

The Secularisation of the Islamic Family Laws in Turkey – From Atatürk to Modern Day

*"Swiss family-law Professor Gaston Jezz stated regarding the Uthmani Khilafah that the harmony of religious and national beliefs **"gave birth to the strongest family hearth in the world, and this entity founded a public life which has never been seen in the history of any nation. I, as a Western family-law professor say, take away the family system from the Turks, and there will not remain much."*** [Cemal Kutay, Pembe Mendil]

This last century was not only a century of wars, invasions, fragmentation and political instability for the Muslim Ummah. Rather, the Islamic Ummah also witnessed the systematic and relentless corruption of its entire Islamic values and lifestyle. Secular women's organisations and NGOs based upon liberal, secular, democratic capitalist beliefs and laws, as well as international agreements have been established, promoted and popularized. Vitiating non-Islamic ideas, values and lifestyles were disseminated and their spreading ensured through media and other culture shaping means. At the same time, Islamic values were despised, dispraised and labelled as backward. The corruption of values not only led to the corruption of a few individuals, it deprived future generations of their vital social structures and in particular a healthy family structure. All efforts primarily targeted the woman, who is the mother and educator, and the keystone of society. Hence, changing the woman means changing the family and consequently changing the whole society.

For Mustafa Kemal, the **"creation of a society consisting of modern individuals who embrace the freedom of religion and conscience"** was of vital importance for the survival of his new secular Republic, which he called *"my greatest achievement"*. He expressed this in a speech to the public in Bursa in 1923: *"New Turkey cannot abide to the commands of the Ottoman Code of Civil Law (Majallah), which do neither suit time nor needs. We will also improve our rules of law to the level of the most civilized nations. The attempt to rule today's society with laws set up for a society that lived a hundred, five hundred, a thousand years ago is negligence, and ignorance."*

However, it was obvious that the transformation from religious law to secular law was impossible as long as the Khilafah (Caliphate) and its Shariah courts continued to exist. Eventually, as a result of the abolishment of the Caliphate on March 3, 1924, followed by the removal of the Shariah courts on April 8, 1924, the works for the creation of a modern Civil Law were resumed. A commission of 26 persons, consisting of jurists, parliamentarians, academicians, judges and lawyers was formed. This commission translated the Swiss Civil Code into Turkish and composed a new text. The proposal was accepted by the parliamentary committee on justice without any changes on February 17th, 1926. The committee's report stated that the secular Swiss Civil Code was one of the most successful laws among civilized countries, and that its rules had the quality to meet all the needs of the time with regards to social and economic life. The law was published in the Official Gazette on April, 4, 1926, and entered into force only six months later on **October 4, 1926**. The follow-up of this law was the Law of Obligations. The same committee translated the Swiss Law of Obligations into Turkish and proposed it as a draft, which was adopted on April, 1926, published in the Official Gazette on May 8, 1926 and finally entered into force on the same date with the Civil Code.

The implementation of the "Civil Code" and the "Law of Obligations" had wide repercussions throughout Europe. Professor Georges Sauser Hall, who worked as consultant of the Turkish Government in Istanbul within the framework of the Treaty of Lausanne, wrote in his book "The Reception of European Law in Turkey": ***"The most powerful Islamic State, its thousand years old customs, are being repealed within a period of six months. Such a radical and rapid change is unknown to history. There is no experience more venturous upon a country and upon a society than this."*** [Sauser-Hall, Georges: La réception des droits européens en Turquie.]

In fact, entering into force the new Turkish Civil Code based upon secular and democratic principles meant the outright abandonment of Islamic law, which made the Turkish Republic

State completely identical to other Western secular states. In addition, this was the instrument to ensure the application of secular jurisdiction upon each section of society, and in every sphere of social life. The organisation of family according to the Civil Code has huge differences to the organisation according to the Islamic jurisdiction. Furthermore, both secularists and Muslims agree indisputably that there are complete contradictions between these two types of law. The regulation of any matter within the scope of non-Islamic secular and democratic family law, like betrothal, conditions and provisions of marriage, conditions and provisions of divorce and its consequences, regulation of matrimonial property, family housing, paternity, adoption, guardianship, maintenance and alimony, tutorship etc..., differs from the regulations prescribed by Islam. For example, the adoption of the Civil Code made civil marriage mandatory. Thus, marriages conducted according to religious provisions only were deemed invalid, which made the implementation of Islamic regulations related to divorce, alimony, inheritance, paternity and other matters linked to marriage inapplicable. Also imposing **monogamy** considered polygamy a crime which was to be punished within the scope of adultery. For decades, children born from marriages out of civil marriage did not even receive identification cards. **Divorce** was re-arranged and the woman's demand for divorce according to secular concepts was regarded as a right. Women were given the right to work **without the husband's permission** in any job they wanted. The claim of ensuring equality between men and women in economic and social areas paved the way for one of the main reasons of divorce. The **lower limit for the age of marriage** automatically considers the husband of a woman who married under the age of 17 - even ignoring her free will - a criminal and is punished with 8 to 15 years imprisonment.

In the forthcoming years of the Republic, Turkey was to be among the first countries who signed every international agreement and declaration invented by the capitalist powers. One of these was the **Convention on the Elimination of all forms of Discrimination against Women (CEDAW)** formed by the United Nations in 1981 and based upon liberal and secular principles. Turkey signed and ratified this convention already in 1985. Other than CEDAW, secular Turkish governments conducted works for the implementation of the agreements, declarations and recommendations within the domestic law provided by institutions like the European Social Charter, Convention on the Rights of Children, ILO (International Labor Office), OECD; International Conference on Population and Development (ICPD), and the Fourth World Conference on Women - the Beijing Declaration. All of these agreements and declarations, which claim to protect women's rights in marriage, divorce, public life and their physical rights, have only produced insuperable problems within societies through equating women to men. As a result of the ratification of CEDAW, Turkey established the Directorate General on The Status of Women in 1990 within the parliament in order to develop national mechanisms for the purpose of improving women's policies. It mainly contributes to the development and declaration of laws related to women. Since then, numerous constitutional and legal changes have been made. Especially in the 1980's, women's movements gained momentum. Their aim is to establish the "principle of approaching every problem through a woman's perspective".

The following briefly outlines the secularisation of family law in Turkey in historical order:

- 1990 - Abolishment of Article 159 of the Civil Code, which stated that the wife needs her husband's consent/permission in order to work outside the home.
- 1996 - Article 441 of the penal code regulating adultery by men, was annulled.
- 1998 - Article 440 of the penal code regulating adultery by women, was annulled.
- 2001 - Article 41 of the Constitution was amended, and the statement of "The family is the foundation of the Turkish society" was extended with the statement, "and based on the equality between the spouses".
- 2002 - Ratification of the Optional Protocol to the CEDAW. The New Turkish Civil Code entered into force. The main regulations introduced by the law include the following:
 - The law removed the clause that stated, "The husband is the head of the family", and replaced it through the statement, "**the spouses jointly make decisions regarding the marriage union**".

- While the Old Civil Code held the husband responsible for maintaining his wife and children, the New Civil Code states that both husband **and wife** "contribute towards the expenditures of the union with their labour and possessions to a degree commensurate with their capabilities".

- The new law increased the age of marriage equally for men and women to 17. However, the civil code allows for marriage at the age of 16 for men and women with the consent of the court in "exceptional circumstances" (like pregnancy).

- 2004 - Amendments in Articles 10 and 90 of the Constitution entered into force, stating, "In the case of a conflict between international agreements [...] and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail." Within this context, CEDAW was brought to a superior position over national regulations.

- 2006 - The Directorate General on the Status of Women, under the Prime Ministry, issued the "Manual on Combatting Domestic Violence". The contents of this book contain approaches which diametrically oppose the Islamic social system.

- In 2012 "The Law to Protect Family and Prevent Violence Against Women - Law Nr. 6284" came into force.

- The Prime Ministry repeatedly issued Action Plans for 2007-2010, 2012-2015 and lastly 2016-2020 under the title "National Action Plan on Combating Violence Against Women". They all were prepared in pursuance of all international conventions, including mainly the Istanbul Convention.

In particular, the definition of violence made in Law Nr. 6284 from 2012 and the manner by which this law is implemented produced even more tragic incidents of violence against women, and caused thousands of family tragedies in Turkey, instead of preventing it since it came into effect.

The detrimental impact of these laws based upon secular, democratic, liberal and other non-Islamic principles upon family life in Turkey has been proven by many academics and studies:

It was determined, for instance, that promoting women's employment as a woman's right independently of the husband's consent led to an increase in divorce numbers, while also leading to a reduction in fertility rate. It was revealed that women had to choose between continuing their marriages and pursuing their career. Furthermore, many of those women entering the labour force were forced to delegate the care for their elderly and ill to other individuals or institutions, which caused additional costs and other discomfort for the families.

Even if the Turkish Civil Code, with its family code in general and the regulations regarding marriage in particular, seems to contain some regulations not contradicting the Islamic regulations, performing deeds according to it is not implementing the provisions of Allah, for the Muslims are obliged to rule by the laws of Shariah and to perform their actions according to the laws of Shariah alone.

Indeed, the fact that the Turkish Constitution and the Civil Code as well as any other laws based upon these were taken from the West, and the fact that the obligation to adopt the provisions of international laws and agreements are established in Article 90 of the Constitution, lays bare clearly who the supreme legislator is in Turkey's secular liberal democratic system. However, we as Muslims, from the moment we professed our Iman, took the pledge that we will only and only submit to Allah Subhaanah wa Taala and His systems. Any rules determined by someone else other than Allah Subhaanah wa Taala only led us to disaster and breakdown and continue to do so, alongside endangering our Hereafter.

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