<sup>401</sup>

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<sup>399</sup> “Şeriat-ı garrâyı Ahmediyye'nin insanlık âlemine bahşettiği bütün güzel ahlaklardan olan kadınların örtünme emrine bazı İslam kadınları tarafından tamamıyla riâyet edilmemekte ve edep ve milli ahlaka aykırı durumlarda bulunmakta olduğu anlaşıldığından bahisle dinen ve siyaseten kabul olunamayacak cevaz verilmeyecek bu gibi razı olunmayan durumların her halde meni ile İslam dininin hükümlerinin korunmasına dikkat ve itina edilmesinin lüzumunun tamimen tebliği Meşihat penâhiden bildirilmiş...” DH EUM THE 47 11, 14 August 1910

<sup>400</sup> Semiha Peyami, “Mehpâre Osman Hanım'a,” *Kadınlar Dünyası*, 76, 1 July 1913.

<sup>401</sup> Mehpâre Osman, “Bizde Tesettürü Nisvân,” *Kadınlar Dünyası*, 74, 29 June 1913.

The writers in the Islamist journals *Sebil'ür-Reşad* and *Sırat-ı Müstakim* criticized women's tendency to unveil and uncover their faces in public. A conservative woman writer in *Sebil'ür-Reşad*, Fatma Zehra, accused feminist women of being blatant and coarse and wrote that no Muslim women were under captivity and they were happy to live with the rules of Islam. According to Zehra, the disgraceful feminists of the district of Beyoğlu were brought up by missionaries and had the kind of freedom they wanted, so they should leave Muslim women alone.<sup>402</sup>

In another article in *Sebil'ür-Reşad*, Ferid Vecdi wrote that unlike European women, Muslim women had never been captives, in that they had rights to marry, get divorced, engage in commerce, and to get an education. It was true that women had been mistreated; however, this situation could not be remedied by unveiling them but by giving them their inherent rights that Islam had endowed them with.<sup>403</sup> Vecdi also argued that the desire to unveil came from Westernization: people wanted to look like Westerners. He argued that if the Ottoman Empire took China as a model, both men and women would want to look like Chinese people, and women in this case might try to have smaller feet. No man, he argued, would like his wife to be under the gaze of other men in the street.<sup>404</sup> For Vecdi, women in Africa and Australia were not veiled; they were even nude. Yet these countries were neither advanced nor

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<sup>402</sup> “Bir müddetten beri nisâiyyûn adında bir sürü genç Müslüman kadınların temiz kıyafetlerine kirli ellerini uzatmaktalar. Bunlar hayâsız, adi kadınlardır... Bu sefil kadınları misyonerler yetiştirmiş. Eğer bunlar Beyoğlu'nda sürtüklük eden kendi karıları, kızları için hürriyet istiyorlarsa gerek yok; zaten bu kadınlar kendi hürriyetlerine mâlikler. Biz Müslüman kadınlar esaret altında değiliz. Saadet içinde şeraitimizin bize vaaz ettiği insani ve ahlaki kurallara uygun yaşıyoruz...” Fatma Zehra, “Nisaiyyat”, *Sebil'ür-Reşad*, cilt 11, adet 278, 8 January 1914

<sup>403</sup> Ferid Vecdi, “Kadınlara Hürriyeti Mutlaka Vermek İsteyenlerin Vay O Biçarelerin Başına,” *Sebil'ür-Reşad* 11, 267, 23 October 1913.

<sup>404</sup> “Tesettür reddi batı gibi olmak hevesinden kaynaklanmaktadır. Eğer Osmanlı batı değil Çin tesiri altında olsaydı kadınlar, erkekler Çinlilere benzemeye çalışır, hatta kadınlar küçük ayaklı olabilmek için çabalar...” Ferid Vecdi, “Kadınlara Hürriyeti Mutlaka Vermek İsteyenlerin Vay O Biçarelerin Başına,” *Sebil'ür-Reşad* 11, 268, 30 October 1913.

civilized. If women were unveiled, they would have to earn their living, work in factories or on streets, which was no good for them at all.<sup>405</sup>

The Şeyhülislam Mustafa Sabri argued that it would be hypocrisy to claim that the unveiling of women would not disturb society. Sabri said that European women were not veiled, but that they were still chaste. Unlike Muslim men, European men were used to seeing women unveiled since their childhood. Hence, to think that unveiled Muslim women would be accepted in society as easily as their European counterparts would not make any sense for the Ottoman case.<sup>406</sup> Likewise, Abdüllatif Nevzat, another writer for *Sebil'ür-Reşad*, argued that men were against veiling because they wanted easier interactions with women. He advised those who were against veiling to open schools for girls only instead, for veiling did not block women's lives in any way, let alone their education.<sup>407</sup>

Seniye Ata, who was a writer for *Kadınlar Dünyası*, argued that true veiling would not block the chances for a man and a woman to know each other. The main concern of the veiling order in Islam was to hinder arousal of lustful desires, and this order was a sine qua non of society. Veiling thus did not block women's lives in any way. For instance, women in Islamic history had become scholars, like the wife of the Prophet, Aisha. So as long as a woman did not arouse desire with her clothing and was properly veiled, a Muslim woman could engage in every activity in society.<sup>408</sup>

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<sup>405</sup> Ferid Vecdi, "Kadınlara Hürriyeti Mutlaka Vermek İsteyenlerin Vay O Biçarelerin Başına," *Sebil'ür-Reşad* 11, 268, 30 October 1913.

<sup>406</sup> Şeyhülislam Mustafa Sabri, "Aile Hayatı, Tesettür Meselesi, Kadın Hukuku," in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 3*, ed.Hakkı Dursun Yıldız, (Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 115-118.

<sup>407</sup> Abdüllatif Nevzat, "İçtimaiyyat, Hasbihal Evvela Erkeklerimizi Örtelim," *Sebil'ür-Reşad* 92, 241, 24 April 1913.

<sup>408</sup> "... Erkeğin olduğu gibi kadının da arzusu ümidi var. Sadece kadınların erkekler gibi isteklerini ortaya çıkartacak vasıta ve serbestileri yok. Ancak hakiki tesettür kız ile erkeğin birbirini tanınmasına mâni değildir. Dinimizin tesettürü emretmekteki maksadı nefsanî şeyleri tahrik etmemesi içindir..."

As explored from the journals, one of the taboos of the Islamic world had become a subject of discussion in the late Ottoman Empire. While some people took a fierce approach and rejected veiling because they believed it blocked women's lives, some remained convinced that veiling had nothing to do with a woman's personal development, education, or even work. Some claimed that veiling decreased a woman's chance of getting married, while others argued that proper veiling had nothing to do with a woman's marriage prospects.

For those who criticized the existing patterns, a new marriage type outside arranged marriage was required. A modern lifestyle dictated the belief that only through a marriage of free choice could people establish stronger families. In the next section, I will explore how people perceived arranged marriages and marriages of free choice.

### **3.1.3.5. Arranged marriage and marriage of free choice**

Having become an option as a result of reforms, the marriage of free choice was highly discussed in the late Ottoman Empire. However, marrying someone whom a person freely chose also made divorce a demanded right for women. In this section, I explore how arranged marriages and marriages of free choice were discussed and applied in the late Ottoman Empire.

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*Hakikatte kadınların hareket serbestiyetine mani değildir, onların hürriyetinin garantisidir. Saadet asrından 4 Halife Devri'nin sonuna kadar ki dönemde kadınlar serbest hatta erkeklerle birlikte savaş meydanında bile bulunmuş. Hz. Ayşe'yi sahâbeye ders vermeye peygamber efendimiz memûr ediyor. Endülüüs'te İslam ahkâmını bizden iyi bilen ulema da kadını Islama mâni olarak algılamadı. İmam Azam, Şafii gibi imamlar, muhterem zatlar İslam hukukunda kadın haklarını erkek hakları kadar gözettiler. Kadınların sefaletinden asla din, İslam sorumlu değildir. Hatta Amerika'da Avrupa'dakinden daha çok hakkı dinimiz bize temin etmiştir...*" Seniye Ata, "Türk Kadınları ve Aile," *Kadınlar Dünyası*, 78, 3 July 1913.

According to Fanny Davis, the practice of arranged marriages and the custom that forbade the bride and groom from seeing each other before the wedding had started to be criticized in the late 19<sup>th</sup> century.<sup>409</sup> It was usually Westernized Ottoman intellectuals and literary figures such as İbrahim Şinasi, Namık Kemal, and Celal Nuri who criticized this custom.<sup>410</sup> Marmaduke Picktall, who was a traveler, briefly stayed in Istanbul during World War I. He wrote that Muslim girls had started to refuse marrying a man whom they did not know before. Hence, it became a fashion to briefly meet face to face before marriage during this time in Istanbul.<sup>411</sup>

Contemporary writers such as Fatma Aliye argued that consent of the parties, physical and spiritual health, the affection of a man for his wife, and their devotion to mutual duties were the conditions for a successful marriage.<sup>412</sup> The reason for the call for a marriage of free choice was that it was believed that a couple married through love would live happily. It was deemed to be important that couples shared tastes, social backgrounds, and ideas. For that reason, a couple should get to know each other in person before marriage. In such a mind-set, it was not acceptable to be married by the force of elders.<sup>413</sup>

Seniye Ata, a writer for *Kadınlar Dünyası*, wrote that marriage was useful since it resulted in the birth of another a human being who would eventually become a soldier. A strong nation needed strong families, yet the youth were afraid of getting married. As a result of arranged marriages, they were afraid of ending up living with someone they did not like. To breed happy and healthy children, strong families

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<sup>409</sup> Fanny Davis, *The Ottoman Lady*, 77-78.

<sup>410</sup> See İbrahim Şinasi's "Şair Evlenmesi" of 1860 parodying arranged marriages. Also, Namık Kemal in his play *Zavallı Çocuk* of 1873-1874 explained the tragedy of arranged marriages. Celal Nuri, in his book "Kadınlarımız" of 1331 argued for the necessity of man and woman see each other before the marriage as a necessary condition to be met. See: Fanny Davis, *The Ottoman Lady*, 77-78.

<sup>411</sup> Marmaduke Picktall, *Harpte Türklerle Birlikte*, 56-60.

<sup>412</sup> Fanny Davis, *The Ottoman Lady*, 78.

<sup>413</sup> Nükhet Esen, "Türk Ailesindeki Değişimin Romanımıza Yansıması," 662.

should be established. The establishment of strong families very much depended on giving up the arranged marriage tradition and letting a man and a woman know each other prior to marriage.<sup>414</sup>

Şükûfe Nihal, a writer for *Türk Kadını*, wrote that lately marriages end in divorce. Couples suffered from misunderstandings and fought with each other. As such, many unhappy people constituted the nation, which was not good. However, neither men nor women were bad people; what was needed to establish a happy and strong family was to give up the tradition of arranged marriage.<sup>415</sup> The women writers also complained that it was not possible to know each other's thoughts and feelings while being presented as an item on sale.<sup>416</sup>

It was clear from the journals of the late Ottoman Empire that young people had a different mind-set than their parents with regard to marriage. They knew what qualifications their life companions should have. For instance, in the journal *Türk Kadını*, readers were asked to take a poll about their future husbands and wives. Various women answered questions. The first female said that she wanted a religious, pious husband. The second one wanted a classy, open-minded husband who would allow her to work. The third one wanted a husband who in his early youth had tasted all the pleasures of life and even sinned, so that he could only think of her now. The fourth one wanted a well-educated, multilingual husband, who should not be presumptuous. The fifth one wanted a blonde, blue eyed, smart, kind, and a rich husband with whom she could live in a mansion. The sixth one wanted one of the most intelligent persons of the country as her husband. He did not have to be

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<sup>414</sup> Seniye Ata, "Türk Kadınında Aile," *Kadınlar Dünyası*, 25 June 1913.

<sup>415</sup> Şükûfe Nihal, "Gençler Niçin Aradıklarını Bulamıyor," *Türk Kadını*, 9, 12 September 1918.

<sup>416</sup> M. Belkıs, "Görücülük," *Kadınlar Dünyası*, 58, 13 June 1913.

rich. It would be better if he had completed his education in Europe. She also wanted him to spend most of his time studying in his laboratory.<sup>417</sup>

One of the male respondents said that his wife should be an extreme beauty, so that everyone on the street or in a salon would look at her admiringly. He said that he was not jealous, and neither should his wife be. He wanted his wife to meet all of his friends, and he also wanted to meet all of hers. She should better get used to smoking and drinking coffee after meals. He also wanted her to speak French as her native tongue and listen to European music. The other respondent answered that he should be his wife's first love. He would also prefer her to stay at home, and even if she had to leave her home, she should be accompanied by her mother. However, he also admitted that in these days, it was impossible for a young woman to stay at home. He wanted her to be well-educated, clever, and elegant. She did not have to be very beautiful. She also should know how to handle housework and home economics. She should be religious and reserve her beauty only for her husband at home.<sup>418</sup>

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<sup>417</sup> 1.Dindar, *sofu, derviş tabiatlı olsun, ben geçindirecek derecede serveti olsun.* N.R; 2.Kibar, *asil, hassas, zeki, çapkın, serbest fikirli, kadına hürmetkâr, Avrupa hayatı görmüş olsun. Ben meslek sahibi olmaya çalışıyorum zevcim beni çalışmaktan men etmesin.* L.K; 3.Zevcim gençliğinde hayatın tüm zevklerini tatmış olsun, izdivaca kadar tüm günahları işlemiş olsun. Düşüneceği artık bir ben olayım. Arzularımı yerine getirsin, hareketlerime müdahale etmesin. Kıskanç olmasın; 4.Vazifşinas olmalı. Tahsili fevkalade olsun ama mağrur olmasın. Lisanı ecnebi bilsin. H.R; 5.Sarışın mavi gözlü, peltek lisanlı, ince kıvrak hassas, zengin vefakâr olsun. Müstakil bir evde oturalım. K.Y.; 6.Memleketin en zeki, mütefekkir simalarından olsun. Milli, içtimai mefkûrelere sahip, metin seciyeli olsun. Çok zengin olmasın temini mâişetimiz için çalışmaya muhtaç olmayacak kadar geliri olsun. Darülfünun tahsilini Avrupa'da tamamlamış olsun. Zamanının büyük kısmını benle laboratuarda geçirsün. İlmen benden yüksek olsun ama beni küçük görmesin. T.Z. "Müsabaka: Zevcinizin, Zevcenizin Nasıl Olmasını İstersiniz?" *Türk Kadını*, 17, 30 January 1919.

<sup>418</sup> "1.Zevcemın kesinlikle mazi aşkı olmasın. İlk son erkeği ben olayım. Mümkün olsaydı izdivaçtan evvel evinden dışarı ancak annesi ile çıkan nevinden olsun isterdim. Ama bugün için kabil değil. Düşüncelerimiz, emellerimiz bir olsun. İyi tahsil görmüş olsun. Hassas zeki olsun. Çok güzel olmasa daha iyi olur. İstemem herkesin gözü onda olsun. En büyük aşkı aile muhabbeti, en mühim işi aile vazifesi olsun. Dindar olsun. Evin müdiresi olacak, haliyle hesap tutsun, ev işlerinden anlasın. Zevcemi hiçbir erkek arkadaşına çıkarmayacağım. O da beni kendi arkadaşlarına çıkartmasın. Süs ve ziyetini sevsün fakat sokakta değil, evinde. D.D.; 2.Zevcem çok güzel olmalı. Hatta o kadar güzel olsun ki sokakta, salonda herkes ondan başka kadın görmesin. Kıskanç değilim. O da olmasın. Kıskançlığı hiç sevmem. Kendisini her arkadaşına çıkartacağım. O da beni tüm ehıbbâsıyla tanıştırsın. Alafranga müzik dinlesin. Yemekten sonra sigara ve kahve içmeye alışsın. Tahsili olsun. Fransızcaı anadili gibi

As can be seen from the documents, young people's choices and preferences regarding a marital union differed from those of tradition and the expectations of elders. Obviously, those who wanted to meet their prospective spouse prior to marriage also opposed polygamous marriages.

In the late Ottoman Empire, state politics were against polygamy, and the nuclear family was ideologically preferred by the authorities, and these presentations influenced the populace and their marriage expectations. In the next section, I will explore discussions on polygamous marriages versus the nuclear family.

### **3.1.3.6. Polygamy versus the nuclear family**

The Quran is not primarily a legal document. It is rather a declaration of fundamental Islamic ethics. According to Noel Coulson and Doreen Hincliffe regarding the position of women and polygamy, there are injunctions in the Quran that women are equal to men; wives should be treated fairly, equitably; divorce should take place only with due consideration, and women's rights should be respected.<sup>419</sup> However, Coulson and Hincliffe argue that the general ethical injunctions of the Quran rarely transformed into legally enforceable rules. They were recognized as only binding on the individual conscience. For example, while the Quran insisted on the impartial treatment of cowives in a polygamous marriage, Islamic law did not elevate this requirement into any kind of legal restriction.<sup>420</sup>

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*bilsin. S.Ş.* "Müsabaka: Zevcinizin, Zevcenizin Nasıl Olmasını İstersiniz?" *Türk Kadını*, 18, 20 Şubat 1919.

<sup>419</sup> Noel Coulson and Doreen Hincliffe, "Women and Law Reform in Contemporary Islam," 37.

<sup>420</sup> According to Coulson and Hincliffe, women's rights suffered progressive dilution during the process of juristic development that extended over more than two centuries. For Coulson and Hincliffe, the hallmark of early Muslim jurisprudence was that the status quo remained, unless it was expressly superseded by the dictates of Islam. Hence, standards of pre-Islamic customary law were carried over into Islam. Explicit Quranic legal rulings on the status of women and women's rights were observed

Ottoman society was patriarchal by nature, and some people practiced polygamy. However, polygamy existed very infrequently in Istanbul.<sup>421</sup> Duben and Behar have showed that the predominant form of marriage in Istanbul was bigamy, not polygamy, as is commonly thought. In fact, polygamy was clearly opposed by many people in Istanbul throughout the 19<sup>th</sup> century.<sup>422</sup> However, polygamy existed, and as can be observed from sijills, Quranic injunctions on marriage and polygamy were mostly not followed in the Ottoman Empire. Women were mistreated as a result of ignorant husbands who did not comply with the rules of Islam. Hence, many people, both women and men, demanded a change in the application of family law.

Travel books also showed Ottoman people's avoidance of polygamy. Sir Edward Pears, who was a British traveler, wrote in his diary that even in the late 19<sup>th</sup> century polygamy was decreasing among the Turks, for it was too expensive (Ottoman Muslims did not consider polygamy wrong).<sup>423</sup> Lucy Garnett, another British traveler, found polygamy practiced among the Turks. However, Garnett wrote that Turkish men never met the limits of four wives; they seemed to be content with having two most of a time.<sup>424</sup> Marmaduke Pickthall was an English traveler, who visited Istanbul in the twilight of World War I. He lived among the Turks for a while, and during his stay in Istanbul, he converted to Islam. Pickthall noted that polygamy was little practiced in the Ottoman Empire, and when it was practiced, there was a reason. A man indulged in having another wife when the first wife could not give birth or when she refused to travel and settle down in another land with him.<sup>425</sup>

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in light of prevailing tribal law, which meant that Islamic Law continued to reflect the patriarchal nature of Arab society. See: Coulson and Hincliffe, 37-38.

<sup>421</sup> İlber Ortaylı, *Osmanlı Toplumunda Aile*, 58-59.

<sup>422</sup> Alen Duben and Cem Behar, *Istanbul Households*, 149.

<sup>423</sup> Sir Edward Pears, *Turkey and Its People*, 68.

<sup>424</sup> Lucy Garnett, *Home Life in Turkey*, (New York, 1909) quoted in Fanny Davis, *The Ottoman Lady*, 77-79.

<sup>425</sup> Marmaduke Pickthall, *Harpte Türklerle Birlikte*, 91.

However, there was an outcry against polygamy during the late 19<sup>th</sup> and early 20<sup>th</sup> centuries.<sup>426</sup> According to Duben and Behar, the strong opposition to polygamy despite its infrequency derived from a larger ideological battle for Westernization and modernization.<sup>427</sup> Polygamy thus had a symbolic meaning both for the Western-minded and conservative intellectuals of the late Ottoman Empire.

In the literary works of the late Ottoman Empire raised the ills and disadvantages of polygamy. For some of the novelists and intellectuals, polygamy caused family tragedies. The Ottoman author and novelist Ahmet Mithat Efendi wrote about the ills of polygamy, forced marriage, and concubinage in his novels.<sup>428</sup> In his play *Eyvâh*, Efendi explained the predicament of a man who loved both of his wives and could not select one over the other. Polygamy meant suffering rather than enjoyment for the hero of the play.<sup>429</sup>

In the first psychological novel of Turkish literature, *Zehra*, Nabizade Nazım depicted the jealousy and hatred between a man's two wives.<sup>430</sup> Likewise, in her memoir, *Mor Salkımlı Ev*, Halide Edip Adivar argued that her family was dragged into tragedy after her father got married to his second wife. It was a period of jealousy, hysteria, and continuous stress that made it difficult for the family members to keep on living.<sup>431</sup> Hence, for the literate population, polygamy was associated with tragedy and suffering, both for men and women.

Some Western-minded Ottoman intellectuals deemed it necessary to explain the ills of polygamy by founding their arguments on the irrelevancy of polygamy in

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<sup>426</sup> According to İlber Ortaylı, polygamy was mentioned far more than it deserved to be mentioned in the late Ottoman period media and literary works. See: İlber Ortaylı, *Osmanlı Toplumunda Aile*, 58-59.

<sup>427</sup> Alen Duben and Cem Behar, *Istanbul Households*, 158.

<sup>428</sup> Ellen L. Fleishmann, "The Other "Awakening": The Emergence of Women's Movements in the Modern Middle East, 1900-1940," 100.

<sup>429</sup> İnci Eningün, *Ahmet Mithat Efendi Bütün Oyunları* (Istanbul: Dergâh, 1998).

<sup>430</sup> Nabizade Nazım, *Zehra*, (Ankara: Akçağ, 2005).

<sup>431</sup> Halide Edip Adivar, *Mor Salkımlı Ev*, (İstanbul: Özgür, 2005).

Islam.<sup>432</sup> One of those intellectuals, Şemseddin Sami, pointed out in 1880 that polygamy was not recommended in the Quran, though it was permitted.<sup>433</sup> In his book, *Kadınlarımız*, Celal Nuri argued that concubinage and polygamy undermined the basic unit of civilization, which was the family. He furthered his arguments by saying that Islam was essentially against polygamy, and that the practice of polygamy was a misinterpretation.<sup>434</sup>

Another Westernist intellectual, Mansurizade Said Bey, who would later on become a member of the committee that prepared the OLF, and an Islamist intellectual, Ahmet Naim, had a row with each other in their newspaper columns. Mansurizade argued that the ruler of an Islamic country could ban polygamy with a law, and that obeying a country's ruler was also compulsory in Islam.<sup>435</sup> Naim opposed Mansurizade's argument and accused him of misunderstanding the Islamic rules and principles.<sup>436</sup>

Among the Islamists, Aksekili Ahmet Hamdi was the most vociferous proponent of polygamous marital unions.<sup>437</sup> He wrote a series of articles on that issue. Although he argued that polygamy was a license given for difficult times, he also claimed that men were superior to women both physically and mentally by birth. First, a man's body—including his reproductive organ—was stronger than and superior to a woman's, since his heart was bigger and heavier, his senses were sharper, and his brain was bigger and had more convolutions. According to Hamdi, a woman was like a child; she was impatient and quickly changed her mood. Therefore

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<sup>432</sup> Fanny Davis, *The Ottoman Lady*, 93.

<sup>433</sup> Tezer Taşkıran, *Women in Turkey* (İstanbul: Redhouse Yayınevi, 1976).

<sup>434</sup> Celal Nuri İleri, *Kadınlarımız*, 139-141.

<sup>435</sup> Mansurizade Said Bey, "Taadüdü Zevcat İslamiyet'ten Men Olunabilir," *İslam Mecmuası*, 8, 21 Mayıs 1914 quoted in Mustafa Gündüz, *II. Meşrutiyet'in Klasik Paradigmaları: İctihad, Sebili'r-Reşad ve Türk Yurdu'nda Toplumsal Tezler*, 329.

<sup>436</sup> Ahmet Naim, "Taadüd-ü Zevcat İslamiyet'ten Men Olunabilir miymiş?" *Sebil'ür-Reşad* 12, 298, 28 Mayıs 1913.

<sup>437</sup> Aksekili Ahmet Hamdi, "İslamiyet ve Taadüd-ü Zevcat-6," *Sebil'ür-Reşad* 13, 280, 26 February 1914.

it was best for a woman to stay at home and a man to wear the breeches at home. For Hamdi it was best for such a strongly build person to be polygamous.<sup>438</sup>

In another article Hamdi accused Europeans of committing adultery, for polygamy was not allowed there.<sup>439</sup> He also criticized those who blindly followed the Europeans and disregarded Islamic rules. Hamdi argued that men and women were different by nature. Men had higher libido than women. Besides, at a certain age, women went into menopause and could not reproduce. In general, the male population is lower than women's in the world because of wars. He complained that if men could not marry as many women as possible within their financial capacity, women, who were the "sperm field" of men, would remain inert. This situation would cause mental illness in women, and women in return would become a burden on society. Even worse, such women might commit adultery. Therefore, polygamy for Hamdi was a sine qua non in society.<sup>440</sup>

Another conservative thinker, Fatma Aliye Hanım, approached the issue quite logically, and she argued that unlike her Christian sisters, who could not get a divorce once married, the Muslim wife had a right to divorce from an unwanted

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<sup>438</sup> *"..Kadının işi evidir. Evinden dışarı çıkarsa hem nefisini hem ailesini hem de medeniyeti mahveder. Yaratılış gereği kadın ve erkek eşit, denk değildir. Yaratılış kanunu erkeğin kadın üzerinde sultan, hâkim olmasını gerektiriyor. 1.kadın ve erkeğin üreme organları farklıdır. Erkeğin ki 12 cm üstündür; 2.erkek kadından fizik olarak üstündür: kadının kalbi küçüktür, daha hafiftir; 3. Erkeğin tat alma, işitme kuvveti daha kuvvetlidir; 4. Erkeğin beyni kadının beyninden daha büyük ve daha kıvrımlıdır. Kadının beden terkibi çocuk gibidir. O yüzden kadınlar çocuk gibidir sevinç, elem, korku onları çabuk etkiler. O yüzden sabırsızdırlar. İşte bu sebeplerden kadın evi haricinde bulunmamalıdır. Erkek kadına hâkim olmalıdır. Hatta toplumsal düzenin iyiliği için bir erkeğin çokeşli olması iyidir..."* Aksekili Ahmet Hamdi, "İslamiyet ve Taaddüd-ü Zevcat- 3," *Sebil'ür-Reşad* 11, 275, 1 October 1914.

<sup>439</sup> Aksekili Ahmet Hamdi, "İslamiyet ve Taadüd-ü Zevcat-4," *Sebil'ür-Reşad* 11, 280, 23 October 1914.

<sup>440</sup> *"Avrupa'yı körü körüne taklit eden bazıları İslamiyetin esaslarını hiçe sayıyor. Çokeşlilik zaruret durumunda başvurulacak meşru bir yoldur. Taâddüd-ü zevcatın bazı zararları var: .... Ama bu yanlış uygulama taâddüdü zevcatı gayri meşru yapmaz. Çok da faydası var: 1.kadın erkek tabiatı farklı. Erkek kadını çok arzular 2. Türün devamı, tenasül, için evlenilir. Ama kadın belli bir yaştan sonra menopoza girer, erkeğin üreme kabiliyeti bitmez 3. Dünyada genel olarak erkekler kadınlardan azdır. Günümüzde savaşlar nedeniyle erkek nüfusu azalmış, halk yoksul düşmüştür. Nafakayı tahsilden aciz erkekler evlenememekte döl tarlaları olan kadınlar atıl kalmaktadır. Bu durum kadınlarda pek çok beden ve akıl hastalığına yol açar, kadınlar beşer hayatı üzerine yük haline gelir, bela kesilirler. Hatta zina bile yapabilirler..."* Aksekili Ahmet Hamdi, "İslamiyet ve Taâddüd-ü Zevcat 3," *Sebil'ür-Reşad* 11, 275, 1 October 1914.

marriage. She could even get married to someone else again. Besides, for Hanım, polygamy prevented society from prostitution, which obviously had disturbed the last days of the Ottoman Empire.<sup>441</sup>

Although polygamy was not frequent in the late Ottoman Empire, the discussion of its abrogation raised tensions in society. As depicted in journals, while some intellectuals opposed polygamy, some defended it, for they perceived it as a God-given license. All these discussions reflected the mind-set of the Ottomans. However, no matter what intellectuals discussed, the ruling party's opinion on polygamy mattered most on the road to the promulgation of the OLF, which I will explore in the next section.

### **3.1.3.7. The Committee of Union and Progress's family politics**

As the ruling party, the CUP had a political and economic agenda, and the construction of the national family formed part of it. However, because this national family was nuclear in structure, men's license to polygamy had to be restricted through the promulgation of a new family law. In this section, I explore the CUP's family politics with regard to the preparation and promulgation of the Ottoman Law of Family Rights of 1917.

According to Deniz Kandiyoti, the CUP's family politics were an attempt to extend state control into the private realm of the family. The political revolution of 1908 was followed by a social revolution, which shaped Ottoman society along more egalitarian and nationalistic lines. The adoption of a new family model was hastened

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<sup>441</sup> “..Taâddüdü zevcat fuhuşa mânidir..İslamiyette taâddüd-ü zevcata karşı talak bulunuyor. Bu durumda taâddüd-ü zevcat kadınlara cebri bir zulüm olamaz. Kadın ortak istemediği takdirde boşanabilir, başkası ile tezevviç edebilir. Oysa metres istemeyen bir Hıristiyan kadın boşanamaz ve evliliğini sürdürmek zorunda kalır..” Fatma Aliye Hanım, “Ta’addüd-ü Zevcat, Zeyl,” in *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi Vol 3*, ed. Hakkı Dursun Yıldız, Ankara: Emek Gazete ve Matbaacılık Ltd., 1992), 1035.

by the social revolution. The national family of the CUP was nuclear and monogamous.<sup>442</sup> The transition from a large, extended patriarchal family to a small, nuclear family was seen as necessary by the CUP. The CUP policies promoted the nuclear family because it believed it would establish a balance of power between men and women.<sup>443</sup>

The nationalists argued that the history of pre-Islamic Turkish society offered evidence to support egalitarian families and monogamous marriages. This period was called the golden age by the nationalists, and it inspired the Ottoman Law of Family Rights of 1917.<sup>444</sup> Ziya Gökalp wrote a chapter on feminism in his book *Principles of Turkism*. He argued that in the ancient religion of the Turks, women held certain powers, and in nomadic Turkish tribes, women even held a position equal to men. According to Ayşe Durakbaşa, Halide Edip Adivar agreed with Gökalp on his ideas about Turkish feminism. They both emphasized the ideas that feminism and equality between the sexes were features of the Turkish nation when unsullied by foreign influences and religions.<sup>445</sup>

Fanny Davis, on the other hand, accused Halide Edip Adivar of misjudging the lives of the ancient Turks. Adivar tried to bolster her argument that Turks were monogamous by giving the example of the lives of the nomads of the Çukurova region. Davis opposed Adivar on more recent findings of an anthropologist,<sup>446</sup> who showed that polygamy was also part of the nomadic life. Davis further argues that Ziyaeddin Fındıkoğlu and Adivar, who were the followers of Gökalp, confused monogamy with freedom for women. According to Davis, it was a truism that

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<sup>442</sup> Deniz Kandiyoti, "End of Empire," 36.

<sup>443</sup> Kate Fleming, "Women as Preservers of the Past," 137.

<sup>444</sup> Mervat Hatem, "Modernization, the State and the Family in Middle East Women's Studies," 69.

<sup>445</sup> Ayşe Durakbaşa, "Kemalism as Identity Politics in Turkey," 140-141.

<sup>446</sup> Joseph Szyliowicz, *Political Change on Rural Turkey: Erdemli* (The Hague, 1966), 51.

women of the nomadic Turks of Central Asia were not secluded, and sometimes the first wife of a ruler had an equal status to that of her husband. Yet it was also true that the Turkic rulers sometimes had more than one wife.<sup>447</sup>

The CUP's family politics extended to the realm of education. For instance, in school textbooks, it was emphasized that a woman had to be an ideal housewife. She must be knowledgeable in housework, maintain order, cleanliness, and happiness of the house. Besides, she had to be a loving wife to her husband, and try to console him in his sorrows and increase his happiness.<sup>448</sup> In the same textbooks male students were reminded to be polite and gentle towards their future wives, since a wife's mood had a lot of influence on the upbringing of children in the family.<sup>449</sup>

Likewise in women's journals of the time, issues related to the evils of polygamy and the necessity of maintaining a nuclear family were discussed. In an article in *Kadınlar Dünyası*, it was said that only in a nuclear family could a man and a woman take care of themselves and their children. An ideal age for marriage was 30 for men and 25 for women, because only then had they reached the maturity to establish a strong family. In the marital union, men should know how to treat their wives well and they should not have a drinking problem. Besides, in the marital union a woman should know her rights well, so that she could have a say in her family.<sup>450</sup>

Aliye Cevat Hanım in *Kadınlar Dünyası* refuted the arguments for polygamy that were put forward by intellectuals like Aksekili Ahmet Hamdi. She argued that those who thought polygamy would bring about a population increase were wrong.

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<sup>447</sup> Fanny Davis, *The Ottoman Lady*, 88.

<sup>448</sup> Hakkı Behiç, *Malumât-ı Medeniye ve Ahlâkiye (Dersaadet: İkdâm, 1327)*, 115 quoted in Ekin Enacar, "Education, Nationalism and Gender in the Young Turk Era (1908–1918)"

<sup>449</sup> Ekin Enacar, 150.

<sup>450</sup> "Aile," *Kadınlar Dünyası*, 46, 1 June 1913.

Polygamy only decreased the physical and mental power of men. Besides, if a man died at an early age, his wives and children would remain without means to survive. Even if he did not die young, a polygamous man had to work a lot to maintain his family, which meant that he would not be able to enjoy his life and his family. A polygamous man could be rich, yet he could not be happy, for it was difficult to find serenity in polygamous unions. According to Aliye Cevat Hanım, polygamy was the reason for the early deaths of many Ottoman sultans. She said that in hot-climate countries, such as in Arabia, polygamy might be a necessity. However, polygamy would only introduce hardship and discontent for people outside of these countries.<sup>451</sup>

The ideas against polygamy reached their height during the reign of the CUP. However, the encroachment of state power into the realm of the family was achieved in full through the family law reform, the Ottoman Law of Family Rights of 1917.<sup>452</sup> As explored in this section, many areas, including education, urban transformation, and changes to social and cultural life all had an impact on the Ottomans' understanding of marriage, whether polygamous or nuclear. Changes in these realms required a change in the application of the family law.

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<sup>451</sup> “..Bizde acayip bir fikir var: güyâ zevce ne kadar çok olursa çok nüfus çoğalmış. Düşünülüyor ki erkek beden kuvvetinden düşüyor. Üstelik çok çocuk olursa ve erkek vefat ederse çocuklar ortada kalıyor. Hatta padişahlarımızın çoğunun da erken vefat etme sebebi çokeşliliktir... Her ne kadar şeraitimiz çokeşliliğe müsaâde ettiyse de bu durum o zamanın tabiatındandı. Arabistan sıcak memlekettir ve sıcak memleketlerde çokeşlilik bir nevi zaruret teşkil eder ... Zavallı genç bir erkek çokeşli olursa ailesinin geçindirmek için çok çalışacak, yorulacak, hatta ölecek. Hayatın zevkini tatmadan o da eşleri de mutsuz olacak. Çocukları zayıf ve güçsüz kalacak...” Aliye Cevat, Aile-3,” *Kadınlar Dünyası*, 43, 29 May 1913.

<sup>452</sup> Deniz Kandiyoti, “End of Empire,” 36.

### 3.2 Economic context of marriage and divorce

When the Ottoman intellectual Namık Kemal wrote an article in the *Tasvir-i Efkar* newspaper in 1867, people's expectations regarding women and the country's economy had changed. Women were expected to contribute to the country's economy by working. In the late Ottoman Empire, there were "new" women who were well educated and working, and others who were not educated but still had to work, and even resort to prostitution, to make ends meet. For the second group of women, getting a divorce and marrying another man was a way to survive, because their husbands were lost or absent and these women could not get nafaqa. For the first group, however, simply demanded its right to marry by choice and the right to get divorced in the case of an unhappy marriage. Both these groups' reasons thus demanded a new family law, or the reform of the family law.

Namık Kemal's article was one of the earliest examples of a discussion on "new" women and families. As a prominent intellectual, Kemal claimed that women should be educated, so that they could work and contribute to the economy of their country.<sup>453</sup> Kemal's article, in fact, marked a turning point, in that it expected from a Muslim woman that she bear the burden of her family, or at least share the economic responsibility with her husband. Before, sustaining his family ranked among a husband's duties. A Muslim woman could get involved in commerce and manage her estate if she wanted to, but until the 19<sup>th</sup> century, she was not expected to contribute to her family's and the nation's economy.

Between the time of Namık Kemal's article and the rule of the CUP "the mentality change" of the Ottomans became consolidated. The articles in journals such as *Türk Kadını* and *Kadınlar Dünyası*, known for their affiliation with the CUP,

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<sup>453</sup> Nicole A.N.M. van Os, "Osmanlı Müslümanlarında Feminizm." 342.

are quite revealing in that sense. In one of the articles, Edhem Nejat said that in Turan, the homeland of the ancient Turks, women were quite used to work outside their homes. Besides, the religion of Islam ordered that women be educated. Thanks to the revolution of the 1908, the education of women improved due to schools opened for them.<sup>454</sup> Likewise, İsmail Hakkı argued that the inclusion of women in social life meant that women got educated and could become doctors, teachers, and scientists.<sup>455</sup> In another article, Necmettin Sadık argued that humanity and civilization had reached high point thanks to social life and the division of labor. For women to progress, they should also contribute to society by working. However, in the mean time, women should not neglect their duties at home as spouses and mothers.<sup>456</sup>

Male writers in these journals preferred that women work and contribute to the economy and home finances, while at the same time not forgetting about their household responsibilities. However, in the feminist journal of *Kadınlar Dünyası*, women writers discussed the issue from a different perspective. They saw work as a way to save them from captivity and as a way to become powerful in society. Mükerrerem Belkıs Hanım argued that the reason why many women had to endure physical violence from their husbands was that they did not have the means to earn their own living.<sup>457</sup> Women writers also argued against the view that women were not capable of becoming engineers or doctors because they were mentally incapable. Hanım mentioned that Marie Curie, who won the Nobel Prize of 1912, was an engineer.

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<sup>454</sup> Edhem Nejat, "Türkiye'de Kız Mektepleri ve Terbiyesi," *Türk Kadını*, 10, 26 September 1918.

<sup>455</sup> İsmail Hakkı, "Kadın ve İçtimai Muhitler," *Türk Kadını*, 9, 12 September 1918.

<sup>456</sup> Necmettin Sadık, "Kadınlığın Terakki Yolları," *Türk Kadını*, 4, 4 July 1918.

<sup>457</sup> Mükerrerem Belkıs, "Kadınlıkta Esaretin Müvellidi," *Kadınlar Dünyası*, 96, 21 July 1913.

Hanım gave examples from Strasbourg, where women could even work for the police, and added that in many European countries they even became attorneys.<sup>458</sup> In another article, Atiye Şükran gave an example of a Greek woman she met on a ferry. The Greek woman used to be rich, but when her husband became mentally ill, she lost all her means. She then opened a coffee shop where she worked. For Şükran, engaging in commerce was not a crime or a sin, and Turkish women should also think about such ways to earn their living.<sup>459</sup>

Against these perspectives, the conservatives argued that men were superior to women: “It was he who had to work and maintain his family in all means.” For Aksekili Ahmet Hamdi, one of the most vociferous Islamists, a woman’s mind was only capable of doing housework. She was created to give birth, suckle a baby, and raise a child. Paradoxically forgetting how hard these tasks were and that only a strong person could endure them both physically and mentally, Ahmet Hamdi argued that no woman could compete with men and that she should stay at home and be taken care of by men.<sup>460</sup> Mehmet Akif likewise argued that the main responsibility of a woman was the upbringing of her child. Besides, if a woman neglected her main responsibility and got, for instance, legal training, she might one day find her child as a criminal before her eyes.<sup>461</sup>

Along similar lines, the Şeyhülislam Musa Kazım Efendi argued that women were not responsible for earning their living. It was men’s responsibility. Women were made to become mothers and raise their children. Hence it was not necessary for them to receive a higher education. Besides, having a higher education would

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<sup>458</sup> Mükerrrem Belkıs, “Şiddetle Red, Kadınlar Nakısat’ül Akl İmiş,” *Kadınlar Dünyası*, 85, 10 July 1913.

<sup>459</sup> Atiye Şükran, “Ticaret Ayıp Değildir,” *Kadınlar Dünyası*, 68, 23 June 1913.

<sup>460</sup> Aksekili Ahmet Hamdi, “İslamiyet ve Taaddüd-ü Zevcat 2,” *Sebil’ür-Reşad* 11, 276, 25 December 1913.

<sup>461</sup> Mehmet Akif, “Kadının Vazife-i Tabiyesi Nedir?” *Sebil-ür Reşad*, 93, 4, 17 September 1908.

hinder their role as mothers and housewives. It might even prevent them from getting married. And this would create great damage for society. However, Kazım did not see any reason why women should not get a higher education after they had married and had raised their children.<sup>462</sup>

The CUP rulers, on the other hand, were very much convinced of women's capacities and ability to work. They even hired some women as agents for intelligence services. For instance, in an official correspondence sent from the Police Headquarters of Istanbul to the Ministry of the Interior, it was asked whether it was appropriate to employ women as intelligence officers, for they might be incompetent in political matters and in difficult cases like robbery. In reply, the Ministry of the Interior answered that as long as it would do good to law and order, women could be employed as intelligence officers.<sup>463</sup>

For the CUP rulers the education of women was related to providing further job opportunities to them. The CUP rulers were even thinking of sending educated women from Istanbul to teach in the provinces. However, this plan failed due to societal restrictions on women at a time.<sup>464</sup> Although the CUP's project to provide job opportunities to women in the provinces failed, the women's associations worked enthusiastically to further such opportunities. The Society for Excellence of Ottoman Women (*Osmanlı Kadınları Cemiyeti Hayriyesi*) and the Society for the Defense of the Rights of Ottoman Women (*Osmanlı Müdâfa-i Hukuk-u Nisvân Cemiyeti*)

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<sup>462</sup> Musa Kazım, "Hürriyet, Eşitlik ve Kadın Hakları," in *Türkiye'de İslamcılık Düşüncesi*, ed. İsmail Kara, (İstanbul: Kitabevi, 1997), 120–130.

<sup>463</sup> "Önceden Dâhiliye Nezaret Celilesine önceden teşkil buyrulan istihbârat memurlarının keyfiyet tayin ve istihdam arzına dair emanet edilen talimatnamenin 6.maddesinde istihbarat memurlarının her nevi meslek erbabından seçilmesinin câiz olacağı yazılmış ise de... bazı kadınların istihbârat memuriyetine tayin edilip edilemeyeceğine tereddüt edildiğinden keyfiyetin irade emri buyrulması arz ve istihâm olunur. İstanbul Polisi.

*Dâhiliye Nezareti Muhaberati Umumiye Dairesi'nden İstanbul Polis Müdüriyeti Umumi Dairesi'ne Asayiş ve güvenin teminine alaka eylediği cihetle istihbarat memurluklarında kadınların istihdamı caizdir.* "DH İD 65 16, 26 Şubat1912.

<sup>464</sup> Fanny Davis, *The Ottoman Lady*, 56.

promoted education and personal freedom for women, and argued for replacing the veil with a headscarf to allow women's faces to be visible while working.<sup>465</sup>

Actually, the activities of those women's associations were streamlined with the CUP policies on women and family. There were obviously some women who wanted and demanded to work. However, there were also women who were forced to work as a result of war. In the next section, I will explore women's work to clarify its relation to and impact on the promulgation of the OLF.R.

### **3.2.1. Women's compulsory work as a result of their plight in the late Ottoman Empire and its impact on marriage-divorce issues**

Muslim women were used to having a male relative support them financially. However, approximately three million Muslim men were killed, lost, or injured during the wars that overwhelmed the Ottoman Empire in its final two centuries. The devastation of most of the male population meant that many women were left without any means of subsistence.<sup>466</sup>

The widows and daughters of the martyrs and war veterans were also at risk of being kidnapped by vagabonds or some people of bad faith. A document of the Ministry of Foreign Affairs reported that some Arab people from Java came to Istanbul and deceived those women into marriage. Yet these women end up being sold as slaves or concubines. Ottoman Muslim women were thus banned from marrying Arabs of Java, and the Ministry of Foreign Affairs was ordered to take precautions against further such occurrences.<sup>467</sup>

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<sup>465</sup> Ibid., 56.

<sup>466</sup> Yavuz Selim Karakışla, *Women, War and Work in the Ottoman Empire*, 167.

<sup>467</sup> MV 219 82, 21 June 1920.

It was also true that women had been working in the Ottoman Empire to earn their living. According to Donald Quataert, women in the Ottoman Empire had been working as laborers in textile production, shoemaking, tobacco pressing, and the export industries such as those for raw silk, carpet, and lace since the 19<sup>th</sup> century. Besides, household spinning, weaving, knotting, and embroidering were common for women of the countryside.<sup>468</sup> Despite the fact that women in the countryside received lower wages than their male counterparts, they were still earning their own money.<sup>469</sup> However, as mentioned above, women living in big cities were mostly not working, living under the protection of their male guardians. Some of them earned money through producing some handcrafts. Yet they did not produce for the market. The only work options for city women were to become midwives, nurses, and cooks, occupations categorized as women's jobs.<sup>470</sup>

In the big cities of the empire, wartime inflation worsened the economic conditions of people living on fixed incomes, creating sudden hardship and poverty,<sup>471</sup> alongside that created by missing men. For that reason, as Ziyaeddin Fahri Fındıkoğlu,<sup>472</sup> Bernard Lewis,<sup>473</sup> and Niyazi Berkes have argued, women were forced to engage in economic activities. However, there was also a high rate of unemployment during the years of the World War I, according to Yavuz Selim Karakışla, making it even harder for women to find work, because even male

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<sup>468</sup> Donald Quataert, *Ottoman Manufacturing in the Age of Industrial Revolution* (Cambridge: Cambridge University Press, 2002), 170-175.

<sup>469</sup> Donald Quataert, *Ottoman Manufacturing*, 174; Nicole A.N.M van Os, "Bursa'da Kadın İşçilerin 1919 Grevi," *Toplumsal Tarih*, 39 (1997), 7-10; Yavuz Selim Karakışla, "Uşak'ta Halı İşçilerinin İsyanı (1908)," *Toplumsal Tarih*, 99 (2002): 54-57.

<sup>470</sup> Yavuz Selim Karakışla, "Dersaadet Telefon Anonim Şirket-i Osmaniyesi ve Osmanlı Kadın Telefon Memureleri," *Tarih ve Toplum*, 212 (2001): 29-37.

<sup>471</sup> Alen Duben and Cem Behar, *Istanbul Households*, 43.

<sup>472</sup> Ziyaeddin Fahri Fındıkoğlu, *Essai sur La Transformation du Code Familial en Turquie*, 31.

<sup>473</sup> Bernard Lewis, *Modern Türkiye'nin Doğuşu*, 230-238.

laborers were willing to work for lower wages.<sup>474</sup> Therefore, women faced ever greater hardship.

Having realized the economic plight of women, the Ottoman state took precautions and provided women with job opportunities. Some women started to work in the Ottoman Bank or the Dersaadet Telephone Company.<sup>475</sup> The state authorities even established a Battalion of Workers for women who were living on the verge of hunger in 1917.<sup>476</sup> The situation of refugee Muslim women was also taken care of by the authorities. In 1913, the Ministry of the Interior ordered the Istanbul Municipal Borough to give vocational training to refugee women, so that they could be employed as housekeepers as a way to earn their living. These women were also allowed to live in the *Dar'ül âceze*.<sup>477</sup>

Because job opportunities for women were scarce and many women lived on the verge of hunger, the Ottoman state also paid the dependents of soldiers a stipend, *mûinsiz aile mâaşı*, initiated by the Ministry of War. Officers, soldiers, and civil servants who returned from the fronts were given money to rent a home and supply food for their families until they got their monthly salaries back.<sup>478</sup> Although they were a temporary solution, these salaries came as a great relief to women. For instance, Hatice Hanım from Gönen, Balıkesir, petitioned to get the *mûinsiz* family salary since her husband was deceased and two of her sons, who should be taking care of Hanım and her daughter financially, were recruited and she had not heard

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<sup>474</sup> Yavuz Selim Karakışla, *Women, War and Work in the Ottoman Empire*, 166.

<sup>475</sup> Yavuz Selim Karakışla, "Osmanlı'da Kadın Fotoğrafçılar," *Toplumsal Tarih*, 75 (2000): 18–20.

<sup>476</sup> Meral Altındal, "Kadın Birinci İşçi Taburu Tarihçesi," *Toplumsal Tarih*, 41 (1997): 14–16; Zafer Toprak, "Osmanlı Kadınları Çalıştırma Cemiyeti: Kadın Askerler ve Milli Aile," *Tarih ve Toplum* 51 (1988): 34–38; Yavuz Selim Karakışla, "Enver Paşa'nın Kurduğu Kadın Birinci İşçi Taburu: Osmanlı Ordusu'nda Kadın Askerler," *Toplumsal Tarih* 66 (1999):15–24.

<sup>477</sup> DH İD 161-1 6, 18 August 1913; DH EUM VRK 20 106, 25 September 1912.

<sup>478</sup> "Harb mevkilerinden gelmekte olan şehit ve zabitan ve memur ailelerine hane kiralamaları ve maâş tahsis oluncaya değin iaşeleri için şimdilik 500 liranın hazine masrafları harcamalarından tertip edilip tahsisi lüzumuna dair dâhiliye nezaretinin 31 Mart 1913 tarihli 863 nolu tezkeresi okundu..." MV 179 61, 7 July 1913.

from them since.<sup>479</sup> If the state had not paid Hanım, without a job, or land, or a male guardian, Hanım and her daughter would either have had to live off neighbours' help or not survive at all.

Unfortunately, the salaries paid to the dependents of dead soldiers and war veterans were reduced by the high inflation. The already bankrupt Ottoman state could not satisfy the financial requirements of the soldiers' families. In fact, by the end of 1915, the salary of a dead soldier could only buy a single loaf of bread. Hunger and the battle to survive dominated, and the female dependents of Muslim Ottoman soldiers who did not receive support from other family members came close to the starvation point. In those harsh conditions, the spiritual values of Ottoman society transformed into material ones, in that even prostitution became a means of survival for Muslim Ottoman women.<sup>480</sup>

In the feminist journal *Kadınlar Dünyası*, women's philistinism and the inability to pursue a career were blamed for women's resort to prostitution in the late Ottoman Empire. For Meliha Cenân Hanım, women had become prostitutes because they could not work otherwise.<sup>481</sup> The problem increased, and it alarmed the authorities. For instance, in May 1914, the police of Istanbul received secret information that a Muslim woman worked at the brothel of *Necika* in Beyoğlu. The

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<sup>479</sup> "Kaymakam bey hazretleri, câriyeleri Plevne Mahallesi'nden müteveffa bakkal Osman Efendi zevcesi olup 2 oğlundan büyüğü İsmail geçen eylül ayında emsâli ile birlikte askere sevk edildi. Bugün askeri hizmetini Çatalca Ordusunda Sancaktepe mevkiinde 2. Kolorduya mensup 4. Fırka iaşe neferi namıyla ifa etmekte. Diğer oğlum Hüseyin 1321 senesinde Kırkkilise de gönüllü olarak askere alındığından mukaddes askeri hizmetini ifâdan sonra polis mesleğine girerek Edirne vilayeti polis mürettebatında Gelibolu kazasında vazife ifâ esnasında o kasabada birkaç sene evvel evlendiği cihetle buradan nüfusça hane nakli ettirdiği halde mezkûr muavene askeri cihetçe itibara alınmayıp büyük oğlum İsmail harbe maiyetli olarak sevk edilmiş ve burada 18-19 yaşlarındaki bakire kızım Fatma ile câriyelerini aç bilaç terk ederek zarurette kaldığı gibi Edirne polis mürettebatında bulunan oğlum Hüseyinin de harp ilanından beri hayat ve memâdından haber olmadığı yapılacak tahkikât ile açık olacağına lütfen ve merhameten padişahımızın sadakası olmak üzere câriyenize münsizler arasında maaş tahsisi hususuna müsaade etmeniz bâbında emr-ü ferman..." DH EUM VRK 9 27, 20 February 1913.

<sup>480</sup> Yavuz Selim Karakışla, *Women, War and Work in the Ottoman Empire*, 50.

<sup>481</sup> Meliha Cenân, "Kadının Hayat ve Mesaii Umumiyyeye İştiraki Lazımdır," *Kadınlar Dünyası*, 85, 10 July 1913.

police inquired and found out that she used the Greek name Marika, whereas her real name was Nazime. She was 17 years old, the daughter of the deceased major Ahmet Bey and the widow of the vagabond Cevat. The necessary procedures were followed against Nazime and the brothel that employed her.<sup>482</sup>

The Ministry of War developed the idea of establishing an organization to employ the mothers, wives, sisters, and daughters of Muslim Ottoman soldiers facing hunger and destitution in the middle of the World War I. The vice commander and minister Enver Pasha and his wife Naciye Sultan established the Society for the Employment of Ottoman Muslim Women, *Kadınları Çalıştırma Cemiyeti İslamiyyesi*.<sup>483</sup> According to Karakışla, employing women was more reasonable than giving them unsatisfactory salaries. Besides, in this way, women had the opportunity to live honorably, without having to resort to prostitution to make ends meet.<sup>484</sup> In a letter sent from the Ministry of the Interior to the Istanbul Municipality in 1916, it was mentioned that as soon as the Society for the Employment of Ottoman Muslim Women was founded under the aegis of Naciye Sultan, fifteen thousand Muslim women applied to get a job. Those women were employed in various positions in state-related offices. The Ministry of the Interior asked the municipality about the vacant positions, such as in hospitals.<sup>485</sup>

However, the employment of its female members was not the primary objective of the society. Knowing that it could support and protect women from the danger of losing their moral values only temporarily, the directors encouraged the

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<sup>482</sup> DH EUM EMN 74 6, 19 May 1914.

<sup>483</sup> Yavuz Selim Karakışla, *Women, War and Work in the Ottoman Empire*, 50.

<sup>484</sup> *Ibid.*, 135.

<sup>485</sup> “Yeni kurulan Kadınları Çalıştırma Cemiyeti İslamiyesine mâişete muhtaç olan çalışmak isteyen onbeş bin İslam hanımı başvurmuş ve hizmete kabul olunacak kadınların iffet, doğru ahlak ve tavrı cemiyetin taahhüdü altında olduğu anlaşılmiş bunların resmi dairelerde ve umumi müesseselerde kadınlar tarafından ifası mümkün hizmetlerde istihdamı görülmüş olmakla size bağlı hastanelerde sair müesseselerde ne gibi hizmetlerde ne kadar hanım memur istihdamı mümkün bulunduğunun yazı ile bildirilmesini ricâ ederim.” DH KMS 42 10, 3 November 1916.

women employees to marry and form a family. A year after its establishment the society announced a regulation on marriage and started a marriage campaign, which in fact was a continuation of the national family campaign conducted on a larger scale by the CUP.<sup>486</sup>

Muslim women whose male relatives died or went missing in the wars also applied to *Dar'ül âceze* for living quarters. For instance Saime Hanım applied because her husband Yusuf was disabled and she had almost no means to survive.<sup>487</sup> Another woman, Fatma Hanım, applied to live in *Dar'ül âceze* with her child, for her husband had died on the Caucasian front. Being an orphan, Hanım had already lived in the *Dar'ül âceze* before she had been married off to Celaladdin Bey by officers of the institution. However, now that her husband had also been killed and she had no male relative to take care of her, Hanım reapplied to the institution.<sup>488</sup>

For women like Hatice and Fatma, state help came as a great relief. Yet they needed either a job or a male guardian, preferably a husband, to take care of them. The situation of such women would have been worse if they had been married and their husbands were lost or had left them without alimony. The family law before the OLFM deprived them from the right to get an easy divorce and to remarry. By establishing *Kadınları Çalıştırma Cemiyeti İslamiyyesi* and announcing a regulation on marriage and a marriage campaign, the CUP rulers realized the further necessity of reforming family law. The conditions in the late Ottoman Empire required a new

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<sup>486</sup> Yavuz Selim Karakışla, *Women, War and Work in the Ottoman Empire*, 148.

<sup>487</sup> DH UMVM 163 65, A1, 19 January 1922.

<sup>488</sup> “*Mâruzu carıyanemdir. Cariyeleri henüz çocukluk hâlinde iken kimsesiz kaldığıma binâen önceden darülacezenin korumasına kabul buyrulurken uzun süre iade ve infak oluna gelmekte iken ahiren mensup, bağlı samii nezaret penâhilerinden kılınan izinnâmeden keyfiyet aşikâr buyrulacağı vecihle Celâleddin bin Fazlî namında biriyle evlenmiş ise de seferberlik münasebetiyle silâhı altına alınarak Kafkas cephesinde harbe sevk edilmiş idi. Merhumun mezbur harp cephesinde hummâdan vefat etmiş olduğu bu kere resmi suretle doğrulanmış iane ve infâkı temin edecek başka kimsem bulunmadığından sefalet hâli ve perişanlıkta kaldım. Lütfen merhameten yine mezkûr hayriyeye kayıt ve kabulüm ile refahımı temin ve maişetimi hususunda izin verilmesi....*” DH UMVM 119 53, 1 December 1913.

family law for different sections of society for various reasons. In the next chapter I will explore the road to the promulgation of the OLF, and its application in late Ottoman Istanbul.

## CHAPTER 4

### THE ROAD TO THE OTTOMAN LAW OF FAMILY RIGHTS OF

1917

Islamic law, the Sharia,<sup>489</sup> is a divine law, the principles of which are based on the Quran and the Prophet's Sunnah.<sup>490</sup> However, there is no simple set of codified rules that constitute the Sharia. It is rather a body of texts based on the Quran, the hadith,<sup>491</sup> and legal interpretation.<sup>492</sup> In addition, the written law does not always coincide with people's practices, with customs. For that reason, Islamic law is defined as a repertoire of precedents, cases, and general principles along with a body of well-developed hermeneutical techniques.<sup>493</sup> This complexity of the Sharia gave way to four main juristic schools (hereafter madhhab), and as well as other sects, which slightly differ from each other in certain practices of Islam.<sup>494</sup>

Many people tend to think that Sharia has remained unchanged because it is divinely inspired law. However, although it is based on the Quran and the Sunnah,

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<sup>489</sup> I will use Sharia for Islamic Law in this section.

<sup>490</sup> For the Prophet's customs, sayings, and doings, I hereby use the word "Sunnah."

<sup>491</sup> Hadith are the reports of statements or actions of the Prophet, or of his tacit approval or criticism of something said or done in his presence. In matters of jurisprudence, hadith are important tools for understanding the Quran. See: EI.

<sup>492</sup> İhsan Yılmaz, *Muslim Laws*, 32.

<sup>493</sup> Aziz Al-Azmeh, *Islams and Modernities* (London: Verso, 1996), 12.

<sup>494</sup> İhsan Yılmaz, *Muslim Laws*, 31.

the Sharia has continually evolved since the founding of the four main schools of Islamic law.<sup>495</sup> Likewise the popular image of the Sharia courts is that of a traditional, religious, and narrow-minded legal institution opposed to modernity.<sup>496</sup> However, the Sharia court has never been detached from people's lives and has continued to evolve.<sup>497</sup> Haim Gerber cites examples from the Ottoman context and shows that Muslim internal pluralism and dynamic legal change were everyday realities of life in the Ottoman Empire even before the reform period,<sup>498</sup> which shows the ability of Sharia to adapt to times and contexts.

Judith Tucker states that legal reforms are meant to bring Islamic Law in accordance with changing social needs.<sup>499</sup> At the turn of the 20<sup>th</sup> century, problems related to family matters in Ottoman society were demanding: People were confused over issues of marriage, divorce, alimony, and inheritance. According to Ziyaeddin Fahri Fındıkoğlu, Muslim jurists in the late Ottoman Empire and politicians became aware of the changing conditions in family matters; hence the need emerged for a change in Islamic family law.<sup>500</sup> Codification attempts in the empire reached family law last.<sup>501</sup> When it did, the two actors of reform, the chief religious authority, the Meşihat,<sup>502</sup> and the cadres of the CUP, highlighted different social needs and approached family law reform in different ways.

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<sup>495</sup> Elizabeth Brownson, "Gender, Muslim Family Law, and Contesting Patriarchy in Mandate Palestine, 1925-1939," 7.

<sup>496</sup> Iris Agmon, *Family and Court Legal Culture and Modernity in Late Ottoman Palestine*, 3-4.

<sup>497</sup> *Ibid.*, 45-47.

<sup>498</sup> Haim Gerber, *State, Society, and Law in Islam, Ottoman Law in Comparative Perspective*, (New York: Suny Press, 1994).

<sup>499</sup> Judith Tucker, "Legacies," 2.

<sup>500</sup> Ziyaeddin Fahri Fındıkoğlu, "Aile Hukukunun Tedvini Meselesi," *Ebul'Ula Mardin'e Armağan*, 692-693.

<sup>501</sup> Ziyaeddin Fahri Fındıkoğlu, *Hukuk Sosyolojisi*, 241

<sup>502</sup> I hereby use 'Meşihat' for the highest Religious Authority in the Ottoman Empire.

In this chapter the aim is to shed light on the reform processes in Islamic family law as it was applied in the late Ottoman Empire, by highlighting actions taken by the Meşihat to reform the Islamic family law, and by the CUP to pass the OLF, as well as events that led to its annulment in 1919. The Meşihat circles, ulema around the Office of the Şeyhülislam, made several attempts to influence the CUP government to make changes to family law changes by the reunification of the Mecelle Commission. They did not succeed.

The implicit competition between the Meşihat and the CUP will enable us to better comprehend why the civil code of the Ottoman Empire was not drafted by the Mecelle Commission,<sup>503</sup> but was prepared rather hastily by another commission (that will be explained later in this chapter) and was promulgated in the middle of the World War I. Primary sources used in this chapter are archived Ottoman state documents,<sup>504</sup> *defters* of the Meşihat, the journals of *Volkan*, *Sebil-ür Reşat*, Sharia court records,<sup>505</sup> *Düstûr*, and *Meclis-i Mebusan Zabıt Ceridesi*.

#### **4.1 The Meşihat and the family law reform**

Since the beginning of the Second Constitutional Period, family law issues were at a deadlock in the Ottoman Empire because of the political power struggle between the CUP and the Meşihat. This competition had reached its height when the CUP government postponed the reunification of the Mecelle Commission for drafting a civil code to an unknown date. Problems related to family law and the plight of

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<sup>503</sup> See previous chapter for Mecelle and Mecelle Commission.

<sup>504</sup> Başbakanlık Osmanlı Arşivi (BOA), Republic of Turkey Prime Ministry General Directorate of State Archives.

<sup>505</sup> I hereby use the word “sijil” for Shari court records.

women in the Ottoman Empire lingered, however, which required solutions immediately. Hence, rather than competing with the CUP cadres, the ulema reorganized the institution of the Meşihat to handle issues surrounding family law. In this section, the Meşihat's attempts to resolve family law issues and the codification of family law will be explored in detail.

#### **4.1.1. Deadlocks encountered in family law as a result of the restrictive use of Hanafi madhhab**

Having a unified system of law was important for the centralization of the empire, for it allowed averting different views of belief.<sup>506</sup> The well-trained religious scholars, the ulema,<sup>507</sup> and the sultans in the grand days of the empire played a large part in bringing together Islamic Law in a unified Hanafi form.<sup>508</sup> In the middle of the 16<sup>th</sup> century, the Hanafi School, madhhab,<sup>509</sup> had almost become the official state madhhab of the Ottoman Empire to achieve legal unity,<sup>510</sup> and for solidifying the power of the Ottoman sultans.

Until the middle of the 16<sup>th</sup> century, no one school of law's jurisdictions were accepted in the empire as the only way to solve legal problems. Before the adoption

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<sup>506</sup> Colin Imber, "Erken Osmanlı Tarihinde İdealler ve Meşrutiyet" in *Kanuni ve Çağı*, Metin Kunt, Christine Woodhead eds (İstanbul: Tarih Vakfı Yurt Yayınları, 1998), 152.

<sup>507</sup> I hereby use "ulema" for Ottoman religious scholar.

The ulema were mostly appointed as mosque functionaries, teachers, jury consults, and judges. They were responsible for educating the Muslim community as teachers at schools, guiding them in their personal lives as judges at the courts of Holy Law. See: Richard L. Chambers, "The Ottoman Ulema and the Tanzimat," in *Scholars Saints and Sufis Muslim Religious Institutions in the Middle East since 1500*, ed. Nikki R. Keddie (Berkeley: University of California Press, 1972), 33

<sup>508</sup> Joseph Schacht, *An Introduction to Islamic Law*, 85.

<sup>509</sup> Starting from the Umayyad period and developed further during the Abbasid period, jurists were divided into various schools, madhhab, as a result of freedom of thought and a need to base the Islamic law in all areas on the factors involved in them. See: Dawoud S. El Alami, *The Marriage Contract in Islamic Law* (Great Britain: Graham & Trotman Ltd., 1992), 2-3.

<sup>510</sup> İslam Demirci, "Osmanlı Meşihat Makamına Bağlı Te'lifî Mesail Şubesinin Kuruluşu ve İslam Hukuku Alanında Yaptığı Çalışmalar" (M.A. Thesis, Marmara Üniversitesi, 2002), 35.

of Hanafism, a Hanafi woman was able to divorce her husband who left her by applying a court that had Shafi'i qadı. However, after the 16<sup>th</sup> century, the legal madhhab of the Ottoman Empire, the Hanafi School, officially left no grounds by which a wife could free herself from an undesirable marriage.<sup>511</sup> Because of the restrictive use of the Hanafi madhhab, which did not allow divorce for women easily, most Ottoman women had to endure desertion and/or maltreatment by their husbands without recourse to divorce.<sup>512</sup>

Restricting the vast possibilities of Islamic Law to only one madhhab made life even more difficult for most Ottoman Muslim women. Social upheavals and the wars that the Ottoman Empire had been facing during its past centuries presented unsolvable problems to Hanafi judges. The Ottoman jurists realized the difficulties that women had to face in the 20<sup>th</sup> century and agreed on employing the always existent methods in the Islamic Law for solving legal problems.<sup>513</sup> For that purpose, the ulema in the Meşihat took many precautions, such as adding new branches and subbranches to the institution. Through the work of these branches, answers to family law-related problems were found in the canon law books of all four Sunni madhhabs, and were presented in an orderly, bureaucratic form; they were also published in the Meşihat's official journals. In the next section I will explore the Meşihat's newly added branches and other attempts at solving family law-related problems in the late Ottoman Empire.

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<sup>511</sup> However, rare examples of divorce cases of Hanafi women by Shafi qadı can also be encountered in the sijills of various places in the Ottoman Empire.

<sup>512</sup> John L. Esposito, *Women in Muslim Family Law*, 53.

<sup>513</sup> Mehmet Akif Aydın, *Osmanlı Hukuku'nda Kazai Boşanma: Tefrik*, (İstanbul: Yayl., 1986), 35.

#### 4.1.2. The Meşihat's precautions against the deadlocks in family law

The reform age brought about a depreciation of the ulema's status in Ottoman politics. Especially during the Second Constitutional Period, the ulema had to resist pressure coming from the CUP cadres, which made a reform of family law even more difficult. In this section, I will explore the Meşihat's position in the late Ottoman Empire, the Şeyhülislam's attempts to reunite the Mecelle Commission,<sup>514</sup> the failure thereof, the reorganization of the Meşihat in response, and the institution's efforts to publish a journal and establish an academy for Islamic sciences.

##### 4.1.2.1. Situation of the ulema in the late Ottoman Empire

According to Richard Chambers, sultan Abdülhamid II held the ulema responsible for the death of the sultan Abdülaziz and the bloody uprising of the religious students, called *Softalar Kiyamı*.<sup>515</sup> Because the sultan was not welcoming to the ulema, some ulema allied themselves with the CUP cadres, who were campaigning against Abdülhamid II's rule.<sup>516</sup> However, for some of the CUP cadres, religion was a way to mobilize masses,<sup>517</sup> and they were approaching the ulema rather pragmatically.<sup>518</sup>

During Abdülhamid II's reign, gossip spread that the members of the CUP were *atheists, masons*. Some of the CUP members approached the ulema to try and

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<sup>514</sup> See the previous chapter for details of the Mecelle Commission.

<sup>515</sup> Richard L. Chambers, "The Ottoman Ulema and the Tanzimat," 46

<sup>516</sup> İsmail Kara, *İslamcılarının Siyasi Görüşleri I*, (İstanbul: Dergah Yayınevi, 1993), 62.

<sup>517</sup> Şükrü Hanioglu, "Garpçılar: Their Attitudes toward Religion and Their Impact on the Official Ideology of the Turkish Republic," *Studia Islamica*, 86 (1997): 145-146

<sup>518</sup> Şükrü Hanioglu, "Blueprints for a Future Society" in *Late Ottoman Society The Intellectual Legacy* Elisabeth Özdalga ed (London: Routledge, 2005), 28

get rid of these images.<sup>519</sup> However, the more the CUP restricted the freedom of the people and engaged in criminal activities, the less they appealed to the people. Gradually, the ulema and the religious circles gathered around the journals *Beyan'ül Hak*, *Sırat-ı Müstakim*, and *Sebil'ür-Reşat*, and they started criticizing the CUP.<sup>520</sup>

During the Second Constitutional Period, the Şeyhülislam's new term was the issue that disturbed the critics of the CUP most. Making the Şeyhülislam equal to a minister in the cabinet was unacceptable for the conservative groups.<sup>521</sup> Derviş Vahdeti, who was the chief editor of the journal *Volkan*, vigorously opposed this development. He argued that aligning the Şeyhülislam with the status of a minister depreciated the esteem and value of the highest religious authority in the empire.<sup>522</sup> Vahdeti further criticized the obligation of the Şeyhülislam to attend the meetings of the assembly. According to Vahdeti, the legislative body could not check the Meşihat, for the assembly was inferior in status.<sup>523</sup>

However, the CUP cadres demanded a separation of religious affairs from “worldly” ones, and they insisted on the Şeyhülislam's obedience to the new regulations. Along with the CUP cadres, some intellectuals had become more open in their criticism of the Şeyhülislam's involvement in political matters. For these intellectuals, the Şeyhülislam's sphere of responsibility should be restricted to religious matters. Ziya Gökalp was one of the most vociferous men in that group.

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<sup>519</sup> Feroz Ahmad, *The Young Turks the Committee of Union and Progress in Turkish Politics 1908-1914* (Oxford: Clarendon Press, 1969), 28.

<sup>520</sup> Mustafa Gündüz, *II. Meşrutiyet'in Klasik Paradigmaları*; İsmail Kara, *İslamcıların Siyasi Görüşleri I*, (İstanbul: Dergâh Yayınevi, 1993), 68.

<sup>521</sup> *Mizan*, 24 February 1909, 76.

<sup>522</sup> Derviş Vahdeti, *Volkan* 50, 6 February 1909, 256.

<sup>523</sup> Derviş Vahdeti, *Volkan* 56, 12 February 1909, 266. Also on the same issue, Abdülhamid II also agreed with the conservatives: calling the Şeyhülislam, the Patriarch, and the Chief Rabbi to the same meeting was making them equal in status; he advised the CUP leaders of being more respectful to the Şeyhülislam's spiritual authority. See: Ali Cevad Bey, *İkinci Meşrutiyet'in İlanı ve 31 Mart Hadisesi* (Ankara: TTK, 1960), 43.

Gökalp argued that the Ministry of Justice should take all legal matters, including family law, from the Meşihat's hands. In addition, the empire's religious affairs should be dealt with by the Ministry of Religion. Gökalp presented his views at the congress of the Committee of Progress and Union in 1916. At the end of the congress, a decision was taken accordingly and the Ministry of Justice was made responsible for all the law courts in the empire, while the medreses were taken under the control of the Ministry of Education.<sup>524</sup>

The battle between the CUP cadres and the Meşihat circles regarding family law also projected into assembly. Having realized the need to reform family law, many scholars and deputies demanded that the Mecelle Commission should come together under the aegis of the Meşihat and draft a civil code. However, the discussion about the Mecelle Cemiyeti lasted almost three years, without a conclusion. In the next section, I will explore the assembly meetings on the reunification of the Mecelle Commission.

#### **4.1.2.2. Attempts to reunite the *Mecelle Commission* for drafting a civil code**

Along with the Şeyhülislam, some deputies of the Second Constitutional Assembly approved the idea that the Mecelle Commission should reunite and hoped to expand on the Mecelle to bring it into accordance with the times. In the 44<sup>th</sup> meeting of the *Meclis-i Mebusan* on March 22, 1909, it was decided that an official letter be written to the Meşihat, and a draft law be prepared for the recreation of the

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<sup>524</sup> Ramazan Boyacıoğlu, "*Hilafetten Diyanet İşleri Başkanlığı'na Geçiş*," (PhD Dissertation, Ankara University, 1992), 65-68; J.H. Kramers, 1993, İA, XI, "Şeyhülislam", 489.

Mecelle Commission, whereupon the deputies discussed the budget of the commission, who should be selected as members, and the scope of its activities.<sup>525</sup>

The Şeyhülislam wrote an official letter to the grand vizier on June 21, 1909, saying that it was sending the draft law prepared by the *İlmiye Encümeni* to the assembly. The grand vizier Hüseyin Hilmi then wrote an official letter to the assembly on June 24, 1909, mentioning that the draft law had been sent by the Meşihat and that necessary action should be taken as soon as possible. However, when the issue was read in the assembly meeting, it was understood that the draft law was not prepared by the Council of State, which left the deputies quite ambivalent about the issue. As a result, they could not decide whether or not to approve the draft law on that day.<sup>526</sup>

The recreation of the Mecelle Commission had not been discussed in the assembly until the Şeyhülislam Musa Kazım wrote an official letter to the assembly on March 15, 1911, and reminded the deputies about the new decision to recreate the commission after two years.<sup>527</sup> Musa Kazım wrote another letter to the assembly on April 12, 1911, and it was read as the first article in the meeting. In the letter, he mentioned that the draft law about the recreation of the Mecelle Commission had been amended and asked that the action be approved, along with the budget of the Mecelle Commission. The draft law was re-transferred to the *İlmiye Encümeni* at the

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<sup>525</sup> Meclisi Mebusan Zabıt Ceridesi, 1st Period, Volume 2, 1st Year, 44th Meeting, 9 March 1325, 22 March 1909.

<sup>526</sup> Meclisi Mebusan Zabıt Ceridesi, 1st Period, Volume 6, 1st Year, 137th Meeting, 18 August 1909.

<sup>527</sup> Meclisi Mebusan Zabıt Ceridesi, 1st Period, Volume 4, 3rd Year, 64th Meeting, 23 March 1911.

meeting,<sup>528</sup> which in a way meant that the issue was sent into oblivion by the authorities.

After the decision of that meeting, the hopes of recreating the Mecelle Cemiyeti waned. This situation pushed the Meşihat to take other measures for the compilation of a new family law.<sup>529</sup> Actually, the discussion on the Mecelle Commission proved a crossroads, in that both parties took different paths in accordance with their ideologies for family law reform. The next section explores the Meşihat's efforts at that reform.

#### **4.1.2.3. The Meşihat's handling of the family law-related problems in the late Ottoman Empire**

On July 24, 1914, the Office of the Fetva,<sup>530</sup> *Fetvahane*,<sup>531</sup> was divided into two branch offices: *Te'lif-i Mesail* and *Taharri-i Mesail*.<sup>532</sup> While the *Te'lif-i Mesail* Branch was responsible for collecting the fetvas and opinions of the four main madhhab to publish them in a journal, *Muhit-ul Fetava*, the other branch was responsible for registering the fetvas after the approval of the Şeyhülislam.<sup>533</sup>

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<sup>528</sup> Meclisi Mebusan Zabıt Ceridesi, 1st Period, Volume 5, 3rd Year, 78th Meeting, 12 April 1911.

<sup>529</sup> Yavuz Hulusi, *Events Leading to the Compilation of the First Ottoman Civil Code*, (İstanbul: İstanbul Üniversitesi Edebiyat Fakültesi Yayınları, 1984).

<sup>530</sup> I hereby use the word "fetva" for Ottoman Legal opinion. The ulema could issue fetva, which served as a restraint on the sultan's sovereign will. The ulema could even issue fetvas dethroning a sultan. See: Richard L. Chambers, 1972, "The Ottoman Ulema and the Tanzimat," 33, İsmail Hakkı Uzunçarşılı, *Osmanlı Devleti'nin İlmiye Teşkilatı*, 238-239.

<sup>531</sup> *Fetvahane* was a branch of the Meşihat, which was responsible for organizing fetva on matters involving religious law, examining court verdicts and judicial entitlements, and executing appeals. See Ferhat Koca, "Osmanlılarda Meşihat Dairesi İçinde Müstakil Bir Birim Olarak Fetvahane," *İlam Araştırmaları Dergisi*, Cilt 2, Sayı 1 (Ocak-Haziran 1997), 133.

<sup>532</sup> İslam Demirci, "Osmanlı Meşihat Makamına Bağlı Te'lif-i Mesail Şubesinin Kuruluşu," 16.

<sup>533</sup> *Ibid.*, 16.

According to Ömer Nasuhi Bilmen, the *Te'lif-i Mesail* subbranch had two commissions: *Heyet-i Fikhiyye* (also called *Heyet-i İlmiyye*), which was responsible for the renewal of family law (tajdid); and *Heyet-i Te'lif-iyye*, which was responsible for collecting fetvas and publishing them in the journal *Muhit-ul Feteva*.<sup>534</sup> The other subbranch, *Heyet-i Te'lif-iyye*,<sup>535</sup> supported the *Heyet-i İlmiyye* in collecting and publishing fetvas and pleading with all Sunni madhhabs that would possibly put an end to the deadlock in family matters in the empire. By publishing the journal *Muhit-ul Fetava*, the *Heyet-i Te'lif-iyye* also protected the original sources of the fetvas.<sup>536</sup> However, employing a modern method of communication by publishing a journal did not suffice to come up with unified solutions to the problems of marriage and divorce encountered in the late Ottoman Empire.

The aim of the *Te'lif-i Mesail* subbranch was to oversee all issues related to marriage and divorce, *muamelat* and *ukubat*.<sup>537</sup> Also it was in the *Te'lif-i Mesail* subbranch that many scholars gathered and drafted a book of rearranged Islamic family law, the *el-Ahkamu's Şeriyeye fi'l Ahvali's Şahsiyye Kitab'un-Nafakat*, after it became obvious that the CUP government would not allow the reestablishment of the Mecelle Commission. The book *Kitab'un-Nafakat* compiled and united the issues of family law of the Hanafi School. However, this time, every bit of information and agreements that used to be considered unimportant in the Hanafi madhhab was also compiled, for some of them might have introduced solutions to marriage and divorce-related problems in the late Ottoman Empire.

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<sup>534</sup> Ömer Nasuhi Bilmen, *Hukuki İslamiyye ve Istilahati Fikhiyye Kamusu vol I*, (İstanbul: Bilmen Yayınevi, 1967), 4.

<sup>535</sup> *Ibid.*, 4

<sup>536</sup> İslam Demirci, "Osmanlı Meşihat Makamına Bağlı Te'lif-i Mesail Şubesinin Kuruluşu" 37.

<sup>537</sup> Ömer Nasuhi Bilmen, *Hukuki İslamiyye ve Istilahati Fikhiyye Kamusu I*, 3-5.

The establishment of the subbranches in the *Fetvahane* was important also because it was through these branches that the two imperial edicts (*irade*) about women's problems of were issued. These edicts allowed women to divorce their missing husbands who had left them without any livelihood, or a husband inflicted with a disease.<sup>538</sup> In the next section I will explore the two *irade* that paved the way to the reform of family law.

#### **4.1.2.4. Granting women the right to divorce: Two judicial circulars,<sup>539</sup> *İrade*, preceding the OLFR**

In Islamic legal discourse and practice, on occasion, or if a marriage no longer brings joy, respect, and like, marital relations may be terminated. Divorce was very much part of Muslim communities.<sup>540</sup> However, divorce gave different options to men and women. While men did not need recourse to authorities, female-initiated divorce had to take place under the supervision of a judge. Besides, rules of divorce varied across and within legal schools as the jurists interpreted the sacred texts differently,<sup>541</sup> which made divorce more difficult in one madhhab than another.

The wars plaguing the final years of the Ottoman Empire required that women be able to divorce easily if their husbands had departed leaving them without support, or afflicted with disease.<sup>542</sup> This situation required a change in the laws of divorce. In 1915 the Sudanese Mohammedan Law Courts recognized that the Sharia

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<sup>538</sup> Mehmet Akif Aydın, "Osmanlılarda Aile Hukukunun Tarihi Tekâmülü," 443.

<sup>539</sup> I hereby use the word "irade" for Ottoman judicial circular.

<sup>540</sup> Judith E. Tucker, *Women, Family and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2008), 85-87.

<sup>541</sup> *Ibid.*, 131.

<sup>542</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 144.

courts might apply in all relevant cases opinions from schools other than the one to which they were traditionally bound.<sup>543</sup> Following the Sudanese decision, an irade was also issued in Istanbul, which allowed the application of rules other than those of the authoritative Hanafi School, which meant that the Sharia courts might use one of several existing variant opinions.<sup>544</sup>

The two imperial edicts, *irade*, allowing the application of non-Hanafi rules so that women could get divorced were issued in 1916.<sup>545</sup> The legislators had based this female right to divorce, which did not exist in the Hanafi School, on the opinions of the Hanbali and Maliki School, and on minority Hanafi opinion.<sup>546</sup>

The first edict relied on the views of the Hanbali School and provided for the judicial dissolution of a marriage on the woman's initiative if she was deserted and left without support. The Meşihat put the blame on the number of foreign Muslim visitors who were marrying Ottoman women and afterwards abandoning them. In the official report, *mazbata*, written by the committee of compilation, *Heyet-i Te'lifiyye*, on March 4, 1916, it was said that Ottoman Muslim women were married to Muslim men of other nationalities who came to Ottoman lands either for commerce or to visit. However, these men usually went back to their countries for good and left their wives behind without livelihood or bride price, *mehr*. Since it was not possible to trace these men, their wives could not get divorced and had to endure economic difficulties. Therefore regarding the conditions and the plight of women, it was a

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<sup>543</sup> June Starr, *Law as a Metaphor*, 38.

<sup>544</sup> This allowance provided the groundwork for the OLF, which granted a wife two new grounds of divorce.

<sup>545</sup> June Starr, *Law as a Metaphor*, 38-39.

<sup>546</sup> İhsan Yılmaz, *Muslim Laws*, 42.

must that a judge could annul a marriage by resorting to the Hanbali madhhab in such cases.<sup>547</sup>

The above official report was introduced by the Şeyhülislam and issued as a fetva on February 28, 1916, and the fetva of the Şeyhülislam became valid by an *irade-i seniye* dated March 5, 1916.<sup>548</sup> The committee recognized the plight of Ottoman women who were deserted by their husbands. What is more important is

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<sup>547</sup> “Zevc gâib olarak nafakanın tahsili müteazzir olduğu takdirde zevcenin talebiyle qadı nikahu fesheder” *Melfûf mazbata mucebince amel oluna Mehmed Reşad Mehir ve nafakanın tesviyesinde ve hukuk-ı zevciyete riâyetde ademi'l-iktidar bulunanların izdivâcını nazar-ı dikkatle görerek teehhülü ahkâm-ı âliyye-i şer'iyenin bi'l-etrâf netice-i teâmülü telakkî eylesine ve binâen aleyh saâdet-i âilenin menbâ-yı kıymeti olmak ve nev'-i beşerin tezâyüdünü kâni' bulunmak hasebiyle nikâhın avâz-ı cüziye ile zevâlini muvâfık görmiyen Eimme-i Hanefiye aleyhim rahmetü rabbi'l-beriyeye hazerâtının zevc gâib olarak istihsâli nafaka müteazzir olsa dahi akd-i nikahın fesh olunamaması ve qadı nafaka takdîr ederek zevce bi'l-istikrâz nefsinin infâk idüb zevcin avdetinde ona mürâcaat eylemesi suretindeki icthadlarında mütecelli-I hikmet-i fâzıla derkâr olmakla beraber İmam Mâlik –Radiyallahu Teâlâ anhü- ve İmam Şâfi –razi anhü'l-bâriyeden- bir rivâyete göre zevc gâib olubda tahsili nafaka müteazzir bulunduğu takdirde zevcenin talebi üzerine fesh-i nikâh oluna bilüb İmam Ahmed bin-i Hanbel - Radiyallahu Teâlâ anhü- dahi zevcin gaybetiyle istihsal-i nafakanın taazzürü suretinde fesh-i nikâh edilebilmekle icthad eylemiş olduklarına ve zevcin avdetinde ondan istihsal edeceği ümidiyle müddet-i medidde zevcenin taayyüsüne kâfi meblağ İkrâz eyleyeceklerin nedreti bir çok sekâleti müeddî olduğu gibi terakkiyat-ı asriyye ile mütenâsiben tezâyüd iden ihtilât neticesi olarak düvel-i sâire teb'asından bir takım Müslümanlar müsâferet veya ticâret tarikiyle muvakkaten memâlik-i Osmaniyyeye gelerek devlet-i aliye teb'asından İslam kadınlarla izdivâc eylemekte ve bazıları zevcelerini bilâ nafaka velâ münfik bırakub bir daha gelmemek üzere memleketlerine avdet eylemekte oldukları ve bu takdirde istihsal-i nafakaya imkan bulunamayub zevce vefatına kadar kemâl-i sekâletle emrâr-ı zaman eylemekte olduğu görülmekte olduğuna nazaran İmam Ahmed bin-i Hanbel Hazretlerinin icthadları asrın ihtiyâcâtına evfak ve nâsın muâmelâtına erfak olub mesâil-i müctehedün fihâda Emîrül-Mü'minîn Hazretleri hangi kavil üzerinde amel olunmasıyla emrû ferman buyurulur ise onunla amel olunmak muktezî olduğundan ve Fetvâhâne-i Âlinin hey'et-i iftâiyye kısmına âid 30 Şaban sene 1332 tarihli nizamnamenin altıncı maddesinde hey'et-i mezkûre Mezheb-i Hanefide gayr-i kazâiye add olunan bir kavli maslahat-ı asra evfakiyetinden nâşi ihtiyar ider veya ilcâ-i maslahatla eimme-i selase mezâhibine aid bir kavli tercihen muvâfık görür ise bu babda müdellelen bir mazbata tanzim ideceği musarrâh bulunduğundan hey'et-i mezkûrece ihtiyâcât ve ilcâat-ı asriyyeye göre ve bu meseledeki kavli hanefiyenin delâil-i tercihiyesini mütezammın sâlifü'z-zikr madde-i nizâmiyyeye tevfikân tanzim ve fetvâ emânetine tevdi' idülüb i'tâ kılınan ve leffen arz ve takdîm olunan mazbatada münderec ve bâlâya aynen muharrer maddenin delâil-i mesrûde mucebince ihtiyâcât-ı asriyye ve refâhat-ı ictimâiyeyi temin için badezîn bi'l-umûm kaza ve iftada düstürü'l-amel olması zımnında hatt-ı hümayun-ı hazret-i hilâfet-penâhileriyle tevşih buyurulması Emîrül-Mü'minîn Efendi Hazretlerinin atabe-i seniyye-i mülûkânelerinden müsterhim bulunduğu ma'rûzdur efendim. Fi- 29 Rebiü'l-Ahir sene 1334. 20 Şubat 1915.*

Defter of the Office of Grand Qadı, Meşihat, Number: 5, Page: 67/1. Also see: Düstur 2. Tertip, 8. Cilt, İstanbul, Evkaf Matbaası, 1928, 478.

<sup>548</sup> ALİ FUAT TURKGELDİ, HSD AFT 6 14, 1334, R 23.

that the authorities also recognized the need to change the existing application of the Islamic law emerged at that specific time.<sup>549</sup>

The second edict adopted a variant Hanafi opinion that a wife could seek divorce if the husband became afflicted with diseases that put her life in danger, such as leprosy, insanity, and the like. In the official report, dated March 23, 1916, it was said that if a husband suffered either insanity or leprosy, or a disease similar to these, his wife could either choose to stay with him or could sue him for divorce. If there was a chance that he could be cured, the judge may delay the application of divorce for a year. According to the edict, at the end of the year, the wife could revisit the judge for the annulment of the marriage, if she desired.<sup>550</sup> Ahmet Muhtar, Hafız

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<sup>549</sup> “...Asrın ilerlemesi ile uygun artan karışıklıklar neticesi olarak diğer ülke tebasından bir takım Müslümanlar misafirlik ve ticaret tarikiyle uygun Osmanlı ülkelerine gelerek devleti âliye tebasından İslam kadınlara izdivaç etmekte ve bazıları zevcelerini bila nafaka ve la münfik bırakıp bir daha gelmemek üzere memleketlerine döndükleri ve bu takdirde nafaka istihsâline imkân bulunmayıp zevce vefatına kadar sefaletle zaman geçirdikleri görülmekte bulunduğuna nazaran imam Hanbel hazretlerinin içtihatları asrın ihtiyacatına daha uygun ve nasın muameletine erfak olup örnek verilen müctehidlerde emirülmüminin hazretleri hangi kavil üzere amel olunmasıyle emru ferman buyururlar ise onunla amel olunmak uygun olduğundan fetvahane-i âlinin heyeti iffaye kısmına ait 23 Temmuz 1914 tarihli nizamnamenin 6.maddesinde heyeti mezkûre mezhebi hanefide gayri müftabih (hakkında fetva verilmiş olan) add olunan bir kavli maslahatı asra uygunluğundan doğanı seçer veya zorla maslahatla 3 mezhep imamına ait bir kavli tercihen uygun görür ise bu babda delili bir mazbatı tanzim edeceği açıkca izah edilmiş olduğundan heyeti mezkûrece ihtiyaclar ve asrın zorlamalarına göre bu meseledeki hanbelinin söz delaili tercihiyesini kapsayan zikredilmiş nizami maddelere uygun tanzim ve fetva emanetine emanet edilip verilen ve leffen arz ve takdim olunan mazbatada münderiç ve balaya aynen yazılmış maddenin delaili mesrude gereğince asri ihtiyaclara ve içtimai refahı temin için bade izin bilumum kaza ve iftade düstürül amel olması zimmında haddi hümayun hazreti hilafet penahiyle süslenmesi emirülmüminin efendimiz hazretlerinden maruzdur efendim.” ALİ FUAT TÜRKGELDİ, HSD AFT 6 13, 29 January 1916.

<sup>550</sup> Cünûn ve cüzam ve veya bunların derecesinde bulunan illetlerden biri zevcede mevcut bulunduğu ba'de'n-nikah ve yahud akd-i nikahdan sonra tahaddüs etdikde zevce mütehayyiredir. Dilerse zevciyle ikâmeti ihtiyar eyler dilerse qadı'ya bi'l-mürâcaa nikâhın feshini taleb eyler illet-i vâkı'anın zâil olacağı ümid olunur ise qadı feshi bir sene te'cil eyler. Müddet-i mezkûre zarfında zâil olmadığı takdirde zevce dilerse tekrar qadı'ya bi'l-mürâcaa nikâhı fesh etdirir. Mezkûr hıyâr fevri olmayub zevce dilediği zaman isti'mâl idebilir. Şu kadar ki, zevce kable'n-nikah zevcin uyûbuna âlime yahud ba'de'n-nikah ve'l-vukûf kavlen yâ fi'len râziye olsa hıyârı sâkit olur” Müctehidîn-i İzâm Hazerâtının mevcut yâ ba'de'l-izdivâc hâdis olan illet sebebiyle zevc-i diğer için hıyârın sübût ve adem-i sübûtu hususun-daki müctehedâtını ve İmam Muhammed -Rahimallahü Teâlâ- Hazretlerinin bu babdaki kavillerinin delâil-i tercihiyyesini ve İmam müşârun-ileyhin icthadları vechiyle tertib olunan ve bâlâya da aynen tahrîr edilen mes'eleyi mütezammun olarak 20 Şaban sene 1332 tarihli Nizamname mucebince Fetvâhâne-i Âli Hey'et-i Te'lifiyesince tanzim ve Fetvâ Emânetine tevdi idilüb i'tâ kılınan mazbata leffen vaz ve takdim olunmuş ve mesâil-i müctehedfihâda Emîrî'l-Mü'minin Hazretleri hangi kavil üzere amel olunmasıyle emru ferman buyururlar ise onunla amel olunmak muktezî bulunmuş oldu-

Mustafa Satvet, Muharrem Lütfi, Hüseyin Fahreddin, and Ali Haydar, who were the members of the Committee of Compilation, the *Heyeti Te'lifiyye*, asked the Şeyhülislam to issue a fetva based on the official report mentioned above on April 20, 1916, and the irade became valid in May 1916.<sup>551</sup>

These two irades prepared by the *Heyeti İtfayye* are important in that they were the culmination of attempts to codify a family law in the late Ottoman Empire before the promulgation of the OLF. From the beginning of the 20<sup>th</sup> century, many ulema in the Ottoman Empire raised the necessity of codifying family law. While some erudite people were calling for the completion of the civil law Mecelle, which lacked the codes of family law, others insisted that European civil codes be translated and quoted.<sup>552</sup> Since it was quite obvious that the CUP government would not allow for the reestablishment of the Mecelle Commission, and since it was unacceptable for the ulema to comply with quoted European civil codes, the Meşihat began studies on a new family law reform. In the next section, I will explore the efforts of the Meşihat to draft a new family law.

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*ğundan mazbata-i mezkûrede dermeyân edildiği vechile İmam müşârun-ileyhin her ciheti câmi ve te'mîn ve kusuru bulunan ictehadları üzere ... mesele-i mezkûrenin ba'dezîn bi'l-umum kaza ve üftâde düstûrî'l-amel olması zımnında hatt-ı hümayun-ı hazret-i hilâfet-penâhileriyle tevşih buyurulması Emîrî'l-Mü'minîn Efendi Hazretlerinin atabe-i seniyye-i mülûkânelerinden müsterhim bulunduğu ma'rûzdur efendim. Fi- 18 C.Evvel sene 1334; 10 Mart 1916*

Defter of the Office of Grand Qadı, Meşihat, Number: 5, Page: 67/3.

Also see: Düstur, 2. Tertip, 8. Cilt, Istanbul, Evkaf Matbaası, 1928, 858.

<sup>551</sup> Ali Fuat Türkgeldi, HSD AFT 6 17, 20 April 1916.

<sup>552</sup> Ziyaeddin Fahri Fındıkoğlu, "Aile Hukukunun Tedvini Meselesi," 695-703.

#### 4.1.2.5. The Meşihat's new family law draft, *Kitab'un-Nafakat*

A contemporary, Ömer Nasuhi Bilmen, tells us that the committee had a special space consigned to them in the Meşihat to work on the family law.<sup>553</sup> As soon as they started working, the committee first compiled the major and minor opinions of the Hanafi School on family law. The committee then codified all the opinions in order and translated the articles from Arabic to Turkish. The translations were monitored by another committee, after which *Kitab'un-Nafakat*,<sup>554</sup> the first book of family law, was published. *Kitab'un-Nafakat* was then sent to some courts to have checked whether any problem could come up during the application of the newly codified family law.<sup>555</sup>

The codification of family law by the *Heyet-i Te'liffiye* was halted in 1916. According to Ebu'l Ula Mardin who was contemporary to the *Heyet-i Te'liffiye*, a disagreement between the Şeyhülislam Mustafa Hayri and CUP members was why the efforts of the *Meşihat* in codifying family law failed.<sup>556</sup> The Şeyhülislam used to have the right—granted by the *Kanun-i Esasi*—to access the Ottoman sultans and get a decree if deemed necessary.<sup>557</sup> Şeyhülislam Mustafa Hayri was employing this

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<sup>553</sup> Ömer Nasuhi Bilmen, *Hukuki İslamiyye ve Istılahatı Fikhiyye Kamusu I*, 3-5.

<sup>554</sup> The Book on Alimony.

<sup>555</sup> Mehmet Akif Aydın, "Osmanlılarda Aile Hukukunun Tarihi Tekâmülü," 435-437.

<sup>556</sup> *Heyet-i Te'liffiye* only completed the book on alimony, *Kitab'un Nafakat*. The other book on divorce, *Kitab'un Talak*, was being cross-checked for its translation and the book on marriage, *Kitab'un Nikah*, was being translated when the work of the office was halted. See: İslam Demirci, "Osmanlı Meşihat Makamına Bağlı Te'lif Mesail Şubesinin Kuruluşu" 77.

<sup>557</sup> The constitutional monarchy seemed to have received little approval from the ulema. They argued that it would have been more appropriate to form an assembly composed of the *alims*, religious scholars, rather than of ordinary politicians with secular training. Besides, for the ulema, it was almost blasphemy to have an assembly with non-Muslim rulers in a Muslim land. See: Niyazi Berkes, 1978, *Development of Secularism in Turkey*, 304–305; İhsan Güneş, *Türk Parlamento Tarihi Meşrutiyet'e Geçiş Süreci: I ve II Meşrutiyet*, (Ankara: TBMM Vakfı Yayınları, 1996), 221–222. To convince the ulema that they would still have esteem in the new constitutional regime, a special right was given to the Şeyhülislam in the constitution, *Kanuni Esasi*. According to article 27, while all the ministers were being appointed by the prime minister, the sultan himself appointed the prime minister and the

right for issues related to family law, but his direct contact with the sultan caused tension in CUP circles.

The CUP cadres made every effort to render things difficult for the Şeyhülislam Mustafa Hayri, eventually forcing him to give up his position in 1916.<sup>558</sup> Together with the Şeyhülislam Mustafa Hayri, the *Fetva Emni*, Ali Haydar, who was the top officer of the *Fetvahane*, also resigned. Haydar was responsible for the translation, codification, and edition of the fetvas. Once he resigned, no one could replace him. Hence, the resignation of the two most important figures in Meşihat left the codification of family law unfinished.<sup>559</sup> Besides, Ömer Nasuhi Bilmen argues that the CUP government promulgated the OLF in the middle of the World War I to counteract the efforts of the Meşihat.<sup>560</sup>

However, along with the codification of family law, the ulema in the Meşihat were also busy with publishing a journal and establishing an academy of Islamic studies. In the next section, I will explore the journal *Ceride-i İlmiyye* and the academy *Dar'ül Hikmet'il İslamiyye*.

#### **4.1.2.6. The Journal *Ceride-i İlmiyye*, and the Academy of Islamic Sciences, *Dar'ül Hikmet'il İslamiyye*, of the Meşihat**

The years between 1914 and 1922 were war times in the Ottoman Empire. Besides, changes in the bureaucracy and institutions brought about innovations as

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Şeyhülislam. Therefore although Şeyhülislam was a minister, he had a direct link with the sultan. See: Ziya Kazıcı, "Osmanlılarda Şeyhülislamlık Müessesesi" *İslam Medeniyetleri Mecmuası*, 2(1981): 54.

<sup>558</sup> Ebu'l Ula Mardin, *Medeni Hukuku Cephesinde Ahmet Cevdet Paşa (1822-1895)*, (İstanbul: İstanbul Üniversitesi Hukuk Fakültesi, 1946), 106-111.

<sup>559</sup> Ömer Nasuhi Bilmen, *Hukuki İslamiyye ve Istılahatı Fikhiyye Kamusu I*, 4.

<sup>560</sup> *Ibid.*, 1-2.

well as hardship, and sorrow in people's lives.<sup>561</sup> In these years the Meşihat worked hard, for people needed a spiritual boost and guidance more than ever to survive in these harsh conditions of war.

In 1914, the Meşihat started publishing a journal, *Ceride-i İlmiyye*, which was its official journal.<sup>562</sup> However, it played a crucial role in the late Ottoman Empire, for it provided people with moral support and answers to their questions around issues like marriage, polygamy, divorce, missing husband, commerce, and problems encountered in daily life. Besides, the fetvas covered in the journal were not only for Muslim people; there were also answers to the questions of non-Muslims.<sup>563</sup>

The journal was revolutionary in that the Meşihat used a modern method of communication to gather together legal specialists and perhaps provide answers to some people's problems and questions. Providing answers via a publication obviously suited the "modern" times well.

In the *Ceride-i İlmiyye*, questions were mostly asked about family law issues.<sup>564</sup> How a wife could get alimony from a missing husband's assets was the most common problem dealt with in the journal.<sup>565</sup> The journal also stated that a wife could be divorced by letter, which relieved women who were suffering as a result of husbands living abroad. Polygamy was not problematized in the journal; when it was

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<sup>561</sup> İsmail Cebeci, "*Ceride-i İlmiyye'de Yer Alan Fetvalar*," (M.A. thesis, Marmara University, 2001), 45.

<sup>562</sup> Nesimi Yazıcı, "*Ceride-i İlmiyye*", DİA VII, İstanbul, 1993, 407-409.

<sup>563</sup> İsmail Cebeci, "*Ceride-i İlmiyye'de Yer Alan Fetvalar*," 41.

<sup>564</sup> Saliha Okur, "*Ceride-i İlmiyye'deki Bozma Kararlarının Hukuki Tahlili*," (M.A. thesis, Marmara University, 2001), 29.

<sup>565</sup> İsmail Cebeci, 57.

mentioned, it was indirectly.<sup>566</sup> Clearly, the social and economic situation of the late Ottoman Empire was reflected in the journal.

*Dar'ül Hikmet'il İslamiyye* (hereafter DHİ),<sup>567</sup> the Academy of Islamic Sciences, was founded on August 12, 1918.<sup>568</sup> by the Meşihat for examining the problems in the Muslim countries in general and the problems of Muslims and non-Muslims in the Ottoman Empire in particular.<sup>569</sup> The DHİ had commissions on *fiqh* (canon law), *ahlak* (ethics) and *kelam* (theology). The ulema gathered in these commissions worked meticulously to find answers to people's questions.<sup>570</sup> In the *Sebil'ül-Reşat* published on August 15, 1918, it was mentioned that the academy was responsible for the unity of Islam and for doing scientific research. To warm people's heart to Islamic rules and to make people understand the real Islam was apparently one of the responsibilities of the DHİ.<sup>571</sup>

In wartime conditions, family matters again loomed large in the commissions of the DHİ. People usually did not know how to accommodate change and reforms in society within their belief system. The ulema in the DHİ issued many fetvas regarding marriage, divorce, and inheritance. These fetvas were published in the official journal of the Meşihat, the *Ceride-i İlmiye*. The *Ceride-i İlmiye* made the fetvas available to specialists and to common people.<sup>572</sup> In that, the establishment of the DHİ was a relief, for many remained clueless on how to perform their religious duties especially during wartime.

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<sup>566</sup> Ibid., 55.

<sup>567</sup> I hereby use the acronym DHİ for *Dar'ül Hikmet'il İslamiyye*.

<sup>568</sup> For the Nizamname of the DHİ see: *Düstur 2. Cilt*, 10. Tertip, İstanbul, Evkaf Matbaası, 1928, 505.

<sup>569</sup> Sadık Albayrak, *Son Devrin İslam Akademisi Dar'ül Hikmet'il İslamiyye*, (İstanbul: İz Yayıncılık, 1998), 10-12.

<sup>570</sup> Sadık Albayrak, *Son Devrin İslam Akademisi*, 9-11.

<sup>571</sup> *Sebil'ül-Reşat*, "Dar'ül Hikmet'il İslamiyye," Volume 15, Number 365-368, 15 August 1918.

<sup>572</sup> İsmail Cebeci, 37-39.

The DHİ also kept an eye on the media for publications that were disrespectful of Islam. For instance, in an official letter written from the Meşihat to the Chancellor of the State, *Başkitabet Celilesi*, the authorities were asked to take measures against an article, “Kadın Zihniyeti” (Woman’s Mentality) published in the *Istanbul Gazetesi* on November 6, 1919. The letter mentioned that according to the constitution, *Kanun-i Esasi*, the religion of the Ottoman Empire was Islam. Therefore, it was a crime against the constitution to publish an article upsetting Islamic values. The state had to take every measure against it, including punishing the author of the article, so that such disregard of Islamic rules would not occur again.<sup>573</sup> The same letter also mentioned that the members of the DHİ preached during Friday gatherings at the mosques of Fatih, Beyazid, and Ayasofya, so that people would be aware of such misinformation about Islam.<sup>574</sup>

This was the time when the Meşihat and the ulema were losing their influence. According to Amit Bein, the ulema lamented the fact that they were respected only by common people and rural populations. Their reputation and the institution of the Meşihat were facing derision among the urban elites, which

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<sup>573</sup> “*Türkçe İstanbul Gazetesinin 6 Teşrinisani sene 1335 tarihli nüshasında Kadın Zihniyeti ser levhası altında neşrolunan makale hakkındaki irâde-i seniyye-i hazret-i hilâfet-penâhîyi meblağ-ı mezkûr nüshanın leffiyle vârid olan 13 Safer sene 1338 tarihli ve 127 numaralı tezkere-i husûsiye-i atûfleri mütâla’â güzâr-ı senâviri oldu. .... gerek mevzûu gerek tarz-ı tahriri itibariyle bilhassa câlib-i dikkat bulunan bu gibi makâlâtın neşri şer’an asla câiz olamayacağı gibi erbâb-ı diyânet ve hamiyetin te’sîrât-ı amikasını müceb olacağına nazaran idâreten ve siyâseten de muvâfik görülemeyeceği bedihî ve Kânun-i Esâsî ahkâmınca Devlet-i Aliyye’nin dîni dîn-i islâm olub bu esâsî himâye ile mükellef bulunması itibariyle bu misillü neşriyatın Kânun-i Esâsî ahkâmına da tecavüz mahiyetinde bulunmuş olmasına binaen bu gibi neşriyatın bir daha tekerrürüne meydan verilmemesi esbâbının istikmalî taraf-ı sâmi-i sadaret-penâhîye ve zikr olunan makale muharriri hakkında matbu’at kanununun madde-i mahsûsası ahkâmına tevfikân icab eden muâmelenin ifâ ve neticesinin bir an evvel ebnâsı Dâhiliye Nezaret-i Celîlesine izbâr edilmiş olduğunun beyânı siyâkında terkîm-i tezkere-i senâvirîye mübâderet kıldın efendim. Fi- 14 Safer 1338, 8 Kasım 1919” Defter of the Office of Grand Mufti, *Meşihat*, 127, 78.*

<sup>574</sup> Defter of the Office of Grand Mufti, *Meşihat*, 127, 78.

threatened their viability.<sup>575</sup> Though larger segments of society remained respectful of their decisions, the ulema could not recover from the loss of authority in Ottoman politics. The CUP had already made clear its attitudes towards religious issues by trying to enact a family law reform, which was in conformity with the main ideological position of the CUP.

#### **4.2 The Committee of Union and Progress, family law reform and the OLF**

The modern notion of *governmentality*, which is a government with the goal of managing a population to further its welfare and productivity, considers education, industry, and economic policy as matters of state concern to be implemented and regulated by bureaucracy and law. Regulating these matters through bureaucracy also meant that the population could be controlled through various techniques, especially through legal regulations. Sami Zubaida has argued that the 19<sup>th</sup> century reforms of the Ottoman Empire were to create a centralized modern state according to the notion of *governmentality*, so that eventually the institutions and practice of law were formalized and integrated within the state bureaucracy in the late Ottoman Empire.<sup>576</sup>

The CUP cadres furthered the notion of *governmentality* and demanded that a new family law be drafted, so that the Ottoman population could be managed better. For that purpose, the CUP implemented policies to increase the power of the central state, which required that all the institutions of the empire were under the control of the state. The tendency towards a central, strong state apparatus also required that

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<sup>575</sup> Amit Bein, *Ottoman Ulema, Turkish Republic Agents of Change and Guardians of Tradition* (California: Stanford University Press, 2011), 12-13.

<sup>576</sup> Sami Zubaida, *Law and Power in the Islamic World*, 128.

religious authorities were located outside the political realm, for there was a clear line of demarcation between what was worldly and controllable and what was religious and metaphysical for the CUP.<sup>577</sup>

However, at the time of the family law reform, the ulema were still part of the Ottoman state apparatus, and they were able to exert pressure on the CUP government.<sup>578</sup> Despite the pressure coming from the conservative religious authorities in the empire, the CUP dared to achieve its goals related to family law by promulgating the first codified Islamic family law, the OLF. In this section, attempts of the CUP at the codification of family law, the application of the OLF, and its eventual annulment will be explored by using state documents and court records (sijills) as primary sources.

#### **4.2.1. Establishment of commissions for drafting a family code and the promulgation of the OLF**

While the Meşihat in 1916 was busy compiling the family law, the CUP government also established three commissions called *İhzar-ı Kavanin* to draft a civil, a commercial, and a family code.<sup>579</sup> The committee who was in charge of preparing a new family law studied the Roman, British, German, American, Austrian and Hungarian family laws, along with the Islamic ones.<sup>580</sup> Besides, the Commission

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<sup>577</sup> Esra Yakut, 2005, *Şeyhülislamlık Yenileşme Döneminde Devlet ve Din*, (İstanbul: Kitap Yayınevi, 2005), 53; Tarık Zafer Tunaya, *İslamcılık Cereyanı*, 32.

<sup>578</sup> Fanny Davis, *The Ottoman Lady a Social History from 1718 to 1918*, 124.

<sup>579</sup> Gülnihal Bozkurt, *Batı Hukukunun Türkiye'de Benimsenmesi*, 167.

<sup>580</sup> *Ibid.*, 89.

of the Family Law, *Hukuk-u Aile Komisyonu*, also formed a subcommission to study the details of the family law of the non-Muslim subjects of the Ottoman Empire.<sup>581</sup>

Among the three commissions established by the CUP, only the Commission of the Family Law was able to complete its mission.<sup>582</sup> The Ottoman Law of Family Rights of 1917 was ratified by the sultan Reşat on 8 Muharrem 1336/October 25, 1917, and became operative. The content of the OLFR<sup>583</sup> was not satisfying to those who were against its promulgation.<sup>584</sup> In order to prevent some of the deputies' opposition to the OLFR, the CUP government declared that it was a temporary law without any discussion in the chamber.<sup>585</sup>

The Ottoman Law of Family Rights of 1917 was an attempt to standardize a vast body of somewhat disparate interpretation and opinion on family law matters into a code, which established universally applicable rules of family life in the late Ottoman Empire for all Ottoman subjects.<sup>586</sup> As mentioned in the second chapter, achieving legal unity in the Ottoman Empire was the purpose of the CUP rulers. The OLFR was to apply as a national code on a territorial basis as part of legal modernity.

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<sup>581</sup> Ziyaeddin Fahri Fındıkoğlu, *Essai sur La Transformation du Code Familial en Turquie*, 42.

<sup>582</sup> Gottard Jaeschke, *Yeni Türkiye 'de İslamlık*, (Ankara: Bilgi Yayınevi, 1972), 23.

<sup>583</sup> For the OLFR's articles see: *Düstur*, 2. Tertip, 9. Cilt, İstanbul Evkaf Matbaası, 1928, 762. Also, the text of the Ottoman Law of Family Rights of 1917 was published in the *Takvim-i Vakayi* Newspaper in 14 Muharrem 1336 (Muslim Calendar, Hijri)/31 Teşrin-i Evvel 1333 (Julian Calendar)/30 October 1917. The text was also transliterated; see: Orhan Çeker, *Aile Hukuku Kararnamesi*. İstanbul: Mehir Vakfi Yayınları, 1999.

<sup>584</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 155, 163.

<sup>585</sup> According to Şükrü Hanioglu the CUP managed to bypass legislature by means of the cabinet. The cabinet issued temporary laws confirmed by imperial decrees at times when parliament was not in session. Over time, temporary laws overtook the legislation in the parliament as the principal law making mechanism of the state. Many important decisions such as the Ottoman Law of Family Rights of 1917 were confirmed as temporary laws, without any discussion in the chamber. See: Şükrü Hanioglu, *A Brief History of the Ottoman Empire*, 163.

<sup>586</sup> Judith E. Tucker, "Revisiting Reform," 4-10.

For this purpose, articles that regulated the marriage and divorce of the non-Muslim subjects were also included in the OLFR.<sup>587</sup>

The 156<sup>th</sup> article of the OLFR, for instance, extended the Sharia court's authority to control the marriage, dowry, and divorce claims of non-Muslims. In fact, this article automatically annulled the rights of the non-Muslim community leaders.<sup>588</sup> Hence, with this law, it became easier to place all religious courts in the Ottoman Empire under the authority of the Ministry of Justice.<sup>589</sup>

Both Muslim and non-Muslim subjects of the Ottoman Empire were Ottoman citizens ever since the promulgation of the nationality law, *Taabiyet-i Osmaniye Kanunnamesi*, of 1869.<sup>590</sup> The Ottoman state could not overlook how the non-Muslim population managed its family affairs, since Muslim and non-Muslim subjects of the Ottoman Empire were made equal before the law. In the bill of complaint, the *Esbab-ı Mucibe Layihası*, the reasons for the promulgation of the OLFR, and the handicaps of having separate family laws for each ethnic and religious community of the empire, was mentioned.<sup>591</sup>

According to the *Esbab-ı Mucibe Layihası*, because the non-Muslim populations of the empire were employing their separate laws, they could not be controlled by the state. This situation jeopardized the well-being of non-Muslim citizens, for they might be treated unjustly by their religious leaders, who were not

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<sup>587</sup> Robert H. Eisenman, *Islamic Law in Palestine and Israel*, 36.

<sup>588</sup> Gülnihal Bozkurt, *Batı Hukukunun Türkiye'de Benimsenmesi* 173.

<sup>589</sup> June Starr, *Law as a Metaphor*, 6-10.

<sup>590</sup> Füsün Üstel, "II. Meşrutiyet ve Vatandaşın 'İcadı,'" in: *Modern Türkiye'de Siyasi Düşünce: Tanzimat ve Meşrutiyet'in Birikimi*, ed. Tanıl Bora and Murat Gültekinçil (İstanbul: İletişim Yayınları, 2001), 166; Sami Zubaida, *Law and Power in the Islamic World*, 141.

<sup>591</sup> Gülnihal Bozkurt, 173.

competent enough to manage family law affairs.<sup>592</sup> Therefore, a unique family law that could be applied to all subjects of the Ottoman Empire would benefit the society as a whole.<sup>593</sup>

The OLFRR was promulgated in the middle of the war. Robert Eisenman argues that the timing of the CUP rulers had a lot to do with the wave of Turkish nationalism.<sup>594</sup> However, in the explanation of the body of regulations of the OLFRR, which was published to illustrate controversial issues of the application of law, it was mentioned that the word “nationality” was replaced by the word “religion” in the body of regulations. Religion was an important aspect of the marriage issue, and the word “nationality” used to be applied to reveal the religion of the spouses. However, the use of the word “nationality” meant a lot more than was intended. It referred to ethnicity.<sup>595</sup> The codification of family law under severe war conditions was intended to realize the CUP rulers’ desire to unify their subjects. Obviously, the state’s ongoing modernization project and the plight of women were also among the motivations for the new family law. However, the CUP rulers’ abstention from using the word “nationality” more likely related to the CUP’s effort to unify all Ottoman subjects.

On October 23, 1917, the 200<sup>th</sup> article of the penal code was changed to include those who solemnized a marriage ceremony without a permission letter or

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<sup>592</sup> Orhan Çeker, *Aile Hukuku Kararnamesi*, 67–69.

<sup>593</sup> For the transliteration of the full text of the Layiha: Sabri Şakir Ansay, *Medeni Kanunumuzun 25. Yıldönümü Münasebetiyle Eski Aile Hukukuza Bir Nazar Hukuk İnkılâbımızı Aydınlatan Tarihi ve Teşrii Vesikalar*, 18.

<sup>594</sup> Robert H. Eisenman, *Islamic Law in Palestine and Israel*, 36.

<sup>595</sup> “..Milliyet kelimesi bu lahiya ile alakası olmayan kavmiyet fikralarına dalalet edilip hâlbuki asıl maksadı nikâh meselelerinde tesiri olan dinin temininin bilinmesinden ibaret olduğundan milliyet kelimesi din kelimesi ile değiştirilmiştir..”, İ.DUİT 94 9, 4 December 1917.

married a woman who had already been married to another person.<sup>596</sup> During the First World War, many soldiers died or went missing. The wives of these soldiers were sometimes forced by their male relatives to marry again, even if it was not certain that their husbands were dead. This situation affected the soldiers fighting for the Ottoman Empire. The main consideration of the CUP rulers was the control and well-being of the population and of the soldiers during times of war. Hence this measure against this unpleasant situation must have been taken into consideration along with the bureaucratic regulations.

For the CUP government, a lack of unified law in the Ottoman Empire was a serious issue. As can be observed from the documents, bureaucratic measures with punishments, even if they were not applied, were taken. For instance, in a document dated October 31, 1918, the governors of Bitlis and Erzurum inquired with the Ministry of the Interior about the situation of non-Muslim people who were married without getting warrant from the Sharia court. In response to the inquires, the Ministry of the Interior replied that the religious leaders and the headmen who enacted such marriages without getting a warrant from the Sharia court would be acting against the law and must be persecuted.<sup>597</sup>

Another correspondence sent from the *Sicill-i Nüfus İdare-i Umumiyesi* to the Ministry of Justice declared that according to the law of *Sicilli Nüfus*, marriage and

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<sup>596</sup> BOA, MV 248 39, 1336 M 7, 23 October 1917; Kanun-i Ceza'nın 200. maddesinin 19 Rebiülahir 1332 tarihli zeyl-i sanisine muaddel kararname; see: Düstur 2. Tertip, 9. Cilt, İstanbul, Evkaf Matbaası, 1928, 782.

<sup>597</sup> “..5 kanun-i sani 1326 tarih ve 523 nolu tahriratu behiyyeleri cevabıdır. İzinname istihsâli etmeksizin nikâh akd edenler hakkında umumiyetle kanuni takibat icrası hususi karar gereğinden bulunduğu nüfus müdüriyetinin ifadesiyle beyan olunmuştur.”; “..9 ağustos 1326 22 ağustos 1910 15 şaban 1328 tarih 680 nolu tahriratu behiyyeleri cevabıdır. İzinname almaksızın akd icra olunan milel gayri müslimenin münekehat ve tevellüdat vukuatı ruhani reisleri ile muhtarlara usulünce ihbar ettirilerek yine onlar tarafından vukuat ilmühaberlerinin imla ve itası suduru olacağı sicilli nüfus idaresi müdüriyetinin ifadesi ile beyan olunur. Ol babda.” BOA, DH SN THR 17 95, 31 October 1918.

divorce documents and the certificate of proof prepared by the non-Muslim religious leaders and imams should be sent to the Census Bureau.<sup>598</sup> The registration of marriages and divorces with the Census Bureau had become even more important after the promulgation of the OLFR. The Census Bureau asked the *tahrirat kalemi* whether the marriages of the Armenian soldiers in the cities of Van, Erzurum, Sivas and Bitlis to local Armenian girls should be registered to the *sicilli nüfus*. The issue was discussed through correspondence among the Census Bureau and the Ministry of Justice. In the end an official letter was sent to Edirne province, saying that it was appropriate to register the marriage of Armenian soldiers to local Armenian girls.<sup>599</sup>

#### 4.2.2. Regulations of the OLFR

The OLFR was an attempt to better control the population by the CUP. It was also important for the authorities to centrally register marriages and divorces, the lack of which caused many problems to both women and men. On December 30, 1917, the ministers of sea, navy, war, the interior, communication, agriculture, justice, as well as the vice minister of the treasury, Şeyhülislam Musa Kazım, the regent of the minister of foreign affairs, and the grand vizier prepared the Body of Regulations of the OLFR. The Body of Regulations of the OLFR included 20 articles, each giving details regarding the application of the procedures.<sup>600</sup>

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<sup>598</sup> DH SN THR 78 14, 1336 CA 13, 24 February 1918.

<sup>599</sup> “...*Vilayeti aliyelerine tebliğ kılınan umumi tahrirat Hukuk-ı Aile Kararnamesi'ne müteâllık nüfus muâmelatı hakkında taraflı valâlarından işâr olunan izâhatı içeren ve van ve diğer vilayetlerde Ermeni ahalisinden olup da asker olarak bulunduğu mahalde kadim ahaliden yerli Ermeni kızlarıyla izdivaç edenlerin sicilli nüfusa kayıtlarında bir mahzur görülmemiş olduğunan ona göre gereğinin ifası konusunda şukkayı süvari hulûmi yazıldı.*” DH SN THR 79 44, 28 March 1918.

<sup>600</sup> Hukuk-u Aile Kararnamesi'ne müteallık muamelat-ı idariye hakkında nizamname, see: Düstur 2. Tertip, 10. Cilt, İstanbul, Evkaf Matbaası, 1928, 52. Also İ.DUİT 94 9, 30 December 1917.

The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> articles of the regulation were intended to keep people under control and to register marriages and divorces. The 1<sup>st</sup> article says that the couple intending to marry should get a receipt from the council of elders of the neighborhood they live in. The receipt should mention the names of their parents, their religion and sect, their nationality, and their capacity to marry or not, their parents' permission, if required due to their age and sect. The 2<sup>nd</sup> article says that the couple should hand their receipt along with their Ottoman identification card to the court of the neighborhood, where either one of the couple lived. If the couple is non-Muslim, then the documents should be handed in to the religious leader of the couple's neighborhood. The 3<sup>rd</sup> article says that the court will give back the document to the couple if there are missing parts.

The 4<sup>th</sup> article is important in that it shows that the whole marriage business is controlled by the state, not by the parents of the couple as before. The 4<sup>th</sup> article says that if the parents of the couple do not approve of the marriage, they will be invited to the court to explain their reasons for disapproval with a written notice.

Articles 5 through 8 reveal the importance of registering the marriage. The modern state and governmentality required such measures to be taken especially during war. The 5<sup>th</sup> article says that if a court expects no obstacle to the marriage, with the parents' approval the intention of the marriage is made public, so that someone can contest within ten days. The 6<sup>th</sup> article says that one copy of the marriage announcement will be hung on the wall of the court, while the other copy will be hung in the couple's neighborhood. If the marriage is announced in a newspaper, the attending court should archive it. The 7<sup>th</sup> article says that either before the marriage or after the marriage if a parent opposes it, the court invites those

who oppose the marriage to explain their reasons. The judge decides then whether the marriage is permissible or not. The 8<sup>th</sup> article says that if the objectors do not appear at court on the given day, their objection will not be considered valid. However, if the reason for their objection is valid, the judge can still decide in accordance with the objection.

The 9<sup>th</sup> and 10<sup>th</sup> articles give marriage an official character. The 9<sup>th</sup> article says that if a court permits the marriage, the ceremony will be held either at the court or at a place declared by the couple, depending on the couple's and their parents' wishes. If the ceremony is to be held at a place declared by the couple, people with official titles granted permission will send the court<sup>601</sup> the document of marriage. The 10<sup>th</sup> article says that if a non-Muslim couple is to marry, after the necessary inspection is held according to the 41<sup>st</sup> and 42<sup>nd</sup> articles of the OLF, a religious official will call for a special official with a title from the court 24 hours prior to the ceremony and the court will send the official.

The 11<sup>th</sup> and 12<sup>th</sup> articles reveal the intent of the CUP to control all subjects Muslim or non-Muslim. The 11<sup>th</sup> article says that if religious leaders abstain from the marriage ceremony, the couple can still invoke the court for marriage. Their declaration along with the religious leader's declaration will be assessed by the court and they can still marry. The 12<sup>th</sup> article says that if the court decides that the reason of the religious leader's abstention from the marriage ceremony is not fitting, the marriage is announced according to the 5<sup>th</sup> article.

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<sup>601</sup> For the aim of legal unity, Sharia courts were made responsible also for the family law affairs of the non-Muslim population of the Ottoman Empire. See: Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 211-212.

Articles 13 through 16 are also for recording purposes. The 13<sup>th</sup> article says that the judge, his regent, or a special officer will attend the ceremony in person and prepare a marriage contract, which will declare the names, careers, religion, sect, and nationality of the couple and their parents; the amount of the *mehr*; and stipulations added to the marriage contract, if demanded by one party. The 14<sup>th</sup> article says that two copies of the marriage contract will be prepared. The first copy is archived by the court to be used on demand; the second copy is sent to the Census Bureau to be registered. The 15<sup>th</sup> article says that if a husband divorces his wife, he should inform a court about his decision either orally or in writing after the end of his wife's waiting, *iddah*,<sup>602</sup> period. The court will prepare a record and have the wife sign it. If the wife lives in another neighborhood, the court will send the documents to the court of the neighborhood she lives in. The court record is registered both in the *defter* where the marriage is first registered and in the population register's register. The 16<sup>th</sup> article says that if the couple decides to get divorced, the marriage is annulled, or the couple decides to live separately, the decision is registered in the population register after the court decides that the decision is legal.

The 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>. and the 20<sup>th</sup> articles explain the bureaucratic procedures of the regulation. The 17<sup>th</sup> article says that according to the court, the articles of this body of regulations are administrative. The 18<sup>th</sup> article says that the body of regulations is in effect also for the non-Muslim subjects of the Ottoman Empire. The 19<sup>th</sup> article says that the body of regulations is in force since 1 Kanun-i âni 1334, 18 Rebi'ül evvel 1336 (October 1, 1918). The 20<sup>th</sup> article says that the Ministry of Justice is responsible for the application of the body of regulations.

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<sup>602</sup> See next chapter for details of the *iddah* period.

The body of regulations of the OLFK was not enough to clarify how the new law should be applied. Governors of the provinces corresponded with the Ministry of the Interior, the Ministry of Justice, and the population register asking questions about issues that contradicted to previous population law, such as certificate of proof, letter of permission, the revenue stamp, and the date of the registration of the marriage and divorce, along with the authorized person to do it. Letters were sent from the provinces of Aydın, Edirne, Karahisar, İstanbul, and Adana asking how the OLFK procedures should be applied both to Muslim and non-Muslim people, as well as the required fines if people did not abide by the law.<sup>603</sup> The authorities required that the couple informed them about a change in their place of residence by providing a *nakl-i mekan* certificate of proof. On July 7, 1918, the governor of Trabzon asked the Ministry of the Interior about the bureaucratic procedures on the issue and whether the imams or headmen, the *muhtars* could still give the certificate

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<sup>603</sup> “...Mâlumları olduğu üzere akitleri icrâ edilecek İslamlar için şer’i mahkemeden itâ olunan izinnâmelere 10’ar kuruşluk pul ve gayri Müslim nikâhlarında da adı geçen bu 10 kuruşluk pulun nüfus dairesine verilecek ilmühaber vukuâtlarına yapıştırılması kanun gereği idi. Aile Kararnamesi hükümlerine tevfikân şeri mahkemelerce meriyyül icra tutulmaya başlanan adı geçen kararname gereğince şeri mahkeme huzurunda akidleri icra olunanlara izinnâme verilmeyip tescil sureti ile muamele icra olunuyor ve şu hale nazaran arz edildiği şekilde ilsak edilen 10 guruşluk puldan daresta tutulması hazine hukukunun ziya’ını mucib oluyor. Aile kararnamesinin adı geçen özel maddesi gereğince nikâh feshi, şer’i mahkeme tarafından hükm-ü lâhık olanlar hakkında adı geçen mahkemeden nüfus idaresine birer kita müzekkere yazılmakta ise de nüfus muamelatındaki vukuât ancak talak ilmühaberleriyle kayıt muamelesi yapılmakta olup adı geçen müzekkere ile tebligat icra edilmesi kabul edilen usule aykırı olduğu ve nikâh feshi cihetine gidilmesi talak sureti ilmühaberlerinin tanzim edilememesine sebep vermekte bulunduğu görüldüğü gibi sadece şer’i mahkemenin nüfus idaresine bir müzekkere ile tebliğine münhâsır kalmasında asli muamelenin noksan icra edilmesi neticesini vereceği hatıra geliyor. Bunun üzerine hâli hazırda mevcut olan vukuat ilmühaberleri yazılmayıp şeri mahkemeden muvazzah ve lazım meşruhatı hâvi olmak üzere tasdik ettirilmesi mi yoksa nikâh feshi hususunda diğer şekilde ilmühaber vukuâtı tertip edilmesi mi gerekeceği cihetleri idareyi tereddüde sevk ediyor. Bu hususun ve bir de maruzat neticesi olarak izinnâmelere ilsâk edilen 10 guruşluk pulların huzuren akid icrası hazine gelirlerini korumak için mezkûr 10 guruşluk pulun mahkemeyi şeriyye zabıt namesine mi yoksa vukuat ilmühaberine mi yapıştırılacağıın dâhiliye nezaret celilesinden sorulması ol babda. Aslına mutâbiktir...” DH SN THR 80 5, 9 August 1918.

of proof, for it was not clearly explained in the OLFR. In response to the governor's letter, the office population register clarified the issue.<sup>604</sup>

On April 28, 1918 the Ministry of the Interior declared that the court decisions on marriage and divorce would substitute the certificate of proof and if one of the spouses was living in another place, the authorities of that place would be informed about the couple's marriage or divorce. On May 1, 1918, the population register of the Ministry of the Interior declared that according to the OLFR, a second copy of the marriage contract or divorce letter would substitute for the marriage and divorce certificate of proof.<sup>605</sup> Despite the Ministry of the Interior's efforts to clarify the procedures of the OLFR, governors and officials of the provinces were still

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<sup>604</sup> “..7 Temmuz 1918 tarih ve 116 nolu tahrirat-ı âliyyeleri cevabıdır. Münekehat ve talak vukuunda usulen mekân değişikliği ilmühaberi talebi ve gerekli muamelenin ifası ve Hukuk-u Aile Kararnamesi'nin yürürlüğe konulmasından evvel vuku bulmuş olan münekehat ve talak vukuatının dahi nüfus kanununda yazılmış olduğu üzere imla ettirilip matbu ilmühaberler üzerine icrası gerekeceği beyanıyla şukkayı hulusı stivari terkim kılındı...” DH SN THR 80 18, 16 July 1918.

<sup>605</sup> “..Hukuk-u Aile Kararnamesi'ne müteâllik nüfus muâmelatına dair bil'muharebe adliye nezaret celilesinden cevap olarak gelen tezkerede Hukuk-u Aile Kararnamesi'ne müteâllik muamelatı idariye hakkındaki nizamnamenin 14., 15. maddeleri mucibince nikâh akidnamelerinin bir suretini nüfus idarelerine tebliğ ve talak vukuunda dahi kezâlik keyfiyetin idarei mezkûreye derhal yazı ile bildirilmesine mahkemeler vazifeten mecbur olup evvelce gayri müslimeye ait nikâh ilmühaberlerine 10 gurusluk pul ilsakı nikâh akdinin doğrudan doğruya ruhani reisler tarafından ifa edilegelmelerinden ileri gelin olarak Hukuk-u Aile Kararnamesi'nin neşrinden sonra, gayri Müslim milletinin münekehâtı da doğrudan doğruya mahkeme memurlarının nezareti altında icra olmasına binaen hâkim adına nikâh mahalline akde gidecek memuru mahsusa hitaben yazılan izinnâmeler mahkemenin resmi muamelesinden sayılan ve resmi damgaya tabi olmayıp şu kadar ki işbu memurlar tarafından nikâh akdi esnasında tanzim edilen akidnamelere naip raporları mahiyetinde olmak itibariyle damga kanunun 9. maddesinin 61. fıkrasına uygun olarak ancak 3 gurusluk maktu pul ilsakı lazım geleceğinden keyfiyet önceden şeri mahkemeye tamimen tebliğ edildiği gibi sicilli nüfus kanununun 42. maddesi gereğince münekehat ilmühaberlerinin tabi olduğu bir gurus harcın eskiden olduğu gibi istifası tabii olup gerek adı geçen harcın bi istifa nüfus idarelerine gönderilmesine ve gerek nikâh akdi akidnamesinin ikinci nüshasıyla talak vukuatının ayrılık hükümlerinin derhal nüfus idarelerine ihbar ve tebliği hususunda gecikme yapılmaması lüzumu bu kere tüm şeri mahkemeler tamamen tebli olduğu yazı ile bildirilmiştir. Hukuk-u Aile Kararnamesi'ne müteâllik nizamnamede muharrer akidname zabıtname nikâh akdi ve vukuû talakı açıklayan müzekkerelerin nikâh ve talak ilmühaberleri makamında kabulü tabii olduğu gibi zevcinden birinin ikametgâhı başka kaza dâhilinde bulunduğu takdirde nikâh zabıtnamesinin tevdi kılındığı veya talak vukuunun işar olunduğu mahalli nüfus idaresi tarafından diğer kaza nüfus idaresine bildirilmesi lazım geleceğinden ona göre ifasının gereği tamimen tebliğ olunur.” DH MB HPSM M 33 51, 1 May 1918.

confused. On July 15, 1918, a letter was sent from the province of Sivas asking about the dealings of the local population register after the promulgation of the OLFR.<sup>606</sup>

The OLFR was being applied throughout the Ottoman Empire despite the confusion the application procedures caused. In the next section, I will explore the innovations that come along with the OLFR.

#### 4.2.3. Innovations of the OLFR

The OLFR codified systematically the two central areas of personal status: marriage and divorce. What is seen as reform in Islamic family law came mainly in regulations that extend women's rights to seek the judicial dissolution of marriages beyond those in the two *irade* a year before.<sup>607</sup> Apart from limiting the husband's right to polygamy, the OLFR granted wives two new grounds for divorce. The legislators based this right to divorce for women on the opinions of the Hanbali and Maliki madhhabs and on minority Hanafi opinion.<sup>608</sup>

According to Elizabeth Brownson, the OLFR was the earliest reform in Islamic family law, permitting women to request divorce on issues both mentioned in the marriage contract and on other unanticipated reasons. With the OLFR, women were allowed to add a condition to their marriage contract stating that if the husband remarried, while still married to the first wife, the second marriage would automatically be null, or the first wife could get divorced from her husband.<sup>609</sup>

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<sup>606</sup> DH SN THR 80 17, 15 July 1918.

<sup>607</sup> Margaret L Meriwether and Judith Tucker, "Introduction," 34-37.

<sup>608</sup> İhsan Yılmaz, *Muslim Laws*, 42.

<sup>609</sup> Elizabeth Brownson, "Gender, Muslim Family Law, and Contesting Patriarchy in Mandate Palestine, 1925-1939," 56.

The OLFR did not arrange the law of conjugal life in total. To sum up, the OLFR:

- Allowed the bride and groom to opt for monogamy by allowing women to incorporate this condition into the marriage contract (see above);
- Set an age limit for the bride and groom as a precaution against child marriage;
- Limited the effectiveness of certain expressions of unilateral repudiation by requiring the presence of a judge or a deputy for male-initiated divorce;
- Upheld a woman's right to divorce if the husband had an incurable malady or went missing, even if he had left an allowance for her;
- Ordered a family council to be formed when a couple could not agree on divorce, so that both husband and wife benefited from the advice of their relatives;<sup>610</sup>
- Gave marriage and divorce a more official character<sup>611</sup> by making marriages and divorces subject to the jurisdiction of the Ministry of Justice.

For reforming the above-mentioned areas of family law, the OLFR amalgamated the views of different juristic schools, *madhhab*, of Islam. This method of piecing together rules from different schools of Islamic law is a legal device,

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<sup>610</sup> OLFR, Book II, article 130.

<sup>611</sup> By preliminary publication of wedding bans and by registering both marriage and divorce within state.

called *talfiq*.<sup>612</sup> Apart from employing *talfiq*, the legislators of the OLFR also made use of rather archaic opinions of Islamic Law, which they thought suited contemporary times.<sup>613</sup> However, for selecting the articles that would improve women's status regarding divorce, alimony, and child custody cases,<sup>614</sup> the legislators, according to Joseph Schacht, combined not only the opinions from the four madhhab, but also went back into the past to adopt any opinion from any time that might suit the purposes. This was, for Schacht, "unrestrained eclecticism,"<sup>615</sup> which made the OLFR revolutionary for some scholars,<sup>616</sup> and a law reform to be criticized severely, for others.

Judith Tucker finds the OLFR rather disappointing, in that for her the OLFR reduced the vast body of interpretations and opinions on family matters to a codified law text, which is standard and not flexible.<sup>617</sup> Tucker argues that the traditional legal system before the OLFR was more flexible and prone to protect women's rights in the marital household. She brings examples from pre-reform period Ottoman muftis, who had almost always chosen solutions that befitted women's social situation in cases of legal deadlocks. For instance, the muftis discussed even the kinds of food, quality of clothing, and housing that a woman might legally require from her husband for maintenance allowance.<sup>618</sup>

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<sup>612</sup> See: The Oxford Dictionary of Islam, "Talfiq," [http://www.oxfordislamicstudies.com/article/opr/t125/e2323?\\_hi=0&\\_pos=8](http://www.oxfordislamicstudies.com/article/opr/t125/e2323?_hi=0&_pos=8) (accessed January 24, 2011)

<sup>613</sup> Joseph Schacht, "Islamic Law in Contemporary States," *The American Journal of Comparative Law* 8, (1959): 106.

<sup>614</sup> Elizabeth Brownson, "Gender, Muslim Family Law," 45-48.

<sup>615</sup> Joseph Schacht, "Islamic Law in Contemporary States," 106.

<sup>616</sup> See İhsan Yılmaz, *Muslim Laws*; Halil Cin, *İslam ve Osmanlı Hukuku'nda Evlenme*, 125.

<sup>617</sup> Judith E. Tucker, "Revisiting Reform," 9-11.

<sup>618</sup> Judith E. Tucker, "Legacies," 13.

In a standardized and codified legal text like the OLF, a woman might have lost her ability to *shop for justice*,<sup>619</sup> which she used to do with the help of qadī. However, the assumption that women in the late Ottoman Empire were shopping for justice required a qadī who was willing to take women's interests into account while making his decisions. Yet this assumption also demands questioning, because what happened when there was no qadī in a court room who favored women's interests? Both views about the OLF have credibility in that it is true that pre-reform qadis had a range of possibilities among which they could choose. It is also true that a codified, standard text like OLF gave women a standing ground, so that she could get rid of an unwanted marriage, a husband marrying another woman, or a husband who deserted her for good with or without leaving her a means of livelihood.

The discussion on polygamy was one of the core issues of the family law reform. Muslim men were permitted to marry up to four wives by the Quran. But the Quran also states (surah An-Nisa, verse 3) clearly the conditions under which men can resort to polygamy:

And if you have reason to fear that you may not act equitably towards orphans, then marry from among (other) women such as are lawful to you (even) two, or three, or four: but if you fear that you might not be able to treat them with equal fairness, then (only) one – or (from

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<sup>619</sup> *Shopping for justice* is a concept developed by Ron Shaham, which explains the situation of Muslims who go from one madhhab to another to solve their problems. Non-Muslims were taking a similar action when they went to qadī court instead of their own religious forums to solve their legal problems. Kemal Çiçek says about this matter that the Christian populations were familiar with workings of the law. Therefore it was possible for them to shop for justice and employ strategies to improve their chances of obtaining a favorable verdict. Hence, the non Muslim populations of the Ottoman Empire dealt with their issues including personal status matters to business transactions, which could also be addressed in their own institutions. And the *qadī* protected non-Muslim's interests as long as their claims were lawful. See: Ron Shaham, *Shopping for Legal Forums: Christians and Family Law in Modern Egypt*, in *Dispensing Justice in Islam: Qadis and their Judgments*, ed. M. Khalil Masud, R. Peters & D. S. Powers (Leiden/Boston, MA: Brill, 2006) and Kemal Çiçek, "A Quest for Justice in a Mixed Society: the Turks and the Greek Cypriots Before the Sharia Court of Nicosia," in *The Great Ottoman-Turkish Civilization, Vol 2*, ed. Kemal Çiçek, (Ankara: Yeni Türkiye Yayınları, 2000).

among) these whom you rightfully possess. This will make it more likely that you will not deviate from the right course.<sup>620</sup>

The condition of achieving “equality”—emotionally, materially, and physically— among wives is almost impossible. Therefore polygamy is permitted for a man only under extraordinary conditions such as warfare or other rare circumstances. Otherwise, it is almost impossible for a man to be the rightful beneficiary of this permission. Despite all the complications included in polygamy, it was still practiced, albeit in a limited manner in the Ottoman Empire as explored in previous chapter.<sup>621</sup>

In a *sijil* dated October 19, 1916, an Istanbulite woman, Şehime İffet Hanım,<sup>622</sup> married with two children—Reşit and Nihal—was left by her husband without any livelihood or daily allowance. Her husband, Haydar Bey,<sup>623</sup> was a captain in the Ottoman Army and at the time of the lawsuit he was living in Damascus. When Şehime İffet Hanım sued her husband for maintenance, Haydar Bey, through his attorney, claimed that he could not pay the money Şehime İffet Hanım demanded, for he also had to maintain his second wife, Naciye Hanım. At the end of the lawsuit, the qadı decided that captain Haydar had to pay the necessary maintenance allowance, *nafaqa*, to Şehime İffet Hanım and his children.<sup>624</sup> According to the Sharia, it was Haydar Bey’s responsibility as a husband and as a father to take care of his wife and children; to feed them, to shelter them, and to

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<sup>620</sup> The Qur’an, Surah 4 An-Nisa, Verse: 3 translated and explained by: Muhammad Asad, *The Message of The Qur’an*, (London: E.J. Brill, 1980), 101–102.

<sup>621</sup> Alen Duben and Cem Behar, *Istanbul Households*, 157–158; İlber Ortaylı, *Osmanlı Toplumunda Aile*, 58; Travellers: Lucy Mary Jane Garnett, *Turkey of the Ottomans*, 206-207; Sir Edward Pears, *Turkey and Its People*, 68; Marmaduke Pickthall, *Harpte Türklerle Birlikte*, 91.

<sup>622</sup> I hereby use the word “Hanım” for Ottoman lady.

<sup>623</sup> I hereby use the word “Bey” for Ottoman gentleman.

<sup>624</sup> Anadolu Sadareti Mahkemesi Defteri (Court of *Anadolu Sadareti*), Defter no: 171, Case number: 25, Page: 92, 19 October 1916.

supply their livelihood by all means. However, rather than fulfilling the legal and religious obligations to his family, Captain Haydar preferred to remarry and left his first wife and children stranded. With a husband like Haydar, it was better for the woman to have a codified right if she did not want to be polygamously married.

Two main areas of personal status, marriage and divorce, were systematically codified in the OLFR.<sup>625</sup> The other areas of family law, such as child custody, the management of property, and rules of inheritance were not mentioned. Child custody is also an important issue regarding a mother's or a father's life, and the courts maintained their pre-reform practices regarding the issues of custody after the promulgation of the OLFR.<sup>626</sup> For instance, in a *sijil* from Galata Court, another Istanbulite woman, Fatma Hanım, sued her husband, Hüseyin Bey, for her parental right after they divorced. Hüseyin Bey subsequently married a Greek woman, Katinya, starting to live with Katinya and her family. Fatma Hanım told the court that the way Hüseyin was living was improper for her children. The court made an investigation and found out that Katinya was actually a loose woman and placed the children under Fatma Hanım's guardianship and decided that Hüseyin Bey would pay maintenance allowance, *nafaqa*, to his children.<sup>627</sup> In Fatma Hanım's case, the well-being of the children had to be considered, and the court decided accordingly. However, this important area of Islamic family law was not covered in the OLFR.

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<sup>625</sup> Robert H. Eisenman, *Islamic Law in Palestine and Israel*, 34-37.

<sup>626</sup> The cases of custody of both Muslim and non-Muslim Ottomans were quite frequent in the *sijills* I have examined. Although there is no decree regarding the custody issue in the OLFR, law makers did not prevent *qadis* from judging the way they used to do either. Hence, problems related with the custody issue were able to be resolved in practice despite the lack of ruling in the new law.

<sup>627</sup> Galata Mahkemesi Defteri (Court of Galat *Defteri*), Defter: 1026, Case: 160, Page: 259, 5 May 1918.

The case of an Armenian woman, Eshuki Hanım, and her husband, Serunyan Efendi,<sup>628</sup> is also interesting, for in that case the qadı not only protected a non-Muslim woman's material interests but also her reputation and chastity. Eshuki Hanım sued her husband for the guardianship of their three-year-old daughter, Leyla. At a time, their divorce case was being processed by the Armenian Patriarchate. In the meantime, Serunyan Efendi did not let Eshuki Hanım see her daughter. Eshuki Hanım through her attorney resorted to qadı court, asking to place her daughter under her guardianship. Through his attorney, Serunyan Efendi told the court that Eshuki Hanım was a loose, adrift, and lustful woman who was afflicted with nervousness, thus she should not raise children. Serunyan Efendi's witnesses told the court that Eshuki Hanım partied most of the time with Francs, entertained guests both men and women at her place, played cards with her guests, rode horses, did not wake up before noon, and the like. According to the witnesses, she did not make a good mother. After these witnesses, Eshuki Hanım told the court that her husband was treating her badly; that is why she had nervousness. Yet she never failed in her responsibilities, she told the court. Following Eshuki Hanım, her witnesses—the list of which is almost two pages long—told the court that Eshuki Hanım was a chaste and healthy woman who really loved her child. They gave witness that Eshuki Hanım made a good mother. The judge decided that Eshuki Hanım's witnesses could not be lying and placed Leyla's guardianship to her mother.<sup>629</sup> Likewise, Madam

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<sup>628</sup> Efendi is one of the titles of Ottoman gentleman mostly used for non-Muslim people.

<sup>629</sup> *Beyoğlu'nda Saksı Sokağında otuz dört numaralı Saksı Hanının dört numaralı dairesinde mukime tebea-ı Devlet-i Aliyyenin Ermeni milleti nisvanından şahsı muarrefe Eskuhi Hanım ibnet-i Migail Ağub Serunyan Efendinin zikri âti hususta taleb ve da'va ve muhakeme ve muhasama ve mudafaa ve reddi cevaba ve münferiden ve müctemian icra-yı vekâlete me'zun vekil-i müseccel-i şer'isi Dersaadet da'va vekillerinden David Musisyan Efendi veled-i Kerupe ve Yağdik Efendi veled-i İstapan Setanden mûmâ ileyh David Musisyan Efendi bilvekale Galata Mahkemesinde meclis-i şer'i şer'if-i enverde Beyoğlu'nda Taksim civarında Şişli Sokağında altı numaralı hanede mukim tebea-ı Devlet-i Aliyyenin*

millet-i merkumesinden kezalik şahsı muarref Diş Tabibi Arşak Serunyan Efendi veled-i Ohanes Efendinin zıkr-i âti hususda taleb ve da'va ve muhakeme ve muhasama ve müdafaya ve münferiden ve müctemian icra-yı vekalet me'zun vekil-i müseccel-i şer'isi Dersaadet da'va vekillerinden Mehmed ve Mahir Efendi ibn-i Fadıl Efendi ile Ğavavis Serunyan Efendiden mûmâ ileyh Mehmed ve Mahir Efendi muvacehesinde müvekkil-i mûmâ ileyh Arşak Serunyan Efendi ile zevcesi müvekkilem mûmâ ileyha Eskuhi Hanım meyanelerinde bir zamandan beru hâsıl olan münaferet ve beynunet üzerine nikahlarının feshi için mûmâ ileyhima taraflarından mülğa Ermeni Patrikhanesine müracaat edilmiş idi. Ahîren daire-i mezkurenin lağvı üzerine teşekkül eden Ermeni murahhasahanesinde da'va-yı mezkurenin ayinleri vechiyle devam ve ikmalî tabii ise de bir seneyi mütecaviz müddetden beru zevc-i mûmâ ileyh müvekkilem mûmâ ileyhanın şer'an hazinesi bulunduğu üç yaşında sağire kerimesi Leyla'yı şunun bunun yed-i terbiyelerinde bırakarak yüzünü bile validesi müvekkilem mûmâ ileyhaya göstermemekte ve bu suretle müvekkilemin meşru olan hakkı hızanesi ihlal ve iptal edilmekte olduğundan mûmâ ileyh Arşak Serunyan Efendinin fıraşından hâsıla ve müvekkilemden mütevellide olub halen babası mûmâ ileyh nezdinde olan ve hakkı hızaneden sakıta ve terbiye-i nisadan müstağniye olunmayan sağira-i mezbure Leyla bihakkıl hızaneye validesi müvekkilem mûmâ ileyha Eskuhi Hanıma teslim olunmak bilvevale matlubumdur deyu da'va ettikde müddeâ aleyh mûmâ ileyh Arşak Serunyan Efendi vekil-i mûmâ ileyh Mahmud Mahir Efendi dahi cevabında "müddeiye-i müvekkile-i mûmâ ileyha Eskuhi Hanım heva ve hevesine tabi ve şer' ve aklın hilafına aklına gelen her hareketi icra etmektedir. Hatta geçen sene kızı sağire-i mezbureyi pederinin nezdinde bırakarak zevc-i müvekkilem mûmâ ileyhın rızası hilafına olarak Avrupa'ya gitmiş ve ahîren kendisi ecnebi bir kimesne ile avdetle bir aralık saika-ı asabiyetiyle kendisini tesmim etmiştir. Bundan başka tamamıyla akıl ve şuura malike dahi değildir. Müvekkilemin zevcesi müvekkile-i mûmâ ileyhın daire-i itaatına almak fikri kendisiyle idame-i zevciyet maksadına mebni olmayıp sağire-i mezburenin muhafazası içindir. Bu suretle müvekkile-i mûmâ ileyha Eskuhi Hanım her vecihle gayri me'mune olub sağire-i mezburenin ona teslimi manen ve maddeten ziyânı muhtemel ve sağire-i mezbure müvekkilim mûmâ ileyh nezdinde olsa bile müvekkile-i mûmâ ileyhaya teslimi gayri caiz olmağla müvekkileme karşı mûmâ ileyhanın bî-vech-i şer'i muarazadan men'ini bil vekale taleb ederim" dedikde. Müddeiye vekili mûmâ ileyh David Musisyan Efendi cevabında "müvekkilem mûmâ ileyha gayri me'mune olmayıp her vecihle emîne ve hakkı hızanesini ber vech-i şer'i ifaya muktedire olduğundan sağire-i mezburenin bilhassa müvekkilem mûmâ ileyhaya teslimi matlubumdur" deyu müdafaa ve müddeâ aleyh vekil-i mûmâ ileyh Mahmud Mahir Efendi ber vech-i muharrer def'i müddeâsıyla beyana ba'del havale müddeiye vekil-i mûmâ ileyh David Musisyan Efendi müvekkilesi mûmâ ileyhanın her vecihle me'mune olduğunu bittevatür isbata hazır olduğundan tevatür şahidlerinin istimalarını ve müddeâ alyh vekili mûmâ ileyh Mahmud Mahir Efendi dahi icab eder ise müddeiye-i mûmâ ileyhanın gayri me'mune olduğunu bi'ş-şehade ve 't-tevatür isbata muktedir ve âmede ise de evvel emirde ber mucceb-i karar huzuru şer'a ikame eylediği şahidlerinin istimalarını taleb eylediklerinden sonra müddeâ aleyh vekili mûmâ ileyh Mahmud Mahir Efendi tarafından bera-yı şehadet meclis-i şer'a ikame olunan Beyoğlu'nda Taksim Sokağında on iki numaralı hanede mukim tebea-i Devleti Aliyyenin Ermeni milletinden Doktor Edvart Marissen Efendi veled-i Garabet veled-i Simon istişhad olundukda ben şu Arşak Efendi ile komşu bulunuyorum. Zaten de tabib-i hususileriyim. Zevcesini tanırım ismi Eskuhi'dir. Babasının ismi Ağopyan Migail Efendidir. Mezburenin tabiatı hafiftir ve asabidir. Haneyi idare edecek kadın değildir. Yani ev kadını değildir. Bu asabiyet dolayısıyla bundan altı ay mukaddem kendisini agutiniş nam ecza ile tesmim etti. Bizi çağırıldılar. Ölümünden dar kurtardık. Bu vecihle mezbureye çocuk teslim edilemez. Zira çocuğa bir ziyân iras eder. Başka malumatım yoktur. Beyoğlu'nda Hüseyin Ağa mahallesinde on dört numaralı hanede mukim tebea-ı Devleti Aliyyenin Ermeni milletinden ve sabık rusumat istimatorlarından Ohanes Efendi Mıgırdıç veled-i Ohanes istişhad olundukda mahkemeye şehadete geldim. Şu komşu Arşak Efendinin familyasını tanırım. Ağopyan Efendinin kızının ismi Eskuhi'dir. Biz mezbureye Madam Serunyan deriz. Bu kadın sabah sokağa çıkar. Akşam gelir. Bazı kere geceleri dahi zevci Arşak Efendi ile sokağa çıkar. Sinemaya gider. Gündüzleri yalnız başına ekseri sokağa çıkar. Nereye gidip geldiğini bilemem. Bazı kere beygire dahi biner. Bundan başka malumatım yoktur. Üsküdar'da Bağlarbaşı Mezarlık Yolunda seksen yedi numaralı hanede mukim tebea-ı Devleti Aliyyenin Ermeni milletinden ve tüccar komisyoncularından Petros Efendi veled-i Artin veled-i Petros istişhad olundukda mahkemeye şehadete geldim. Şu Arşak Efendinin zevcesi Eskuhi Hanımı bilirim. Babasının ismi Ağopyan Efendidir. Mezbure Eskuhi öğleden evvel yatağından kalkmaz. Sonra kalkar yemeğini yer. Sokağa çıkar. Gazino ve otellere gider. Ne için gittiğini bilmem. Hanelerine gittiğim zaman sual ederim.

Havrin, a Jewish woman, filed a suit for the guardianship of her children; for she argued that it was the best of her children's well-being and education. The judge decided that the children should be taken from her ex-husband, Tomas Papter, and placed under her guardianship.<sup>630</sup>

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*Sokağa gitti derlerdi. Bazen bargir elbiselerini giyer. Ecnebler ile gezmeğe gider. Akşamları geç gelir. Bazı defa kendi hanesine erkek ve kadınları toplar. İskambil kâğıdı oynar. Kendisi sinirli ve hafif meşreblidir. Evde gürültü eder ve günlerce çocuğunun yüzünü görmemiştir. Hatta bundan bir buçuk sene mukaddem kendisini zehirlemiştir. Mezbureye çocuk emniyet olunamaz. Çünkü kendisi ev halini kâtiyen bilmez. Başka malumatım yoktur. Üsküdar'da Valide Bağında on beş numaralı köşkte mukim tebea-ı Devleti Aliyyenin Ermeni milletinden ve tüccardan Tosik Efendi Serunyan veled-i Ohanes veled-i Garabet istişhad olundukda mahkemeye şehadete geldim. Şu Arşak Efendinin zevcesi Eskuhi Hanımı yakından tanırım. Babasının ismi Migail Agopyandır. Bize gelir aylarca kalırlardı. Kendisi hafif meşrep ve asabi ve gayet inatçıdır. Ufak bir şeyden hiddet eder. Mezbure yalnız başına baloya ve gazinoya gider. Şampanya ile sarhoş olur. Otellere dahi gündüzleri gider. Bazen aklına gelir beyirlere biner. Bendlere gider. Meşin şapkalı Frenkler ile gider. Her zaman hanesinde bulunmaz. Bulunduğu zaman hanesine bakmaz. Çocuğuna hiç bakmaz. Hâsılı maddeten ve manen mezbureye çocuk teslim olunamaz. Benim malumatım bundan ibarettir deyu ihbar eylediklerinden müddeiyye vekil-i mûmâ ileyh David Musisyan Efendinin tevatür şahidlerinin ikamesi lüzumu tefhim olundukdan sonra müddeiyye vekil-i mûmâ ileyh ise ifade-i sabikasını betekrar ve ihzar eylediği tevatür şahidlerinin istimalarını talep ve müddeâ aleyh vekil-i mûmâ ileyh Mahmud Mahir Efendi dahi zapt-ı sabıkta beyan eylediği vecihle müvekkile-i mûmâ ileyha bir buçuk sene mukaddem kendisini tesmim ile intihara tasdir ve hayatını tehlikeye ilkadan tabib tarafından tedavi olduğu bilumum tanıyanlarca malum olduğundan mahkeme salonundaki muhbirlerin dahi bu ciheti bulunuşundan esna-yı istimalarında bu hususun dahi gerek hazır-ı bilmeclis bulunan mûmâ ileyha Eskuhi Hanımdan ve gerek muhbirlerden sual edilmesini talep ve lede's-sual mûmâ ileyha Eskuhi Hanım cevabında bundan bir buçuk sene mukaddem baş ağrısı ve nevrasti için her an istimal etmekte olduğum haplarından her nasılsa fazla miktarda almış olduğumdan sihhâtime tesiri görülüb telaş edilerek doktorlar celp ile tedavi olunmuşum. Yoksa bu hapları intihar maksadıyla almadım. Gerçi zevcim hakkımda reva gördüğü muamele-i nâ- lâyıkasından her an müteessir olarak yaşamak arzusunda bulunmuyor idiysem de evladıma olan hamiyetimden ber vech-i muharrer hiçbir vecihle intihar fikrinde ve kelam-ı zevceme vasiyeti havi çocuklarıma bakması için bir mektup göndermiş idim. Bu mektup üç sene mukaddem tarafımdan yazılmış ve mezkûr haplardan hâsıl olan rahatsızlığım bir sene mukaddem vuku bulmuştur. Bunu ba'del-beyan li-eclil ihbar müddeiyye vekili tarafından huzur-ı şer'a ikame olunan .....her biri müctemian ifadelerinde Madam Eskuhi ile zevci dış tabibi Arşak Sarunyan Efendiye biliriz. Madam Eskuhi iffet ve ismet sahibesidir ve namusludur. Şuurunda bir şey yoktur. Tamm-us sıhha vel akıldır. Kendisi iyi tahsil görmüştür. Çocuğuna son derece şefkat ve muhabbeti vardır ve çocuğuna güzelce bakar ve çocuğunu muhafaza eder. Madam Eskuhi'nin intiharına ve bu intihar dolayısıyla tabibler tarafından tedavi edildiğine dair malumatımız yoktur." Deyu müttefikullafz beyan ve ihbar etmeleriyle mucibince müddeiyye-i mûmâ ileyha Eshuki Hanım me'mune ve müstakime ve sağire kızı mezbure Leyla'yı terbiye ve muhafazaya muktedir iddiği Beyoğlu Polis Müdüriyetinden vukubulan tahkikat ile kizib üzere ittifaqları mutasavver olmayan ber vech-i muharrer muhbirlerin ihbaratından inde's-şer'il enver zahir ve nümayan olduğu müddeiyye vekil-i mûmâ ileyh David Musisyan Efendi ile müddeâ aleyh asıl mûmâ ileyh Arşak Serunyan Efendiye ba'det tefhim henüz hakk-ı hizaneden sakıta ve terbiye-i nisadan müstağniye olmayan sağire-i mezbure Leyla'yı validesi ve hâzinesi mûmâ ileyha Eskuhi Hanıma teslim müddeâ aleyh asıl mûmâ ileyh Arşak Serunyan Efendiye tenbih olduğu tescil ve i'lam olundu. Fi'l-yemirrabî vel işrin fişehrî rebi'il-ahir liseneti hamse ve selâsin ve selâsemie ve elf."Galata Mahkemesi Defteri (Court of Galata Defteri), Defter: 1026, Case: 199, Page: 12, 24 Rebiülahir 1335/ 18 January 1917.*

<sup>630</sup> Galata Mahkemesi Defteri (Court of Galat Defteri), Defter: 1026, Case: 16, Page: 32, 17 March 1917.

As they did before the reform period, after the promulgation of the OLFR non-Muslims still applied to the qadı court when they deemed it necessary or more beneficial.<sup>631</sup> The above-mentioned cases and others show us that not all non-Muslims in the Ottoman Empire were discontent with the authorization of the Sharia court to handle their family matters and with the promulgation of the OLFR. Actually, Muslim and non-Muslim people of the Ottoman Empire used the innovations of the OLFR to their own advantage.

However, even before people and the authorities got fully used to living in the legal culture introduced by the OLFR, the law ceased to be in effect in 1919. In the next section I will explore the annulment procedures.

#### **4.2.4. The Abrogation of the OLFR**

This section explores the reasons for the annulment of the OLFR, and the objections conservative Muslims and non-Muslims had to the law's application.

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<sup>631</sup> In fact, legal history of the Ottoman Empire is full of examples of Christian or Jewish women applying to qadı for maintenance allowance, inheritance, and etc. See: Agmon, Iris. *Family and Court*; Suraiya Faroqhi, *Subjects of the Sultan: Culture and Daily Life in the Ottoman Empire*, (London: I.B. Tauris, 2005); Ronald C. Jennings, *Studies on Ottoman Social History in the Sixteenth and Seventeenth Centuries: Women, Zimmis and Sharia Courts in Kayseri, Cyprus and Trabzon*; Halil İnalçık, "Ottoman Archival Materials on Millets," in *Christians and Jews of the Ottoman Empire: The Functioning of a Plural Society, Vol 1*, Ed. Bernard Braude & Bernard Lewis, (London/New York: Holmes and Meirer, 1982); Boğaç Ergene, *Local Court, Provincial Society and Justice in the Ottoman Empire: Legal Practice and Dispute Resolution in Çankırı and Kastomonu*, (Leiden: Brill, 2003); Judith Tucker, *In the House of Law: Gender and Islamic Law in Ottoman Syria and Palestine*, (Berkeley and Los Angeles: University of California Press, 1998), Judith E. Tucker, *Women in Nineteenth-Century Egypt*, etc.

#### 4.2.4.1. Opposition of the conservative Muslims to the OLFR

In the annulment decree of the OLFR, it was argued that the OLFR was deficient in many respects; therefore it would be a disadvantage to Muslims if the law remained in effect.<sup>632</sup> The conservatives of neither Muslim nor non-Muslim communities were satisfied with the OLFR.<sup>633</sup> The conservative Muslims were complaining about the OLFR on the grounds that it was relying on other Sunni madhhabs' rulings. They used the press to argue against the law until the CUP rulers left Istanbul after the war.<sup>634</sup>

The most vociferous conservative opponent to the OLFR was Sadrettin Efendi, who was a scholar at *Dar'ül Fünun*. Efendi's arguments published in the *Sebil'ür-Reşat* were quite representative of conservative Muslim people's views and their reasons for opposing the OLFR. He wrote almost 40 articles in which he explained the flaws and inconveniences of the OLFR. Actually, he wrote his articles as soon as the OLFR was promulgated, but the authorities did not allow the journal to publish them immediately. The journal was able to publish Sadrettin's articles in 1918.<sup>635</sup>

In this section I will explore some of Sadrettin's articles to show the concerns of the conservative Muslims about the OLFR. Sadrettin was actually lamenting the fall of tradition. His was concerned more with societal values shaped by Islamic rules than with the actual needs of Ottoman society at the time. In his first article, Sadrettin

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<sup>632</sup> 8 Muharrem 1336 tarihli Hukuk-ı Aile Kararnamesi'nin lağvı hakkında kararname see: *Düstur* 2.Tertip, 11.Cilt, İstanbul, Evkaf Matbaası, 1928, 229. Also see: BOA, DH HŞ 3-1 2-25, A1, 15 July 1919. Also see: Sabri Şakir Ansay, *Medeni Kanunumuzun 25. Yıldönümü Münasebetiyle Eski Aile Hukukuza Bir Nazar Hukuk İnkılâbımızı Aydınlatan Tarihi ve Teşrii Vesikalar*.

<sup>633</sup> Alen Duben and Cem Behar, *Istanbul Households*, 214.

<sup>634</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 221

<sup>635</sup> Sebil'ür-Reşad, "Hukuk-u Aile ve Usul-ü Muhekemat-ı Şeriyye Kararnameleri Hakkında," volume 15, number 382, 12 Aralık 1918.

criticized the age limits placed on marrying couples and the authority given to judges to decide whether a girl younger than 18 could marry or not. Sadrettin argued that according to Sharia there is no age limit to marriage and it went against the etiquette and Islamic morals of the society.<sup>636</sup> In his fourth article Sadrettin also argued that the stipulation in the OLFIR banning the marriage of girls under 12 and boys under 9 were grounded on the views of Abdullah bin Şübrüme and Ebu Bekir'ül Asım. However, the authenticity of these scholars' views could not be known for certain.<sup>637</sup> For Sadrettin, those who were brought up by foreign governesses and those who lingered in the streets with men wearing obscene costumes could not appreciate the value of this rule.<sup>638</sup> For Sadrettin, women in general posed a threat to society's

<sup>636</sup> “...Altıncı maddede: on yedi yaşını itmam etmemiş olan münahike baliğe olduğunu beyan ile müracaat ettikte hali mütehammil ve velisinin izni munzamm ise hakim izdivacına müsaade edebilir” denilmiş. Madde-i sabıkadaki mehazir ba-cemaaha bunda da mevcut olduğu gibi üslubu da bozuk. Velisi dururken kız iznname almak için huzur-ı hâkime çıkarılacak! Bu işe ahlak-ı milliye ve âdâb-ı İslamiye ile kabil-i Te'lif olmadığı varest-i beyandır.... Esasen icra-yı akd için hâkimin müsaadesini izn-i veliye ta'lik etmek ve bunu İmam Muhammed'in kavline isnad ettirmek de doğru değil. Hiçbir zaman İmam-ı müşarinileyh öyle veli izin vermiyorsa hâkim de müsaade etmesin dememiştir. Bilakis mehr-i mislini verecek talip küfüv olup da veli-i akreb teannüten razı olmuyorsa ona menut olan hakkın alettertib ondan sonraki velilere ve velayât-ı hassa ahabından hiçbir kimse yoksa velayet-i amme ahabına intikal eyleyip onların da izin vermeleri lazım geleceği Hülasatü'l-Fetâvâ ve sair muteberât-ı fikiyede musarrahtır Sadrettin, “Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyeye Kararnameleri Hakkında 1,” *Sebil-ür Reşad* 383, volume 15, 19 December 1918.

<sup>637</sup> “Yedinci maddede: “On iki yaşını itmam etmemiş olan sagir ile dokuz yaşını itmam etmemiş olan sagire hiçbir kimse tarafından tezvîc edilemez.” denilmiş ve mezahib-i ma'rufe-i İslamiye'den hariç olan bu hükümün bazı kütübe müctehidîn-i eslaftan Abdullah bin Şübrüme rahmetullahi aleyh ile Ebu Bekirü'l-Asım'a nisbet olunan bir kavle istinad ettirildiği layihada gösterilmiş ve müctehid kavli olsa da nass ve icmaa muhalif olmakla taklidi caiz olmayıp onunla emir ve hüküm olursa da şer'an sahih ve nafiz olmayacağından gaflet edilmiştir. Bu naklin İbn-i Şübrüme'den sıhhati de yoktur. Ebu Bekirü'l-Asım ise komisyonca zannolunduğu gibi eimme-i dinden bir müctehid değil, mutezile-i Kadriye'den bir mübtedî'dir i'raza mevcut tesmiyesini inkârla “لااعلم الاالجسم الطويل العريض العميق.” demiş olmasıyla ehl-i kelam arasında iştihar eylemiştir. İsmi de Abdurrahman bin Keysân'dır. Bu söz yalnız onun kavli veyahut rivayeti olabilir. Kütüb-i mezkurede maan zikrolunmaları da buna delalet eylemekte olup hilafin ihtilafât-ı mutebereden olmadığına, kavli-i mübteda' derekesinde bulunduğu işaretir...” Sadrettin, “Hukuk-ı Aile ve Usulü Muhakemat-ı Şeriyeye Kararnameleri Hakkında 4,” *Sebil-ür Reşad* 384, volume 15, 22, 26 December 1918.

<sup>638</sup> “...Evet, zamanımızda ecanib ile ihtilatı çoğalan, bazı bilad-ı mütemeddinede her nasılsa aba' ve akrabalarının emr-i dine ihtimam ettiklerinden erkek ve kız çocuklarını ecnebi mürebbiyeler ve muallimeler ellerinde büyütmeğe başladıklarından ve her şeyden evvel elsine-i ecnebiye tahsiline sevk edilmekte olduklarından birtakımları meslek ve marufu zayi ettiler. Vaktiyle tezvîc edilemediklerinden bir İslam ailesi teşkil etmek için i'dad olunamadıklarından yoldan çıktılar. Gerdan, göğüs açık, saçlar, kulaklar meydanda, düzgünlü allıklı yüzleriyle sokaklara düştüler. Fariza-i tesettürden gafil, nehy-i İlahî'den bihaber, mecma-ı nâsa dalıp genç erkeklere harfendazlık ve sarkıntılığa, önüne

morals and they should be married off at an early age by their parents, so that their minds would not be contaminated by Western ethics, to which they could possibly be exposed at theatres and cinemas. Otherwise, prostitution and adultery would increase in society.<sup>639</sup>

In his 8<sup>th</sup> article on the OLFR, Sadrettin criticized the compulsory announcement of the marriage. According to Sadrettin, for those living in the provinces and villages, this stipulation would be burdensome.<sup>640</sup> However, the conditions of war made it compulsory to announce a marriage: many women were forced to marry by their male relatives when their husbands were fighting on the fronts during the First World War.<sup>641</sup> This situation was depressing to the soldiers, along with the bureaucratic burden it brought to the state.<sup>642</sup> Therefore, especially during war, it was better to get the marriage announced before the ceremony was solemnized.

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*gelenlerle mülatafa ve müzahakeye, bazıları da muaşaka ve mükatebeye çıktılar. Filhakika asabları mütezelzil olmuş, bünyeleri zayıflamış, hatta verem illetine müptela olmuş genç kadınlar ve kızlar adeta tekessür eyledi. Lakin bilmüşahede hâdis olan bu fecayiın esbabı evvelden beri cari olan âdât ve ahkâm-ı İslamiye’de aramak doğru değildir. Bühtan olur. Ma’lul-i illetinden fasl-ı zaman ile tehallüf edemeyeceğinden esbabını da yine umur-ı muhaddisede aramak icap eder. Emr-i dine ihtimamları olmayıp tekalid-i felsefiyeye tabi olan aba ve akrabalarının onları sevk etmekte oldukları yollarda taharri eylemek lazım gelir. Bu netayic-i vahimenin menşei feraiz ve âdâb-ı İslamiye’den gafil ve mahrum bırakılan o biçare çocukların, o zavallı kızcağızların icabât-ı medeniye zu’muyla edebiyat-ı Garbiyeye, asab tehyic ve berbat eden romanlara dökülmelerinde ve her gün sinemalarda, tiyatrolarda facialar, dramlar, muaşakalar temasına dalmalarına ve öğrendiklerini kemal-i itikadiyla yavaş yavaş nefslerinde tecrübe ve tatbik başlamalarındadır. Şer’an ve aklen mahzur ve menfur olan şu ahvalin kanunla önü alınmak lazım gelirken bir de vaktiyle veliler tarafından tezvic olunmak men’ olunursa, hükkam-ı zamanın müsaadelerini tahsile ve buluş iddiasına ta’lik ve tas’ib edilirse, her veli kızını yahut yetimesini tezvic edecek olduktan “Gelsin, görelim: Baliğa olduğunu söylüyor mu? Bünyesinin tahammülü var mı? Keşfedelim.” denilecek olursa müntic-i hayır olur mu? Ve memleketimizdeki akvam-ı İslamiye’nin âdâb ve ahlaklarıyla bu hükmün Te’lifi mümkün müdür? Komisyon heyeti buralarını düşünmemişler, ahkâm-ı İslamiye hakkında pek yanlış zehablarda bulunmuşlardır..” Sadrettin, “Hukuk-ı Aile ve Usulü Muhakemat-ı Şeriyye Kararnameleri Hakkında 4,” *Sebil-ür Reşad* 384, volume 15, 26 December 1918.*

<sup>639</sup> Sadrettin, “Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyye Kararnameleri Hakkında 4,” *Sebil-ür Reşad* 384, volume 15, 26 December 1918.

<sup>640</sup> Sadrettin, “Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyye Kararnameleri Hakkında 8,” *Sebil-ür Reşad* 386, volume 15, 9 January 1919.

<sup>641</sup> See previous chapter for details.

<sup>642</sup> See previous chapter for details.

In his 12<sup>th</sup> article Sadrettin agrees with the law that many corrupt practices occurred because the marriage and the bride price were not recorded prior to the OLF. However, he still disagreed on the creation of a marriage certificate at a court with the testimony of state officials. For him the witnesses should have been religious and virtuous people.<sup>643</sup>

In his 14<sup>th</sup> article Sadrettin spoke of the virtues of polygamy and criticized the OLF for limiting it. According to Sadrettin, sometimes a woman could not give birth, she might be morbid, or could not handle the housework herself. Hence it became a necessity for a man to have a second wife. Besides, according to Sadrettin no man would ever marry a woman who put a stipulation limiting the man's polygamous behaviors in the marriage contract.<sup>644</sup> In his 22<sup>nd</sup> article Sadrettin again mentions polygamy. In the 74<sup>th</sup> article of the OLF, the Quranic stipulation that a

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<sup>643</sup> "...Ve memleket-i Osmaniye'de nikahın icrası intizamsız bir hale girmiş olmasıyla birçok yolsuzluklar husule gelmiş ve mevaki-i şer'iyesi olan nice kadınların icra-yı akdleriyle alakadarânın hukuklarının iptaline gidildiği dermiyan olunarak esna-yı akde ahkam-ı nikaha vâkıf olan bir zatın huzuruyla akdname tanzimi bir emr-i mendub olduğu ve böyle bir akdname tanzim ve tescil edilmiş olması ileride gerek akdın vukuu, gerek mehrin miktarı hakkında zuhur edebilecek olan ihtilafâtın önünü alacağı gösteriliyor. Ve bu vazîfenin nüfus ve belediye memurlarına yahut katib-i adllere tevdi ciheti de düşünülmüş ise de akdnamenin bilabeyyine mazmunuyla amel edilmesi muktezi olan vesaik cümlesinden olması da mültezem olmakla her hususta velayet-i ammeyi haiz olan ahkâma tahmili daha münasip addolunduğu beyan olunuyo... Hâlbuki nikâhta mesnun ve müstehab olan ahkâmına vâkıf olanlardan biri yahut bir hükümet memuru marifetiyle icra olunması değil, erbab-ı salah ve adaletten şahitler bulundurulup teyemmünen ehl-i fazl ve takva yediyle akdolunmasıdır..." Sadrettin, "Hukuk-u Aile ve Usulü Muhakemat-ı Şer'iyye Kararnameleri Hakkında 12," *Sebil-ür Reşad* 387, volume 15, 16 January 1919.

<sup>644</sup> "...Evsat-ı nas ve fukaraya gelince madde onlar için cidden muzır ve daima muhataralıdır. Çünkü kadının bazen çocuğu olmaz; bazen hastalıklı olur yahut tedbirsiz beceriksiz olup umur-ı beyniyeyi idare edemez. Vazife-i zevciyeti hakkıyla ifa eyleyemez. Zevci tekrar evlenmeye muhtaç olur. Maazalik onu da terk etmek istemez. Hukukuna riayet eder. Kadın da üzerine evlendiğine rıza gösterir. Bazen nöbetini ortağına bağışlar. Beraber geçinir giderler. Lakin arada böyle şart-ı ta'lik bulunursa işin rengi değişecek. Zevci onu terk etmeye muhtar kalacak. Ve bir kere bıraktıktan sonra da tekrar almayacak. Kadının menfaat zannıyla koyduğu şart onun harap ve perişanısını intac edecek. Bikes ve bivaye sefalette kalıp "Sebeb olanlar hayır ve felah bulmasın" diyecektir. Erkeklerle gelince birçokları bittabi buralarını ibtidasından düşünecek, öyle bir şart-ı mekruh altına girmeyi istemeyeceklerdir. Kızın ailesi tarafından teklif ve ısrar olduğu surette ekseriya kabul olunmayacak; tarafeyn yekdiğerini beğenmiş, akdın icrası tasmin olunup aralarında güzel bir itihad temeli atılmış iken bu şart-ı menfurun yüzünden bozulup yerine bir tebaguz ve münaferet esası kaim olacaktır..." Sadrettin, "Hukuk-u Aile ve Usulü Muhakemat-ı Şer'iyye Kararnameleri Hakkında 14," *Sebil-ür Reşad* 388, volume 15, 23 January 1919.

polygamous man must be just to all his wives is repeated. However, Sadrettin limits the meaning of justice to the equality of the number of nights that a polygamous man should spend with his wives. In Sadrettin's view, if a polygamous man spent the equal amount of nights with each of his wives, he could still love one of them more than the others: treat her better financially, and the like. He even suggested to the commission of the OLFK that the 74<sup>th</sup> article of the law be revised to clarify that justice in that context only meant the nights that a man spent with his wives.<sup>645</sup>

In his 29<sup>th</sup> article, Sadrettin criticized the 104<sup>th</sup> article of first book's first chapter of the OLFK, which approved the divorce of a drunken man. This article was grounded on Muhammad bin Salaam's and Imam Shafi'i's opinions. However, Sadrettin argues that it was a mistake to ground this article on Imam Shafi'i's view, for he meant something else with his words.<sup>646</sup> Besides, for Sadrettin getting a

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<sup>645</sup> "...Tamamıyla adalet yalnız zevceler değil, sair nâs aralarında da matlub ve herkesin üzerine vacibdir. Hiçbirine zulmetmemek manasınadır. Bazılarına fazla ihsan ve ikram eylemeye mani değildir. Zevceler de böyledir. Aralarında müsavâta riayetinin vücubu beytutet hakkında olur. Gecelerini beyne'l-harair o vechle taksim eylemekten ibarettir. Yoksa her husus ve keyfiyette müsavât ile amel etmek lazım değildir. Matlub ve vacib olan her birinin hal ve şânına göre nafaka, sîsve ve sekenalarını temin eyleyip hiçbirisinin ifâ-yı hukukunda tagyir etmemektir. Yoksa birisinin erbab-ı yesar ve gınadan olmasıyla istihkakının kıymetçe fazla olduğundan diğerini de müstehak ve me'luf olduğu suret-i maişeti değiştirip onun mertebesine is'ad etmek icap etmez. Kezalik evvelki haremın zat-ı evlad olduğundan, sebk eden hukuk, hıdematından dolayı ona fazla ihsanda bulunursa yenisine de bir mislini ver, denilemez. Herbirinin müteferrid bulunduğu surette istihkakı ne ise müteaddid oldukları zamanda dahi yine o kadar. Fazlası zevcin fazail ve vicdanına raci' olup bab-ı hükümet ve hükkamın müdahale edebilecekleri umurdan olmadığı mecmaun aleyhtir. Kanunların suitefsire mahal kalmayacak niza ve ihtilafâta bâis olmayacak kadar açık yazılması da elbette matlub olduğundan böyle bir kanun yapılacaksa bu maddenin de tashih olunarak "Müteaddid zevceleri olan kimse haklarında icra-yı adalet etmek ve hal-i hazırda gecelerini aralarında müsavât üzere taksim etmek lazımdır" denilmelidir..." Sadrettin, "Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyye Kararnameleri Hakkında 22," *Sebil-ür Reşad* 393, volume 16, 27 Şubat 1919.

<sup>646</sup> "...Müfarakatin bab-ı evvelinin fasl-ı evvelinde 104'üncü maddede: "Sarhoşun talakı muteber değildir." denilmiş. Ve layihada bu maddenin Muhammed bin Selam hazretlerinin reyine ve İmam Şafî'nin iki kavlından birine istinad ettirildiği gösterilmiştir. Hâlbuki İmam Şafî'nin o kavli zahir hakkındadır, talak hakkında değil. Bu naklin ondan galat olduğunda Şafîye şekk etmezler. Muhammed bin Selam hazretleri de ashab-ı mezahib olan eimme-i müctehidinden olmayıp Tahavî akranından ve Kerhî gibi tabaka-i salile ricalindendir. Belh ulemasından olup Ebu Nasr künyesiyle meşhurdur. Tarihinde vefat eylemiştir. Bu kavli, dört yüz sene sonra Endülüs'te neş'et eden İbn-i Hazmü'z-Zahirî, mezhebimizin erkânından olan İmam Zefr rahmetullahi aleyhe de eylemiştir. Bu nakle itimad eylemek caiz olsa şu maddenin ona bina edilmesi mümkün olur ve ona istinad ettirilmesi lazım gelirdi. Komisyon ona muvafık olmamıştır, yahut âdem-i zikrini evla görmüşlerdir. İsbet

divorce under such an unpleasant condition could be a woman's opportunity to get rid of an unwanted marriage, something the law does should not allow.<sup>647</sup>

In his 32<sup>nd</sup> article, Sadrettin argues that the ideology of the commission that prepared the OLFER was more "Western" than it should be. For Sadrettin the commission was not aware of the Islamic rules and regulations actually lived in Ottoman society. He argues that marriage and divorce were a lot different there than in Europe. For instance, Sadrettin claims that there is no irrevocable divorce or waiting, *iddah*, period in European family law, like the one in Islamic Law. The 110<sup>th</sup> article of the OLFER stipulated that a man should inform the judge about his divorce within fifteen days. However, what if he decides to reunite with his wife, which is his right in Islamic family law? A woman's *iddah* period is more than fifteen days, and during this period she is under the responsibility of her husband economically. What happens if the woman turns out to be pregnant and left without livelihood after the end of fifteen days? For Sadrettin, the announcement of divorce would cause gossip among the people, which would be another burden on both the woman and the man. Sadrettin suggested that if it was important to record the divorce for the state, it

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*olmuş, çünkü sıhhati olsa evvelden beri ehl-i mezhebinden ve ehl-i beladetten olan fukaha ve ulema beyninde maruf olması icap edecek. Galat olduğu meydanda..*" Sadrettin, "Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyeye Kararnameleri Hakkında 29," *Sebil-ür Reşad* 396-397, volume 16, 13 March 1919.

<sup>647</sup> "...kadınların lehinde zannıyla vaz' edilmiş olan bu madde layıkıyla teemmül olunursa sırf onların aleyhindedir. Çünkü kadın sarhoşun etvar ve mezaliminden evvelden beri bizar olmuş da ayrılmak istiyorsa şimdi ayrılmayıp taht-ı i'tisafında kalacak. Hem de kendisinin tedeyyün ettiği mezhep ve itikadınca nikâhsız olarak onunla yatıp kalkması lazım gelecek. Bunu elbette vicdanına yedirmeyeceğinden nafakasından vazgeçip kedd-i yeminiyle geçinmeye çalışacak yahut mutekid olmadığı diğer bir mezhepten istianeye kararnamede gösterilen aile meclisinden istifadeye mecbur olarak bu kere de hakk-ı sarıhi olan mehrinden mahrum olacaktır..." Sadrettin, "Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyeye Kararnameleri Hakkında 29," *Sebil-ür Reşad* 396-397, volume 16, 13 March 1919.

should be done after all issues such as irrevocable divorce and *iddah* were resolved between the couple.<sup>648</sup>

In his 34<sup>th</sup> article, Sadrettin criticized the 122<sup>nd</sup> article of the OLF, which allowed women to divorce their husbands when afflicted with leprosy, vitiligo, or venereal diseases after getting married. He argued that this article had ground in any Islamic stipulation, word of a scholar, or law school. For Sadrettin, some venereal diseases were curable, unlike leprosy and vitiligo. The reason for the spread of venereal diseases was not Islamic marriages but the ever increasing number of brothels. If prostitutes and their visitors were checked regularly, the state could prevent the spread of the diseases. Sadrettin's main fear regarding that issue was that women whose husbands were afflicted with any of these diseases would immediately get a divorce and resort to adultery, and eventually become prostitutes.<sup>649</sup>

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<sup>648</sup> "...*Tecdid-i nikah ile telafi etmek istediği talakı ihbar ve işaa etmek zevc için külfet ve meşakkati, zevce ve evlad için mazarratı daî olur. Konu komşu esbabını tefahhus ve taharriye kıyam ederler. Birçok kıl u kale bâis olur. Maksudun fevt ve hayat-ı ailenin sönüp mahvolmasına sebebiyet verir. Bahusus her talak her mezhebe göre sahih ve vaki değildir. Ahali-i İslamiye salık oldukları mezahib-i mutebere-i eimmeden istifade etmek isterler. Kendi mezhep ve kanaatlerince vaki olmayan bir talak nasıl gidip hâkime tescil ettirebilirler. Komisyon hiç buralarını düşünmemişler. Bu maddeyi istinad ettirecek kıl-i kavli de bulamamışlar. Avrupa kavanininden alınmış ceza kanununa zeyl edilmek istenilen bir madde ile de teyid olunarak ihbar ve tescil için yalnız on beş gün mühlet tayin ediyorlar. İddetin inkızasına kadar olsun tehirine ruhsat verilmiyor. Teklif cidden ağır... Hükümet-i seniyye de bu ciheti nazar-ı iltifata almış. Neşr olunan bir nizamname ile talak-ı ric'î de bu mühletin inkızası iddetten muteber tutulmasına müsaade olunmuş nikâha rücu olunduğu surette ihbara hacet kalmayacak. Burası güzel. Lakin zevcesi kabul ederse esna-yı iddette hal-i nikâha avdet talak başında da olur. Ve ehemm ve elzem olan da böyle tecdid-i akd ile nikâha avdetin esbabını teshil ve temhid eylemektir...*" Sadrettin, "Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyye Kararnameleri Hakkında 32," *Sebil-ür Reşad* 402-403, volume 16, 3 April 1919.

<sup>649</sup> "...*Hastalığın gerek oralarda intişarına, gerek memleketimize intikaline sebep olan nikâh-ı şer'î değil, zamanın serbest bırakılıp umumhanelerin kişade bulundurulması, oradakilerin arasına muayeneye tabi tutulmaları men'-i intişarına kifayet eder addolunarak sebep-i husulünün her yerde ve her zaman için umur-ı mübahe menzelesine getirilmiş olmasıdır. Bu misillü ilel ve emrazın men'-i intişarı matlub olunca fiil-i zina ve esbabı, taife-i nisanın açık saçık gezerek rical ile ihtilati kamun ile men' olunmalıdır. Hastalığın men'-i sirayeti için hâkimlerin izdivac edecek olanlardan sıhhatlerine dair rapor talep etmekte oldukları, muhaddirat ve bakiratın da kable'n-nikâh muayeneye tabi tutuldukları söyleniyor. Bu hususa dair geçen sene makam-ı şeşihatten bir emirname isdar edilmiş olduğu da gazetelerde görülmüş yahut işitilmiş idi. Tedabir-i sıhhiye haddizatında güzel şeydir. Lakin bununla maksad hâsıl olmaz. Nikâhtan me'yus olanlar zinaya dökülecekler. Hastalığın intişarı maaziyyade devam edecek. Ve bunların yüzünden bunca tahir bin tahiranın münakehâtı duçar-ı müşkilat olacak. Ahâli-i İslamiye'nin âdâb ve ahlakıyla kabil-i te'lif olmayıp erbab-ı hayâ va gayretin*

In the 35<sup>th</sup> article, Sadrettin demanded that women should not get divorced even if their husbands suffer from mental illness. The 123<sup>rd</sup> article of the OLFR allowed women whose husbands were mentally unstable to get divorced a year after they sued the husbands. This article was grounded in the Maliki School. Sadrettin argues that this principle is applicable only to Maliki followers; hence Hanafi judges could not resort to it and the article is not applicable to everyone.<sup>650</sup> In the same article Sadrettin also criticized the core article of the OLFR, the 126<sup>th</sup>, which allowed women to get a divorce if their husbands were missing and were left without the means of livelihood. He wrote that this principle was grounded in the Maliki and Hanbali schools. However, the article was not applicable since these two schools allowed the divorce only if a woman was not able to buy even a loaf of bread. For Sadrettin this article was not suitable for any of the four law schools. Sadrettin also argued that the number of missing husbands could not be that high. Yet even if it

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*tıbaina elbette giran gelecek olan şu teklifin meşakkatini onlar çekecekler, onlara inhisar edecektir. Her yerde tatbiki dahi müteyessir olmayacağı gibi birçok suiistimalâta da sebebiyet verecektir. İzdivac edeceklerin ilel-i sariyeden salim olduklarını tahkik eylemek kendilerine ve ailelerine düşer, hâkimlere değil. Erbab-ı hükümet ve ehl-i ilm ve hikmet için bu babda yapılacak olan şey nâsa lazım gelen ihtarât ve vesaya ile mümkün olan teshilâtın ifasından ibarettir. Tarafeyn lüzum görürler de isterlerse bu misillü uyûb ve ilelden selameti nikâhlarında şart eylemek mezheb-i Malikî'de caiz olduğu gibi zevce zevcinde böyle bir ayıbın vücuduna yahut hudusuna ıtlâında hakk-ı hiyar olmasını akd esnasında şart ve ta'lik ettirmek mezhebimizde de mümkündür. Bundan fazlasına da hâcet yoktur...*" Sadrettin, "Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyeye Kararnameleri Hakkında 34," *Sebil-ür Reşad* 414-415, volume 16, 15 May 1919.

<sup>650</sup> "...Kable'l-akd, ya ba'de'l-akd kable'd-duhul zevc tecennün ederse zevcenin taleb-i tefrike hakkı olması İmam Muhammed'den mervî olan ahd kavline muvafık olup lakin ba'de'd-duhul hâdis olan cinnet ve illet böyle değildir. Malikî mezhebince muhtelefün fih olup ba'de'd-duhul hâdis olan cinnet yahut cizzam ve barastan dolayı tefrik hükmününün nafiz olması için hâkimin o mezhebi mu'tekid olması da lazımdır. Mezheb-i Hanefî le mütedeyyin olup tefrikin adem-i sıhhati mün'akid olan hükkam için mümkün olamaz. Bu misillü maddeler hakkında en ziyade bu cihetin nazar-ı dikkate alınması lazım gelir. Çünkü mesele din meselesi, hall ve hürmet meselesidir. Maddenin müetni de ba'de'd-duhul hâdis olan illet hakkında pek sarîh değil. Herhalde ba'de'd-duhul lafzı ilave edilir ve müddet-i tecil bir seneye hasr olunmayıp ârâ-yı etibbanın ittifakıyla şifasından ye'sin tahakkukuna ta'lik olunursa bundan daha münasip olur..." Sadrettin, "Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyeye Kararnameleri Hakkında 35," *Sebil-ür Reşad* 429-420, volume 16, 5 June 1919.

were high, a chaste woman should wait for the return of her husband. He suggested that she could work or that the relatives of her husband should take care of her.<sup>651</sup>

In his 37<sup>th</sup> article, Sadrettin also criticized the 127<sup>th</sup> article of the OLFK according to which a judge can divorce a woman from her missing husband who left her without alimony. The state would investigate the husband, and she should wait four years after she applied to the court. If the husband went missing during the war, she should wait until the soldiers and prisoners of war have returned. She should also wait her *iddah* period. This article for Sadrettin was grounded on the Maliki School, and contradicted the Hanafi and Shafi Schools. Sadrettin argues even if it were applied and a woman would get divorced, she would have a bad reputation and some people might even call her a “slut.” She would not be able to find another husband and would be left without any means of livelihood, which she might get if she heard from her missing husband ever again.<sup>652</sup>

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<sup>651</sup> “..Mezhebimize muvafik olduđu gibi olan bir kimsenin nafaka cinsinden bir mal terk etmeksizin tegayyüb ve fıkdanından dolayı zevcesinin tefrikinde gidilmek mezheb-i Şafî’ye de uymaz. Malikî ve Hanbelî mezheplerinden alınmış olacak. Lakin yine doğru değil. Çünkü bu maddeden tebadür ettiđi üzere tamam-ı nafakanın tahsili mütezzir olmak, hükm-i tefrik için onların mezheplerince de kâfi olmaz. Tefriki onlar ancak sedd-i ramak edecek bir kuru ekmek bulamadığı surette tecviz eylemişler ve maazalik bu tefrikin de bir hükm-i kat’î mahiyetinde olmadığını kitaplarında tasrih etmişlerdir. Erkek zühür edip de vaktiyle nafaka bırakmış olduđu yahut kadının nafakasını iskat eylemiş. Bulunduđu bir menhec-i şer’î iki şahid-i adl ile ispat ederse tefrikin batıl olacağını, zevce iddet beklemiş ve ondan sonra başkasına varmış ve zevc-i sani duhul etmiş olsa da nikâhı muteber olmayıp evvelki nikâhla zevc-i evvelin olacağını mufassalan beyan eylemişlerdir... Hâsılı şu madde hiçbir mezhebe muvafik olmayıp 128. maddenin buna dair hükmü ictimaa muhaliftir. Komisyon hey’ât-ı aliyesinin buralarına vakıf olamadıkları ve etrafiyla düşünemedikleri anlaşılıyor. Bu maddenin vaz’ ve teşriinden öyle fayda ve maslahat da beklenmez. Memleketimiz ahalisinden öyle tegayyüb ve ihtifa ederek hükümet-i seniyyeyi kendilerini bulup meydana çıkarmaktan aciz bırakmış olanlar çok değil, belki hiç bulunmaz gibidir. Zevcesinin nafakasını vermekten bahl eden kimseler bunu yapmazlar. Ve buna hacet görmezler.... Tegayyüb ve ihtifa hiçbir zaman sebepsiz olmaz. Ve her ne sebebe mebni olursa olsun böyle sefer ve ihtifaya muztarr olanların uğradıkları musibet da’î-i şefkat iken bir de hal-i tegayyüblerinde haremlerine göz koyanlar, onları taleb-i tefrike sevk edenler bulunursa bile tezaüf edecek. Bu madde, o gibilerine cüret verecektir. Buraları etrafiyla teemmül edilmek lazım gelir. Nafaka-i evvel ve ahir tahsil olunabilir. Zevcin böyle bir musibete giriftar olduđu zaman zevcesi kendi malıyla ve sa’yıyla geçinir. Ehil ve akrabaları da ona bakacaklardır. Bu maddeye lüzum yok. Ne akval-i fikhiye, ne de masalat-ı âmmeye muvafik değil.” Sadrettin, “Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyye Kararnameleri Hakkında 35,” *Sebil-ür Reşad* 429-420, volume 16, 5 June 1919.

<sup>652</sup> “..Mezheb-i Malikî’nin münferid olduđu tecil ve tefrik hükmü bilad-ı İslamiye’de mefkud olanlara mahsustur. Binaenaleyh bu madde ona da muvafik olmayıp bilad-ı İslamiye’de mefkud olanlara

In his 38<sup>th</sup> article on the OLF, which was published after the abrogation of the law, Sadrettin commented on the 130<sup>th</sup> article, concerned with the establishment of a family council for finding solutions to a couple's problems. That council was also authorized to decide a divorce. However, Sadrettin argues that this article was grounded on the Maliki School and that it would be a mistake to apply it to the followers of the Hanafi madhhab. For Sadrettin, the interdenominational use of the Islamic schools of law is not appropriate.<sup>653</sup>

Sadrettin, other conservative intellectuals, and the ulema lamented the crumbling of the Islamic tradition in Ottoman society. He criticized the OLF commission for not paying attention to the Islamic legal tradition that had been evolved through the centuries, instead making use of the so-called weak legal views that it deemed more practical for their ideological purposes. Together with the non-

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*teşmili icmaa muhaliftir. Bilad-ı İslamiye'de yahut matlub olan tahkikata kabiliyeti olan havza-i hükümet-i Osmaniye'de mefkud olanlara maksur olsa da bu reyin kabulünü, müberhen ve muallel olan mezheb-i cumhuru terkini muktezi yoktur. Zamanın eşkâr ve icabâtına muvafik demek esbab-ı tercihten değildir. Mezheb-i cumhuru mu'tekid olan hükkam için onunla hükmetme meşru olmaz. Hassaten onun ma'mulün bih olması emrolunduğu surette gerçi hilafında ma'zul olup kendi mezhepleriyle de mezuniyetleri olmadığından hükmedemezler. Lakin onunla hükmedebilmeleri de laakall rıza-yı Barî'ye muhalif olacağı zan ve zehabında bulunmamakla meşruttur. Ve illa icmaen nafi olmaz. Kaybın hakkı bakidir. Ve her kim tarafından hükmölünse evvac için hayırlı olmadığı gibi bu tefrik öyle zannolunduğu gibi zevcat için de maslahat-ı sıhiha temin etmez. Çünkü ibtidaen kat'iyeti haiz olmadığı gibi her vakit için de şüphelidir. Memleketimizde me'luf sekene-i Salibe miyanında Maliki mezhebi şayi ve maruf olmadığından pek garip görülecek. O kadını zevceliğe kabul edecek olan da hemen bulunmayacak. "Evli insanlar diyar-ı gurbette kim bilir ne yapıyor. Vefasız şıllık, beş sene bile bekleyemedi." diyecekler. Hele kendini bilen, din ve mezheple mütekayyid, hayrı me'mul olanlardan hiçbir kimse ona rağbet etmeyecek. Bu tefrik onun dul kalmasına ve o zamana kadar olmakta olduğu nafakadan bilahare zevcinin mirasından mahrum olmasına sebep olacaktır. Komisyon buraları da teemmül etmemişler." Sadrettin, "Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyye Kararnameleri Hakkında 37," *Sebil-ür Reşad* 431-432, volume 17, 24 July 1919.*

<sup>653</sup> "Buraları etrafıyla teemmül edilmek lazım gelirken hiç düşünülmemiş. Mezheb-i Maliki üzere aile komisyonları teşkil edilsin, onların verecekleri hükümler sicillere kaydolunsun, itiraz mesmu' olmasın, denilmekle mesele hallolundu zannedilmiş. Emr-i nikâhta hall ve hürmet ahkâmı telfik-i mezahib vadisinden yok yere teşviş edilmiştir. Bunda zevcât için hayır ve maslahat yoktur. Öyle zevcine ilan-ı husumetle hilaf-ı mezhep ayrılmış olan kadını ahalimizden kim alacak. Ona tekarrüb etmeye havas ve avam eğer zina demezlerse elbet şüpheli tanıyacaklardır. Magrib diyarına yahut Sudan'a gidip Maliki'lere varacak değil ya. Daha etraflı düşünülürse onu Maliki'lerin de pek kabul etmeyecekleri anlaşılıyor..." Sadrettin, "Hukuk-u Aile ve Usulü Muhakemat-ı Şeriyye Kararnameleri Hakkında 38," *Sebil-ür Reşad* 439, volume 17, 28 August 1919.

Muslim religious leaders critiques, the opposition of Muslim conservative intellectuals and the ulema played a part in the annulment of the OLFR.

#### **4.2.4.2. Opposition of non-Muslim religious leaders to the OLFR**

The authorization of the qadı courts to handle cases related to marriage, divorce, and dowry claims of non-Muslims in the 156<sup>th</sup> article of the OLFR brought about an uproar among the religious leaders of these communities, the representatives of the Great Powers who supported them, and the Ottoman government.<sup>654</sup> Non-Muslim community leaders showed a great degree of discontent with the new family law. The Greek Patriarch and the Jewish Rabbi reacted negatively to the family law of 1917 because it intervened with their communities' religious affairs.<sup>655</sup>

During the assembly meetings when the OLFR was being discussed, a deputy from Aydın, a non-Muslim, Emanuelidi Efendi, argued that the OLFR was against the 11<sup>th</sup> article of the Constitution, Kanun-i Esasi, which gave various religious communities of the Ottoman Empire the right to practice their religion.<sup>656</sup> The Greek Patriarchate established a commission to prepare a memorandum to be sent to the Judicial Committee of the Assembly saying that solemnizing marriage was a religious duty that should be performed by the church. Besides, since the times of the sultan Mehmed II (r. 1444-46 and 1451-81), the performance of this duty had been allocated to the church as a privilege. This privilege belonged to the Greek Church

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<sup>654</sup> Gülnihal Bozkurt, *Batı Hukukunun Türkiye'de Benimsenmesi*, 175-177.

<sup>655</sup> Sabri Şakir Ansay, *Medeni Kanunumuzun 25. Yıldönümü*, 223

<sup>656</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 222-223.

for centuries; neither the 1839 *Gülhane Hatt-ı Hümayun* nor the 1856 *Islahat Fermanı* had disturbed it, and it should be kept as it was.<sup>657</sup>

Greek, Armenian, and Jewish religious leaders demanded support from the European countries via the embassies in Istanbul. They even insisted that pressure should be placed on the Ottoman state. These religious leaders even considered not abiding by the OLF, even if it meant a civil offence.<sup>658</sup> The non-Muslim religious leaders told their community members to disregard the OLF.

Non-Muslim religious leaders lobbied the press and used all available media to reclaim their rights on their communities' family issues. The Greek government protested the OLF. In the BOA<sup>659</sup> document file titled "Severing the Diplomatic Relations with Greece," there is a letter sent from the Greek Foreign Ministry to the Dutch consulate in Athens.<sup>660</sup> The letter addresses the Queen of Holland, saying that the OLF means the end of the arrangements that privileged the orthodox Greek population in the Ottoman Empire; hence the Greek government had protested the new family law.<sup>661</sup>

Together with the protests of the conservative Muslims, these efforts resulted in the annulment of the law in 1919, with heavy pressure coming from the major

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<sup>657</sup> Austrian State Archive, Haus und Hof Archiv, Politisches Archiv (PA), XII, LVI 17 November 1917, cited in Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 223.

<sup>658</sup> Austrian State Archive, Haus und Hof Archiv, Politisches Archiv (PA), XII, LVI 17 November 1917, cited in Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 223.

<sup>659</sup> Prime Ministry Ottoman Archives

<sup>660</sup> According to the document the letter was sent on 14 August 1918.

<sup>661</sup> "...Yunan konsolosluğu majesteleri Hollanda kraliçesinin büyükelçiliği aracılığıyla senato'nun resmi ilanına dair bir itiraz metnini ilettiler. 25 Ekim 1333 tarihli aile hukuku'na ilişkin kanun uzun süreden beri Ortodoks olan Osmanlılara tanınan ayrıcalıklı düzeni değiştirecek ve yine bunu destekleyecek şekilde Türkiye'deki Osmanlı devletinde Yunan tebasının da menfaat ve ayrıcalıklarını kaldırarak olan kanun söz konusudur..." HR HMŞ İŞO 66 27, November 1918.

authority of the occupying forces in Istanbul, *İtilaf Devletleri Yüksek Komiserliği* (The High Commission of the Allied Forces).

#### **4.2.4.3. Annulment of the OLFR**

In general, the reforms created the following changes:

- Allowed women to put stipulations in their marriage contracts against polygamy;
- Put limits on a man's unilateral right to divorce his wife;
- Allowed women to seek divorce; and
- Expanded the authority of the Sharia courts to include the family matters of non-Muslims.

Reforming the above-mentioned areas troubled the conservatives in both Muslim and non-Muslim communities in late Ottoman society. All religious authorities felt disturbed by the encroachment of the state into the domains over which they claimed a monopoly of power: the spheres of the personal status and family belonged to the religious authorities, and they resisted the shrinkage of their power in these domains.<sup>662</sup> Besides, the extension of citizen rights to non-Muslims plagued the Great Powers, who had been meddling with the internal affairs of the Ottoman Empire for more than a century. Both the conservative Muslim and non-Muslim community leaders and by the occupying forces objected to and protested the OLFR via journals and bureaucratic procedures, ushering in the events that led to

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<sup>662</sup> Deniz Kandiyoti, "End of Empire," 27

its annulment. On June 19, 1919 (20 Ramadan 1337), the OLFR was abrogated with a decree, with the legal provisions preceding the OLFR back in effect.<sup>663</sup>

However, the abrogation of the OLFR complicated the legal and bureaucratic procedures of family law issues in the Ottoman Empire.<sup>664</sup> Despite the fact that the war had ended, the problem of missing husbands continued and women's difficulties of livelihood were prolonged. In two documents dated June 10, 1922, and October 19, 1922, respectively, the Council of Ministers tried to decide whether the court of *Kazaskerlik* or local *qadis* should be responsible for marriage annulment cases brought because of missing husbands and alimony difficulties.<sup>665</sup>

Moreover, despite the fact that the OLFR was abrogated, for the practicality of family law issues, the OLFR was used in the Ottoman Empire until the 1923. In the cases I examined from the years 1919, 1922, and even 1923, some *qadis* referred to the OLFR to empower women, even after it was abrogated. In the next chapter, I will explore the content of the OLFR in detail by presenting examples from the *sijills* I have examined.

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<sup>663</sup> 8 Muharrem 1336 tarihli Hukuk-ı Aile Kararnamesi'nin lağvı hakkında kararname; see: *Düstur 2.Tertip*, 11.Cilt, İstanbul, Evkaf Matbaası, 1928, 229. Also see: DH HMs 3-1 2-25, A1, 15 July 1919.

<sup>664</sup> In another document it was said that divorce issues would be handled via a certificate of proof taken from the Sharia court and a document taken from the İstanbul population register. DH SN THR 3, 117, A15 April 1920.

<sup>665</sup> ŞD TN2, 2847, 39 13 March 1922; MV 224 148, 19 October 1922.

## CHAPTER 5

# **EXPLORATION OF THE OTTOMAN LAW OF FAMILY RIGHTS OF 1917**

In this chapter I will explore the OLFR and its application in Istanbul courts from 1915 to 1923. The period chosen reflects both the reform and pre-reform legal culture and practices. Examining the court proceedings of that period, I was able to compare and explore the situation related to family law in the late Ottoman Empire and prepare an exact report. Based on my findings from court proceedings, I will argue that with the promulgation of the OLFR, both Muslims and non-Muslims who suffered for various reasons in their marital lives gained more space and rights to seek justice. Although both Muslim and non-Muslim men resorted to the OLFR for their family law-related problems, the general tone in the court records indicates that, as in pre-reform times, the law protected the interests of women, who were deserted, left without livelihood, beaten or insulted by their husbands. By giving examples from the court records, I will try to show how both Muslim and non-Muslim women of the Ottoman Empire benefited from the application of the Ottoman Law of Family Rights of 1917. It must be said, however, that the rhetoric of the court proceedings did not drastically change after the promulgation of the OLFR, and some pre-reform practices also continued with new applications.

## 5.1 Exploration of the OLFR and application of it in late Ottoman Empire Istanbul

The Ottoman Law of Family Rights of 1917 is composed of two separate books. The first book, *Münakehat*, concerns marriage; it contains 6 chapters, *bab*, 15 sections, *fasıl*, and 101 articles. The second book, *Müfarakat*, deals with divorce; it contains 3 chapters, 5 sections, and 56 articles. In total, the OLFR contains 157 articles related to the marriage and divorce elements of Islamic family law.

The organization of the OLFR is as follows:

### **First Book (*Kitab-ı Evvel*): MARRIAGE (*Münakehat*)**

<b>CHAPTER I</b>	<b>ARTICLE NUMBER</b>
1 <sup>st</sup> Section: Engagement	1-3
2 <sup>nd</sup> Section: Legal Competence for Marriage	4-12
<b>CHAPTER II</b>	<b>ARTICLE NUMBER</b>
1 <sup>st</sup> Section: Legal Disabilities for Marriage	13-19
2 <sup>nd</sup> Section: Legal Disabilities for Marriage of Jewish Citizens	20-16
3 <sup>rd</sup> Section: Legal Disabilities for Marriage of Christian Citizens	27-32
<b>CHAPTER III</b>	<b>ARTICLE NUMBER</b>
1 <sup>st</sup> Section: Marriage Agreement	33-39
2 <sup>nd</sup> Section: Marriage Agreement of Christian Citizens	40-44
3 <sup>rd</sup> Section: Homogamy ( <i>Kefaet</i> ) <sup>666</sup>	45-51
<b>CHAPTER IV</b>	<b>ARTICLE NUMBER</b>
1 <sup>st</sup> Section: Nullity ( <i>Butlan</i> ) <sup>667</sup> and Voidability ( <i>Fasid</i> ) <sup>668</sup> of a Marriage	52-58

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<sup>666</sup> *Kefaet* is one of the basic obligations of Islamic family law. According to the law, if a couple wants to marry, the bride and groom must have similar socioeconomic status, cultural backgrounds, and religion. I hereby use the word *kefeat* and Ottoman homogamy interchangeably.

<sup>667</sup> In Islamic family law, if a man marries to relative, with whom marriage is forbidden, marries a woman during her waiting, *iddah*, period, marries two sisters at a time, marries a woman who was formerly divorced by irrevocable divorce, marries a polytheist woman, or marries without testimony his marriage is null, *butlan*. In such a marriage neither the husband nor the wife has any right to claim.

<sup>668</sup> In Islamic family law, marrying without permission of a guardian, not abiding by the bride price, *mehr*, conditions, marrying a woman without knowing that she is already married, and marrying without meeting the homogamy conditions constitutes a voidable, *fasid*, marriage. At the end of a *fasid* marriage, the wife gets her bride price, her *iddah*, and nafaqa. A child born of such a marriage is legal.

2 <sup>nd</sup> Section: Nullity and Voidability of Marriages of Jewish Citizens	59-62
3 <sup>rd</sup> Section: Nullity and Voidability of Marriages of Christian Citizens	63-68
<b>CHAPTER V</b>	<b>ARTICLE NUMBER</b>
1 <sup>st</sup> Section: Rules of Marriage	69-77
2 <sup>nd</sup> Section: Rules of Marriage for Christian Citizens	78-79
<b>CHAPTER VI</b>	<b>ARTICLE NUMBER</b>
1 <sup>st</sup> Section: Bride Price ( <i>Mehr</i> ) <sup>669</sup>	80-91
2 <sup>nd</sup> Section: Maintenance Allowance ( <i>Nafaqa</i> ) <sup>670</sup>	92-101

**Second Book (Kitab-ı Sani): DIVORCE (Müfarakat)**

<b>CHAPTER I</b>	<b>ARTICLE NUMBER</b>
1 <sup>st</sup> Section: General Rules of Divorce	102-110
2 <sup>nd</sup> Section: Revocable Divorce ( <i>Talak-ı Ric'i</i> ) <sup>671</sup> and Irrevocable Divorce ( <i>Talak-ı Bain</i> ) <sup>672</sup>	111-118
3 <sup>rd</sup> Section: Annulment of Marriage, <i>Hıyar-ı Tefriq</i> <sup>673</sup>	119-131
<b>CHAPTER II</b>	<b>ARTICLE NUMBER</b>
1 <sup>st</sup> Section: Divorce of Christian Citizens	132-138
<b>CHAPTER III</b>	<b>ARTICLE NUMBER</b>
1 <sup>st</sup> Section: Waiting Period, <i>Iddah</i> <sup>674</sup>	139-149
2 <sup>nd</sup> Section: Maintenance Allowance, <i>nafaqa</i> of a woman during her waiting period	150-154
<b>Miscellaneous Articles</b>	155-157

<sup>669</sup> In Islamic family law, bride price, *mehr*, is a necessary payment by a husband to a wife for marriage.

<sup>670</sup> In Islamic family law, a husband must provide his wife with food, shelter, and clothing as long as he is married to her. This is called *nafaqa*. He also has to provide for her during her three-month waiting period, *iddah*, if he divorces her. If a woman is pregnant, he has to cover her expenses and provide her *iddah nafaqa* until she gives birth. I hereby use the word *nafaqa* for maintenance allowance; and the word *iddah* for a woman's waiting period after being divorced by her husband.

<sup>671</sup> In Islamic family law, *talaq-ı ric'i*, revocable divorce is a kind of divorce that does not require making a new marriage contract and the payment of *mehr* if a husband wants to reunite with his wife.

<sup>672</sup> In Islamic family law, if a man divorces his wife by uttering the divorce word for the third time, the divorce is irrevocable, *talaq-ı bain*.

<sup>673</sup> Annulment of a marriage by decision of a judge is *hıyar-ı tefriq*.

<sup>674</sup> According to Islamic Law, a woman should wait three menstruation cycles, so that it is known whether she is pregnant or not. Having the waiting period, she can remarry. This waiting period is called *iddah*. During *iddah*, a husband is responsible for covering his ex-wife's living expenses. See: Sabri Şakir Ansay, *Medeni Kanunumuzun 25. Yıldönümü Münasebetiyle Eski Aile Hukukuza Bir Nazar Hukuk İnkılâbımızı Aydınlatan Tarihi ve Teşrii Vesikalar*, 212–213.

The aim of the reformers was to establish legal unity in the Ottoman Empire; hence the OLFR contained separate articles for Jews and Christians. The civil code of Russia from 1883 also had a similar structure: there are separate articles for different religious groups in the civil code.<sup>675</sup> In the OLFR, 13, 27, and 5 articles, respectively, specifically concerned Jews, Christians, and people of both religions. Besides, 115 articles were common to Muslims and Christians, 134 articles were common to Muslims and Jews, and 97 articles were common to people of all three religions.<sup>676</sup> In the next section I will explore the articles of the OLFR both for Muslim and non-Muslim populations of the Ottoman Empire.

### **5.1.1 Examination of the articles of marriage in the OLFR**

The OLFR codified the two main areas of family law, marriage and divorce. In this section and in the next I will explore these two main areas of personal status law by citing examples from the sijils of Istanbul courts.

#### **5.1.1.1. Engagement ceremony**

The first book of the OLFR is about marriage. It starts with a regulation on the engagement ceremony. This is the first section of chapter 1, and it is composed of three articles. According to the articles 1 and 2, being engaged does not mean to be

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<sup>675</sup> Ziyaeddin Fahri Fındıkoğlu, *Essai*, 34.

<sup>676</sup> Ebru Kayabaş, “Hukuk-ı Aile Kararnamesi,” 52–53.

married. If an engagement decision is reversed, the bride price, *mehr*, is bound to be paid back, though presents remain.<sup>677</sup>

According to Hayrettin Karaman, the Turkish word *nişanlanmak*, which means engagement, was first used in the OLF. Although *nişanlanmak* as a concept appears to be introduced to Ottoman family law with the OLF, the earlier concept of *Hitbe* already included what is meant by *nişanlanmak* in the OLF, and more. According to Karaman, flirting, a man proposing a woman to marry, promising and even agreeing on *mehr* were all included within *Hitbe*.<sup>678</sup> Agreeing with Karaman, Mehmet Akif Aydın argues that *nişanlanmak* was not a new concept, but a restructuring of an already existing one.<sup>679</sup> However, Halil Cin argues that as a concept, *nişanlanmak* was first institutionalized with the OLF.<sup>680</sup> Whether institutionalized or not, the inclusion of the engagement ceremony did not make much difference in terms of women's rights.

I have not come across an engagement case in the documents I examined. However, Zahid Çandarlı gives an example of a court record dated June 10, 1916, from Izmir. In the record a woman plaintiff sued her ex-fiancé for the charges of her weaving loom that she sold for her supposed wedding expenditures. The court recognized her claim and the ex-fiancé was made to pay her the expenditures.<sup>681</sup>

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<sup>677</sup> OLF, article 1, article 2.

<sup>678</sup> Hayrettin Karaman, *Mukayeseli İslam Hukuku I* (İstanbul: İz Yayıncılık, 2001), 294–295.

<sup>679</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 183.

<sup>680</sup> Halil Cin, *İslam ve Osmanlı Hukuku'nda Evlenme*, 294.

<sup>681</sup> Zahid Çandarlı, *L'Evolution du Mariage en Droit Turc et la Condition du Mari* (Fribourg, 1941), 89 quoted in Ebru Kayabaş, "Hukuk-ı Aile Kararnamesi," 64.

Apparently, Ottoman women had also been using the qadı courts widely before the OLFR for engagement issues. The institutionalization of already existing concepts in Islamic Law possibly made it easier to claim rights legally.

### **5.1.1.2. Credentials for marriage**

The second section of the first chapter of the OLFR talks about the credentials for marriage in nine articles. According to article 4, a boy has to be 18 and a girl has to be 17 years old to be competent to marry.<sup>682</sup> However, a girl's father has to be consulted for the marriage. If a father thinks that his daughter's husband is not her equal, he can resort to the court for the annulment of his daughter's marriage. As an innovation, with the OLFR, a father's consent was asked in advance as a precaution against further discord.<sup>683</sup>

According to articles 5 and 6, if a boy and a girl have not reached the maritable age, a judge could decide whether they can marry or not by assessing their situations. However, once again a girl's father will be consulted. However, this time he also has to give his permission for a marriage to be contracted.<sup>684</sup> For the Christians, the age limit is 22 for a man and 20 for a woman to get married. If the prospective couple's ages are below the limits, their parents will be consulted for consent.<sup>685</sup>

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<sup>682</sup> OLFR, article 4.

<sup>683</sup> Ziyaeddin Fahri Fındıkoğlu, *Essai*, 36.

<sup>684</sup> OLFR, article 5, 6.

<sup>685</sup> OLFR, article, 12.

If a girl is younger than 9 and a boy younger than 12, neither a parent nor a judge could marry them according to the law.<sup>686</sup> This article was different from the pre-existing practice of Islamic family law in the Ottoman Empire. However, it should be mentioned that the argument against parents' unrestricted rights to marry their children was actually the employment of one of the Islamic family canons. According to the canon developed by Ebu Bekir el-Esam, the parental authority was built on the idea of the well-being of children. Since there was no benefit to marrying children before they reached puberty, it was not allowed. According to Aydın, the idea of el-Esam best suited Ottoman times, and the legislators of the OLFR preferred to employ it in the new family law.<sup>687</sup>

According to the Hanafi School, parents could marry their mentally defective children. Regarding the situation of the mentally ill, the OLFR required an absolute necessity for these people to marry. However, it was up to the judge to decide whether the condition was an absolute necessity or not. The law did not define precisely what constituted an absolute necessity.<sup>688</sup>

In the court records I examined, I came across neither an age-limit case nor one with an incident of mentally defective people's marriage.

### **5.1.1.3. Restraints of marriage**

This is the first section of the second chapter of the book of marriage. The section about restraints of marriage is composed of seven articles. Since all four

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<sup>686</sup> OLFR, article, 7.

<sup>687</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 186.

<sup>688</sup> OLFR, article, 9.

schools of Islamic Law agreed on people who could not marry each other, the OLFK did not bring much difference regarding this aspect. The articles 13 to 19 defined restrictions for Muslims; 20 to 26 for Jews; and 27 to 32 for Christians Ottoman citizens' restrictions in marriage.<sup>689</sup>

However, an addition to the 200<sup>th</sup> article of the penal code was made to accompany the OLFK, which sentenced—between six months and three years in prison—those who married an already married woman or who witnessed such a ceremony.<sup>690</sup> Given the social upheavals and destitution caused by men lost or killed in war, such an addition to the penal code was a wise decision by the legislators. It was not rare that a woman who was widowed or whose husband appeared lost married another man, either on her own or through her guardian—only to have the first husband reappear after some time.<sup>691</sup> For example, the war veteran Osman resorted to a court to reclaim his wife Servet, who had been married off to Mehmet by her uncle, Ömer Rıza. Osman argued that Ömer Rıza unlawfully married off his wife to Mehmet. The marriage was null and Servet should return to their house. During the trial, Servet said that her uncle made her marry Mehmet, but that Mehmet and had not consummated and that she wanted to go back to her first husband, Osman. When Mehmet agreed, the qadı decided that the second marriage was null, and Servet went back to her first husband. Since Servet and Mehmet did not have a sexual intercourse, Mehmet did not have to pay Servet the *mehr*.<sup>692</sup>

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<sup>689</sup> OLFK, Chapter 2, Sections 1,2 and 3.

<sup>690</sup> See previous chapter for details of the changes regarding the 200<sup>th</sup> article of the Ottoman Penal Code.

<sup>691</sup> See chapter 4 for details.

<sup>692</sup> “*Galata’da Karadeniz otelinde mukim şahsı muâ’rref Osman ibn-i Ali Galata Mahkemesinde Meclis-i Şer’i Şerif-i Enverde Galata’da Çeşme meydanında Hacı Ömer mahallesinde muhtar Kazım Efendi hanesinde keza zat-ı mua’rrefe müteveffa Ali Kapudan kerimesi Servet Hanım muvacehesinde*

In the above-mentioned case, qadı protected the rights of all sides. The uncle Ömer Rıza, who was the “bad guy” in this unsavory story, had probably acted in good faith. But with other people, the situation of war could have easily led to exploitation, so the addition to the penal law acted as a precaution against such cases, which could cause emotional and material damage to people.

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*yedimde olup iş bu meclis-i şer'a ibraz eylediğim bir kı'ta ilmühaberde muharrer olduğu üzere ben mezbure Servet Hanımı âkile ve bâliğa ve cemi-i mevâni-i şer'iyeden haliye olduğu halde yüz adet lira-yı Osmanî mehr-i muaccel ve yüz bir adet lira-yı Osmanî mehr-i müeccel tesmiyeleriyle iş bu bin üç yüz otuz beş senesi ağustosunun on ikinci günü mahzar-ı şuhudda tezviç ve tenkih ve duhul edip ol vecihle mezbure zevce-i menkuha-i medhulün bihası olduktan sonra ben lihasletin sefere azimetimde zevcem mezburenin amcası Ömer Rıza Efendi fuzûli olarak zevcem mezbureyi bir buçuk mah mukaddem iş bu hazır-ı bil meclis Mehmet Efendi ibn-i Ahmet Efendiye tezviç ve tenkih etmiş ise de ber vech-i muharrer Servet Hanım benim menkuha-i meşru'um olduğundan akd-i sani batıl ve fuzuli olmağla sual olup zevcem mezburenin bana itaat ve hukuk-ı zevciyete riayet etmesine hüküm olunmasın taleb ederim deyu dava ettikde mezbure dahi cevabında filhakika tarih-i mezkûrda ben nefsimi mehreyn-i mezkureyn tesmiyeleriyle âkile ve bâliğa olduğum halde müddei mezbur Osman Efendiye tezvic ve tenkih edip ve beynimizde halvet ve zıfaf vâki' olup olvecihle mezbur Osman Efendi zevc-i dâhilim iken ber vechi muharrer zevcim mezbur seferde bulunduğu esnada yani tahminen bir buçuk ay mukaddem amcam Ali Rıza Efendi kendi meşiyetinden beni mezbur Mehmet Efendiye tezvic ve tenkih etmiş ise de akd-i fasid ve butlanına mebni akd-i mezkûru kabulden bil-imtina nefsimi mezbur Mehmed Efendiye teslim etmediğim cihetle mezbur Mehmet Efendi ile beynimizde halvet ve duhul vaki olmamıştır. Zevc-i evvel-i meşruum olan mûmâileyh Osman Efendiye mesken-i şer'isinde itaate âmâdeyim deyu beyan ve ifade ve hazır-ı bil-meclis Mehmet Efendi ibn-i Ahmed Efendiden lede-el-istifade ifadesinde fil-vaki mezbure Servet Hanımı bir buçuk ay mukaddem tezvic ve tenkih etmiş isemde henüz beynimizde halvet ve duhul vaki olmamağla mezbure zevci gayri medhulun bihâmdır. Bâlâda muharrer olduğu üzere müddei mezbur Osman Efendi mezbureyi tezvicimden evvel tarihi mezkurda tezevvüç ve takarrub etmiş olduğuna ahîren muttâli olduğumdan ben de mezbureyi bir talak-ı bâyin ile tatlik eyledim demekle müddeâ aleyhâ mezbure Servet Hanım dahi ifadesinde şayet mezbur Mehmet Efendiden hukuku zevciyet ve mehr vesair hukuktan bir nesne mukabelesin hakkım var ise bil-cümle hukuk ve amme-i deâvî ve kâffe-i mutalebatdan mezbur Mehmet Efendinin zimmetini kabulünü havi ibra-ı âmm-ı sahih-i şer'i ile ibra ve iskat eyledim dedikde tarafeynin iddia ve müdafaalarıyla müddeâ aleyh mezbure Servet Hanımın mezbur Mehmet Efendi ile vaki olan nikahları fâsid ve bâtil olub duhul ve halvet-i sahiha vaki olmamağla mehr ve nafaka-i iddet lazım gelmediği tarafeyne tefhim ve mezbure Servet Hanımın halen zevc-i meşruu mumaileyh Osman Efendiye mesken-i şer'isinde itaat ve hukuku zevciyete riayet etmesi icab eylediği tescil ve i'lam olundu. Fi'l-yevmi'l-ısrin min şehri Rebii'l-ahir liseneti seman ve selasin ve selasemie ve elf.”*

Galata Mahkemesi Defteri (Court of Galata Defteri), Defter: 1029/1, Case: 26, Page: 144, Date: 12 January 1920.

#### 5.1.1.4. Marriage ceremony

This is the first section of the third chapter of the first book of the OLFR. It contains seven articles. Analyzing the articles 33 to 36 helps us understand the institutionalization of state control over marriage in the Ottoman Empire.

In Islamic Law, marriage is not a sacrament as it is in Christianity.<sup>693</sup> According to Joseph Schacht, marriage in Islamic Law is accepted as a contract. In Islamic Law, legislative acts of family law are defined under the subcategory of *muamelât*,<sup>694</sup> which arranges family issues. In addition, *muamelât* regulates the area of political, legal, economic, and social relations between individuals, between individuals and society, and from society to society. Schacht thus concludes that a marriage in Islamic law is a rather worldly affair.<sup>695</sup>

The Ottoman state had always intervened in the marriage affairs of its subjects.<sup>696</sup> This intervention was consolidated after the Tanzimat through new laws and the Body of Regulations, *Sicill-i Nüfus Nizamnamesi* (September 2, 1881) and *Sicill-i Nüfus Kanunu* (August 27, 1914), respectively. Between *Sicill-i Nüfus Nizamnamesi* and *Sicill-i Nüfus Kanunu* the Ottoman State also issued another body of regulations with the aim controlling the marriage and divorce affairs of the population.<sup>697</sup> Aydın argues that the OLFR was a continuation of this process, and

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<sup>693</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 13; Halil Cin, *İslam ve Osmanlı Hukuku'nda Evlenme*, 32-33; Ahmet Akgündüz, Halil Cin, *Türk Hukuk Tarihi II* (İstanbul: İstanbul Araştırmaları Vakfı, 1996), 83

<sup>694</sup> Hayrettin Karaman, "İlmihal Geleneği", <http://www.hayrettinkaraman.net/kitap/meseleler/0845.htm> (accessed: 25<sup>th</sup> October 2013)

<sup>695</sup> İslam Ansiklopedisi, s.v. "Nikâh" by Joseph Schacht.

<sup>696</sup> See Chapter 2 for details.

<sup>697</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 138. Also see previous chapter for details.

with OLFR, the Ottoman state wanted to establish a system that controlled both Muslims and non-Muslims.<sup>698</sup>

According to article 33 of the OLFR, a marriage must be announced. However, before making a marriage public, a couple must follow two procedures: First they must receive a certificate of proof from a council of elders in their place of residence. The certificate has to include the personal data of the parties. In addition, the council of elders has to declare if a party has an impediment to marriage; if there is an impediment, the reasons of it, and depending on the age and *madhhab* of the parties, whether a consultation and/or permission is required from the guardians. The certificate of proof is submitted together with the birth certificates to a local judge of any of the parties. The judge can deny the marriage application if there is an obstacle to marriage. The guardian is invited to court if he does not give his consent to marriage. If the judge finds no obstacle to the marriage, the marriage is announced publicly. There is a ten-day waiting period for people to apply to court if they want to appeal the marriage. After the announcement period, the marriage ceremony is held either at the court or at a place specified by the judge. If a marriage ceremony is to be held at a place other than the court, an officer charged by the court has to attend the ceremony. A judge or whoever solemnized the marriage prepares a contract, *akidname*, which includes the amount of the bride price, *mehr*, and the stipulations of either the wife or the husband, apart from the parties' identities.<sup>699</sup>

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<sup>698</sup> Ibid., 188.

<sup>699</sup> Hukuk-ı Aile Kararnamesine Müteallik Muamelat-ı İdariye Hakkında Nizamname, articles 1-13.

An amendment dated 1917 to the 200<sup>th</sup> article of the Penal Code<sup>700</sup> was a direct threat to: a husband who did not marry at a court; attorneys of parties included in the marriage ceremony; the witnesses of such marriage ceremony; a judge who solemnized a marriage without the necessary procedures; a Christian religious officer who solemnized a marriage without the attendance of an officer charged by local court; a judge who on purpose did not send an officer who would solemnize a marriage to a place predefined by the court.<sup>701</sup>

According to the 39<sup>th</sup> article of the OLFR, the above-mentioned articles were valid also for the Jews of the empire. The second section of the third chapter regulates the marriage ceremonies of Christians. In articles 40 to 44, it was explained that a religious officer examines the certificate of proof and birth certificate of the parties. The Christians will have their own religious ceremony for marriage. However, the official has to inform the local court about the marriage ceremony consummated within 24 hours. The local court sends an officer to the place where the marriage ceremony is held and keeps a record of the marriage. A religious officer will be imprisoned between one and six months if he has failed to inform the authorities about a marriage.<sup>702</sup> Even a marriage solemnized without following the above-mentioned procedures was valid, however.

Having mentioned the witness to a marriage ceremony, it is important to emphasize that according to the 34<sup>th</sup> article of the OLFR, there should be two witnesses during the ceremony. However, the article is not clear on the gender of the witnesses present. Since, according to Islamic family law, only one male or two

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<sup>700</sup> İsmail Cebeci, *Ceride-i İlmîyye Fetvaları* (İstanbul: Klasik Yayınları, 2009), 34.

<sup>701</sup> Gottard Jaeschke, "Türk Hukuku'nda Evlenme Akdinin Şekli- Devletler Hususi Hukuku'nda Bir Araştırma," *İstanbul Üniversitesi Hukuk Fakültesi Mecmuası*, 18 (1952): 1128-1154.

<sup>702</sup> OLFR, First Book, Chapter 3, Section 2.

female witnesses can witness a marriage, this article confused the people. Besides, according to Islamic Law, it is a must for the witnesses to speak the same language as the wedding parties, so that they understand the court. There is no mention of this necessity in the OLFR.<sup>703</sup>

#### **5.1.1.5. Stipulation against polygamy in the OLFR**

The 38<sup>th</sup> article of the OLFR is a stipulation against polygamy. The Hanbali madhhab was employed for this article. With the OLFR, it was accepted that a woman can create a restriction with respect to her husband marrying a second time. According to the article, if her husband remarries, either the second marriage or her marriage will be null. Actually, the intention of Mansurizade Said, a member of the commission that prepared the OLFR, was to abrogate polygamy totally. Mansurizade Said discussed the issue at length in *Sebil'ür Reşat* with Ahmed Naim. Mansurizade Said argued that the ruler, *ulu'l emr*, could abrogate polygamy. It would not be against Islamic doctrine, for people living in a Muslim country must obey the ruler. According to Islamic Law, a ruler should protect the rights of all his subjects; hence protecting the well-being of society in general and of women in particular by abrogating polygamy was legal and just.<sup>704</sup>

The conservatives criticized Mansurizade Said severely, because they were very much annoyed that a woman's consent was asked for her husband's second

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<sup>703</sup> Ömer Nasuhi Bilmen, *Hukuk-ı İslamiyye ve Istılahatı Fıkhiyye Kamusu II*, 30.

<sup>704</sup> Mansurizade Said Bey, "Taadüd-ü Zevcat İslamiyet'ten Men Olunabilir," *İslam Mecmuası* 8, 21 May 1914.

marriage and claimed that this article went against the *Sunnah* and *icma*.<sup>705</sup> According to Aydın, the 38<sup>th</sup> article of the OLFK was a middle course between people like Mansurizade and conservatives. Yet none of the sides involved in the discussions of the reform were content in the end, for they had to compromise on their positions and beliefs.<sup>706</sup>

However, while arguing against the limitation of polygamy by claiming that this limitation went against the *Sunnah*, the Muslim conservatives were missing a point. A man who preferred to be polygamous in the Ottoman Empire might not be abiding with the *Sunnah* either. The equality principle in polygamy as defined in the Quran had not been met by many polygamous men. For instance, Hamide Hanım sued her husband Abdullah Ağa,<sup>707</sup> for he neither paid the bride price, *mehr*, nor provided her with a place to live. She claimed her *mehr* and wanted her maintenance allowance from Abdullah Ağa until the day he provided her with a place. In his response, Abdullah Ağa told the court that he could not give her a maintenance allowance, *nafaqa*. He told the court that only if Hamide Hanım agreed to living with Abdullah Ağa, his first wife, and two daughters from his first marriage, could he take care of her needs. The court decided that Abdullah Ağa needed to pay a maintenance allowance to Hamide Hanım.<sup>708</sup>

Another case involves Major Faruk, who was the son of a pasha, *paşazâde*, also sued by his wife. His wife, Mükerrerem Hanım was pregnant, not knowing that

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<sup>705</sup> Ahmed Naim, "Taadüd-i Zevcat İslamiyetten Men Olunabilir mi imiş?," *Sebil'ür-Reşad* 12 28 May 1913; Sadreddin, "Hukuk-u Aile ve Usulü Muhakematı Şeriyye Kararnameleri Hakkında," *Sebil'ür-Reşad* 15, 1913. See previous chapter for details.

<sup>706</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 193.

<sup>707</sup> Ağa is one of the titles of Ottoman gentleman, mostly used for uneducated people, townsmen.

<sup>708</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1028/1, Case: 32, Page: 12, 27 January 1919.

her husband had a second wife. She asked the court to increase her maintenance allowance. In his defense, Major Faruk argued that they were divorced, that he had another wife to take care of, and that he was not rich enough to meet the expectations of Mükerrerem Hanım. However, witnesses testified that Major Faruk was quite wealthy and could pay Mükerrerem Hanım the amount she wanted. The court decided that Major Faruk needed to pay Mükerrerem Hanım the *nafaqa* she asked.<sup>709</sup>

In a third case the situation of the woman is even more complicated. Nüzhet Hanım was an émigré from Hayrabolu. Nüzhet Hanım, her husband Mehmet Nuri Efendi, and their daughter had immigrated to Istanbul after the Balkan Wars. After a year and a half, her husband went back to Hayrabolu, telling Nüzhet Hanım that they would reunite as soon as he could find financial means. Nüzhet Hanım sued Mehmet Nuri Efendi, for she and her daughter were left without any means of livelihood and asked for a maintenance allowance. The witnesses told the court that Mehmet Nuri Efendi was well off, living in Hayrabolu with his second wife. The judge decided that Nüzhet Hanım was to be paid the maintenance allowance she asked.<sup>710</sup>

The above-mentioned cases from the Istanbul courts are revealing of the fact that the already difficult life conditions of Ottoman women were worsened by polygamous men. In the cases examined, polygamous men were not the rightful beneficiaries of the polygamy permission given in the Quran, because they neither treated their wives equally nor took care of their material needs, which they had to according to Islamic Law. Major Faruk and Mehmet Nuri Efendi did not even consider the well-being of their offspring. The 38<sup>th</sup> article of the OLFER therefore

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<sup>709</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 5, Page, 24, 3 March 1917.

<sup>710</sup> Beykoz Mahkemesi Defteri (Court of Beykoz *Defteri*), Defter: 12/2, Case: 34, Page: 83-84, 14 July 1923.

might have put women at ease legally. Besides, the article could serve as a discouragement to men who could not truly bear the burdens of polygamy legally, materially, and socially.

#### **5.1.1.6. Homogamy, *Kefaet***

This is the third section of the third chapter of the book of marriage of the OLF. Homogamy, *kefeat*, is one of the basic obligations of Islamic family law, insisting that the bride and the groom would have to have similar economic, social, religious statuses. In Islamic family law, homogamy is mostly sought in men, as a man can marry a woman who is not his equal, while a woman cannot marry a man who is not her equal. If she does, her father can object and resort to court for the annulment of his daughter's marriage.

There are six criteria of homogamy, *kefeat*, in classical Islamic doctrine: religion, freedom, piousness, fortune, occupation, and family origin.<sup>711</sup> Family origin is important especially for the Arabs; for instance, a person from the *Kureysh* tribe is equal only to a person from that same tribe. According to Ahmet Akgündüz and Halil Cin, for other Muslims, equality is sought in terms of religion. Among Muslims, if a person's father is the only Muslim among his paternal relatives, he is not equal to a person whose father and grandfather are Muslim. Wealth is important in terms of having enough money to pay the bride price and cover the expenses of the wife.<sup>712</sup>

The OLF admitted only two criteria for homogamy: wealth and honor. The legislators in many areas ratified the existing practices and conventions on marriage

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<sup>711</sup> Alen Duben and Cem Behar, *Istanbul Households*, 120.

<sup>712</sup> Ahmet Akgündüz and Halil Cin, *Türk Hukuk Tarihi II*, 98.

matters, though.<sup>713</sup> According to article 45, a husband should be able to pay the bride price, *mehr-i muaccel*, and to support his wife and children. Again the same article says that a husband's occupation should be as honorable as that of his wife's father. When the OLF<sup>R</sup> was promulgated, slavery had already been abolished in the Ottoman Empire. Therefore, it was not necessary to stipulate freedom as one of the conditions of homogamy. Besides, for Muslims in the Ottoman Empire, it was not quite possible to trace who accepted Islam before the other. For that matter, the homogamy condition had to some extent also lost its validity.<sup>714</sup>

The 47<sup>th</sup> article says that a woman can marry without a bride price her equal without the permission of her guardian. However, if she marries someone who is not her equal, her guardian can apply to a court to annul that marriage. According to article 48, a guardian cannot annul a marriage for which he has given his consent if the husband turns out not to be the equal of the wife. Yet if either a guardian or the wife stipulated equality in the marriage contract, then they can apply to a court and ask for the annulment of the marriage.<sup>715</sup> The last article of the section on homogamy ends by stating that these decrees are not applicable to non-Muslims.

I have not come across any case related to the notion of homogamy, *kefeat*, or any divorce case related to it.

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<sup>713</sup> Alen Duben and Cem Behar, *Istanbul Households*, 120.

<sup>714</sup> Ebru Kayabaş, "Hukuk-ı Aile Kararnamesi," 88.

<sup>715</sup> OLF<sup>R</sup>, article 47, 48.

### 5.1.1.7. Voidable, *Fasid*, and Null, *Butlan*, marriages

This is the fourth chapter of the first book on marriage. It has three chapters and explores voidable, *fasid*, and null, *butlan*, marriages. Articles 52 to 58 define voidability and nullity for a Muslim marriage, articles 59 to 62 for Jews, and 63 to 68 for Christians.

The voidable, *fasid*, marriages are: marrying without the permission of a guardian; employing a guardian who is not a close relative while a close relative is present; not abiding by the bride-price conditions; marrying a woman without knowing that she is already married to someone else; marrying without abiding by the homogamy requirements. Those whose marriages are voidable should get immediately divorced. If they do not, a judge will divorce them upon a complaint. At the end of a voidable, *fasid*, marriage, a woman can claim her bride price, *mehr*, gets her waiting period, *iddah*, and *nafaqa*. Besides, if a child is born as a result of a voidable conjugal union, it is still legitimate.<sup>716</sup>

The null, *butlan*, marriages are: marrying a relative, marriage with whom is legally forbidden; marrying a woman during her *iddah* period; marrying two sisters at the same time; marrying a woman formerly divorced by irrevocable divorce; marrying a polytheist woman; marrying without witnesses. At the end of a null marriage, neither a woman nor a man has any right to claim.<sup>717</sup>

According to Mehmet Akif Aydın, the legislators did not take into consideration the differences between voidable and null marriages defined in the

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<sup>716</sup> Ebru Kayabaş, "Hukuk-ı Aile Kararnamesi," 91

<sup>717</sup> Ibid., 93.

Hanafi School.<sup>718</sup> Ebru Kayabaş argues that the legislators defined null marriages as voidable. For instance, while marrying a foster by milk is null, the OLFR considered it to be voidable. In the OLFR, only a marriage of a non-Muslim man and a Muslim woman is accepted as null.<sup>719</sup>

Among the documents I explored, I have not come across either a null or a voidable marriage case.

#### 5.1.1.8. Dictums of marriage

A Muslim woman's right as a wife to obtain material support, *mehr* and *nafaqa*, from her husband could be activated and enforced, if necessary, by the legal system. A husband could even be imprisoned if he did not pay *mehr* and/or *nafaqa*.<sup>720</sup> The first section of the fifth chapter of the first book of the OLFR mainly covers the obligations of a husband and a wife towards each other in a conjugal union. The issues covered in this section are: payment of bride price, *mehr*;<sup>721</sup> accommodation;<sup>722</sup> the wife being the compulsory companion of her husband wherever he lives;<sup>723</sup> not allowing any relative of a husband other than his legal children to live in the household unless the wife gives her consent;<sup>724</sup> mutual understanding and showing good manners towards each other; and the wife's

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<sup>718</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 194.

<sup>719</sup> OLFR, article 58.

<sup>720</sup> Judith Tucker, "Revisiting Reform," 8.

<sup>721</sup> OLFR, article 69.

<sup>722</sup> OLFR, article 70.

<sup>723</sup> OLFR, article 71.

<sup>724</sup> OLFR, article 72.

obedience to her husband;<sup>725</sup> obeying the rule of equality if a man is polygamous;<sup>726</sup> and results of voidable and null marriages.<sup>727</sup>

#### 5.1.1.8.1. Bride's Price, *Mehr*

A man must pay a bride price, *mehr*, to his wife for their marriage. However, this payment is neither a fee nor compensation. *Mehr* is for providing a woman with economic security. Besides, *mehr* totally belongs to a woman and no one can claim it from her.<sup>728</sup> If the amount of the *mehr* is fixed during the marriage ceremony it is called *mehr-i müsemma*. *Mehr-i müsemma* is bifurcated: *mehr-i muaccel*, which is paid during the ceremony in total, and *mehr-i müeccel*, a payment that can be delayed. There is also *mehr-i misil*, which is an agreed payment by the court defined by how much payment is made to a wife's equals in terms of status and wealth. Having been stated precisely, it is argued that *mehr* is a strategy to strengthen a woman against a man's unilateral right to repudiate his wife.<sup>729</sup> Therefore it is one of the most important determinants of Islamic family law in general, and of marriage in particular.

The first section of the sixth chapter has 12 articles, all of which are about the bride price, *mehr*. From article 80 to 91, the legislators abided by the Hanafi madhhab's rulings on *mehr*. In one difference, the OLFR has no lower limit for the

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<sup>725</sup> OLFR, article, 73.

<sup>726</sup> OLFR, article, 74.

<sup>727</sup> OLFR, articles, 75, 76, 77. The second section of the first chapter is reserved for the consequences of voidable and null marriages of Christians. See OLFR, articles, 78, 79.

<sup>728</sup> Ömer Nasuhi Bilmen, *Hukuk-ı İslamiyye ve İstılahatı Fıkhiyye Kamusu II*, 147-148; Hayrettin Karaman, *Ana Hatlarıyla İslam Hukuku II: Hususi Hukuk*, (İstanbul: Ensar Neşriyat, 1985), 95; İlber Ortaylı, *Osmanlı Toplumunda Aile*, 64.

<sup>729</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 104, Cin, *İslam ve Osmanlı Hukuku'nda Evlenme*, 216-218; Karaman, *Mukayeseli İslam Hukuku I*, 338-339.

*mehr* (the Hanafi madhhab stipulates at least 10 *dirhem* silver). Likewise, the upper limit of *mehr-i müsemma* was also left unbounded.<sup>730</sup> The OLF<sup>R</sup> also banned the wife's parents or her close relatives from taking money, *başlık parası*, for wedding expenses.<sup>731</sup>

The 87<sup>th</sup> article says that if there arise a dispute about *mehr*, a husband's word will be recognized. In lieu of *mehr*, a husband can offer some goods. However, in pre-reform practice, a dispute on *mehr* was resolved by applying the *mehr-i misil* ruling, which set the amount of *mehr* by examining the woman's peers.<sup>732</sup> This article is incongruous with the pre-reform *mehr* practice, which was more advantageous for both Muslim and non-Muslim women.

In a case before the promulgation of the OLF<sup>R</sup>, a woman sued her husband for her bride price, *mehr*. She was able to get the payment despite her husband's act of protests, for he thought the presents he gave her during the marriage should be counted as her *mehr*. An Istanbulite lady Fatma Hanım was the daughter of a medical doctor. She was married to Ali Rıza Bey, who was also well off. Fatma Hanım sued her husband for her bride price, *mehr*. However, Ali Rıza Bey claimed that he gave his wife high-priced jewelry, which should be a substitute for her *mehr*. After lengthy discussions and testimonies of witnesses, the court decided that Ali Rıza Bey should pay Fatma Hanım her *mehr*, after subtracting the amount of the jewelry

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<sup>730</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 196.

<sup>731</sup> OLF<sup>R</sup>, article, 90.

<sup>732</sup> Ebru Kayabaş, "Hukuk-ı Aile Kararnamesi," 99.

he gave her.<sup>733</sup> If Fatma Hanım had sued her husband after the promulgation of the OLF, Ali Rıza Bey's claim would have been accepted.

Ottoman women were very much aware of their right to *mehr*. They did not let it go even if when they were working or had means to survive. For instance, Fatma Hürrem Hanım, who was a headmistress of a commodity market in

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<sup>733</sup> “Üsküdar Mahkeme-i Şer’iyyesinden mü’tâ bin üç yüz otuz iki senesi Zilhicce-i şer’ifesinin on dokuzuncu günü tarihiyle muvarraha olub hulasa-yı meâli: Üsküdar’da Kadı karyesinde Osman Ağa Mahallesinde Kağıtçıbaşı Sokağında beş numaralı hanede sakine muarrefetü’z-zat Fatıma İhsan Hanım ibnet-i Doktor Emin Bey husus-ı âtil beyanda münferiden ve müctemi’an vekil-i müseccel-i şer’leri da’va vekillerinden sıra Eminizâde İsmail Ratıp Bey ibn-i Ali Rıza ve İsmail Münir Beylerden ancak mûmâ-ileyh İsmail Ratıp Bey mecliste Meclis-i Umumi-i Vilayet Azasından Ali Rıza Bey ibn-i Eşrefin dahi kezalik husus-ı âti’l beyanda vekil-i müseccel-i şer’isi Şûra-yı Devlet Bidayet Mahkemesi zabıt katiplerinden Mehmed Arif Bey ibn-i Mazhar Bey muvacehesinde müvekkil-i mûmâ-ileyh Ali Rıza Bey müvekkilesi mûmâ-ileyhâ Fatıma İhsan Hanımı bin üç yüz dokuz sene-i maliyesi Temmuzun on dokuzuncu günü karye-i mezkûrede mahzar-ı şuhudda elli adet tam yüzlük Mecidî altunu mehr-i muaccel ve elli bir adet tam yüzlük Mecidî altunu mehr-i müeccel tesmiyeleriyle tezevvüc ve kabul ve mezbûreye duhul edip olvecihle müvekkilesi mûmâ-ileyhin zevc-i dâhili iken bin üç yüz otuz sene-i maliyesi Haziranın yirmi yedinci günü zevcem Fatıma İhsan Hanımı tatlik ettim deyu müvekkilesi zevcesi mûmâ-ileyhâyı tatlik etmekle zimmetinde mütekarrır ve ma’kudûn aleyh müvekkilesi mûmâ-ileyhânın mehreyn-i mezkûreyni olan cem’an yüz bir adet lira-yı Osmanîyi halen edâ ve teslim müvekkiline izafetle vekil-i mûmâ-ileyh Mehmed Arif Beye tenbih edilmek ve müvekkilesi mûmâ-ileyhânın inkıza-ı iddet-i muayyene-i malumesine değin nafaka ve kisve-bahâ ve meûneti- süknâsi için zevc-i mütallık mûmâ-ileyh Ali Rıza Bey üzerine kadr-i ma’ruf meblağ farz ve takdir olunmak matlubumdur deyu da’va ve lede’s-sual vekil-i mûmâ-ileyh Mehmed Arif Bey dahi cevabında müvekil-i mûmâ-ileyh Ali Rıza Bey müvekkile-i mûmâ-ileyhâ Fatıma İhsan Hanımı tarihi mezkûrda bervech-i muharrer elli adet tam yüzlük Mecidî altunu mehr-i muaccel ve elli bir adet tam yüzlük Mecidî altunu mehr-i müeccel tesmiyeleriyle karye-i mezkûrede bâkir olarak tezevvüc ve mezbûreye duhul edip olvecihle zevc-i dâhili iken mezkûr Haziranın yirmi yedinci günü zevcem Fatıma İhsan Hanımı tatlik ettim deyu zevcesi mezbûreyi tatlik etmiştik. Mehr-i müeccel meblağ-ı mezkûr elli bir adet tam yüzlük Mecidî altunu müvekkil-i mûmâ-ileyhin elyevm zimmetinde mütallakası mûmâ-ileyhâya deynidir deyu tayian bi’l-vekale bade’l-ikrar mehr-i muaccel meblağ-ı mezkûr elli adet tam yüzlük Mecidî altunun yerine müvekkil-i Ali Rıza Bey leyle-i zıfafta mûmâ-ileyhâ Fatıma İhsan Hanımın rıza ve muvafakatıyla mûmâ-ileyhâya elli adet tam yüzlük Mecidî altunu kıymetinde bir madalyon i’ta ve teslim eylediğinde mûmâ-ileyhâ dahi bervech-i muharrer kabul ve tesellüm etmiş olmağla olvecihle müvekkil-i mûmâ-ileyhin zimmet-i mehr-i muaccel-i mezkûrdan berîe olduğu gibi tarih-i talâ k-ı mezkûrdan tarih-i i’lama kadar güzerân olan müddetlere mutallaka-yı mûmâ-ileyhânın iddet-i mutallık mu’ma ileyhten munkaziye olmağla nafaka talebine dahi hakkı yoktur demesiyle .... ...Deyu da’va ve vekil-i mûmâ-ileyh İsmail Ratıp Bey dahi cevabında kütüphane ile kitap ve elbise meseleleri henüz bidayeten fasl ve hal edilmemiş bir da’va olmağla beraber müddeâ aleyh mûmâ-ileyh Ali Rıza Beyin kütüphane ile bir takım kitapları ve bazı elbisesi müvekkilemin nezdinde mevcut ve mahfuz olub müvekkilemin mehreynden alacak hakkı olan meblağ-ı müddeâ-i mezkûrun tamamını müvekkileme tediye eylediği zaman kendisine tesviye edilecektir ve bunda müvekkilemin bir güne hırs ve tama’ı yoktur ... İsmail Ratıp Bey tekrar cevabında müvekkilem mütellaka-yı mûmâ-ileyhâ Fatıma İhsan Hanımın mehreyn-i mezkûreyni cem’an yüz bir adet lira-yı Osmanîden on bir adet lira-yı Osmanîsi ben rızamla bi’l-vekale had ve tenzil etmemle mütebâki alacak hakkı olan seksen altı adet lira-yı Osmanînin misillerini hâlâ bana edâ ve teslim müddeâ aleyh müvekkil-i mûmâ-ileyh Ali Rıza Bey tenbih olunmak bi’l-vekale matlubumdur....” Anadolu Sadareti Mahkemesi Defteri (Court of Anadolu Sadareti Defteri), Defter:171, Case: 1, Page:1, 25 March 1916.

Meydancık, İstanbul, applied to the court to claim her *mehr* from her deceased husband's estate. Although she was working and quite well off, *mehr* was her right and she rightfully demanded it. The court decided that the amount of her *mehr* would be calculated and be paid to Fatma Hürrem Hanım from the estate of her husband, Şükrü Bey.<sup>734</sup>

In another case, an Istanbulite lady Zeynep Nazmiye Hanım was the granddaughter of a pasha. She was married to İsmail Gaffarov, who was quite rich and working at the Austrian Carpet Company. When they had a fierce fight, Zeynep Nazmiye Hanım left her house and moved into her mother's waterside mansion at Kuruçeşme, İstanbul. She sued her husband for her *mehr* and *nafaqa* for their seven-year-old boy, claiming that İsmail Gaffarov insulted and divorced her. After listening to witnesses, the court decided that they were divorced and İsmail Gaffarov had to pay her *mehr* and the child's *nafaqa*.<sup>735</sup>

Fatma Hürrem Hanım, Zeynep Nazmiye Hanım, and Fatma Hanım were notable women. They had powerful families and Fatma Hürrem even earned her money. However, there were also less powerful and even weak women in the Ottoman Empire, whose rights were protected by the court, like Emine Hanım. Emine Hanım was married to a builder, Mehmet Mesut Efendi from Samsun. However, in the same year they married, Mehmet Mesut Efendi left Emine Hanım for Zonguldak and divorced Emine Hanım in absentia, despite the fact that she was pregnant. He did not even send Emine Hanım her *mehr*, which caused the woman to sue her husband. Actually, in such a case, the *mehr* was a woman's only power

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<sup>734</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1029/2, Case: 57(408), Page: 331, 18 November 1919.

<sup>735</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 4, Page:21, 4 February, 1917.

against abusive husbands like Mehmet Mesud. The court decided that Mehmet Mesud Efendi should pay Emine Hanım her *mehr* and *nafaqa* until she gave birth to their child.<sup>736</sup>

There were also absent, *gaib*, husbands who were sued by their wives for *mehr* and *nafaqa*. Ahmet Mithat Efendi was a civil servant and left his wife Mediha Hanım to go to Anatolia without paying Mediha Hanım her *mehr-i muaccel*. Despite the fact that in the *İkdam* newspaper a notice of absence was given for him, Ahmet Mithat Efendi did not appear at court, so the court decided that Ahmet Mithat Efendi should pay the *mehr* to Mediha Hanım. However, if Ahmet Mithat Efendi could not be located, his debt to his wife would have to be paid by a family member from his estate on his behalf.<sup>737</sup>

The qadı court was protective also of the women whose husbands did not automatically pay the *mehr* right after the divorce but waited for a legal enforcement to do so. For instance, Hayriye Hanım sued her husband, Major Ali Cemal Bey, for her *mehr* and *iddah nafaqa*. Her husband divorced her with *talaq-ı bain* and had not paid her *mehr-i müeccel*. The court recognized Hayriye Hanım's claim and decided that Ali Cemal Bey should pay her *mehr* and *iddah nafaqa*.<sup>738</sup> The cases of Major Ahmet Bey and his wife Belkıs Hanım,<sup>739</sup> Hasan Muhsin Efendi and Fatma Sabiha

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<sup>736</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 184, Page:11, 12 February 1917.

<sup>737</sup> Beykoz Mahkemesi Defteri (Court of Beykoz *Defteri*), Defter: 12/2, Case: 29, Page: 48, 10 October 1921

<sup>738</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1027, Case: 533, Page: 37, 20 October 1917.

<sup>739</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 202, Page: 17, 14 February 1917.

Hanım,<sup>740</sup> Sergeant Süleyman Efendi and Şefika Hanım,<sup>741</sup> and İbrahim and Zehra<sup>742</sup>

are similar to Hayriye Hanım's case.

<sup>740</sup> Anadolu Sadareti Defteri (Court of Anadolu Sadareti *Defteri*), Defter: 171, Case: 8, Page: 21-22, 18 May 1916.

<sup>741</sup> “Fındıklı’da Ferizat Hanım mahallesinde yedi numaralı hanede mukime Şefika Hanım ibnet-i Mustafa Efendinin zevce-i mutallıkı Çorlu kasabasında mukim ve ticaretle meşgul çavuş Süleyman Efendi ibn-i Hüseyin Efendi aleyhine ikame eylediği talâk ve mehreyn ve nafaka da’valarından dolayı tasdir .... iş bu mahkemeden mûtâ bir kut’a izinname mucibince mücerret mûmâileyh Süleyman Efendi müvekkilem mezbure Şefika Hanımı bin üç yüz otuz beş senesi Eylülünün yedinci günü Tophane’de Kâtip Mustafa Çelebi mahallesinde mahzar-ı şuhudda beş bin guruş mehr-i muaccel ve beş bin bir guruş mehr-i müeccel tesmiyeleriyle tezevvüc ve tenekküh ve kabul edip ol-vechyle zevce-i menkuha-i medhûlün bihâsi iken Davut Paşa mahkemesinden mu’ta ibraz eylediğim bin üç yüz otuz yedi senesi zilhiceti’ş-şerifesinin yirmi yedinci günü tarihli bir kut’a hüccet-i şer’iyye ile müvekkilem mezbureyi bir talâk-ı bâyin ile tatlik ettiğinden ve müvekkilem mezbureye mehreyn-i mezkureteyne mahsuben nesne i’ta etmeyip müvekkilem mezburenin zevce-i mutallıkı mûmâileyh zimmetinde mehreyn-i mezkureyn cem’an on bin bir guruş alacağı bulunduğundan mehreyn-i mezkureynin mezbureye hâlen edâsını ve müvekkilem mezbure zevce-i mutallıkı mûmâileyhden hamile bulunduğundan vaz-ı haml ile iddet-i inkızasına değil nafaka ve kisve-bahâ vesair levazım-ı zaruriyesi için yevmiye yüz ellişer guruştan şehri dört bin beş yüz guruşun mûmâileyh Süleyman Efendi üzerine farz ve takdiri ve masarîf-ı muhakemenin mûmâ ileyhe tahmilini talep eder ve mûmâileyh Süleyman Efendi Çorlu’da ticaretle meşgul olduğu ve eshab-ı akardan bulunduğu cihetle yüsri bulunduğundan talep ettiğin nafakanın kadr-i maruf idüğünü beyan eylerim”.... ber-muceb-i iddiâ ve ikrar mehreyn-i mezkureyn cem’an on bin bir guruş zevce-i mutallakası mezbure Şefika Hanıma halen edâ ve teslime mûmâileyh Süleyman Efendi ba’de’l- ilzam miktar-ı nafakanın tayini için taraf-ı şer’den ehl-i vukuf intihab olunan Ticaret-i Bahriye Mektebi Müdürü Abdülhamid Naci Bey ibn-i Ahmet Bey ile Dersaadet da’va vekillerinden Halil Efendi ibn-i Nadir Efendiden her biri ifâdelerinde.... deyu vuku’bulan ihbarlarıyla meblağ-ı mezkur şehri üç bin guruşun kadr-i maruf idüğü inde’ş-şer’il enver zahir ve numâyan olmağla müddeiye-i mezbure zat-ı maruf Şefika Hanım zevce-i mutallıkı mûmâileyh Süleyman Efendi kendisine cins-i nafaka olan nesne terk ve i’ta ve irsal ve bir tarafa havale etmediğine ve mûmâ ileyhin nafaka cinsinden malı ve mezburenin iddeti münkaziye olmadığına ber nehc-i şer’i tahlif olunmağın mucibince mezburenin vaz-ı haml ile iddet-i inkızasına değin nafaka ve kisve –bahâ vesair levazımı zaruriyesi için iş bu tarihi i’lamdan bi’l-itibar mûmâileyh Süleyman Efendi üzerine yevmiye yüz guruştan şehri üç bin guruş farz ve takdir olunup meblağ-ı mefruz-ı mezkuru vaz-ı haml ile iddeti inkızasına değin nafaka kisve –bahâ vesair levazım-ı zaruriyesine harç ve sarf ve lede’l-iktiza istidaneye ve indez- zafer mûmâileyh Süleyman Efendiye rucü’a mezbure Şefika Hanıma kibel-i şer’den izin verildiği ve masarîf-ı muhakeme ve pul ve varaka-bahâ ve ücret-i tebliğ olan cem’an üç yüz kırk altı guruşun dahi mûmâileyh Süleyman Efendiden bil-ahz mezbure Şefika Hanıma i’tası iktiza eylediği tescil ve i’lam olundu...” Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1029/2, Case: 406, Page: 328, 17 November 1919.

<sup>742</sup> “Mahmiye-i İstanbul’da ve Şeyh Ebul Vefa Hazretleri türbe-i şer’ifeleri gurbunda Darü’l Hadis mahallesinde medrese sokağında muhtar İsmail Efendinin hanesinde müste’ciren sakin ve zatı Beykoz kazası Sulh Mahkemesi mübaşirlerinden Süleyman Efendi ibn-i el-hac Mehmed ve Kanlıcada sakin Şakir Bey ibn-i Kazım tarifleriyle muarref Zehra Hanım ibnet-i Abdülcebbar Ağa kaza-i mezkûr mahkeme-i şer’iyyesinde ma’küd ve meclis-i şer’imizde kazai mezkûr karyelerinden Yalı karyesinde Gâzi Yunus mahalle ve sokağında Halil Zekeriyya Beyin hanesinde müste’ciren sakin tabakhane-i amire kundura fabrikasında müstahdem İbrahim usta ibn-i Mustafa muvacehesinde mezbûr İbrahim usta iş bu tarihi ilamdan beş ay mukaddem karye-i mezkûrada mahzarı şuhudda iki bin beş yüz bir guruş mehr-i müeccel tesmiyesiyle beni tezevvüc ve tenekküh ve kabul ol vechile zevci dahilim olub lakin beynimizde hüsnü muaşeret hasıl olamadığından mezbûr İbrahim usta iş bu sene-i haliye eylülün on üçüncü günü tarihli irsal eylediği bir ki’ta talaknâmede muharrer olduğu üzere beni bir talak-ı bâyin ile tatlik etmekle zimmetinde mu’tasarîf ve makûdun aleyh mehr-i müeccel-i mezkûr li ecli’l-hakkım olan meblağ-ı mezmezkûr iki bin bir guruş ve mezbûrun firaşından hasıl ve hâlâ batımda

However, the cases of İbrahim Efendi and Zehra Hanım and Sergeant Süleyman Efendi and Şefika Hanım are slightly different: Zehra and Şefika sued their husbands not only for *mehr* but also for *nafaqa*, for they were pregnant. The fact that Zehra and Şefika were expecting and left without any means of livelihood did not seem to concern their husbands. Yet both women knew their rights and the court was protective of them and their unborn children.

#### 5.1.1.8.2. Maintenance allowance, *Nafaqa*

According to Islamic law, having paid the *mehr*, or having decided to make the payment in the future, a husband must first provide for his wife once a marriage is consummated. Besides, a husband has to provide his wife with food, shelter, and clothing for as long as he remains married to her. If he divorces his wife he is also required to cover her expenses during her waiting period, *iddah nafaqa*. This period

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*mütebeyyin tahminen üç aylık hamilim olub vaz'ı haml ile adetimin inki'tasına değin kibel-i şer'den kadr-i ma'ruf meblağ farz ve takdirini ve masarîf-ı muhâkemenin kendisine tahmilini taleb ederim deyu mezkûr talaknâmeyle ibraz ile da'va ettikte lede's-süal müddeâ aleyh mezbûr İbrahim usta dahi cevabında kazıyye-i minval-i muharrer üzere olub mübrez talaknâme mucebince tarih-i mezkûrda bir talakı bayin ile tatlik eylediğini ve mehr-i müecceli mezkûr iki bin beş yüz bir guruş el-yevm zimmetinde zikr olunduğunu ikrar ve nafaka haml için adem-i iktidarına mebni bir para veremeyeceğini beyan ve ifade etmekle müddeâ aleyh mezbûr İbrahim ustanın nafaka hamli hususundaki beyanı şayan-ı iltifat olmadığı kendisine bade't- tefhim tarafeynin ahvallerine vakıf ve zikr-i âti meblağ kadr-i ma'ruf idüğü kibel-i şer'den ehli vukuf olarak tayin kılınan Beykoz'da AliBey sokağında kırk iki numaralı hanede sakin asakir-i Osmaniye yüzbaşılardan İsmail Hakkı Efendi ibn-i Mehmed ve Şahinkaya mahalle sokağında sakin Abdülaziz Efendi ibn-i Abdülaziz nâm kimesnelerden her biri huzur-u şer'i de müddeîye-i mezbûr Zehra Hanıma nafaka haml-ı için yevm-i otuz guruştan şehri dokuz yüz guruş vermekle iktidar olunduğunu ve mebleğ-i mezkûr kadr-i maruf idüğünü âlâ tarikü's- şehade ihbar etmekle mebleğ-i müddeâyı mehr-i müeccel-i mezkûr iki bin beş yüz bir guruş müddeîye-i mezbûre Zehra Hanıma eda ve teslimiyle mezbûr İbrahim usta bade'l- ilzem mezbûre Zehra Hanıma vaz-ı mahal ile iddet-i münkaziye oluncaya değin iş bu tarihi i'lamdan itibaren mezbûr İbrahim usta üzerine bi'l-ihbar yevmi otuz guruştan şehri dokuz yüz guruş nafaka farz ve takdir olunup mebleğ-i mefruzun mezkûr beher şehri nafaka ve kisve-bahâ vesair levazım-ı zaruriyesini harç ve sarf ve lede'l- iktiza âharden istidâneye ve kibel-i şer'iden inde'z-zafer zevc-i mutallak-ı mezbûr İbrahim usta üzerine rucu'a mezbûre Zehra Hanıma bade'l- izin üç yüz guruş masarîf-ı muhâkemenin müddeâ aleyh mezbûr İbrahim ustaya ait olmak üzere müddeîye-i mezbûre Zehra Hanımdan ahz ve istifası iktiza eylediği tescil ve ilam olundu..." Beykoz Mahkemesi Defteri (Court of Beykoz Defteri), Defter: 12/2, Case: 11, Page: 64, 23 September 1922.*

is extended for pregnant woman until the birth of the child. If a husband dies, the obligation to *nafaqa* ends. However, a pregnant wife can claim support from her husband's estate according to Islamic Law.<sup>743</sup>

However, a woman can claim *nafaqa* not only from her husband but also from her male relatives if her husband dies. If she is not married, her father is responsible for her. If she is not married and an orphan, her male relatives are bound to cover her living expenses. For instance, in the cases of İkbâl Hanım<sup>744</sup> and Necmiye Hanım,<sup>745</sup> both women sued their sons, Ziver Efendi and İsmail Efendi, respectively, for *nafaqa*. The other example is Refia Hanım, an immigrant from Janina, who sued her brother for *nafaqa*. Refia Hanım and her daughters were suffering greatly ever since they immigrated to Istanbul. They had been quite well off in Janina. Refia Hanım had a son who could cover the expenses of his mother and sisters. Yet he was recruited to the army and sent to Jerusalem. In addition, at the time of the court case, he was missing. Although Refia Hanım's brother Ahmet Vefik Efendi contested his sister's *nafaqa* claim, he eventually accepted it, and the court recorded the brother's responsibility towards Refia Hanım and her daughters.<sup>746</sup>

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<sup>743</sup> Judith Tucker, "Revisiting Reform," 7.

<sup>744</sup> Beykoz Mahkemesi Defteri (Court of Beykoz *Defteri*), Defter:12/2, Case: 52, Page: 23, 27 November 1919.

<sup>745</sup> Beykoz Mahkemesi Defteri (Court of Beykoz *Defteri*), Defter:12/2, Case: 3, Page: 27, 21 January 1920.

<sup>746</sup> "İstanbul Kadılığı Mahkemesinden bin üç yüz otuz dört senesi Recebi'l-ferdinin on üçüncü günü tarihiyle mü'tâ ve hulasa-ı meali; zatı muarrefe Rafia Hanım ibnet-i Ömer ve Sadriye kebire kızları zatlari muarrefe Fatıma ve Esmâ Hanımlar bintâni'l-müteveffa muharremden her biri mahkeme-i mezkûrede meclis-i şer' de mezbûran Rafia ve Esmâ Hanımlar Türkçe tekellüm edemediklerinden kibel-i şer' den tercüman tayin kılınan Osman Efendi hazır olduğu halde Ahmed Vefik Efendi ibn-i el mezbûr Ömer muvâcehesinde mezbûre Rafia Hanım zâtı'z-zevç olmadığı gibi fakire ve müsirra ve müsinne olub muhassas maaş ve emlakı olmayıp nafakaya muhtace ve sadr-ı kebiröğlü Bekir elyevm Kudüs-ü şer' ifde asker olub kar ve kış ile meşgul olmayıp müsirr ve li-ebeveynler karındaşlarım mûmâ-ileyh Ahmed Vefik ve Mehmed Hasbi ve Abdurrahim ve Zülfikar Efendilerden Zülfikar Efendi Yanya'da mukim olub mûmâ-ileyh Abdurrahim ve Mehmed Hasbi Efendiler müsirr olduklarından nafaka i'tasına gayr-i müktedir ve mûmâ-ileyh Ahmed Vefik Efendi şehri sekiz yüz altmış dokuz buçuk guruş maaşı olub müsirr olduğundan oğlu mezbûr Bekir'e rucu' şartıyla mûmâ-ileyh Ahmed Vefik

There is also the case of Mehmet Şakir Bey, who sued his son's wife, *gelin*, Nesime Hanım. Mehmet Şakir Bey had been giving maintenance allowance, *nafaqa*, to Nesime Hanım and her children. However, because his son Niyazi Bey had become able to provide a livelihood to his own family, Mehmet Şakir Bey did not

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*Efendi üzerine kadr-i ma'ruf ve kifaye nafaka farz ve takdirini ve mezbûrâtdan Fatıma ve Esmâ Hanımlar dahi olmadıkları gibi muhassas maaş ve emlakları olmadığından nafakaya muhtaç olmalarıyla li-ebeveyn dayılarından mûmâ-ileyhim Zülfikar ve Mehmed Hasbi ve Abdurrahim Efendilerden her bir müsir olup mûmâ-ileyh Ahmed Vefik Efendi mu'sır olduğundan mûmâ-ileyh üzerine kadr-i kifaye ve ma'ruf nafaka farz ve takdirini taleb ve da'va etmeleriyle mûmâ-ileyh Ahmed Vefik Efendi dahi mezbûre Raftia Hanım li-ebeveyn kız karındaşı olup zatu'z-zevc olmadığını ve muhassas maaş ve emlakı olmadığını ve kerimesi Fatıma Hanım ile mezbûre Fatma Hanımın kebire kızı mezbûre Raftia Hanımın hafidesi Nimet Hanımların her biri eylevm müsir lerdir. Mezbure Fatma Hanımın Yanya'da emlakı olduğundan mezbûre Raftia Hanım nafakasını mezbûrandan taleb etsin. Ve eshab-ı maideden olduğundan menziline nefsim zam ile infak edeceğini ve diğer karındaşları mezbûrun Abdurrahim ve Mehmed Hasbi ve Zülfikar Efendilerden her biri müsir olduklarından hissesine isabet edecek miktara muvâfakat edeceği ve mezbûre Fatma Hanım eshab-ı servedden olduğunu ve Esmâ Hanımın nafakası mezbûre Fatıma Hanımdan lazım geleceğini dermeyan etmekle mezbûrât Raftia ve Fatıma ve Esmâ Hanımlar dahi Yanya'da ki emlakdan hicretlerinden mukaddem senevî dört yüz guruş kadar istifade edildiğini ve hicretten beri kat'iyen istifade edilmemekte olduğunu ve kendileriyle mezbûrun Abdurrahim ve Mehmed Hasbi ve Zülfikar Efendilerden her biri müsir olduklarını ifade etmeleriyle mezbûr Ahmed Vefik Efendi ber vech-i muharrer yüsr müddeâsını isbattan izharı acz ve talib-i tahlif olmadığını ifade etmekle mezbûrat Raftia ve Fatıma ve Esmâ Hanımlardan bi't-taleb meclis-i şer'a hazır olan Yanyalı Mehmed ve Abdullah ve Fevzi Efendilerden her biri mûmâ-ileyh Ahmed Vefik Efendinin müsir olduğunu ve mezbûrun Abdurrahim ve Mehmed Hasbi ve Zülfikar Efendilerin müsir olduklarını ve mezbûre Raftia Hanımın şehri almış ve mezbûretan Fatma ve Esmâ Hanımların şehri elliser guruşdan yüz guruş nafaka ve kisve-bahâları için kadr-i kifaye ve ma'ruf olduğunu ihbar etmeleriyle... şehir yüz almış guruş nafaka ve kisve-bahâ vesair levazım-ı zaruriyelerini harç ve sarfa ve mezbûr Ahmed Vefik ve Abdurrahim ve Mehmed Hasbi ve Zülfikar Efendilerden ancak mezbûr Ahmed Vefik Efendinin yüsr-i tahakkuk eylediğine binâen mezbûr Bekir Efendiye huzur ve hali yesârında rucü' etmek üzere mezbûrâtın nafakası için mezbûr Ahmed Vefik Efendiye idâne vacip olamağla .... mûmâ-ileyh Ahmed Vefik Efendi ibn-i mezbûr Ömer muvacehesinde "ben zatu'z-zevc olmadığım ve bir taraftan muhassas maaşım ve emlakım ve asla malım olmayıb fakire ve müsire ve müsinne olmamla nafaka ve kisveye eşeddi ihtiyaç ile muhtace olmamla sadr-ı kebir oğlum ve münfiki şer'im bulunan Yanyalı Muharrem oğlu mezbûr Bekir eylevm efrad-ı askeriyeden olup Kudüs-i şerif'de istihdam olumağla kar ve kısb ile meşgul olmayan sadr-kebir oğlum Bekir Efendi üzerine kadr-i kifâye meblağ farz ve takdirini ve mezbûr Bekir Efendi üzerine mukadder meblağın dahi li-ebeveynler karındaşlarım hazır mûmâ-ileyh Ahmed Refik ve gâib anı'l-meclis Mehmed Hasbi ve Abdurrahim ve gâib anı'l-beled Zülfikar Efendilerden mezbûr Zülfikar Efendi Yanya'da mukim olduğu gibi mûmâ-ileyh Abdurrahim Efendinin şehri yüz yirmi guruş mazuliyet maaşı ve Mehmed Hasbi Efendinin iki yüz on bir guruş tekatüd maaşları olup başkaca malları ve emlakları olmadığından müsirler olup biraderim hâzır-ı mûma ileyh Ahmed Vefik Efendi ise muhassasat-ı zatiyeden muhassas şehri sekiz yüz almış dokuz buçuk guruş maaş almakta ve bu vecihle müsir olmağla oğlum mezbûr Bekir Efendi üzerine mukadder meblağın mezbûr Bekir Efendiye huzur ve hali yesârında müracaat etmek üzere bana ikraz ve idâneye tenbih olunmasını taleb ve da'va etmiş isem de mûmâ-ileyh Ahmed Vefik Efendi dahi nafaka ve kisve-bahâ ve sair levazım-ı zaruriyem için kendi malından rızasıyla teberruan şehri almış guruş işbu tarihten itibaren bana vermeye razı ve müteahhid olup meblağ-ı mezkûr almış guruş nafaka ve kisve-bahâ ve sair levazımı zaruriyeme kaft olduğundan oğlum mezbûr Bekir Efendi üzerine ayrıca nafaka takdirine mahal yoktur deyu tercüman mûmâ-ileyhin tercümesi ve mûmâ-ileyh Ahmed Vefik Efendinin tasdiğiyle ifade etmeğın..." Anadolu Sadareti Mahkemesi Defteri (Court of Anadolu Sadareti Defteri), Defter: 171, Case: 21, Page 81, 25 August 1916.*

want to give Nesime Hanım and her children *nafaqa* anymore. The court decided that Mehmet Şakir Bey was not obliged to pay alimony any further. Clearly, a woman's right to *nafaqa* was well understood and practiced in the Ottoman Empire, and women had legal ways to enforce it.<sup>747</sup>

Likewise, non-Muslim women were also well aware of *nafaqa* rights that *qadı* courts could provide them with. I came across the case of a Greek woman, Anastasya, who sued her deceased husband's two brothers: a town crier, *tellal*, Anastas, and a grocer, *bakkal*, Lefter, for *nafaqa*. Because Anastasya and her three daughters were left without any means of livelihood after her husband Alex's death, she sued Alex's brothers. The court decided that Anastas and Lefter needed to pay Anastasya *nafaqa*.<sup>748</sup> The two brothers of Anastasia's late husband might also usurp her right to her husband's estate, which is not mentioned in the document. Obviously, Muslim and non-Muslim Ottoman women were aware of their *nafaqa* rights and resorted to the *qadı* courts when they deemed it necessary.

#### **5.1.1.8.2.1. Discussion on shelter, food, and clothing rights for women**

According to Judith Tucker, the pre-reform judges, *muftis*, gave detailed instructions as to what a wife could require as support in terms of food, clothing, and shelter. For instance, a woman from a comfortable background might refuse to do housework or cooking. For such a woman, a husband must provide her with a servant and bring home prepared food. According to Tucker, in the Islamic legal system, a

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<sup>747</sup> Anadolu Sadareti Mahkemesi Defteri (Court of Anadolu Sadareti *Defteri*), Defter: 171, Case:3, Page: 6, 11 March 1916

<sup>748</sup> Beykoz Mahkemesi Defteri (Court of Beykoz *Defteri*), Defter: 12/2, Case: 26, Page: 13, 18 February 1919.

wife must be supported in the way she is socially accustomed to, that is, according to her social background and status.<sup>749</sup>

In terms of accommodation, a husband should lodge his wife in a separate house, not with other people, in a decent neighborhood. A wife should feel secure in the neighborhood. In Islamic family law, a wife's need for companionship is also considered. She should be surrounded by relatives, friends, or servants. Besides, a woman has the right to refuse living in the same house with a cowife; according to the law, cowives are entitled to separate dwellings.<sup>750</sup> Islamic family law thus detail elaborately the support and care a woman should receive from her husband.<sup>751</sup>

The OLFR only addresses the support that woman should get from her husband in two articles. In contrast to the detailed definitions of the pre-reform period, article 70 and article 72 are rather plain. According to Tucker, these articles reduced the rich detailing of material comforts and lists of status-based standards to the phrase "legal house." Besides, clothing, food, and private space seem to have lost their importance in the OLFR articles.<sup>752</sup> Regarding the 72<sup>nd</sup> article, Tucker also argues that a woman's social needs as a human being, such as her need for companionship, are overlooked in the OLFR.<sup>753</sup> Likewise, Aydın argues that the OLFR is not expressive regarding the definition of women's needs.<sup>754</sup> It seems likely that under the conditions of warfare and economic hardship, the legislators of the OLFR did not take into consideration issues like quality of life.<sup>755</sup>

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<sup>749</sup> Judith Tucker, "Revisiting Reform," 9.

<sup>750</sup> *Ibid.*, 9.

<sup>751</sup> *Ibid.*, 10.

<sup>752</sup> *Ibid.*

<sup>753</sup> *Ibid.*, 11.

<sup>754</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 197.

<sup>755</sup> Judith Tucker, "Revisiting," 11.

However, with the 72<sup>nd</sup> article, a woman's right to privacy was extended. The aim of the CUP was to create a nuclear family, and this article was supportive of the establishment of nuclear families. Aydın argues that this article was not quite applicable, for many women were living with the family members of their husbands.<sup>756</sup> Still, the article might have extended a woman's right to have her own space without even her-mother-in-law.<sup>757</sup>

The hardship common in the final century of the Ottoman Empire really had an impact on the "quality perception" of the judges. Yet this situation did not stop women from suing their husbands to claim the type of housing they had offered during the marriage ceremony. For instance, Mürşide Hanım sued her husband Mahmut Bey for payment of a daily allowance until the day he provided her with the housing he had promised her. Mürşide Hanım was not content with the accommodation her husband offered and she was legally forcing him to give her what he had promised through the court. In the end, the judge decided that Mahmut Bey needed to pay the *nafaqa* to Mürşide Hanım.<sup>758</sup>

Likewise, Hatice Bedia Hanım was not content with her marriage and left her husband, Mehmet Halit. Besides, she even used her right to not breastfeed her child and sent the baby back to his father. Because Mehmet Halit could not find a suitable wet nurse for the baby, he sued his wife Hatice Bedia Hanım to come back to their place, to suckle the baby and comply with family law. The important thing about this case is that Mehmet Halit mentions that his house is in very good condition. Yet the judge did not trust only his words and sent experts of the court to Mehmet Halit's

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<sup>756</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 195.

<sup>757</sup> OLF, article 72.

<sup>758</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1029/2, Case: 368, Page: 295, 13 October 1919.

house. Only after the experts reported that the house was in good condition did the court decide that Hatice Bedia Hanım had to return to suckle the baby and comply with the family law.<sup>759</sup>

Although in the second example Bedia Hanım lost her case, her well-being was still the concern of the court. Both cases dated to after the abrogation of the OLFK showing that its articles still had an impact on later decisions.

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<sup>759</sup> “...Bu da’vamda mübattal ve kâzib olmadığuma yemin ederim deyu teklif edilen yemini icra eylemekle vekil-i mumâ-ileyh Ahmed İzzeddin Bey cevabında müddeî ileyha-yı mumâ ileyha Hatice Bedia Hanım mehr-i muaccel-i mezkûru kabz ve istifa etmediğine dair bâ ihtarnâme gelip mahkemede yemin etmesi lüzumu ve geldiği surette yeminden nükûl addedileceği kendisine tebliğ ve ihtar kılınmış iken bizzat gelmediğinden yeminden nükûl addedilmesini ve ber vech-i muharrer müvekkilim hazır-ı mumâ-ileyh Mehmed Halid Bey mehr-i muaccel-i mezkûru tesviye eylediğine dair olan da’vamızda mübattal ve kâzib olmayıp sadık bulunduğuna dair yemin etmiş bulunması hasebiyle mehr-i muaccel-i mezkûrda mumâ ileyha Hatice Bedia Hanımın yeminden nükûlüne badel hüküm ve Yalı köyünde vaki mesken-i şer’imize gelip itaat etmesi hususunun hükme raptını hazır-ı mumâ-ileyh Mehmed Halid Beyin tasdikına mukarin vekil-i mumâ-ileyh Ahmed İzzeddin Bey taleb ederim demekle ber mucebi taleb meskeni şer’inin muayenesi lazım geldiği tevhim kılınmakla vekil-i mumâ-ileyh Ahmed İzzeddin meclis-i şer’de sabıki misüllü muhkemeye başlandı. Meskeni şer’i hakkında naib baş katib Hayri Efendi tarafından tanzim kılınan on iki Mayıs bin üç yüz otuz dokuz tarihli keşif zabıtnâmesi kiraet olundu. Müddeî vekil-i mumâ-ileyh tarafından meskeni şer’i olarak irae edilen Boğaziçinde ve Vanıköyünde ve caddesinde kırk yediyi atık ve elli beş cedit numaralar ile mürakkam olan hane mahall-i mezkûr-ı üla ve heyeti ihtiyariyesinden Mehmed ve mevki komiser muavini Mustafa ve polis memuru Tahir ve ahaliden Ahmed Bahaddin ve müddeî vekili Ahmed İzzeddin Bey ve Efendiler muvacehelerinde icra kılınan keşif neticesinde üç adet fevkani ve bir tahtani mefrüş ve möbleli odalarla ve matbah ve tahtani ve fevkani olarak iki adet abdesthane fevkani bir sofa ve tahtani bir daşlık ve bir kıyuuu havi olmakla beraber ceviz karyola üzerinde şilte ve yorgan ve yastık bulunduğu ve bir mesken-i şer’i için lazım gelen şeraatı cami olmakla beraber müddeî mumâ-ileyh Mehmed Halid Beyin el yevm tahtı tasarrufunda bulunduğu ve bu muharrer olduğu görülmekle vekil-i mumâ-ileyh Ahmed İzzeddin Bey kelama ibtidarla keşif zabıtnâmesinde muharrer olduğu vechile hane-i mezkûr cîran-ı salihin beyninde vaki ve tarafeyn ehliyle ecanibden hâlî ve gulûf ve muvafıkı başka bir mesken-i şer’i bulunduğu cihetle müddeâ aleyha Hatice Bedia Hanımın meskeni mezkûre gelip zevc-i müvekkilim mumâ ileyhe itaat ve hukuk-ı zevciyyete riayet etmesi hususunun taht-ı hükme alınmasını bil vekale taleb ederim demesiyle keyfiyet ledet’- teemmül mehr-i muacceli mezkûru istifa eylediği zevce-i müvekkilei mumâ ileyhanın ber vechi muharrer yeminden nükûlüyle sabit olub menzil-i mezkûrun mesken-i şer’i idüğü sâlifü’z-zikr keşif ve muayene raporu mündericati ve başkâtip mumâ-ileyh Hayri Efendinin inhasıyla tahakkuk etmekle mucebince zevce-i müvekkile-i mumâ ileyhanın zevc-i mumâ ileyhin meskeni şer’isi olan menzil-i mezkûruna gidib kendisine itaat ve hukuk-ı zevciyyete müraat etmesi....” Beykoz Mahkemesi Defteri (Court of Beykoz Defteri), Defter: 12/2, Case: 31, Page: 78-81, 14 May 1923.

### 5.1.2 Examination of the articles of divorce in the OLFRR

Islamic family law recognizes three types of divorce. The first one is called *talaq*, a man's unilateral right to repudiate his wife. Men incur some obligations—such as supporting a former wife for a specific period and paying *mehr*—after the divorce, though.<sup>760</sup> The second one is called *khul*, a female-initiated divorce in which a man divorces his wife in exchange for compensation, such as not paying the *mehr* or *nafaqa*.<sup>761</sup> The third one is annulment, *hiyar-ı tefriq*, for which the divorce decision is made by a judge. In Islamic Law, a woman who cannot persuade her husband for *khul* or who does not want to give up of her rights to *mehr* and *iddah nafaqa* has the right to appeal to a court to get a divorce from her husband.<sup>762</sup>

The book of divorce has three chapters. The first chapter has three sections. The first and second sections of the first chapter include the general legal decisions and explore revocable divorce, *talaq-ı ric'i*, and irrevocable divorce, *talaq-ı bain*. However, the third section, which is about the annulment of a marriage, *hiyar-ı tefriq*, is considered one of the most important parts of the OLFRR. In that section, the right to divorce is also given to women, which was almost impossible in the Hanafi School, the official school of the Ottoman Empire.<sup>763</sup>

#### 5.1.2.1 Male-initiated divorce, *Talaq*

For a man to divorce his wife, he should have conceivable reasons. He could divorce his wife three times; in the first two divorces, both sides can reunite if they

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<sup>760</sup> Judith Tucker, "Revisiting Reform," 11.

<sup>761</sup> Ömer Nasuhi Bilmen, *Hukuk-u İslamiyye ve Istılahatı Fıkhiyye Kamusu II*, 283, Judith Tucker, "Revisiting Reform," 11; Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 115.

<sup>762</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 115–116.

<sup>763</sup> Judith E. Tucker, *Women, Family and Gender in Islamic Law*, 111-121.

want to. However, the third time a divorce is irrevocable. After the third divorce the couple cannot reunite, unless the woman marries someone else and divorces him or her new husband dies.<sup>764</sup>

The articles 102 and 103 of the OLFRR reiterated a man's unilateral right to repudiate his wife. However, articles 104 and 105 are new in that they do not accept the divorce of a drunken man or a divorce by force. According to Halil Cin, these articles cut out men's direct control over their divorce right, for they had to follow strict state procedures.<sup>765</sup>

Fatma Nazlı Hanım sued her husband, Mehmet Fazıl Bey, for her *mehr* and the *nafaqa* of her 11-month-old baby. Through her attorney, Fatma Nazlı Hanım told the court that her husband divorced her three times, that she did not want to live with a man who insulted her. In the first session, Mehmet Fazıl Bey told the court that he would employ an attorney and the court trial was put off to another date. In the second session, at the beginning, Mehmet Fazıl Bey took an oath, and through his attorney said that while he divorced Fatma Nazlı Hanım he was drunk and did not remember clearly what he had said. Mehmet Fazıl Bey also said that he wanted to have a good relation with his wife. The court decided according to the 104<sup>th</sup> article of the OLFRR that Mehmet Fazıl Bey and Fatma Nazlı Hanım were not divorced.<sup>766</sup>

The second section of the first chapter of the book of divorce is about revocable and irrevocable divorces. A revocable divorce, *talaq-ı ric'i*, is a type of

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<sup>764</sup> Nihat Dalgın, *İslam Hukukunda Boşanma Yetkisi* (İstanbul: Marmara Üniversitesi İlahiyat Fakültesi Yayınları, 2001), 39.

<sup>765</sup> Halil Cin, *Eski Hukukumuzda Boşanma*, 125-126. See Sadrettin's articles on the same issue in previous chapter.

<sup>766</sup> Galata Mahkemesi Defteri, (Court of Galata *Defteri*), Defter: 1026, Case: 173, Page: 265, 12 August 1918.

divorce that does not require a new marriage contract if a husband wants to reunite with his wife. He also does not have to pay *mehr* again. *Talaq-ı ric'i* is possible if a man and a woman have sexual intercourse, if a husband clearly utters that he divorces his wife, and if a husband abstains from using force or abusive language while divorcing his wife.<sup>767</sup>

*Talaq-ı bain*, on the other hand, is a type of divorce that requires a new marriage contract and the payment of *mehr* if the couple wants to reunite. A *talaq* is *talaq-ı bain* if a husband divorces his wife for the third time, if force and abusive language are used during the *talaq*, or if a husband divorces his wife on demand of his wife (*khul*), which also requires compensation from the wife's side.<sup>768</sup>

#### 5.1.2.2. Female-initiated divorce

Female-initiated divorce, *khul* is very important, for it allows a woman to ransom herself from an unwanted marriage.<sup>769</sup> The 116<sup>th</sup> article of the second section makes it clear that *khul* is acceptable. Yet the OLFK does not put any dictum on *khul*.<sup>770</sup> Neither in substantive nor in procedural terms is there a discussion of *khul* in the OLFK.<sup>771</sup>

The practice of *khul* remained almost exactly the same before, during, and after the OLFK. The cases of Sıdıka Hanım and Hamdi Ağa<sup>772</sup> and Mihriban Hanım

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<sup>767</sup> Ömer Nasuhi Bilmen, *Hukuk-u İslamiyye ve Istılahatı Fıkhiyye Kamusu II*, 195; Karaman, *Mukayeseli İslam Hukuku I*, 358.

<sup>768</sup> Ömer Nasuhi Bilmen, *II*, 199; Karaman, *I*, 359.

<sup>769</sup> Judith Tucker, "Revisiting Reform," 11.

<sup>770</sup> Ebru Kayabaş, "Hukuk-ı Aile Kararnamesi," 107.

<sup>771</sup> Judith Tucker, "Revisiting Reform," 12.

<sup>772</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 8, Page: 27, 19 March 1917.

and Seyyit Efendi<sup>773</sup> occurred before; the case of Hitabe Hanım and Major Ali Rıza Bey,<sup>774</sup> Kezban and Şükrü Ağa,<sup>775</sup> and Elmas Hanım and Hasan Ağa<sup>776</sup> occurred during; and the case of Hacer Hanım and Ahmet Memduh Efendi<sup>777</sup> occurred after the OLFR.

The above-mentioned cases of *khul* were initiated with a woman's declaration of giving up her claims to *mehr* and *nafaqa*, and continued with the husband's acceptance of her statement. The court record ended with the final court decision to arrange a registered divorce. However, the cases of Kezban Hanım and Elmas Hanım were a little different in that they declared in court that they would not demand *nafaqa* from their husbands during the *iddah* period even though they were pregnant. Also in the case of Mihriban Hanım, we see a woman who claimed *nafaqa* for her 21-month-old baby, but nothing for herself except divorce. All in all, the OLFR did

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<sup>773</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 6, Page 26, 2 March 1917.

<sup>774</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 105, Page: 236, 2 June 1336.

<sup>775</sup> “*Mahrûse-i Galataya tâbi' Beşiktaş mahallatından Uzuncaova'da beş numaralı hanede sakine zat-ı zeyl-i vesikada muharrerul-esâmi müslimin tarifleriyle muarrefe Kezban Hanım ibnet-i Hasan Galata Mahkemesinde meclis-i şer'i şerif-i enverde mahall-i mezkûrda sakin Hammal Şükrü Ağa bin-i Osman muvacehesinde mezbûr Şükrü Ağa işbu tarih-i vesikadan üç ay mukaddem yani bin üç yüz otuz altı senesi Zil-hicce'ti'ş-şerifesinin sekizinci günü Rumeli mahallesinde mahzar-ı şuhudda iki yüz elli bir guruş mehr-i müeccel tesmiyesiyle beni tezevvüc ve tenekkuh ve kabul edüb olvechile elyevm zevc-i dâhilim ise de lakin mezbur Şükrü Ağa ile fî maba'd beynimizde hüsn-i mu'âşeret kabil olamayacağı meczumumuz olmakla zimmetinde mütekarrer ve ma'kûdun aleyh mehr-i müeccel mezkûr iki yüz elli guruşla elyevm zat-ı sağır olup, hamile değil isem de gerek üç defa ru'yet-i dem sâfile ve gerekse hamlim zuhur ettiği takdirde vaz-ı haml ile iddetim munkaziyye oluncaya değin iktiza eden nafakam kendi üzerime olmak üzere ben mezbur Şükrü Ağa ile iş bu meclis-i şer'de muhalaa-i sahiha-i şer'iyye ile hal olduğumda oldahi taleb-i mezkûrumu kabul eyledi deyu mukırra-i mezbure Kezban Hanımın sâdura olan bil-cümle takrir-i meşruhunu mezbur Şükrü Ağa vicahen tahkik ve şifahan tasdik etmeğın ma vakaa bi't-taleb ketbolundu. Fil-yevmi's-sani minşehrî rabii'l-evvel sene seba ve selasin ve selasemiete ve elf.” Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1028/1, Case: 301, Page 2, 6 December 1918.*

<sup>776</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1028/1, Case: 30, Page: 12, 11 February 1918.

<sup>777</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1029/2, Case: 30, Page: 433, 13 January 1920.

not change the practice of *khul*, and women continued to practice this type of divorce.

### 5.1.2.3. Annulment of a marriage, *Hıyar-ı Tefriq*

*Hıyar-ı Tefriq* is an annulment of a marriage by decision of a judge. This type of divorce was possible by a woman's resort to court. According to Hüseyin Hatemi, in Islamic family law, a woman also has the right to divorce, yet she is not under the obligation of any payment, like the man's *mehr*. Therefore it is necessary for a woman to resort to a court, so that the man's *mehr* obligation does not cause any conflict between the couple and payment is arranged legally.<sup>778</sup>

Giving women new venues to seek the annulment of marriage was considered an expansion of women's rights in comparison to previously prevailing practice. However, according to Tucker, although the OLF represented an improvement over strict Hanafi doctrine regarding women's rights, it did not present anything new, for the *muftis* had already been following an eclectic path of schools rather than sticking strictly to Hanafi interpretations in terms of divorce matters in Syria and Palestine.<sup>779</sup> Tucker observed that the majority of decisions found in the Hanafi courts of Syria and Palestine were not in compliance with Hanafi jurisprudence. In the decisions, the Shafi'i and Hanbali interpretations were used for the annulment of marriages and Hanafi judges treated these rules as legally binding.<sup>780</sup>

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<sup>778</sup> Hüseyin Hatemi, *İlahi Hikmette Kadın* (İstanbul: Birleşik Yayıncılık, 1999), 44–46.

<sup>779</sup> Judith Tucker, "Revisiting Reform," 15.

<sup>780</sup> *Ibid.*, 12.

There are similar cases in the Istanbul courts before the promulgation and after the abrogation of the OLF. For instance, Hadiye Hanım sued her husband, Ali Şerafeddin, for divorce because he left without any trace and without assigning her *nafaqa*. After the testimonies of witnesses, a notice of loss had been issued for Ali Şerafeddin. The judge decided that the couple was divorced.<sup>781</sup> This case occurred before the promulgation of the OLF. However, there are also cases of annulment, *hıyar-ı tefriq*, when the OLF was in effect. For instance, Nigane Hanım sued her husband, Ahmed Ağa from Bozcaada, because he went to New York five years before and had left Nigane Hanım and his child without *nafaqa*. After an exchange of letters with authorities in New York through the Ministry of Foreign Affairs, *Hariciye Nezareti*, the court decided that Ahmed Ağa was lost and divorced the couple.<sup>782</sup>

In the case of Emine Mahmure Hanım and Major Ahmet Tevfik Bey, a *pashazade*, the reason why Emine Mahmure Hanım pursued a divorce was that her husband was insulting Islam, her religion. Emine Mahmure Hanım through her attorney told the court that Ahmet Tevfik Bey was constantly using abusive language against Islam and that she could not bear it anymore. She claimed that she could not prove that her husband had insulted Islam, but the court might ask Ahmet Tevfik Bey to take an oath. Ahmet Vefik Bey through his attorney told the court that he would give *nafaqa* for their child, but he would not accept the claim that he had insulted Islam. He also said that he would not take an oath, even if he could do it. Ahmet

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<sup>781</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 138, Page: 103, 2 June 1917.

<sup>782</sup> Beykoz Mahkemesi Defteri (Court of Beykoz *Defteri*), Defter:12/2, Case: 6, Page:2, 12 Şubat 1918.

Vefik Bey and his attorney did not appear for the second session; the judge divorced them and made Ahmet Vefik Bey pay a monthly *nafaqa* to his child.<sup>783</sup>

<sup>783</sup> “Beşiktaş’da Kapudan İbrahim Ağa mahallesinde Körpeoğlu Sokağında beş numaralı hanede sakine zatı muarrefe Emine Mahmure Hanım ibnet-i Muhyiddin Beyin zıkr-i âti hususda taleb ve da’va ve muhakeme ve muhasama ve ahz ve kabz’a ve sulh ve ibraya ve münferiden ve müctemian icra-yı vekalet me’zun vekil-i müseccel-i şer’ileri Dersaadet da’va vekillerinden İhsan ve Hüseyin Kazım ve Ali İzzet Beylerden mûmâ ileyh İhsan Bey bilve kale Galata Mahkemesinde meclis-i şer’i münirde Beşiktaş’da Abbas Ağa mahallesinde Hüseyin Paşa Deresinde bakkal üzerinde hanede mukim zat-ı maarref İsmail Hakkı Paşazade asâkir-i Osmaniye Mülazım-ı Evvellerinden Ahmed Teyfik Beyin kezalik zıkr-i âti hususda taleb ve da’va ve muhakeme ve muhasama ve müdafaa ve ahz ve kabz’a ve sulh ve ibraya vekil-i müseccel-i şer’isi Dersaadet da’va vekillerinden Halid Bey ibn-i Lâtîf Efendi muvacehesinde müvekkilem mezbure Emine Mahmure Hanımı müvekkil-i mûmâ ileyh Ahmed Teyfik Bey tezevvüç ve tenekküh ve duhul edib ol vecihle zevc-i dahili iken zevc-i mûmâ ileyh Ahmed Teyfik Bey ezmine-i muhtelif de mükerreren zevcesi müvekkilem mezburenin din ve imanına sebb ve şetm ederek bu vecihle müvekkilem mezbure zevc-i mûmâ ileyhden mutallaka olduğundan sual olunub bu babda hükmü şer’inin itasını ve ber vech-i muharrer sebb ve şetm müddealarını inkarları halinde bu hususta ikame-i beyyineden aciz olduğumuzdan mûmâ ileyh Ahmed Teyfik Beyin ber vech-i şer’i tahlifini ve mûmâ ileyh Ahmed Teyfik Beyin firaşından hasıla ve müvekkilem Emine Mahmure Hanımdan mütevellide olub asla malı olmayan üç aylık Hatice Melek nam sağirenin nafakası için şehri beş yüz gurusun mûmâ ileyh Teyfik Bey üzerine farz ve takdirini taleb ederim deyu müvekkilesi mezbureye izafetle bil vekalet da’va ettikde vekil-i mûmâ ileyh Halid Bey dahi cevabında müddeiyye-i müvekkile-i mezbure Emine Mahmure Hanım müvekkilem mûmâ ileyhin zevce-i menküha-ı medhulün bihası ve asla malı olmayan sağire-i mezbure Hâtice Melek Hanım dahi müvekkilem mûmâ ileyhin firaşından hasıla ve zevce-i müvekkile-i mezbureden mütevellide sulbiye sahih kerimesi olduğunu ikrar ve vekil-i mûmâ ileyhin ber vech-i muharrer sebb ve şetm müddealarını inkar ederim. Bu hususta müvekkilime yemin teveccüh etmeyeceğini ve maamaflık müvekkilim yemine hazır ve kızı sağire-i mezbureye şehri iki yüz gurus nafaka vermeğe razı idüğünü ve bundan fazla nafaka vermeye iktidarı olmadığını beyan ederim deyu müdafaa eddikden ve bera-yı tahlif müvekkil-i mûmâ ileyh Teyfik Beyin mahkemeye ihzar-ı vekil-i mûmâ ileyh Halid Beye tefhim olunduktan sonra muhakeme yevm-i âhara ta’lik ve tarafeynin imzaları alındığı halde yevm-i muallakda mûmâ ileyh Teyfik Bey bizzat mahkemeye gelmediği gibi tarafından vekil-i şer’isi dahi göndermediğinden ve müddeiyye vekili mûmâ ileyh İhsan Bey ise muhakemenin gıyaben ru’yetiyle saireyi mezbure için nafakanın takdirini ve mütemerrid mûmâ ileyh Teyfik Beye bera-yı tahlif mahkemeye gelmesi için ihtarname tebliğini taleb etmekle muhakemenin gıyaben ru’yetine bilibtidar bi-garaz müsliminden ehl-i vukuf intihab olunan kuyud-ı kadime kalemünde Arabî mütercimi Konyalı Tahir Efendi ibn-i Halil ibn-i Mustafa Hayri Efendi ve kalem-i mezkûr hülefasından Hüseyin Hilmi Bey ibn-i Abdulkadir ibn-i Hüseyin’den her biri meclis-i şer’a hazıran olub ifadelerinde Kuyud-ı Kadime Başkâtibi Muhyiddin Bey kerimesi gaibe-i an-ıl meclis Emine Mahmure Hanım zevci Nizamiye Mülazım-ı evvellerinden Teyfik Bey ibn-i İsmail Paşayı ve mûmâ ileyh Teyfik Beyin firaşından hâsıla ve mezbure Emine Mahmure Hanımdan mütevellide tahminen iki aylık Hâtice Melek nam sağireden her birini bilir ve tanırız. Mumâileyh Teyfik Beyin şehri bin yüz gurus maaş-ı muhâssası olduğundan sağire-i mezbure süt ve şeker ve havaic-i zaruriye-i saireye ve nafaka ve kisveye eşedd-i ihtiyaç ile muhtaç olduğundan ahval-i hazıranın ğilasından naşi sağire-i mezbure için şehri dört yüz gurus farz ve takdiri eb-i mûmâ ileyhin haline nazaran kadr-i maruf ve kifaye ve nafaka-i misildir. Biz bu hususu bu vecihle alâ tarikiş-şehade ihbar ederiz deyu vuku bulan ihbarlarıyla mezkurum kadr-i maruf olduğu inde-eş-şer’il enver zahir ve nümayan olmağın mucibince mezburenin nafaka ve kisve-bahâ vesair levazım-ı zaruriyesi için şehri dört yüz gurus mûmâ ileyh Teyfik Bey üzerine bin üç yüz otuz altı senesi Rebiül âhirin sekizinci günü farz ve takdir olunub meblağ-ı mefruz-ı mezkuru sağire-i mezburenin nafaka ve kisve-bahâ vesair levazım-ı zaruriyesine harç ve sarfa âhardan istidaneye ve inde’z-zafer mûmâ ileyh Teyfik Bey üzerine rucu’a müddeiyye-i müvekkile-i mezbure Mahmure Hanıma izin verildikten sonra ber vech-i muharrer sebb ve şetm hakkında li-ecli-et-tahlif mahkemeye gelmesi müktezi olub gelmediği takdirde nakil addiyle müddeiyye-i mezbure Emine Mahmure Hanım mûmâ ileyh Teyfik Beyin din ve imanına sebb ve şetm eylediğine tahlif olunmağın mucibince mezbure Emin Mahmure Hanım mûmâ ileyh Ahmed

Zeliha Melehat Hanım and İbrahim Efendi's case gives an example of an annulment after the abrogation of the OLF. Zeliha Melehat Hanım sued her husband for divorce because İbrahim Efendi had been missing for four years and had left her without *nafaqa*. Following the procedures of giving a notice of loss to a newspaper and listening to witnesses, the court divorced Zeliha Melehat Hanım and İbrahim Efendi.<sup>784</sup>

#### **5.1.2.4. Physical conditions of a man and/or a woman as an impediment to a conjugal union**

Annulment, *hiyar-ı tefriq*, was not a novelty introduced by the OLF. It had been a remedy for women who wanted to terminate their marriages in Istanbul before as well, and continued after the abrogation of the OLF. However, the innovation with the OLF was that the law addressed the defects of insanity,<sup>785</sup> leprosy, vitiligo, or venereal diseases,<sup>786</sup> impotence,<sup>787</sup> and infertility<sup>788</sup> as issues of annulment. The times required that various illnesses such as venereal diseases be included in the OLF as a reason for divorce. An increase in prostitution, the number of travelers, and peripatetic merchants might have spread such diseases.

For a woman to be able to demand divorce for impotence, she could not have a similar problem. Besides, if there was any hope of recovery, a judge may postpone

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*Tevfik Bey'den bir talak-ı bayin ile mutallaka olduğuna hüküm olunduğu tescil ve i'lam olundu. Fi'l-yevmis samın aşar emin şehri Rebi'l-ahir lisene sitte ve selâsin ve selâsemie ve elf.(18 Rebiulâhir 1336 )*" Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 30, Page: 179, 31 January 1918.

<sup>784</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1029/2, Case: 147, Page: 196, 20 April 1920.

<sup>785</sup> OLF, article 123.

<sup>786</sup> OLF, article 122.

<sup>787</sup> OLF, article 120

<sup>788</sup> OLF, article 120

annulment for a year. After a year, if husband rejected divorcing his wife, the judge would annul the marriage.<sup>789</sup> Divorce as a result of a disease like leprosy, vitiligo, and venereal diseases followed a similar procedure.<sup>790</sup> A woman could divorce her insane husband only if her husband became afflicted after the marriage. In such a case, the above-mentioned procedures were followed.<sup>791</sup>

In the sijils I examined, I did not come across a lawsuit based on any of the above reasons.

#### **5.1.2.5. Annulment, *Hiyari Tefriq*, as a result of an absent or missing husband**

Desertion of a wife or failing to provide her with a means livelihood were also reasons for annulment. The article 126 of the OLFR says that if a husband is absent or missing,<sup>792</sup> and has left his wife without *nafaqa*, his wife could resort to court for annulment. While Maliki and Hanbali madhhabs accepted being absent or missing as a reason for annulment, Hanafi and Shafi'i madhhabs did not. According to Hanafi madhhab, in a marital union, if husband is missing, the wife has to wait until her husband's peers die, which might mean decades of waiting if the couple is young.

Obviously, this ruling caused great problems for Ottoman women. In the last century of the Ottoman Empire, a great number of Ottoman women married Muslim men of other nationalities. Yet these men often left their wives without a proper

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<sup>789</sup> OLFR, article 121.

<sup>790</sup> OLFR, article 122.

<sup>791</sup> OLFR, article 123.

<sup>792</sup> In the Islamic Law, a person is *mefkud*, if he is missing and it is not known whether he or she lives or not. And a person is *gaip*, missing, if it is known that he or she is living but not known where he or she lives. See: Karaman, *Mukayeseli İslam Hukuku I*, 233.

divorce and returned to their own countries. As a result of being abandoned by their husbands, these women suffered poverty, because Hanafi madhhab did not allow women in such cases to get divorced, remarry, and obtain *nafaqa*. A judicial circular, *irade-i Seniyye*, issued on 29 Rebiülahir 1334/ March 5, 1916, allowed such women to get divorced by using the Maliki and Hanbali School rulings.<sup>793</sup>

Also affected by absence were women whose husbands were recruited and fought on the many fronts of the Ottoman Empire. For this second group of women, the situation was even worse, for economic hardship peaked during the war. These women were left without any means of livelihood. For instance, Veliye Hanım, whose husband Yakup died at Kilitbahir, Gallipoli, asked the court to record his husband's death, so that she could marry someone else. After listening to witnesses, it became certain that Yakup had died in Gallipoli and the court allowed Veliye Hanım to remarry.<sup>794</sup> Yakup, the martyr, was a craftsman. Veliye Hanım spoke on her own behalf at court. She was probably a woman of little means; otherwise she would have had an attorney speak for her at the court. Yakup was recruited to the army in 1912 and died quite soon. Yet Veliye Hanım was able to obtain a right to remarry from the court in 1917, which also meant 5 years of hardship for her.

In another case, Sami Efendi was recruited to the army during the Balkan Wars. He died at Noragaya, Bulgaria, in 1912. While he was buried, his friends found some money and a letter in his pocket, saying that the money was his wife's bride price, *mehr*, and should be handed in to her in case he died. His friends

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<sup>793</sup> Yunus Vehbi Yavuz, "Osmanlı Sultanı Muhammed Reşad Döneminde Kocası Kaybolan Kadının Evlenmesine İmkân Veren Fıkhi Hüküm Değişikliği ile İlgili Bir Vesika," *İslam Hukuku Araştırmaları Dergisi* 1 (2003): 79-93; Halil Cin, *Eski Hukukumuzda Boşanma*, 130. Also see previous chapter for details.

<sup>794</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 192, Page: 7, 17 February 1917.

Mehmed Mahmud and Major Ziya Efendi handed the money and letter to Sami Efendi's mother, and the court recorded Sami Efendi as a martyr.<sup>795</sup>

Sami Efendi was a responsible husband and a sensitive person who even after his death paid his wife her *mehr*. However, he died in 1912, and the news of Sami Efendi and the *mehr* only reached his wife in 1917, which possibly meant that his wife suffered for 5 years without any means of livelihood, because she was also not able to marry anyone else. Considering the wartime conditions and the economic hardship that people suffered in the Ottoman Empire, the 126<sup>th</sup> article of the OLFK came as a great relief for women who sought divorce from their absent husbands.

What happened to a woman whose husband had left her with a maintenance allowance, *nafaqa*, or means of livelihood but was still missing or absent? Would it be fair to make such woman wait for 50 years maybe until her husband's peers died so that she could remarry? The legislators of the OLFK rightfully addressed this problem in the 127<sup>th</sup> article of the law. The article says that if a man is missing or absent, even if he left money as a form of support for the time of his absence, his

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<sup>795</sup> “Rumelihisarı’nda Başmakçı Şucaattin mahallesinde on dokuz numaralı hanede sakin sabık Varna şehbenderi Asitâneli Mehmet Memduh Bey ibn-i Mehmet Ali bin Mahmut Efendi ile Rumelihisarı’nda Meydan Mahallesi ve yirmi altı numaralı hanede sakin Harbiye emrinde asakir-i Osmaniye Mülazım-ı evvellerinden Ziya Efendi ibn-i Hüseyin bin Azmi Efendiden her biri meclis-i şer’de bin üç yüz otuz üç senesi teşrin-i evvelinin on sekizinci günü Pakize mührüyle mahtûmen Narbiye Nezareti celilesine takdim olunup Boğaziçi Ahz-ı asker Şubesi Riyasetinden mahkemeye tevdi olunan arzuhale Rumelihisarı’nda Mollafenarî mahallesinde Meydan sokağında vâki hanede sakin iken Balkan harbinde taht-ı silaha celp ve davet olunan üç yüz beş tevellüdü Hüseyin oğlu Sami Efendinin eğer ki vefatına dair bir kayd-ı resmi olmadığı derkenar edilmiş ise de merhum üç yüz yirmi sekiz sene-i maliyesinde Bulgaristan cihetinde Noragoya tarafına sevk olunarak mahall-i mezkûrda bin üç yüz yirmi dokuz sene-i maliyesinde düşman tarafından atılan mermi üzerine mezbûr Sami Efendiye isabetiyle şehîden vefat eylediğini işitdik ve bu cihet indimizde böylece müştehidir dahi mezbûr Sami Efendinin tarih ve mahall-i mezkûrda şühedâ makberesine defîn edildiği sırada üzerinde altmış üç guruş mehr-i zatî ve tezkire-i Osmanîyesi zuhur ederek validesi Rumelihisarı’nda Meydan mahallesinde yirmi sekiz numaralı hanede sakine şahsı ma’rufumuz olan Pakize Hanım ibnet-i Abdullah Efendiye teslim olundu deyu âlâ tarîkı’ş-şehade ihbarlarıyla muhbirân-ı mezbûranın ber minval-i muharrer vâki olan ihbarlarıyla mezbûrun şehiden vefatı lede’ş şer-il enver tahakkuk etmeğin ma vakaa bittalep ketbolundu. Fi’l-yevmi’s-sabi’ vel işrin min saferi’l-hayr liseneti sitte ve selasin ve selasemie ve elf.” Galata Mahkemesi Defteri, (Court of Galata Defteri), Defter: 1027, Case: 608, Page: 69, 12 December 1917.

wife can seek annulment. If there is any hope of the husband being alive or found, the judge will postpone the annulment for four years. After four years, or if hope is considered lost in the meantime, the judge will divorce the couple. Clearly, this article was again shaped by contemporary conditions.

The 128<sup>th</sup> article of the OLFR says that if a woman remarries after an annulment, her second marriage will not be cancelled even if her first husband does return.<sup>796</sup> However, according to the 129<sup>th</sup> article, if a woman does not get an annulment of her first marriage, her second marriage is automatically cancelled with the return of her missing husband. The cancellation of the second marriage thus depended on a judge's valid decision.<sup>797</sup>

In the court records examined, most of the cases are related to the issue of missing or absent husbands. This issue seems to have posed a problem for women even after World War I. What is even more interesting is that there are OLFR cases from the years 1922 and 1923, when the OLFR had already been abrogated. During the 1920s Istanbul was occupied, many men joined the army in Anatolia, or had already died. Therefore hardship for women did not end even after World War I. Employing the 126<sup>th</sup> and 127<sup>th</sup> articles of the OLFR; the qadis simply used the law as another method to solve issues of *nafaqa*, *mehr*, and irreconcilable differences between the couples.

An Istanbulite woman, Canfeza Hanım, whose husband had been missing for eight years, resorted to court to seek the annulment of her marriage. The procedure in the case of a missing husband goes as follows: first the woman litigates. Then a

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<sup>796</sup> OLFR, article 128.

<sup>797</sup> Sabri Şakir Ansay, *Medeni Kanunumuzun 25. Yıldönümü Münasebetiyle Eski Aile Hukukuza Bir Nazar Hukuk İnkılâbımızı Aydınlatan Tarihi ve Teşrii Vesikalar*, 30.

notice of the missing husband is printed in a newspaper, usually *İkdam*, and if his address is known, an invitation is sent to husband. In the second session, if the husband does not show up, the court decides in absentia. The judge listens to witnesses and then decides about the marriage. In Canfeza Hanım's case, the procedure was followed and the court decided that she was divorced from her husband according to the 126<sup>th</sup> article of the OLF. <sup>798</sup> Likewise, Fatma Hanım got divorced from Hasan Ağa, <sup>799</sup> who was recruited for the Balkan Wars and had not been heard since 1918.

In another case, Fatma Neyyir Hanım's husband, Ebusüreyya Sami Bey, who was a postman at the governor's office, went to Amasya in 1915 and went missing. Fatma Neyyir Hanım resorted to court for the annulment of her marriage. The court made an inquiry about Ebusüreyya Sami Bey in the Üsküdar police station. In the *İkdam* newspaper, a notice of loss for Ebusüreyya Sami Bey was printed on May 21, 1919, with the number 1647. Two months after the notice, Ebusüreyya Sami Bey was still absent, and in the second session of the court, the judge decided in absentia. Having listened to the witnesses, the judge divorced Ebusüreyya Sami Bey and Fatma Neyyir Hanım according to the 126<sup>th</sup> article of the OLF. <sup>800</sup> Likewise, Fatma Nimet Hanım resorted to court to divorce her husband Bayram Ali Efendi, who had been gone for two years, in 1919. The court followed the same procedures and the judge annulled their marriage according to article 126 of the OLF. <sup>801</sup> Fatma Neyyir

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<sup>798</sup> Beykoz Mahkemesi Defteri (Court of Beykoz *Defteri*), Defter: 12/2, Case: 18, Page: 9, 14 September 1918.

<sup>799</sup> Beykoz Mahkemesi Defteri (Court of Beykoz *Defteri*), Defter: 12/2, Case: 21, Page: 11, 7 December 1918.

<sup>800</sup> Beykoz Mahkemesi Defteri (Court of Beykoz *Defteri*), Defter: 12/2, Case: 14, Page: 6, 14 August 1919.

<sup>801</sup> Beykoz Mahkemesi Defteri (Court of Beykoz *Defteri*), Defter: 12/2, Case: 17, Page: 41, 22 January 1919.

Hanım's case and the above-mentioned three cases occurred while the OLFER was in effect.

The 126<sup>th</sup> article of the OLFER continued to be effective for missing husbands even after the OLFER was abrogated. I have examined three cases. The first one is the case of Hatice Saadet Hanım and the artillery lieutenant Mahmut Hayrettin Efendi. Hatice Saadet Hanım's husband had been missing for a year. She resorted to court through her attorney. Hatice Saadet Hanım's attorney presented the court with her *mehr* certificate, which showed that she got 5,000 *guruş mehr-i muaccel*, and was due 5,001 *guruş mehr-i müeccel*. The attorney asked the court to send an invitation to Mahmut Hayrettin Efendi. The trial was postponed to March 16, 1922. In the meantime, an invitation was sent to Mahmut Hayrettin Efendi's house and a notice of loss was given in *İkdam* on March 3, 1922/8966 and in *Tekvam-i Vekayi* on March 4, 1922/4405. In the second session, Mahmut Hayrettin Efendi again did not show up and the judge decided in absentia. Having listened to the witnesses, the judge divorced Hatice Saadet Hanım and Mahmut Hayrettin Efendi according to the 126<sup>th</sup> article of the OLFER.<sup>802</sup>

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<sup>802</sup> “Beykoz kazası kurasından Paşabahçe karyesinde Yalı sokağında dokuz numaralı hanede sakin Hatice Saadet Hanım ibnet-i Salih Bey tarafından husus-ı âtil-beyanda taleb ve da'va ve ahz ü kabza fesh-i nikah da'vası ikamesine vekalet-i âmme-i mutlaka-i sahiha-i şer'iyye ie vekil müsecel-i şer'isi kaza-i mezkûr kurasından Yalı karyesinde İshak Ağa bayırı nâm mahalde kain menzilde sakin vükela-i daâviden Bahaddin Bey ibni'l- merhum Şemsi Bey Beykoz Mahkeme-i Şer'iyyesine müracaatla bil vekale takriri kelâma ibtidarlar hane-i mezkûrede sakin asakir-i osmaniye topçu mülazimlerinden Mahmud Hayreddin Efendi ibn-i Mehmed Efendi bin üç yüz otuz altı senesi ağustosunun otuz birinci günü mezkûr dokuz numaralı hanede beş bin *guruş mehr-i müaccel* gayrı müteveffa ve beş bin bir *guruş mehr-i müeccel* tesmiyeleriyle mahzar-ı şuhudda müvekkilem mumâ ileyha Hatice Saadet Hanımı tezevvüç ve tenekküh ve kabul ve ol vechile zevc-i gayrı dahilim olduğu halde iş bu tarihi ilamdan bir seneyi mütecaviz bir zamandan beru müvekkilem mumâ ileyhayı bilâ nafaka velâmünfikiş şer'i mezkûr Paşabahçe karyesinde bırakarak semt-i meçhule azimet ettiği ve ol vakitten beri gaybubet-i münkati'a ile gâib olub el-yevm hayat ve memati meçhul ve gâib-i mezbûrun urüz ve akarı ve medyunu zimmetinde veya mevdü'ü nezdinde asla malı ve ikraz-ı nafaka edecek kimesnesi olmadığı gibi nafaka nâmiyla bir nesne irsal ve terk etmediği sipariş yapmayıp bir taraftan havale göstermediği

ve iâşesine bakacak bir ma'îşi dahi olmadığından nafaka ve kisveye eşedd-i ihtiyacı ile muhtaç olub nafakanın tahsili ise mefkûd ve suver-i saire ile hariçten istidâne ve ikrazla tedariki müteazzir bulunduğundan Hukûk-ı Aile Kararnâmesinin madde-i mahsusuna tevfikan müvekkilem mumâ ileyha ile beynlerinde olan akd-i nikahın feshi hükmü tahtı karara alınmasını ve muhâkemenin fi 22 şubat 1338 Perşembe günü zevalî saat ikiye tayiniyle müddeâ aleyh zevc-i mezbûr Mahmud Hayreddin Efendiye bir küt'a varaka-i davetiye tastir buyurulmasını müvekkilem mumâ ileyha Hatice Saadet Hanıma izafetle bil vekale taleb ederim deyu yedinde mevcut ve ifadesini teyid ve mehreyn-i mezkûreyn miktarını mübeyyin mezkûr Paşabahçe Karyesi imamı ve muhtarı ve heyet-i ihtiyariyesi taraflarından memhuren mevrûd bir küt'a ilmühâberi ibraz ile da'vay-ı mezkûr yevm-i muayyende müddeîye-i mumâ ileyha vekili Bahaddin Bey bil vürüd müddeâ aleyh zevc-i mezbûr Mahmud Hayreddin Efendiye vekil-i mumâ ileyhın bil vekale talebiyle yevm-i mezkûrda mahkeme-i şer'iyede isbat-ı vücud etmek veya tarafından musaddak bir vekil-i şer'i göndermek üzere alelusul bir küt'a varaka-i davetiye tastir ve isdarı Hacı Ömer bin Hayri Ağa yediyle irsal olunmuş ise de zevc-i mezbûr Mahmud Hayreddin Efendi mezkûr hanede ikamet etmediği el- yevm mahalli ikameti de meçhul bulunduğu karye-i mezkûr imamı Yusuf Cemil Efendi tarafından varaka ve davetiyyeye meşruhat verilerek tasdik edilmiş olmakla bu babda varaka-i davetiyenin mezbûr Mahmud Hayreddin Efendiye tebliği kabil olamayacağı anlaşılmiş olduğundan vekil-i mumâ-ileyh Bahaddin Beyin talebiyle da'vay-ı mezkûrenin fi on altı mart bin üç yüz otuz sekiz Perşembe günü bade'z- zeval saat ikiye talikine ve müddeâ aleyh mezbûr Mahmud Hayreddin Efendinin yevm-i mezkûrde mehkeme-i şer'iyede isbat-ı vücud etmek ve tebliğ makamına kaim olmak üzere İkdâm ve Takvim-i Vekayi gazeteleriyle ilanına karar verilerek da'va vekili mumâ-ileyh Bahaddin Beye tefhim kılınmakla yevi muayende müddeîyye-i mumâ ileyha Hatice Saadet Hanım vekili Bahaddin Bey gelerek müddeâ aleyh zevc-i gâib mezbûr Mahmud Hayreddin Efendi gaybubet-i münkati'a ile gâib olmasına mebni yirmi iki gün mehil tayin olunarak İkdâm ve Takvim-i Vekayi gazeteleriyle dahi neşir ve ilan edildiği ve müddet-i mezkûre mürûr ettiği halde yevm ve vakt-i muayyenede isbât-ı vücud etmediğinden muhakemenin gıyaben rüyetini bil vekale taleb etmesine binaen lede't- teemmül müddeâ-yı mumâ-ileyh vekili Bahaddin Beyin ifade-i vakıasının muvâfakati tetkik ve dosya evrakı meyanında rapt edilen fi üç mart bin üç yüz otuz sekiz tarih ve sekiz bin dokuz yüz altmış altı numaralı İkdâm ve fi dört mart bin üç yüz otuz sekiz tarih dört bin dört yüz beş numaralı Takvim-i Vakayi gazeteleriyle evrak-ı saireden anlaşılmiş ve taleb-i mezkûr Usul-ı Muhakeme-i Hukukiye Kanununun yüz kırk bir mevaddının on sekizinci maddesine muvafik bulunduğundan müddeâ aleyh gâib-i mezbûr Mahmud Hayreddin Efendi hakkında anı'l-gıyab muhakeme icrasına karar verilerek müddeî mumâ ileyha vekili Bahaddin Beye tefhim edilmekle müddeî mumâ ileyha Hatice Saadet Hanımın vekili mumâ-ileyh Bahaddin Bey zabt-ı da'vayı mündericâtını şifâhen izah ve tekrar etmekle müddeîye-i mumâ ileyha vekili mumâ-ileyh Bahaddin Beyden ber vechi muharrer eylediği da'vasına mutabık beyine taleb olunan kaza-i mezkûr mahallatından Karacabey mahalle ve caddesinde kain merhum Veysel Beyin vereselerinin mutasarrıf oldukları sahilhanede müst'eciren mukim asakir-i Osmaniye Bahriye Kolağalığından mütekaid Nuri Bey ibn-i Ahmed Efendi bin Hüseyin Efendi ile salifü'z-zikr Paşabahçe karyesinde Reşadiye mahallesinde kain menzilde mukim heyet-i ihtiyariye azasından Mehmed Rıza Bey ibn-i Hüseyin Hamid Efendi bin Gâzi Hüseyin Efendi şahidleri olduğunu ve ikame etmek üzere hazır bulduklarını ifade ve beyan eylemekle şahidân-ı mumâ ileyhımadan her biri münferiden istişhad oluduklarında zatlar malumumuz olan müvekkile-i gâib-i anı'l meclis Hatice Saadet Hanım ibnet-i Salih Bey ile kezalik gâib-i anil meclis asakir-i Osmaniye Topçu mülazımlarından Mahmud Hayreddin Efendi ibn-i Mehmed Efendiyi biliyor ve tanıyoruz gâib-i mezbûr Mahmud Hayreddin Efendi müvekkile-i mumâ ileyha Hatice Saadet Hanımı bin üç yüz otuz altı senesi Ağustosunun onuncu günü ânifü'z- zikr Paşabahçe karyesinde Yalı sokağında dokuz numaralı hanede beş bin guruş mehr-i muaccel gayrı müteveffa ve beş bin bir guruş mehr-i müeccel tesmiyeleriyle mahzar-ı şuhudda ve biz meclis-i akidde hazır olduğumuz halde tezevvüç ve tenekküh ve kabul edip ol vechle zevce-i menküha-i gayrı medhulün bihâ iken iş bu tarih-i ilamdan bir seneyi mütejaviz bir zamandan beri zevcesi müvekkile-i mumâ ileyha Hatice Saadet Hanımı bilâ nafaka velâ münfikü'ş şer'i mezkûru Paşabahçe karyesinde bırakarak semt-i mechûla azimet ettiği bu suretle bir seneyi mütejaviz bir zamandan beri gaybubet-i münkati'a ile gâib, hayat ve memati mechul ve gâib-i mezbûr Mahmud Hayreddin Efendinin urüz ve akarı ve medyunu zimmetinde veya mevduu nezdinde asla malı ve ikrazı nafaka edecek kimesnesi olmadığı gibi nafaka nâmıyla birisine irsal ve terk etmediği ve bir taraftan havale ve nafakaya göstermediğinden ve müvekkile-i mumâ ileyha Hatice Saadet Hanım fakir ve muassire ve nafakaya muhtaç ve nafakası zevc-i gâib mezbûrdan tahsili müteazzir ve âhardan istidâne gayrı mümkin olub

Hacer Hanım resorted to court for the annulment of her marriage in 1922. Her husband, Mustafa Efendi, had been missing for quite some time, and she told the court that she wanted a divorce. Unlike Hatice Saadet Hanım, Hacer Hanım had no attorney, and represented her case on her own. An invitation to Mustafa Efendi was sent and a notice of loss given in *İkdam*. In the second session, the judge decided on divorce in Mustafa Efendi's absentia. Having listened to witnesses, the judge divorced Hacer Hanım and Mustafa Efendi according to the 126<sup>th</sup> article of the OLF. <sup>803</sup>

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*bu vechile müvekkile-i mumâ ileyha için zararı an tahakkuk etmiştir. Biz bu hususa bu vech üzere şahidiz, şahadet dahi ederiz deyu her biri müttefikü'l-lafz vel ma'na eda-yı şahadet-i şer'iyye etmeleriyle şahidan-ı mumâ-ileyh Nuri Bey usul-ı mevzuasına tevfikân bâ varaka-i mesture mensub olduğu Beykoz mahallesi imamı İbrahim Hakkı Efendi ibn-i Hacı Ömer ve muhtar-ı evveli Ali Haydar Efendi ibn-i Ali ve muhtar-ı sanisi İbrahim Tevfik Efendi ibn-i Hasan Tahsin ve her biri heyet-i ihtiyariye azasından Vehbi Efendi ibn-i Rıza ve Celaleddin Efendi ibn-i Salih ve Hacı Tosun Efendi ibn-i Ahmed'in ve şahid-i mumâ-ileyh Mehmed Rıza Bey dahi kezalik usul-ı mevzuasına tevfikân evvelâ bâ varaka-i mesture mensub olduğu ma'ruz mezkûr Paşabahçe Karyesi imamı Yusuf Halil Efendi ibn-i Halil ve muhtar-ı evveli Ahmed Efendi ibn-i Mustafa ve heyet-i ihtiyariye azasından Sezai Bey ibn-i Bey Rasimden sırran ve ba'dehü şahidan müdde'ye-i mumâ ileyha vekili Bahaddin Bey ve her biri hazır oldukları halde şahidan-ı mumâ ileyhimadan her biri Beykoz'da Çınaraltı caddesinde eczanede mukim eczacı Ferit Bey ibn-i Recep Efendi ve Yalı karyesinde Gâzi Yunus mahallesinde sekiz numaralı hanede sakin ve Bahriye Kıdemli Yüzbaşularından Mustafa Efendi ibn-i İbrahim ve Beykoz'da Çeşme sokağında on sekiz numaralı hanede sakin Bahriye Yüzbaşılığından mütekaid Hacı Asaf Efendi ibn-i Hasan ve İncir karyesi muhtar-ı evveli Mehmed Efendi ibn-i Habibin dahi alenen lede't- tezkiye adl ve makbulü's- şehade idükleri iş'âr ve ihbar olunup şahadetleri makbul olub gâib-i mezbûrun urûz ve akarı ve medyunu veya mevduu nezdinde ikrazı nafaka edecek kimesnesi olmadığından ve gâib-i mezbûrun mahalli dağında olub da tesbitde bulunmadığına ve gâib-i mezbûr nesne terk ve irsal etmediğine mütedair müvekkile-i mumâ ileyha Hatice Saadet Hanım ve nehci şer'i gayrı tahlifi icra olunmağın bu vechle gâib-i mezbûr Mahmud Hayreddin Efendi zevce-i menküha-i gayrı medhûlun kisve-bahâ müvekkile-i mumâ ileyha Hatice Saadet Hanımı iş bu tarihi ilamdan bir seneyi müteceviz zamandan beri ve bilâ nafaka velâ münfiki's şer'i mezkûr Paşabahçe karyesinde bırakarak semt-i mechule azimet ettiği ve ol vakitden beri gaybubet-i münkatna ile gaip olduğu ve müvekkile-i mumâ ileyha nafaka irsal etmediği gibi ve müvekkile-i mumâ ileyha için nafaka ahz ve tahsili müteazzir bulunduğu ber müceb-i şahadet-i şer'iyye mezkûre ve edilen tahkikattan anlaşılmiş olamağın mucebince Hukûk-ı Aile Kararnâmesinin yüz yirmi altıncı maddesine tevfikân müvekkile-i mumâ ileyha Hatice Saadet Hanımın gâib-i mezbûr Mahmud Hayreddin ile beynlerinde kaim olan nikâhın fesh ve tefrikına hüküm olunduğu tescil ve ilam olundu. Fil yevmi't-tasi' vel işrin min şehri recebi'l-ferd sene-i erbain ve selasi mie ve elf." Beykoz Mahkemesi Defteri (Court of Beykoz Defteri), Defter: 12/2, Case: 36, Page: 51-52, 28 March 1922*

<sup>803</sup> "Beykoz kazası kurasından Dereseği karyesinde Karakulak caddesinde on üç numaralı hanede sakin ve zatı her biri karye-i mezkurede sakinler Doktor Ahmed Fazlı Efendi ibn-i Hüseyin ve Hüseyin Ağa ibn-i Tevfik tarifleriyle mu'arrefe Hacer Hanım ibnet-i İsmail Beykoz Mahkeme-i Şer'iyesine müracaatla zevci karye-i mezkurede Karakulak caddesinde kırk sekiz numaralı hanede sakin Mustafa Efendi ibn-i Topcu Halil Ağa bin üç yüz otuz yedi sene-i hicriyesi şehri rebi'ul-âhırının on altıncı

gününe musadif bin üç yüz otuz beş senesi Kanun-i saninin on dokuzuncu günü mezkûr on üç numaralı hanede mahzar-ı şuhudda bin gurus mehr-i muaccel ve bin bir gurus mehr-i müeccel tesmiyeleriyle beni tezevvüç ve tenekküh ve kabul ve ol vechile zevc-i dâhilim iken iş bu tarihi ilamdan üç sene mukaddem beni bilâ nafaka velâ münfiki'ş-şer'i mezkûr Dereseği karyesinde bırakarak semt-i meçhule azimet ettiği üç seneden beri gaybubet-i munkatı'a ile gâib olub el-yevm hayat ve memati meçhul ve gâib-i mezburun urüz ve akarı ve medyumu zimetinde veya mevdûu nezdinde asla malı ve ikraz-ı nafaka edecek kimsesi olmadığı gibi nafaka namıyla bir nesne terk ve irsal etmediği ve bir taraftan havale göstermediği ve i'aşeme bakacak bir mu'inim dahi olmadığından nafaka ve kisveye eşedd-i ihtiyaç ile muhtaç olub nafakanın tahsili ise mefkûd ve suver-i saire ile hariçten istidâne ve ikrazla edasının müdde-i mahsusasına tevfikan beynimizde olan akd ve nikâhın feshini hüküm ve taht-ı karara alınmasını ve muhâkemenin fi altı temmuz bin üç yüz otuz dört birinci Perşembe günü ba'dez-zeval saat ikiye tayiniyle müddeâ aleyh mezbur Mustafa Efendiye bir kıt'a varaka-ı davetiye tastirini taleb ederim deyu yedinde mevcud ifadesini müeyyid mezkûr Dereseği Karyesi imam ve muhtarı ve heyet-i ihtiyariyesi taraflarından mevrud bir kıt'a ilmühaber ile mehreyin-i mezkureynin mikdarını mübeyyin bir kıt'a akidname suret-i musaddakasını ibraz ile da'va etdikde yevm-i muayende müddeîye-i mezbure Hacer Hanım bil-vurud müddeâ aleyh mezbur Mustafa Efendiye mezburenin talebiyle yevm-i mezkûrda mahkeme-i şer'iyede isbât-ı vucud etmek üzere alelusul bir kıt'a varaka-ı davetiye, ümenadan Abdulaziz Efendi yediyle irsal olunmuş ise de zevc-i mezbur Mustafa Efendi mezkûr hanede ikamet etmediği gibi üç seneyi mütecaviz bir zamandır nerede olduğu ve mahall-i ikameti meçhul olduğu karye-i mezkure imamı Rifat ve muhtar-ı evveli İsmail ve muhtar-ı sanisi Abdurrezzak Efendi ile hayet-i ihtiyariye azasından Mahmud ve Hasan Ağalar tarafından varaka-ı davetiye meşruhat verilerek tasdik edilmiş olmağla bu babdaki varaka-ı davetiye mezbur Mustafa Efendiye tebliği kabil olamayacağı anlaşılmiş olduğundan mezbure Hacer Hanımın talebiyle da'va-yı mezkurenin fi yirmi yedi Temmuz bin üç yüz otuz sekizin birinci Perşembe günü ba'dez-zeval saat ikiye ta'likına ve müddeâ aleyh-i mezbur Mustafa Efendinin yevm-i mezkûrda mahkeme-i şer'iyede isbat-ı vucud etmek üzere İkdâm Gazetesiyile ilanına karar verilerek müddeîye-i mezbure Hacer Hanıma tefhim kılınmağla yevm-i muayende müddeîye-i mezbure Hacer Hanım gelerek müddeâ aleyh zevci gâib-i mezbur Mustafa Efendi gaybubet-i munkatı'a ile gâib olmasına mebni yirmi iki gün mehil tayin olunarak İkdâm Gazetesiyile dahi neşr-i ilan edildiği halde yevm-i vakt-i muayenede isbat-ı vucud etmediğinden muhâkemenin gıyaben rü'yetini taleb etmesine binaen lede't-teemül müddeîye-i mezbure Hacer Hanımın ifade-i vakı'asının müvafıkını tetkik ve dosya evraki meyanına rabt edilmesini fi on dört Temmuz bin üç yüz otuz sekiz tarih ve dokuz bin doksan yedi numaralı İkdâm Gazetesiyile evrak-ı saireden anlaşılmiş ve talep-i mezkuru Usul-ı Muhkeme-i Hukukiye Kanununun yüz kırk birinci mevadde mükabelesinin on sekizinci maddesine muvafık bulunduğundan müddeâ aleyh mezbur Mustafa Efendi hakkında anil-gıyab muhâkemenin icrasına karar verilerek müddeîye-i mezbure Hacer Hanıma tefhim edilmekle müddeîye-i mezbure Hacer Hanıma zabt-ı da'va mündericatını şifahen izah ve tekrar etmekle müddeîye-i mezbure Hacer Hanımdan ber vech-i muharrer mutabiku'l-beyan olundukda her biri sâlifü'z-zikr Dereseği Karyesi'nde Karakulak caddesinde altmış numaralı hanede sakin bahçıvan esnafından Saadeddin Efendi ibn-i Tosun Hüseyin bin Abdullah ve mezkûr caddede mükerrer on numaralı hanede sakin rençber esnafından Teyfik Reis ibn-i Recep bin Ömer şahidleri olduğu ve ikame etmek üzere hazır buldukları ifade ve beyan eyledikleri şahidân-ı mûmâ ileyhimâdan her biri münferiden istişhad olunduklarında zatları malumumuz olan iş bu hazıra-i bi'l-meclis Hacer Hanım ibnet-i İsmail ile Mustafa Efendi ibn-i Topcu Halil Ağayı bilir ve tanırız gâib-i mezbur Mustafa Efendi müddeîye-i hazıra-i mezbure Hacer Hanımı bin üç yüz otuz yedi sene-i hicriyesi şehri Rebîül-âhîrinin on altıncı gününe musadif bin üç yüz otuz beş senesi Kanun-i saninin on dokuzuncu günü mezkûr Dereseği karyesinde Karakulak caddesinde on üç numaralı hanede mahzar-ı şuhudda bin gurus mehr-i muaccel ve bin bir gurus mehr-i müeccel tesmiyeleriyle biz meclis-i akidde hazır olduğumuz halde tezevvüç ve tenekküh ve kabul ve ol vechile zevce-i menküha-i medhulün bihası ile iş bu tarihi ilamdan üç sene mukaddem zevcesi hazıra-i mezbure Hacer Hanımı bilâ nafaka velâ münfiki'ş-şer'i mezkûr Dereseği karyesinde bırakıp semt-i meçhule azimet ettiği bu suretle üç seneden beri gaybubet-i munkatı'a ile gâib ve hayat ve memati meçhul ve gâib-i mezbur Mustafa Efendinin urüz ve akarı ve medyumu zimmetinde veya mevdûu nezdinde asla malı ve ikraz-ı nafaka edecek kimsesi olmadığı gibi nafaka namıyla bir nesne irsal ve terk etmediği ve bir taraftan havale dahi göstermediğinden ve mezbure Hacer Hanım fakire ve muassıra ve nafakaya muhtaç ve nafakası zevc-i gâib-i mezburdan tahsili müte'azzir ve herden istidâne gayr-i mümkin olub bu vechile mezbure için zarar-ı bâyin etmiştir biz bu hususa bu vech

The case of Esmâ Nevzad Hanım and Hasan Ağa<sup>804</sup> is an example of 126<sup>th</sup> article from the year 1923. In the last case, the general procedures for annulment in the OLFK were also followed. However, in the case of Esmâ Nevzad Hanım and Hasan Ağa, Hasan Ağa was lost only for three months. In the document, the phrase *hukuk-ı aile kararnamesi*, the law of family rights, is scratched out. It is likely that the judge decided according to the OLFK rules, but not to cause any further confusion, he deleted the phrase. In my opinion, the judge in case of Esmâ Nevzad Hanım was looking for a way to empower the plaintiff, and the articles of the OLFK ranged among the many strategies that could be employed.

#### 5.1.2.6. Establishment of a family council

In Islamic family law, the husband has the right to divorce a wife with whom he does not get along well. If a wife does not get along well with her husband, she

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*üzere şahidiz ve şehadet hahi ederiz deyu her biri mütefikü'l-lafz olmağın ber nehc-i şer'i eda-yı şehadet etmeleriyle şahidan-ı mûmâ ileyhimâdan her biri usul-ı mevzu'asına tevfikân evvelâ bâ varaka-i mesture mensub oldukları sâlifü'z-zikr Dereşeki Karyesi imamı Rifat Efendi ibn-i Muhiddin ve muhtar-ı evveli İsmail Efendi ibn-i Hacı Mehmed ve muhtar-ı sanisi Abdurrazzak Efendi bin Hacı Ali ve her biri heyet-i ihtiyariye azasından Yusuf Ziya Bey ibn-i Hacı Yunus ve Mahmud Efendi ibn-i Murat ve Ali Ağa ibn-i Süleyman ânifüz-zikr Dereşeki Karyesi ahalilerinden ve rençber taifesinden Recep Efendi ibn-i Ali Suyolcu Mehmed Ağa ibn-i Said'den dahi alenen lede't-tezkiye adl ve makbulü'ş-şehade idükleri iş'âr ve ihbar olunup şehadetleri makbule olub gâib-i mezburun urüz ve akarı medyunu veya mevdüü yedinde malı ve ikraz edecek kimesnesi olmadığına ve gâib-i mezburun mahalle dağından olub nâşize bulunmadığına ve gâib-i mezbur nesne terk ve irsal etmediğine mütedair mezbure Hacer Hanım ber nehc-i şer'i âli tahlifti icra olunmağın bu vechile gâib-i mezbur Mustafa Efendi zevce-i menkuhası müdde'îyye-i mezbure Hacer Hanımı iş bu tarih-i ilamdan üç sene mukaddem bilâ nafaka velâ münfiki'ş- şer'i zikr-i mesbuk Dereşeki karyesinde bırakarak semt-i mechule azimet ettiğî ve üç seneden beri ve gaybûbet-i munkatı'a ile gâib hayat ve memati mechul bulunduğû ve mezbureye nafaka irsal etmediğî gibi mezbure için nafaka ahz ve tahsili müte'azzir bulunduğû ber muceb-i şehadet-i mezkure sabit olan tahkikattan anlaşılmuş olmağın mucebince Hukuk-ı Aile Kararnamesinin yüz yirmi altıncı maddesine tevfikân mezbure Hacer Hanımın gâib-i mezbur Mustafa Efendi ile beynlerinde kaim olan nikahın fesh ve tefrikine hükmolunduğû tescil ve ilam olundu. Fil-yevmi's-sadis min zilhicce-i şer'if senete erba'in ve selasemie ve elf." Beykoz Mahkemesi Defteri (Court of Beykoz Defteri), Defter: 12/2, Case: 46, Page: 56, 31 July 1922.*

<sup>804</sup> Beykoz Mahkemesi Defteri (Court of Beykoz Defteri), Defter: 12/2, Case: 23, Page: 70-72, 19 February 1923.

could try *khul*; however, if her husband does not agree with the *khul*, in the Hanafi madhhab she does not have any other option except trying to convince her husband of their ill-suitedness for each other. The 130<sup>th</sup> and 131<sup>st</sup> articles of the OLFR gave women the right to ask for divorce from husbands they did not like. The legislators employed the Maliki School for these articles.

According to the 130<sup>th</sup> article, a husband or a wife could resort to a court for irreconcilable differences. In such a situation, the judge assigns an arbitrator from both their families. Hence a family council responsible for the resolution of the problems of the couple is established. If the family council fails to reconcile the couple, they divorce them: if the man is responsible of the problems, a *talaq* procedure is followed. If the woman is responsible, a *khul* procedure is followed.<sup>805</sup> According to the 131<sup>st</sup> article, the divorce decision of the family council constitutes irrevocable divorce, *talaq-ı bain*.

Mehmet Akif Aydın argues that this article is very important in terms of women's rights.<sup>806</sup> Rather than holding husbands morally responsible for their misbehavior and insults towards their wives, the OLFR makes husbands socially and materially responsible for their actions in conjugal unions. Besides, the divorce decision is left to third parties, who are elders and wiser. Hence by employing the Maliki madhhab of Islamic Law, the divorce decision is made more objective for both men and women. All in all, this article allowed an improvement in Muslim women's conditions.

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<sup>805</sup> Ömer Nasuhi Bilmen, *Hukuk-u İslamiyye II*, 390; Akgündüz, Cin, *Türk Hukuk Tarihi II*, 121; Cin, *Eski Hukukumuzda Boşanma*, 131-132.

<sup>806</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 204.

Şerife Nur Hanım and her husband Ali Ağa had been married for 17 years. However, they had been separated almost for a year when Şerife Nur Hanım resorted to court for divorce as a result of irreconcilable differences. The procedures of the OLFK regarding this situation were followed and a family council was established for Şerife Nur Hanım and Ali Ağa. However, it was understood that the couple could not reconcile and the couple was divorced according to the 131<sup>st</sup> article of the OLFK.<sup>807</sup>

Seyfiye Hanım sued her husband, Ahmed Rauf Bey, for divorce because he was beating her and was not respecting Seyfiye Hanım's religiosity. Seyfiye Hanım's attorney told the court that Seyfiye Hanım was a very religious woman practicing her religion. Yet her husband was not performing ritual prayers or respecting sacred Islam. The court decided to establish a family council according to the 130<sup>th</sup> article of the OLFK. The family council decided that it was not possible to find peace between the couple and divorced them; Ahmet Rauf Bey also paid Seyfiye Hanım her *mehr*.<sup>808</sup>

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<sup>807</sup> Beykoz Mahkemesi Defteri (Court of Beykoz *Defteri*), Defter: 12/2, Case: 12, Page:5, 20 July 1918.

<sup>808</sup> “Üsküdar Sultantepeinde Saraylı Caddesinde seksen sekiz numaralı hanede sakine zat-ı muarrefe Seyfiye Hanım ibnet-i Mehmed Sadık Efendi meclis-i şer'i münirde İkimiz mahallesinde on iki numaralı hanede sakın zat-ı muarref Ahmed Rauf Bey ibn-i Rifat Bey tarafından yedinde olub işbu sene-i maliye Martının yirmi beşinci günü tarihli Beyoğlu Kâti b-i Adilliğinden mu'ta zikr-i âti hususda münferiden ve müctemian icra-yı vekâlete me'zun vekilleri bulunan Dersaadet da'va vekillerinden Ahmed Ramiz Teyfik Beylerden ancak mûmâ ileyh Teyfik Bey muvacehesinde yedimde olub Üsküdar Kadılığından mu'ta mübrez bir kut'a iziname mucebince müvekkil-i mezbur Ahmed Rauf Bey beni dört bin guruş mehr-i muaccel ve dört bin bir guruş mehr-i müeccel tesmiyeleriyle tezevvüc ve kabul edib ol-vecihle zevc-i dâhilim ise de lakin müvekkil-i mezbur beni infak ve iksa etmediği gibi infak ve iksaya dahi iktidarı bulunmadığından ve zevcim mezbur ile hüsn-ü muaşeret mümkün değildir. Zira validesinin tekâlif-i gayr-ı layikasından ve teşvikinden nâşi zevcim mezbur bigayrı hakkın bir defa olarak beni darb eyledi muahharan pederim hanesine irsal edib bir müddet pederim nezdinde kaldıktan sonra zevcim mezburdan vaki olan taleb ve teklifine kain pederimin şartı olduğunu bana beyan ve kaimpederim beni hanede görmemesi için zevcim tarafından ihfa olundum. Ertesi günü pederim nezdine giderek zevcime vaki olan ricam üzerine bir mesken-i şer'i tedarikini taleb etmiş isemde talebi mezkurumu is'af etmediği gibi hüsn-i muaşeret ve idame-i hayat mütaassir olub beni infak ve iksaya dahi adim'ul iktidar mehreyn ve nafakamı i'ta etmek üzere Hukuk-ı Aile

If it were not for the 130<sup>th</sup> article of the OLF, Seyfiye Hanım might not have been able to divorce her husband. For a religious person like Seyfiye Hanım, to pursue her marriage was probably a lot more difficult than can be imagined. She could have employed *khul*, yet then she would have had to give up her *mehr*. Hence

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*Kararnamesinin madde-i mahsusı ahkâmına tevfiқан beynimizdeki akdin feshini taleb ederim deyu da'va ettikde vekil-i mûmâ ileyh Teyfik Bey dahi müvekkil-i mezbur hazır olduđu halde cevabında müddeiyye-i mezbureyi hini akidde müvekkilimin vekil-i veznedar Tahsin Beye ancak beş yüz guruş mehr-i muaccel ve beş yüz bir guruş mehr-i müeccel tesmiyeleriyle akidlerin icrasına me'zun iyet verilmiş iken vekil-i mûmâ ileyh Tahsin Bey hilaf-ı me'zun iyet olarak dört bin guruş mehr-i muaccel ve dört bin bir guruş mehr-i müeccel tesmiye edildiğini bu kere müvekkilem istihbar eyledi müddeiyye-i mezbure bâlâ-yı zabıtta muharrer olan mehreyn ve nafaka mutalebesinden gayri müvekkilim aleyhine başka bir da'vası olub olmadığı sual buyrularak bâ sicil da'vasını beyan ettikten sonra bilumum da'vasına karşı cevap vereceğim. Deyu müvekkil-i mezburün tasdiğiyle ifade ettikde lede's-sual mezbure Seyfiye Hanım cevabında. İşbu mahkemede ikame eylediğim da'va bundan ibaret olub diğer metalibi dahi mahakim-i aidesinde ikame ederim. Demekle vekil-i mûmâ ileyh cevabında müddeiyyenin şu akd-i nikahdan mütevellid müvekkilemden başka bir metalibi olub olmadığını serahaten beyan etmesi hakkındaki ifademde ısrar ederim deyu ifade etmekle da'va-yı mezkure Hukuk-ı Aile Kararnamesinin yüz otuzuncu maddesinde musarrağ olduđu vecihle zevceyn beynini tefrika ait bir da'va olduğundan birer hakem intihab etme lüzumu tarafeyne ba'det tefhim müddeiyye-i mezbure ifadesinde tefhim buyrevveli n karar vechiyle tarafımdan pederim Sadık Efendiye hakem intihab eyledim dedikde vekil-i mûmâ ileyh Teyfik Bey dahi müvekkil-i mezbur tarafından hakem intihab etmek üzere muhakemenin yevm-i âhara ta'likini taleb ve ol-vecihle ta'lik muhakeme edildikten sonra müddeiyye-i mezbure tarafından zikr-i âti husus ve hususai mezkureye da'va vekillerinden Ali Nureddin Efendiye tevkil etmekle vekil-i mûmâ ileyh Ali Nureddin Efendi vekilân-ı mûmâ ileyhima Ramiz ve Teyfik Beyler muvacehesinde ifadeye bilibtidar müvekkilem tarafından serdedilen esbab-ı tasdik ile beraber müvekkilem gayet dindar büyütülmüş taassubu son dereceye vardırılmış olduğundan zevci ise terk-i salât ve bazı muharremâtı itiyat etmesi imtizaca mani-i kavi ve tefrika hakkı şer'i teşkil etmekte bulunduğundan intihab edilmiş olan hakemler vasıtasıyla nikâhın feshi bilvekal taleb ederim deyu ifade etmekle vekilân-ı mûmâ ileyhima ifade-i sabıkalarında ısrar ile müvekkilemiz tarafından hakem olarak vükela-i deaviden faruk yeni intihab ve izafe eylediğimiz gibi müvekkilemiz mezbur zevce-i mezbureyi infak ve iâşe ettiği ve elyevm dahi infak ve iksaya alâ kadr-il-imkan hazırdır ve zevce-i mezbure için icabından hali bir meskeni şer'i ve levazım-ı beytiye mevcuddur. Müvekkilimiz mezbur asker salâbet-i diniyeye malik ve muharrematdan ârî ve her vecihle imtizaca kadir olduğundan iddiasının reddini taleb ederiz dediklerinde mûmâ ileyha kibel-i şer'den tasvib olunub tarafeyn vekillerini ba'del istima cevaplarında Rauf Beyle Seyfiye Hanım beyninde mütehaddis fesh-i akid da'vasında tetkikat-ı lazimenin icrası için tarafeynden hakem intihab edildiğimizden ve tarafeynin iddia ve müdafaatlarını istima ve zabıtlarını tedkik eyledik. Gerek Teyfik Beyin iddia ve müdafaatından ve gerek Rauf Bey tarafından tahrir olunduđu iddia olunan mektuplardan zevc ile zevce beyninde geçimsizlik mevcut olduğuna muttali' olduk. Zevc zevcesini kendi valide ve pederi yanında bulundurarak asker olması hasebb iyle ancak bu suretle infak ve iâşe edebileceğinden zevcesinin pederi nezdinde buldukları müdded infak ve iâşe ve iksa edemediğini de anladık. Gerek zevc ile zevce ve gerek bunların her iki tarafın ailesi arasındaki vaziyet ve münasebb et idameyi zevciyete mani teşkil etmedikde olduğundan akd-i fes etdik dediklerinde hakemeyn-i mûmâ ileyhimanın ber vech-i muharrer hükümleri kibel-i şer'den ba'det tenfiz alâ mucib-i ikrarihi mehreyn mebleğ-i mecmu'ü mezkür sekiz bin bir guruş zevce-i mutallakası mezbure Seyfiye Hanıma halen eda ve teslim müvekkil-i mezbur Rauf Bey ilzam olunduđu tescil ve i'lam olundu. Fi'l-yevmi's-sabi aşere min şehri receb il-fert liseneti sitte ve selâsin ve selâsemie ve elf." Galata Mahkemesi Defteri (Court of Galata Defteri), Defter: 1026, Case: 105, Page: 236, 28 April 1918.*

the annulment of her marriage through the 130<sup>th</sup> article of the OLFR was more beneficial for her.

#### **5.1.2.7. Divorce among the non-Muslim (Christian and Jewish) population**

The fifth chapter of the OLFR is about the divorce of the Christian population in the Ottoman Empire. The chapter has seven articles. Adultery, insanity, disappearance, being inflicted with syphilis or epilepsy, and peril to a husband's or wife's life are listed as reasons for divorce in the 132<sup>nd</sup> article of the OLFR. However, according to the 135<sup>th</sup> article, if a husband or wife pardons the other side, the divorce becomes null, and the couple cannot resort to court for divorce again.

A husband or a wife can also ask to live separately without divorce in any of the above cases.<sup>809</sup> As in the application for Muslims, a family council is established before the divorce suit commences. If the family council fails to reconcile the couple, the judge starts the case. According to the 137<sup>th</sup> article of the OLFR, after the couple is divorced, they have to have a religious ceremony held by their religious leaders within three months. After three months, in 20 days, the one who asked for the divorce can obtain the copy of the final court decision. Otherwise the judgment is null. According to the 138<sup>th</sup> article, a Jewish man's right to divorce depends on the permission of a judge. A Jewish woman can also ask for divorce. Other than that condition, the clauses of the fifth chapter of the OLFR are binding also for the Jewish population of the Ottoman Empire.

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<sup>809</sup> OLFR, article 136.

The male non-Muslim population benefited from the OLFR more than did the female non-Muslims of the Ottoman Empire. For instance, İsfahah Ağa, who was an Armenian, resorted to the court to divorce his wife, Virjini, for they do not get along well and they had been living separately for more than nine years. The court decided that İsfahan Ağa and Virjini were divorced because they had been living separately for more than five years, which was one of the conditions of the 132<sup>nd</sup> article.<sup>810</sup>

Alexis Efendi, a Greek man, resorted to the court to divorce his wife, Koralye. He told the court that he and Koralye had been living separately for more than five years. Alexis Efendi also demanded back the 16 *Lira* he spent on Koralye's ill health while they were living together. The court decided that Alexis Efendi and Koralye were divorced, and Koralye paid back the money Alexis Efendi had spent for her.<sup>811</sup>

Regarding the non-Muslim's engagement with the qadı court and the OLFR, the case of Muiz Efendi is the most insightful one. Muiz Efendi, a Jewish merchant, resorted to court to divorce his wife, Viktorya. Through his attorney, Muiz Efendi claimed that there was a lack of harmony in their marital life and that he and Viktorya had been living separately for almost two years. During the suit, Muiz Efendi divorced Viktorya with irrevocable divorce, *talaq-ı selase*. In the next session, Viktorya responded through an attorney, who told the court that the 132<sup>nd</sup> article of the OLFR was not retrospective. Besides, Viktorya had not committed adultery, she was not insane, she was not missing, nor did she imperil her husband's life with any diseases. The attorney also tolsaid that Muiz Efendi and Viktorya's case

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<sup>810</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 107, Page: 236, 13 April 1918.

<sup>811</sup> Beykoz Mahkemesi Defteri (Court of Beykoz Mahkemesi *Defteri*), Defter: 12/1, Case: 16, Page: 8, 25 August 1918.

had been worked out by the Chief Rabbinate. The decision was that they remained married and that Viktorya was found to be the rightful claimant of the maintenance allowance that Muiz Efendi had to pay her monthly. Therefore an annulment of their marriage would not be fair. Besides, Viktorya's attorney claimed that since Muiz Efendi and Viktorya were Jewish, Muiz Efendi could not divorce his wife by way of Islam. In the third session of the suit, Muiz Efendi's attorney said that Muiz Efendi had nervousness, which might cause him to commit a crime; therefore the marriage should be annulled. And through his attorney Muiz Efendi also said that he was ready to pay Viktorya her drachoma back and repeated that he had divorced his wife in front of the court. The judge decided that Muiz Efendi and Viktorya were divorced according to the 138<sup>th</sup> article of OLFR and Muiz Efendi had to pay back Viktorya her money.<sup>812</sup>

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<sup>812</sup> “Beyoğlunda Kabristan Sokağında Namer Otelinde on numaralı dairede mütemekkin şahs-ı muarref tebea-ı Devlet-i Aliyyenin Musevi milletinden kuyumcu Muiz Efendi veled-i Avram tarafından zikr-i âti hususta taleb ve da'va ve muhakeme ve muhasama ve murafaa ve redd-i cevaba ve ikame-i şuhuda ve mümeyyiz ve hakem ve ehl-i hibre nasb ve azline ve ahz ve kabz'a ve sulh ve ibraya ve hususat-ı saireye vekil-i müseccel-i şer'isi Dersaadet da'va vekillerinden Avram Neğum Efendi veled-i İsak meclis-i şer'i münirde Beyoğlunda Toz Koparan Kamhi Hanında beş numaralı dairede mütemekkin tebea-i devlet-i müşarun ileyhanın millet-i merkümesinden Victoria bint-i Avram muvacehesinde müvekkilim mezbur mezbure Victoria kadın ile bin dokuz yüz on dört seneyi miladisinin Mayısında yani bundan üç sene on ay mukaddem izdivaç etmiş ve mezbure ile izdivacı müteakib müteveffa-yı diğer zevcesinden mütevellide olub nezdinde yaşayan kerimesine son derece dürüstâne muamele eylediği gibi ahlak-ı düşvâr itibariyle dahi müvekkilimle mümkün-i imtizac ve itilaf edilmediğinden hayat-ı müştereke gayr-ı kabil-i tahammül bir dereceye kadar vardığından ve mütemâdi niza ve şikak içinde bir iki sene imrar-ı hayat edildikten sonra nihayet ol zaman tabiiyetimiz hasebb iyle Hahamhane meclis-i ruhanisine bil müracaat tefriklerin taleb ve bu yolda bir karar istihsal etmiş idi. Bu ana kadar zevc ve zevce ayrı mahallerde ve hal-i mufarekatde hayatgüzar olub bu halin ile-l-ebed temadisine içtimai ve şer'i ve beşer'in nokta-yı nazarında mehazir-i azim zuhuru gayr-ı kabil-i imkan bulunduğundan ve mezbure ile müvekkilim hüsnü muşeret etmesi muhal olub Hukuk-ı Aile Kararnamesinin madde-i mahsusasına tevfikân beyinlerindeki nikahın feshine ve beyinlerinin tefrikına karar i'tasını bi'l-vekale taleb ederim deyu bi'l-vekale da'va ettikde. Mezbure Victoria kadın dahi cevabında da'va-yı mezkure hakkında cevap vermek üzere muhakemenin yevmi âhara ta'likini taleb ettikde müvekkil-i mezbur Muiz Efendi ifadeye bi'l-ibtidar zevcem Mezbure Victoria kadın ile beynimizde muşeret mümkün olamayacağından mezbure-i huzuru işbu gün talak-ı selase ile tatlik eyledim dedikten sonra mezbure Victoria kadın tarafından husus-ı mezkureye tarafından tevkil eylediği İran Konsolatosu Vekili tebea-ı devleti müşarun ileyhanın Ermeni milletinden Artin Kısaryan veled-i Yerus da cevabında bir kanunun ma kabline şumulü yoktur. Müvekkilem ile zevc-i mezbur Muiz Efendi arasında Hahamhanede cereyan eden muhakeme neticesinde müvekkilemin haklı olduğu kendine ta'yin ve tefviz edilen mahiye altı lirayı daire-i

However, it was not only non-Muslim men who benefited from the application of the OLFR; non Muslim women were also resorting to 132<sup>nd</sup> article of the OLFR to get divorce. For instance, Hrisi Hanım sued her husband, Simon, from

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*icradan almakta olması ile sabit ve fesh-i nikâh için fül-i zina ve cinnet ve ceza ile mahkûmiyet ve müddet-i sefer-i baid de olub beş seneden fazla bir müddet yekdiyerini terk etmek ve müdhiş illet-i sariyeye mübtela olmak ve biri diğerinin hayatını tehlikeye ilka edecek bir hareketde bulunmak gibi ef'al-i mevcude olmadığı tahakkuk etmiştir ki zevce nafakaya istihkak kesb etmiştir. Binaen aleyh kazıyye-i muhkeme teşekkül etmiş ve bu husustan dolayı artık fesh-i nikah da'vasında bulunmaya hakları olmadığı cihetle ve biz nikahın bekasını arzu eylediğimiz ve her an ve dakika hane zevci için küşad bulunduğu hasebb iyle ve ika' olunan talak-ı selaseyi esbab-ı mucibe bulunmadığı takdirde hükmü olmadığı cihetle kabul edilemeyeceğinden vekil-i mümâ - ileyhin müvekkileme karşı ikame eylediği da'va-yı mezkuresinden men'i muaraza buyurulmasını talep ederim dedikde icabı bi't-teemmül tefhim olunmak üzere muhakeme yevmi âhara bi't-ta'lik yevm ve saat muarız-ı tarafeyn vekilleri mahkemeye gelerek iddia ve madaafatlarında ısrar etmeleriyle Hukuk-ı Aile Kararnamesinin yüz otuz sekizinci maddesinin eylediği esbab-ı mufarekatdan birinin müddeâ aleyha zevce-i müvekkile-i mezburede mevcut olub olmadığını beyanı lüzumu vekil-i mümâ-ileyh Avram Neğum Efendiye ba'det tefhim vekil-i mümâ-ileyh Avram Neğum Efendi cevabında müddeâ aleyha zevce-i mezbure ile müvekkilim mezbur beyninde her an ve zaman anlaşamamazlık ve âdem-i hüsn-i muaşeret mevcut olub her an ve zaman beyinlerinde niza' ve şikak zuhur ederek esasen müvekkilim mezburda emrâz-ı asabiye mevcud olub daima hal-i hiddetde bulunmasından nâşi âsâbı tahrik olarak kan beynine hücum edib maazallah kan boğmak ihtimali her an mevcud ve bu suretle tehlikede bulunduğundan ve gerek beyyine ve gerek tabib-i müdaviler tarafından i'ta olunacak rapor ile sabit olacağından Hukuk-ı Aile Kararnamesinin maddeyi mahsusuna tefhikan beyinlerinin tefrikiyle akidlerinin feshini talep ederim dedikde. Vekil-i mezbur Artin Kısarlıyan Efendi dahi cevabında geçen celseyi muhakemede tafsilen arz etmiş olduğum vecih üzere işbu da'va Hahamhanede ru'yet edilerek müvekkileme nafaka tahsis edilmesi ile müvekkilemin hakkı olduğu tezahür etmekle bu da'va kesb-i kat'iyet edib kanunun ma kabline şumulü olmadığı cihetle bu da'vanın yeniden ru'yetine mesağ-ı şer'i olamayacağından yeminle vaki olan müdafaatım üzerine bu hususta karar verilmek üzere ta'lik edilmiş idi. Husus-ı mezkure mahkemece bir karar verildikten sonra müddei vekili mümâ leyhin zapt-ı Aile Kararnamesinin fesh-i nikâhı intac edecek bir günâ esbab ve delâili muhtevi bulunmasından muarazadan men buyurulmasını talep ederim demekle vekil-i mezbur Avram Neğum Efendi betekrar kelama bi'l-ibtidar müvekkilim hazır mezbur Muiz Efendi zevce-i menkuhası müvekkile-i mezbure Victoria kadın geçen celse-i muhakemede dahi beyan eylediğimiz vecihle kütüb-i fikhîyyeden ibn-i Abidin tasrihan gösterilen mesele-i şer'iyeye talak-ı selase ile tatlik eylediği gibi şimdi dahi huzur-ı şer'de ikrar ve tatlik edecektir. İşbu mahkeme mehâkim-i Osmaniye-i şer'iyeden olub kütüb-İ fikhîyyede mestur ve müftâbih akval ile hükm-i şer'i icrasına mecbur olduğundan ol-vecihle müvekkilemin istimai ile talak-ı mezkûr hakkında hükm-i şer'inin i'tasını bi'l-vekale talep derim dedikde ve müvekkil-i mezbur ben zevcem mezbure Victoria kadını işbu meclis-i şer'i de olabdaki mesele-i şer'iyeye tefhikan talak-ı selase ile tatlik etdim. Hîn-i nikâhımızda kendisinden makbuzum olan altı yüz lira dırahumayı dahi kısmen zevcem yedine ve kısmen biraderi Muiz yedinde olan eşya-yı zâtiyemi dahi tamamıyla ahz ve teslim eylediğinde meblağ-ı mezkûru zevcem mezbureye tamamen red ve teslim ve iadeye hazırım demekle vekil-i mümâ-ileyh Artin Kısarlıyan Efendi dahi cevabında huzur-u şer'de ika olunan talak-ı selaseye gelince Hukuk-ı Aile Kararnamesinde mevâdd-i mahsusasındaki takayyud muteber olduğu yani tarafeyn Musevi olduğu cihetle ve buna İslamlar hakkında cari olub ve Musevilere şumulü bulunmadığı cihetle gayr-i varid olacağından iddaasının reddini ve eşya-yı müddeâ bih ise beynimizde müvekkil-i mezburün hiçbir eşyası yoktur dedikde tarafeynin iddaa ve müdafaatı tetkik olunarak müddei müvekkil-i mezbur Muiz Efendinin zevcesi mezbure Victoria kadını bil muvacehe meclis-i şer'de talak-ı selase ile tatlik etmesine mebni mezbure Victoria kadın mezbur Muiz Efendiden talak-ı selase ile mutallaka olduğuna ba'del hüküm tarafeyne tefhim olunduğu tescil ve i'lam olundu. Fi'l-yevmi's-sani ve l-işrin fişehrî Rabiu'l-ahire liseneti sitte ve selasin ve selasemie ve elf." Galata Mahkemesi Defteri (Court of Galata Defteri), Defter:1026, Case:67, Page:210, 04 February 1918*

whom she had been living separately as a result of irreconcilable differences. The judge divorced them according to the appropriate article of the OLF. <sup>813</sup>

I have also examined the case of a divorce between a non-Muslim woman and a Muslim man. <sup>814</sup> Anjel Dalmanyany Hanım, an Armenian woman, sued her husband, Mehmet Hayri Efendi, for divorce. Because they had been living separately for more than five years as a result of irreconcilable difference. The judge ended up divorcing the couple according to the 132<sup>nd</sup> article of the OLF. <sup>815</sup>

Among the documents I explored there is also a copy of the final court decision in a Jewish couple's divorce. Amidi Levi Efendi told the court that he divorced his wife, Madam Delisya, by *talaq-ı bain*, and that Madam Delisya accepted his divorce decision. The document says that because the family council failed to reconcile Amidi Levi Efendi and Madam Delisya, the court registered the mentioned *talaq-ı bain*. <sup>816</sup>

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<sup>813</sup> Galata Mahkemesi Defteri (Court of Galata Mahkemesi *Defteri*), Defter: 1026, Case: 142, Page: 247, 27 June 1918.

<sup>814</sup> The marriage between a non-Muslim woman and a Muslim man were not a rare occurrence in the Ottoman Empire. I have found two marriage verdicts for such couples: the certificate of Valra, an Austrian woman and Naci *Bey*: Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1027, Case: 628, Page: 79, 23 December 1917; and certificate of Odil Simone, a French woman, and Şevket *Bey*, a pashazade: Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1027, Case: 42, Page: 104, 17 November 1917. I have also found a case of a Muslim man, Atıf Efendi, who sued his wife, Mefruhi Hanım, an Armenian, to make her to observe the rights of her husband and come back to their home: Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter: 1026, Case: 197, Page: 11, 19 February 1917.

<sup>815</sup> Galata Mahkemesi Defteri (Court of Galata *Defteri*), Defter number:1026, Case: 56, Page: 202, 24 March 1918.

<sup>816</sup> Galata Mahkemesi Defteri (Court of Galata Mahkemesi *Defteri*), Defter: 1026, Case: 68, Page: 212, 4 February 1918.

#### 5.1.2.8. Results of divorce

This is the third chapter of the second book on divorce regarding the financial repercussions of a divorce and the waiting period, *iddah nafaqa*. After a divorce, a husband has to pay the *nafaqa* for three menstrual periods of his ex-wife, during which she could not marry anyone else. Articles 139 to 146 regulate the *iddah nafaqa* conditions of a woman whose husband is dead or who is divorced. Apart from the 140<sup>th</sup> article, these articles are in accordance with the Hanafi madhhab.

The 140<sup>th</sup> article was one of the innovations introduced by the OLFR. According to Hanafi madhhab, a woman who does not have her period has to divorce until she reached to her menopause age, and waits for another 9 months for *iddah* again. However, this condition was problematic for both for women and men, because a woman who does not menstruate for any reason cannot remarry because her *iddah* never ends; and a man has to pay his ex-wife *nafaqa* almost for a lifetime despite their divorce. Mehmet Akif Aydın gives an example of a man who paid his ex-wife *nafaqa* for 20 years and 14 days, for her *iddah* had not ended. Because the woman told to court that she was still waiting for her *iddah*, the judge decided that the man had to continue paying according to the Hanafi madhhab.<sup>817</sup>

To avert such malicious damages, the 140<sup>th</sup> article of the OLFR followed the Maliki madhhab. According to the article, a woman who during her *iddah* period does not have her third period, or never has any of them, has to wait another nine

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<sup>817</sup> Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 205.

months; and a menopausal woman has to wait only three months for the *iddah* to end.<sup>818</sup>

Among the documents I examined, I did not come across any such cases. In my opinion they were rare occurrences. Yet the precaution against it through employing Maliki rulings would protect the interests of both men and women.

Articles 150<sup>th</sup> to 157<sup>th</sup> ascertain that the *nafaqa* belongs to a husband as a result of divorce; there is no need for *iddah nafaqa* for a woman whose husband died; if the *iddah* period has passed without *nafaqa*, either by mistake or by the woman's consent, the *nafaqa* is null; after an *iddah nafaqa* is decided, even if the woman or the man dies, the *iddah nafaqa* is still valid.

Among the documents I examined, *nafaqa* cases are the most frequent ones, before the promulgation, during, and after the abrogation of the OLFR. Besides, the court procedures have been the same in the *nafaqa* related law suits, in all three instances mentioned.

## 5.2 Various articles of the OLFR

According to the 155<sup>th</sup> article of the OLFR, unless otherwise specified, all the articles of the OLFR are valid also for the Christian and Jewish subjects of the Ottoman Empire. However, the 156<sup>th</sup> article, which denies non-Muslim religious leaders the rights over their communities domestic affairs was very important. This

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<sup>818</sup> OLFR, article 140.

article caused such religious leaders' adamant opposition to the OLF, paving the way for the law's annulment.

### 5.3 Table of family law cases of Istanbul courts from 1915 to 1923

	SUBJECT OF THE LAWSUIT	JUDGEMENT		TOTAL NUMBER OF LAWSUITS	LAWSUITS RELATED WITH OTTOMAN LAW OF FAMILY RIGHTS OF 1917
		+	-		
<b>LAWSUITS FILED BY WOMEN</b>					
1	DAILY ALLOWANCE, <i>NAFAQA</i>	9		9	
2	BRIDE PRICE, <i>MEHR</i>	4		4	
3	DAILY ALLOWANCE & <i>MEHR</i>	7		7	
4	DAILY ALLOWANCE INCREASE	8		8	
5	DAILY ALLOWANCE & CUSTODY	1		1	
6	TERMINATION OF MARRIAGE AS A RESULT OF ABSENT HUSBAND	6		6	4
7	TERMINATION OF MARRIAGE AS A RESULT OF IRRECONCILABLE DIFFERENCES	2		2	1
8	ARRANGED DIVORCE	6		6	
9	REGISTRATION OF A DIVORCE	2	1	3	1

10	TERMINATION OF MARRIAGE BECAUSE OF DEATH HUSBAND	1		1	
11	DEMAND OF TERMINATION OF MARRIAGE AS A RESULT OF HUSBAND'S USE OF ABUSIVE LANGUAGE OF WIFE'S RELIGION	1		1	
12	REGISTRATION OF ONE'S HUSBAND AS MARTYR	1		1	
13	REGISTRATION OF MARRIAGE FOR SECOND TIME	1		1	
<b>TOTAL</b>		<b>49</b>	<b>1</b>	<b>50</b>	<b>6</b>
<b>LAWSUITS FILED BY MEN</b>					
1	OBEYING THE LAW OF MARRIAGE	4		4	
2	REGISTRATION OF MARRIAGE	2		2	
3	REGISTRATION OF A DEMAND TO GET MARRIED	1		1	
4	REGISTRATION OF DONATION OF GOODS TO WIFE	1		1	
5	ANNULMENT OF MARRIAGE	1		1	
6	CANCELLATION OF DAILY ALLOWANCE	1		1	
<b>TOTAL</b>		<b>10</b>		<b>10</b>	
<b>LAWSUITS FILED BY NON-MUSLIMS</b>					
1	A DAILY ALLOWANCE LIMONY (FEMALE)	1		1	
2	DIVORCE (MALE)	1		1	1
3	REGISTRATION OF DIVORCE (MALE)	1		1	

4	DISSOLVING OF MARRIAGE (MALE)	1		1	1
5	CUSTODY (FEMALE)	1		1	
<b>TOTAL</b>		<b>5</b>		<b>5</b>	<b>2</b>
<b>GRAND TOTAL</b>		<b>64</b>	<b>1</b>	<b>65</b>	<b>8</b>

## CHAPTER 6

### CONCLUSION

The process of codifying Muslim family law began in the Middle East with the OLF. Although it was abandoned shortly after its promulgation,<sup>819</sup> different Ottoman successor states applied it to varying extents.<sup>820</sup> I will conclude this work by exploring the necessity for a reform in family law by highlighting the similarities in the late Ottoman Empire with Egypt. The reform of family law in the late Ottoman Empire was related to the process of nation-building, the creation of the Ottoman citizen, and the establishment of a new family structure in society. However, the attempt to codify family law also disturbed centuries-old legal traditions, which had been used to keep the Ottoman and Egyptian societies intact vis-à-vis foreign invasions or colonial intrusions. Similarities in intellectuals' views in both countries,

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<sup>819</sup> Although the OLF was abandoned, the Ankara government's family law of 1921 was exactly the same as the OLF. The family law drafts of 1923 and 1924 also bear similarities to the OLF. However, the 1924 law draft departed from the OLF in its resemblance to the Swedish Code on issues of divorce and a divorced woman's inability to use her former husband's surname. Abdullah Akdoğan argues that when this article was drafted, there was no surname law in the Turkish state. Hence it could be argued that the reform committee was preparing for excerption of the Swedish civil code. See: Abdullah Akdoğan, "Türkiye'de 1919-1927 Yılları Arasında Aile Hukuku Alanındaki Kanunlaştırma Çabaları" (Master's thesis İstanbul, Marmara Üniversitesi, 1999).

<sup>820</sup> In Jordan until 1951, Syria until 1953, Antioch and Alexandretta until 1937, when those cities were attached to the new Turkish Republic. See: Mehmet Akif Aydın, *İslam Osmanlı Aile Hukuku*, 225-227. According to Lynn Welchmann, the British Mandate Power in Palestine implemented parts of the OLF that were addressed to Muslims only. In Israel, parts of the OLF continue to be applied to Muslim Palestinians, although modified by legislation. See: Lynn Welchmann, *Women and Muslim Family Laws in Arab States A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007) 12-13.

as well as paths taken during the reform of Islamic family law reveals codification's political power and the ideological concerns attached to it.

In his short story “Kocasını Boşayan Hürmüz” (Hürmüz Who Divorces Her Husband), the novelist Hüseyin Rahmi Gürpınar tells the story of an Ottoman lady woman named Hürmüz who misunderstood the divorce principles of the OLF. Believing that she was given the right to do so by the law, she told her husband that she had divorced him. However, her husband corrected Hürmüz by telling her that he had not divorced her. Hürmüz's husband was glad that the right to divorce their husbands had not been given to women, for women like Hürmüz would then turn the family institution upside down with their tactless decisions and caprices.<sup>821</sup> Hürmüz's husband's attitude reflects that of those who defended the importance of the tradition in late Ottoman society.

A feminist writer in for *Kadınlar Dünyası* named Necmiye Hüseyin, believed that educated and working Ottoman women forced the government to promulgate the OLF.<sup>822</sup> As explored in the second and third chapters of this study, reforms had drastically changed the lives of people and of legal culture in the late Ottoman Empire. Education and encounters with the West at varying levels created a new Ottoman people –like Necmiye Hüseyin- with different lives and expectations. The new Ottoman's worldviews, family, and marriage expectations were in accordance with that of the CUP's family and women politics. The CUP rulers believed that only in a nuclear family could a man and woman be happy and be productive for the economy.

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<sup>821</sup> Hüseyin Rahmi Gürpınar, *Kadınlar Vaizi* (İstanbul: Atlas Kitapevi, 1969), 311.

<sup>822</sup> “...Çalışması, ilmi, ahlâkı, yazısı ve nutku ile bugün kendisine öyle bir mevki' kazandı kitâm bir hukûk değil ise de nîm bir hukûk bahş etdirdi. İşte kadının gösterdiği fevkal'âdeliklerden bugün Dârülfünûn'un serbest derslerine kadın gidebildi ve gişmeleri için Dârülfünûn mu'allimleri tarafından karârlar verildi. Kadınların hukûkuna â'id hükûmet cânibinden dahi Â'ile Kânûnu yapıldı....” Necmiye Hüseyin, “Hukuk Verilmez Alınır,” *Kadınlar Dünyası* 163, 2 March 1918

Obviously, Ottoman women like Necmiye Hüseyin, like their counterparts in Egypt, exerted some pressure on the government with their writings and activities.<sup>823</sup> However, the reform of Islamic family law both in Egypt and in the Ottoman Empire formed part of a larger debate about the self-regulating, self-disciplining, productive, and governable modern subjects of nation-states, which had become possible by extending the state's control over the legal system and by allowing the use of law as a tool for social control. In the Ottoman Empire, promulgation of the OLF by the CUP was part of the rulers' aim to construct governable modern subjects.

As legal modernization in the late Ottoman Empire began to occur, a variety of laws, including penal laws and land laws, were replaced by their European counterparts and/or supplemented with other codes and regulations.<sup>824</sup> The introduction of the monetary economy, changes in the land regime, and the introduction of a land registry necessitated the careful keeping of family law records.<sup>825</sup> Traditional rules remained in family law, but these rules were also taken out of their original context with the dissolution of the qadı court and other measures taken by the centralized Ottoman government as explored in chapter 2.

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<sup>823</sup> For instance, another Ottoman feminist writer in her article in the *İnci* journal argued that although women could work and do almost the same jobs as men, they were paid less. She also demanded that women be given right to vote, as did her counterparts in various Western countries such as Denmark, Norway, and Canada.

*"Garbda kadın, günden güne mevki'ini tahakküm ediyor, her gün yeni bir hakkı istirdâd ediyordu. Kadın da hayâta atılmış ve her yerde erkekle berâber çalışmağa başlamışdı. Hayâtın şu'besinde kadına tesâdüf etmek mümkündü. Bununla berâber kadının kıymeti hakkıyla anlaşılmamışdı. Kadın amelenin ücreti erkeklerinkine nisbetle daha az veriliyor, ekserî yerlerde kadınlar belediye intihâbâtına bile iştirâk etdirilmiyorlardı. Binâen'aleyh kadının hukûku teslim edilmiş değildi; fakat harb kadının daha fa'al bir şekilde çalışması zarûriyetini tevlid etdi. Bu sûretle kadınların hangi sâhalarda ne derece kâbiliyetli oldukları daha iyi anlaşıldı. Bu zarûrî tecrübe isbât etdi ki kadının erkekden dún bir mevki'de bulunması büyük bir haksızlıktır ve kadın erkeğin yapabileceği şer şey'e müsta'iddir İşte bu hâdise Avrupa'da kadınların haklarını istirdâd husûsunda büyük bir vesika oldu. Diğer taraftan "demokrasi"nin daha mükekâmil bir şekl alması kadınların intihâb etmek ve edilmek hakkına mâlikiyetini intâc etdi. Bu sûretle Avrupa kadınları düne kadar mahrûm kaldıkları büyük bir haklarını elde etmiş ve hayâta tamâmen girmişdir..." "Avrupa'da Kadınların Hukuku," *İnci* 3, 1 April 1919.*

<sup>824</sup> The Body of Regulations, *Sicilli Nüfus Nizamnâmesi* (1881 and 1902), concerning population matters and the Population Law, *Sicill-i Nüfus Kanunu* (1914), were issued to make marriage and divorce more systematic for the Ottomans before the promulgation of the OLF.

<sup>825</sup> İber Ortaylı, *Osmanlı Toplumunda Aile*, 126.

The Islamic family law was conceived as the symbol of Islamic identity by conservatives in the late Ottoman Empire. However, in order to enhance the state's control over the legal system as well as to use the law as an instrument of social control, Islamic family law in the late Ottoman Empire was eventually codified and promulgated with the OLF. The codification of the law texts and the increased standardization and bureaucratization that had occurred since the Tanzimat era initiated changes in legal procedures; hence, the legal culture changed in the late Ottoman Empire.<sup>826</sup> In the new legal culture, debates on family law extended eventually into the political and legal spheres in the late Ottoman Empire. Likewise, in Egypt Kadri Pasha Status Code was prepared.<sup>827</sup>

The similarities in the Ottoman and Egyptian discussions about women,<sup>828</sup> family, and divorce can likely be traced to the Egyptian jurist and scholar Muhammad Abduh, one of the founders of Islamic modernism. Egyptian reformists and/or nationalist intellectuals like Abduh, Qasim Amin, Rifa'a al-Tahtawi, and Malak Hifni Nasif encountered European culture at various times. Likewise, some late Ottoman intellectuals also encountered European culture and they were impressed with European wealth, power, and achievements as explored in chapters 2 and 3.<sup>829</sup> Ottoman and Egyptian intellectuals in time adopted the view that religious reforms and secularization represented Europe's progress. The intellectuals in both

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<sup>826</sup> Aneelies Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," 150-151.

<sup>827</sup> The Egyptian Minister of Judiciary Muhammad Kadri Pasha prepared a civil code, *El-Ahkâmüſ-Œer'iyye Fil-AhvaliŒ-Œahsiyye* (1888). Ahmet Akgündüz compares the Kadri Pasha's code's articles with those of the OLF. Kadri Pasha's law is more detailed and encompasses most of the articles of the OLF. See: Ahmet Akgündüz, *Mukayeseli İslam ve Osmanlı Hukuku Külliyyatı* (Diyarbakır: Dicle Üniversitesi, 1986), 143-147.

<sup>828</sup> The "national identity" of Middle Eastern countries was raised on the image of the "new woman," as it was believed that women represented both national identity and a civilized nation. See: AyŒe DurakbaŒa, "Kemalism as Identity Politics in Turkey," 139.

<sup>829</sup> Amit, Bein, *Ottoman Ulema, Turkish Republic Agents of Change and Guardians of Tradition* (California: Stanford University Press, 2011), 14.

countries eventually required reforms that deemphasized the role of the ulema and of other Islamic institutions.<sup>830</sup>

As well as similarities in their ideological inspirations, Ottoman and Egyptian intellectuals also influenced each other. As the Hyde Park Corner of the Middle East, Cairo hosted many Ottoman intellectuals fleeing the strict censorship of Abdülhamid II. As the Hamidian police clamped down on the opposition, many Young Turks settled in Cairo and set up branches here as they had in most European cities.<sup>831</sup> Hasan Kayalı argues that Ottoman intellectuals such as Abdullah Cevdet, whose ideas were mentioned partly in chapters 2 and 3, lived in Cairo for some time and were influenced by reading the writings of Muhammad Abduh.<sup>832</sup> It is not difficult to imagine that many others also encountered Egyptian intellectuals and were similarly influenced by them.

Abduh advocated the construction of a new Muslim subject, which was made possible by reforming the institutions of education, law, and the family. He considered education the only way to lift Muslims from degeneration and decline.<sup>833</sup> For Abduh, the inferior status of women would change only through education. Only an educated woman could become a thinking person and be able to make the right decisions concerning marriage, the raising of children, and housekeeping.<sup>834</sup> In the feminist journal *Kadınlar Dünyası*, Necmiye Hüseyin in Istanbul talked about Abduh's ideas years later: “[. . .] how can an uneducated woman keep her household in order in a civilized manner? How can she raise her little child and give education? Once open a time people never paid attention to these facts. Then for man, family

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<sup>830</sup> Ibid.

<sup>831</sup> Hasan Kayalı, *Arabs and Young Turks*, 45-46

<sup>832</sup> Ibid., 46

<sup>833</sup> Samira Haj, *Reconfiguring Islamic Tradition Reform, Rationality, and Modernity*. (California: Stanford University Press, 2009), 110-119.

<sup>834</sup> Ibid., 131.

meant a place where he was relieved of his biological needs and etc. ... however, with education, work, and being able to raise their voices today, women obtained their half of their rights.”<sup>835</sup> Actually, both in Egypt and in late Ottoman Empire, image of “new woman”, who was educated with Western manners, represented a civilized nation and national identity.

The family envisioned by Abduh was nuclear and monogamous, founded on the love and compassion of two adults. He thus rejected the practice of arranged marriage, for couples who did not know or love each other before could not be happily married.<sup>836</sup> Monogamy, according to Abduh, served public welfare, and therefore rulers should prohibit the practice of polygamy.<sup>837</sup> As was explored in chapters 2 and 3, the Ottoman intellectuals also opposed polygamy and rejected arranged marriages. The Ottoman intellectual Mansurizade Said also argued, like Abduh, that rulers should prohibit polygamy for public welfare, in his article “Taaddüd-i Zevcat İslamiyette men Olunabilir” (Polygamy Can Be Forbidden in Islam) that appeared in *İslam Mecmuası*.<sup>838</sup>

Although Abduh was a reformer trying to revitalize what he deemed a socially stagnant Egyptian community under pressure from an invasive, colonial Europe, his ideas on monogamy, marriage, and the education of women much

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<sup>835</sup> “...Sorarız okumayan, terbiye-i ilmiye görmeyen bir kadın, bir sûret-i medeniyede nasıl ev idâre edebilir? Mini mini yavrucağına nasıl bir terbiye-i ilmiye verebilir? Bu cihet, o zamânlar düşünülmez, nazar-ı i'tibâra hiç de alınmaz idi. Zâten bu gibi şeyler matlûb değil idi. O zamân erkek için â'ileden matlûb olan şey hayât-ı hayvâniyesinin istirahatini tatmîn ve te'mîn etmek idi. Sâ'ika-i zamân ile kadınlar tenevvür etdi olmalı diye düşünüyorum? Bu hâl-i pürmelâlin sefâletini derk etdi. Ve o sefâletden kendini kurtarmağa bütün zekâsıyla çalışdı. Ve kendisini nisbeten kurtardı. Çalışması, ilmi, ahlâki, yazısı ve nutku ile bugün kendisine öyle bir mevki' kazandı kitâm bir hukûk değil ise de nîm bir hukûk bahş etdirdi...” Necmiye Hüseyin, “Hukuk Verilmez Alınır,” Kadınlar Dünyası 163, 2 March 1918.

<sup>836</sup> Samira Haj, 129.

<sup>837</sup> Ibid., 131.

<sup>838</sup> Mansurizade Said, “Taaddüd-i Zevcat İslamiyette men Olunabilir,” *İslam Mecmuası* 8, 20 July 1914.

resembled those of Lord Cromer, the longtime British consul-general in Egypt.<sup>839</sup> In his account of Egyptian society, Lord Cromer blamed polygamous unions and harem life as the sources of Egypt's ill economic and political health.<sup>840</sup> Polygamy and harem life, which had long been imagined as places of depravity, isolation, and sensuality, made Egyptian leaders unable to rule, at least in the eyes of Lord Cromer and his contemporaries.<sup>841</sup> If Egypt wanted to inch closer to modernity, men needed to make changes in national domestic life, including women's education and a reform of marriage.<sup>842</sup>

The Victorian family, Lisa Pollard argues, symbolized modernity, economic solvency, and the success of the nation-state. This model emphasized family stability and limited divorce rights as a means to solidify state control over citizens' relations and state planning in the political and economic realms.<sup>843</sup> According to Pollard, for Egypt to reach political maturity, and for Egyptians to become capable of governing themselves, polygamy had to be replaced with the basic tenets of the Victorian family.<sup>844</sup> Similarly, the CUP's purpose was to establish the national family, with new -educated, and preferably working- women as wives and mothers, who would raise future generations with a consciousness of homeland, *vatan*, and nation, explored in chapter 3.<sup>845</sup>

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<sup>839</sup> Earl of Cromer (Evelyn Baring), *Modern Egypt* (London: Macmillan, 1908) cited in Lisa Pollard, *Nurturing the Nation The Family Politics of Modernizing, Colonizing, and Liberating Egypt 1805-1923* (California: University of California Press, 2005), 95-96.

<sup>840</sup> According to Lisa Pollard, British officials wanted to rule Egypt after invading it in 1882, but without making it an outright colony. By claiming that Egyptians had to be reformed before they could form their own government, the British could justify and afford their long stay in Egypt. See: Lisa Pollard, 2-5.

<sup>841</sup> *Ibid.*, 64.

<sup>842</sup> *Ibid.*, 71.

<sup>843</sup> Barbara Freyer Stowasser, and Zeinab Abul-Magd, "Tahlil Marriage in Shari'a, Legal Codes, and the Contemporary Fatwa Literature," in *Islamic Law and the Challenges of Modernity*, edited by Yvonne Yazbeck Haddad and Barbara Freyer Stowasser (United States of America: AltaMira Press, 2004), 168.

<sup>844</sup> Lisa Pollard, 5, 95.

<sup>845</sup> Deniz Kandiyoti, "End of Empire," 36.

The arguments on new family and woman were prevalent in the Ottoman press, especially among women's magazines. Writing under the pen name Hür Kadın (free woman), a writer for *Bilgi Yurdu Işığı* emphasized that a family was composed of a father, a mother, and children, constituting the basic foundation of society. A woman as a wife was a good friend and partner to her husband and a compassionate mother to her children. She also was to be in charge of her household's health and well-being. Hence she should be educated accordingly. According to Hür Kadın, the division of labor within the family gave the husband the responsibility of earning money, whereas the wife should spend it on her family's well-being.<sup>846</sup>

To give the nuclear family a strong foundation, Abduh recommended the formalization of marriage contracts and required couples to appear in court to bear witness in front of a judge or officer.<sup>847</sup> He wanted to guarantee women's positions in the family by granting them the right to divorce in the marital contract, which would prevent them from suffering injustice at the hands of men.<sup>848</sup> An Ottoman intellectual Celal Nuri, who was a member of the committee of the OLF, rephrased Abduh's argument that women should not face injustice at hands of men in his book *The Women*, as explored in chapter 2. Also the above mentioned two clauses offered by Abduh for Egypt, appeared in the OLF, as explored in the fourth and fifth chapters of this study.

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<sup>846</sup> “Â'ileler cem'iyet-i beşeriyeyi teşkil eden ve bir peder bir vâlîde ve çocuklardan ibâret bulunan küçük hey'etlerdir. Â'ile insânların, beşeriyetin unsur-ı esâsîsidir. Bir memleketde â'ile hayâtı muntazam olur, â'ilelerde refâh ve se'âdet te'mîn edilmiş bulunursa orada her şey muntazam, her şey mükemmel olur ve o mahal sûret-i dâimâda terakkî eder... Kadın hânede ciddî ve samîmî bir refîkadır, kadın müşfik bir vâlidir. Kadın bir evin sıhhat ve selâmetini ve her husûsunu idâre eyleyen müdebbir bir müdürüdür. İşte kadın bu fikre nazaran hazırlanmalı, bir genç hanım kız ona göre ta'lîm ve terbiye alarak yetişdirilmelidir. Erkek ya'ni â'ile babası yalnız meşâgil-i hâriciye ile iştigâl ederek â'ilenin te'mîn-i ma'îşeti için lâzım gelecek parayı kazanacağı gibi asl bu parayı hüsn-i idâre ederek hem hâl-i hâzırda güzel yaşamalarını hem de istikbâlde hayâtlarının refâhını te'mîn eyleyecek kadındır.” Hür Kadın, “Aile'de Kadının Yeri,” *Bilgi Yurdu Işığı* 9, 15 December 1917.

<sup>847</sup> Samira Haj, *Reconfiguring Islamic Tradition*, 131

<sup>848</sup> *Ibid.*, 134.

By reconfiguring Islamic law, Abduh and his followers tried to accommodate new social and cultural realities in the domains of personal status codes.<sup>849</sup> In fact, Abduh and his disciples tried to develop a new *fiqh*, which would modernize Islamic law for the purposes of the emerging nation-state.<sup>850</sup> With his new *fiqh*, Abduh did not challenge the content of the law but demanded its systematic codification through the methods of *talfiq* and *takhayyur*,<sup>851</sup> ensuring that the insights of various madhhab would be drawn on without privileging one. Hence, the principles and rules of the Islamic family law draw on more than one Sunni madhhab.<sup>852</sup> The codification of the Islamic family law in the Ottoman Empire followed the mentioned procedures as explored in chapter 4.

Madhhab, a school of Islamic law, is defined by its substantive boundaries, and an essential part of a school's authority lies in the consistency of its doctrine.<sup>853</sup> That the Islamic modernists, such as Abduh and the committee of the OLF, did not take into serious account these intricacies of tradition and authority when combining schools of law, madhhab, for their reform purposes shows certain insensitivity to social and historical realities,<sup>854</sup> namely, the tradition. However, tradition is even the reason behind the existence of four legal schools: the founders of the law schools and

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<sup>849</sup> Ibid., 153-154.

<sup>850</sup> Barbara Freyer Stowasser and Yvonne Yazbeck Haddad, "Introduction," in *Islamic Law and the Challenges of Modernity*, 6-7.

<sup>851</sup> See: Samira Haj, 142. Also see: chapter 2 and chapter 4 for the application of *talfiq* and *takhayyur* in the reform of Islamic family law in the late Ottoman Empire.

<sup>852</sup> According to Wael Hallaq, some legislators in Sunni countries even resorted to Shi'a law to supplement their civil codes. However, for Hallaq, these reformists were extraordinarily daring in their sources and in combining several elements pertaining to a single issue, regardless of the source's positive legal principles, reasoning, and intellectual integrity. See: Wael B. Hallaq, "Can the Shari'a be Restored?" in *Islamic Law and the Challenges of Modernity*, edited by Yvonne Yazbeck Haddad and Barbara Freyer Stowasser (United States of America: AltaMira Press, 2004), 24-25.

<sup>853</sup> Ibid., 27.

<sup>854</sup> Ibid., 24-25.

their followers all used traditions as their modes of argumentation in different social and cultural settings.<sup>855</sup>

Modernization policies as formulated and implemented by bureaucracies in countries like Egypt and the Ottoman Empire produced national status codes with European concepts of the family and its role in society.<sup>856</sup> Regarding Egyptian family law reform discussions, Albert Hourani argues that Abduh selected some Islamic ideas and discarded others, not because they made sense but because they served his political ends.<sup>857</sup> For Hourani, once the traditional interpretation of Islam had been abandoned and the way was opened to personal judgments, it became impossible to say what was in accordance with Islam and what was not.<sup>858</sup> When the OLF was promulgated similar criticisms were directed at the Ottoman reformists. The Ottoman Islamic conservative intellectuals like Sadrettin responded to the OLF negatively because the law rejected centuries-old Islamic legal tradition as explored in the chapter 4 of this study.

However, social catastrophes, such as wars, may diminish the importance of traditions; because people's needs change under the new conditions. Millions of Muslim men were killed, lost, or injured in the wars that overwhelmed the Ottoman Empire in the wars its final days. This reality left many Muslim women without any means of subsistence in the middle of starving cities.<sup>859</sup> In the late Ottoman Empire, many well-educated "new" women worked, like Necmiye Hüseyin, as did those who were not educated, but who had to labor or even resort to prostitution to make ends meet in war conditions. The first group, the new Ottoman women, demanded their

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<sup>855</sup> Barbara Freyer Stowasser, and Zeinab Abul-Magd, 165.

<sup>856</sup> Ibid., 162.

<sup>857</sup> Albert Hourani, *Arabic Thought in the Liberal Age 1798-1939* (Cambridge: Cambridge University Press, 1983), 144.

<sup>858</sup> Ibid.

<sup>859</sup> Yavuz Selim Karakışla, *Women, War and Work in the Ottoman Empire*, 167.

right to marry by choice, as well as the right to divorce if they were unhappy in their marriages. For the second group of women, divorcing their lost husbands and marrying other men was a way to survive, as explored in chapter 3.

In the Islamic family law, a woman can put various stipulations into her marriage contract and can even demand that her future husband give her the right to divorce him. Actually, it was this possibility that allowed the daughters of the Ottoman sultans to divorce their husbands if they deemed it necessary.<sup>860</sup> Regarding marriage, however, regulations of the Hanafi School of Law, the official madhhab of the Ottoman Empire, made divorce difficult for women. The difficulty to get divorce from their lost husbands especially during the wars worsened the situation of the Muslim Ottoman women. This situation also forced the Ottoman rulers to renew the Islamic family law. Through the OLFR, the confines of the Hanafi School were stretched to include the other three Sunni madhhab, which facilitated divorces for Muslim women whose husbands were missing as explored in chapters 3 and 4.

The religious scholars of the Ottoman Empire were also aware of the plight of Muslim women and the requirement of the renewal of the Islamic family law. To avert discontent about the use of other Sunni madhhab, the Meşihat, the Highest Religious Authority in the Ottoman Empire, tried to reform family law without disturbing Ottoman legal and social tradition, which was explored in chapter 4. The Meşihat offered discussion of the unification of the Mecelle Commission to renew the Islamic family law in the Assembly. As the ruling party, the CUP declined the Meşihat's offer. The scholars in the Meşihat then started academic studies of Islamic family law in the institution. However, as a result of challenges between CUP cadres

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<sup>860</sup> Mehmet Akif Aydın cites the marriage contract of the daughter of the Sultan Vahidettin, Fatma Ulviye Sultan, and Tevfik Pasha. Fatma Ulviye Sultan divorced her husband on 22 June 1922 by virtue of this right. See: Mehmet Akif Aydın, *İslam-Osmanlı Aile Hukuku*, 110-111.

and the Meşihat, the Meşihat's efforts were gradually halted, leaving the CUP to promulgate a new family law.

The codification of a law is not an innocent tool of legal practice; it is a form of exercise of political power.<sup>861</sup> Apart from bureaucratic requirements of the new legal culture, by codifying the law the aim is to place the realm of law and lives of its citizens under control of centralized Ottoman state. The OLFR included a different set of articles for non-Muslim subjects. For the first time in the Ottoman Empire, the CUP rulers also attempted to heighten control over the family affairs of non-Muslim communities by regulating their marriages through the OLFR.<sup>862</sup> However, personal status or family law retained linkages between the legal and the sacred not only for Muslims, but also for the non-Muslim subjects of the Ottoman Empire. Stripping the non-Muslim clergy of their power over their communities' family law affairs also meant crumbling of their social and religious traditions.

Some reform-minded Ottoman intellectuals disdained not only the Muslim but also the non-Muslim traditions. In the eighth issue of the journal *Bilgi Yurdu Işığtl*, published shortly after the promulgation of the OLFR, an author explained the OLFR's essential importance to Ottoman society. The author argued that family law must be applied to Muslim and non-Muslim citizens alike. The author held that marriage ceremonies were not religiously solemnized during the Roman Empire and that the church had compelled people to have religious marriage ceremonies. It actually was not compulsory for non-religious citizens to marry in a church before a priest. The author boldly argued that the OLFR's new regulations would in fact

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<sup>861</sup> Wael B. Hallaq, 22-23.

<sup>862</sup> Elizabeth Brownson "Gender, Muslim Family Law, and Contesting Patriarchy in Mandate Palestine, 1925-1939" 6-7.

benefit the non-Muslim clergy, giving them more time to engage with their genuine religious duties of teaching and studying sacred texts.<sup>863</sup>

As mentioned earlier, the codification of Islamic law is not neutral. The act itself creates a political and ideological burden for all involved. Codifying Islamic family law meant tearing away at centuries-old legal and social traditions that had kept the Ottoman society intact. Hürmüz, whose tale appeared at the beginning of this chapter, was a fictional character, but journals and newspapers of the era reveal that many men and women of the late Ottoman Empire and even the young Turkish republic were confused by the loss of traditional family law. Thus, they did not always embrace the innovations, in part due to misunderstandings.

The present work has focused on the contexts and historiography of the OLFR rather than on the predicament of Islamic legal and social traditions in the late Ottoman Empire. Whether or not it was possible to reform Islamic family law

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<sup>863</sup> "...Hususıyla mezâhib-i muhtelifeye mensûb olan fukahâ akvâlinde ihtiyâc-ı asra tevâfuk edenleri bulmak mümkündür ve şu sûretle Müslimler için icâbât-ı medeniyeye müstened olan kanûnî esâsât-ı fıkhiyeye istinâd ettirmek sehîl [kolay] olduğundan gayr-ı Müslimler hakkında onların ahkâm-ı mezhebiyesinden kavâ'id-i lâzimeyi istihrâcve telkîn ile müşterek mesâ'ilden cümleye âmm ve şâmil olacak bir sûretde tedvini...

En eski Roma hukûku tedkik edilirse görülür ki ilk Romalılar beyninde akd-i nikâh için biri mezhebi diğeri millî ve medenî olmak üzere iki nev' merâsim mevcûd idi. İşbu merâsimden hiçbirine ri'âyet etmeksizin akd olunan nikâhların üzerine ibtidâları hiç netice-i hukûkiye terettüb [sıralanmak] etmez iken mürûr-ı zamân ile merâsim-i nikâhiye münhasıran zevce üzerinde nüfûz ve velâyet-i zevcî tevîd-i şerâ'itinden add olunmuş ve merâsim ve eşkâl-i mezkûreye ri'âyet olunmadan akd olunan nikâhlar bizâtili meşrû' add olunmuşdur. Bu esâslı tebeddülât sâ'ikasyladır ki nikâhı indü'l-iktizâ huzûr-ı hâkimde isbât etmek kesb-i müşkilât ettiğinden Romalılar inkârı sehîl olmayan bir huccet elde etmek için akd-i nikâh esnâsında keyfiyeti tahrîrî bir vesîkaya rabt etmeği i'tiyâd edinmiş idiler. Mürûr-ı zamân ile ve husûsıyla Rum İmparatorluğu arzâsinin barbarlar tarafından işgâlinde sonra beyyine-i tahrîriye ihzârı usûlü de muhâfaza edildiğinden her vakt şâyân-ı i'tibâr olmayan beyyine-i şahsiye ile tahkîm hâlinde başka esbâb-ı sübûtiye tedârik olunamamakda idi. Bu devrlerde sırf rızâ-yı tarafeyn ile in'ikâd etmekte olan münâkehâtın usûl-i akd ve icrâsında ilk zuhûru sıralarında bir tebeddül ikâ' etmemiş olan Hıristiyanlık bilâhire iktisâb ettiği nüfûz ve tevessü'ünden istifâde ederek kilisânın münâkehât akdinde müdâhalesini hükûmetlere tervîc ve kabûl ettirmeğe muvaffak oldu...

...ve hukûk-ı â'ile kânûnunun tedvini ile mahall-i tatbiki ve fâ'idesi kalmayan usûl-i sâbikanın muhâfazası hukûk-ı saltanata irâs edeceği zarardan başka mehâkimin bahş ettiği te'mînâtdan bir kısm efrâd-ı milleti ya'ni gayr-ı Müslimleri mahrûm etmek neticesini intâc ederek bu da kânûn-ı esâsimizle i'lân ettiğimiz müsâvâta hükûmet-i Osmâniye'ce zâten beri tatbik edilen meslek-i adâlet ve meşrûtiyete münâfi olacağından rü'esâ-yı rûhâniyenin bu bâbdaki hakk-ı kazâlarının mu'teber olduğu kânûna derc olunmuş ve rü'es'-yı müşârünileyhimin esâsen ba'demâ lüzûmu kalmayan bu gibi istiglalâtdan kurtarmak sûretiyle vezâ'if-i diniyelerine daha fazla hasr-ı mesâ'i edebilmelerine meydân bırakılmışdır..." "Münâkehât ve Müfâratat Kararnamesi Esbâb-ı Mucibe Lâyihası," Bilgi Yurdu Işığı 8, 8 November 1917.

without disrupting both Muslim and non-Muslim traditions and while also accommodating the social, cultural, economic changes of the late Ottoman Empire is a question beyond the scope of this study. As the first codified Islamic family law promulgated, the OLFR requires further comparative research, both as a law and as an ideological construct. Exploring the contexts of other codified Muslim family laws and their replacement with legal implants (such as the Swiss Civil Code in 1926 by the young Turkish state) opens up new possibilities for researchers.

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