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Family law in Syria: a plurality of laws, norms, and legal practices

Eijk, E. van

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Author: Eijk, Esther van

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5 The Versatility of Personal Status Law: Legal Practices in a *Shar'iyya* Court

Introduction

This chapter analyses the practical implementation of the SLPS, focusing on different aspects of the judicial process. I will describe the legal procedures and practices associated with *shar'iyya* courts in Damascus, including case studies involving marriage, dissolution of marriage, and matters related to children. As mentioned earlier, the connecting thread that runs through the second part of this thesis is my argument that the diverse personal status courts are united in their shared communal, cultural understandings of marriage, gender and family relations. Throughout this chapter I will continue to address the contention that (legal and non-legal) shared norms and views on morality, propriety, marital life and gender relations are abundantly present in the various personal status courts of Damascus, including the *shar'iyya* courts.

In this chapter I will contextualise the legal rules regarding marriage and marriage dissolution (see previous chapter) within the legal procedures and practices in the *shar'iyya* courts. It is important to pay attention to the context in which the law, i.e. the SLPS, operates in order to understand its meaning and the affect it has on the lives of individuals. If one would only focus on the legal provisions of the SLPS, one would miss out on the versatility of Syrian personal status law. It is exactly this versatility or flexibility I aim to emphasise in this chapter.

The content of the SLPS is nearly sixty years old: it dates back to 1953 and was only amended in 1975 and 2003. The SLPS does not always provide clear guidance as to how to resolve a particular issue. Syrian society has changed profoundly over the last decades and the question is if the laws have kept up with the changed realities. Given the government's rigidity in its stand on change and reform of the SLPS (see chapter 3), the question arises how legal professionals, i.e. *shar'iyya* judges and lawyers, work with(in) the SLPS and its (legal) context? And how do they solve cases when the legal system does not provide an answer to a problem at hand?

As explained earlier, the SLPS itself offers a solution, as its provisions are not narrowly defined and leave ample room for interpretation. The substantive provisions of the SLPS are rather brief in many subjects and the ‘residual’ article 305 opens the door wide to the rich collection of jurisprudence of the Hanafi school of law, to which judges and lawyers willingly resort. In addition to SLPS’ ‘open norms’, the SLPS also allows for retroactive registration of customary marriage, out-of-court divorce, and proof of paternity. The SLPS and the legal system in which this law operates are thus a rather open, flexible system. This versatility or flexibility of the SLPS and the legal system is, however, not limited to Syria, in legal systems of other contemporary Arab countries, such as Gaza/Palestine, Egypt and Tunisia, we find a similar situation (cf. Shehada 2009b and c; Sonneveld 2012a; Voorhoeve 2012).

My data on legal practices includes court observations in a Damascus *shar‘iyya* court, interviews and recurrent informal interactions with (legal) experts, particularly lawyers. The case studies I use in this chapter are summaries of what I observed or of what I was told.²¹⁷ The presented cases serve to illustrate different aspects of the judicial process in this particular Damascus *shar‘iyya* court.

As explained in the Introduction, Syria’s political climate posed challenges in gaining access to the courts, court records, and other relevant material. The possibility of conducting frequent court observations in the *shar‘iyya* courts of Damascus was limited due to various reasons, most importantly because I did not have the required clearance from the authorities. Fortunately, through my lawyers-network, I managed to get permission from one *shar‘iyya* judge (hereafter ‘judge Ibrahim’), presiding over one of the six *shar‘iyya* courts of Damascus proper, to sit in on his court sessions. I was allowed to observe the court proceedings in his court, but I could not copy files or other documents, not until I would get the required clearance, which I never obtained in the end. I sat in judge Ibrahim’s courtroom approximately twenty times (i.e. days) and talked to him personally a few times.

Obviously, I cannot generalise on judge Ibrahim’s way of working in general, let alone on other Syrian *shar‘iyya* judges. However, my time in judge Ibrahim’s court provided me with an opportunity to compare my observations to

²¹⁷ Again, as mentioned in the Introduction, all the names used in these case studies are fictitious.

similar research on court practices, most importantly Carlisle's work on Syria and, in a broader context, research undertaken in other Middle Eastern countries (cf. Buskens (Morocco), Shehada (Gaza), Sonneveld (Egypt), Voorhoeve (Tunisia), Welchman (West Bank)).

Furthermore, my frequent interactions with a number of lawyers provided an interesting perspective on legal practice, as it gave me the opportunity to take a closer look behind the scenes of the *shar'iyya* courts. Whereas I found that judges took on a more formal attitude in their interactions with me, lawyers were often more straightforward. They pointed out that 'theory' often did not correspond with what happened in actual practice. Many lawyers were (generally) not hampered by formalities and therefore less inclined to give (legally) desirable answers but 'honest' answers.²¹⁸

5.1 In a Damascus *shar'iyya* court: some general observations

The six *shar'iyya* courts of Damascus proper were housed in Damascus' main courthouse (*al-qaṣr al-'adlī*). The courthouse was a three-story high building, located right in the city centre at a busy traffic junction, just off the corner of *Al-Nāṣr* street and the entrance of the main shopping street of Damascus (*al-sūq al-ḥamīdiyya*). During the courts' working hours (9 a.m. till 3 p.m.), the entrance of the courthouse and the street outside were bustling with people and activity, inside even more so. Once inside, through the door fitted up with a picture of the former President Hafez Al-Assad overlooking the street, one found oneself in a spacious entrance hall, the hot spot of the court building. The six *shar'iyya* courts were located on the ground floor, behind the entrance hall. Next to the *shar'iyya* courts, the *qaṣr al-'adlī* housed numerous other courts, such as criminal and civil courts, both first instance (*maḥākīm al-bidāya*) and appeal (*maḥākīm al-isti'nāf*), and magistrates' courts (*maḥākīm al-ṣulḥ*).²¹⁹

²¹⁸ Cf. Dupret (2006: 150-57) and Sonneveld (2010: 106-08) with regard to Egyptian judges.

²¹⁹ Magistrates' courts are first-instance courts which have limited jurisdiction over certain types of criminal and civil cases.

During my visits to Damascus' main courthouse, the courtrooms, the halls and corridors were usually packed with court personnel, lawyers, litigants, witnesses, family members, including infants. Judges would go back and forth between the courtrooms and their offices; litigants, witnesses and family members patiently waiting their turn, sometimes for hours. Most *shar'iyya* courtrooms opened out to a central hall, where court personnel occupied small offices selling stamps, registering court petitions in their court registry books (*daftars*), and so on.

Each *shar'iyya* court consisted of a single judge (*qāḍī*) who was assisted by a clerk (*kātib*). In the spring of 2009, I attended, for the most part, court sessions with one particular *shar'iyya* judge, i.e. judge Ibrahim. Judge Ibrahim and his clerk were both in their mid to late forties. There was nothing in the judge's appearance to indicate he was in fact a judge (he was always in suit and tie) except for his nameplate saying 'Judge (*al-qāḍī*) Ibrahim'. Together with his clerk he occupied a relatively small courtroom (about 15 m²). A raised dais running across the width of the room occupied the bigger part of the courtroom. The judge and his clerk would sit on the dais, behind piles of files and record books. On one wall there were two closed cupboards stacked with court files. On the other two sides of the courtroom there were simple wooden benches where lawyers, litigants, witnesses, and family members would sit and wait. Most lawyers, litigants and witnesses would wait outside in the hall until the judge returned to the courtroom or until they were called in. Apart from the above-mentioned furniture there was not much else in the room, apart from a copy of the *Qur'ān* wrapped in a cotton bag used to administer an oath, official stamps, files, registry books, and a calendar next to the judge's seat, used to set new court dates.

The court would start around nine o'clock in the morning and would go on until approximately two o'clock in the afternoon. As a rule, judge Ibrahim was not present in his courtroom on Thursdays, because on Thursday mornings arbitration (*tahkīm*) sessions took place in his office. Two appointed arbiters would come to his office and conduct *tahkīm* sessions together with the judge (see below). But also on 'regular' court days, judge Ibrahim did not reside in his courtroom the entire day. He would often go back and forward between the courtroom and his office, two doors further down; an office he shared with his colleague next door. The

courtroom of the neighbouring judge had a backdoor leading to this shared, small (approximately 10 m²) office.

During the court's office hours, judge Ibrahim's courtroom was usually full of activity, with different legal proceedings taking place, often simultaneously. It was not uncommon for judge Ibrahim to examine a witness, while being interrupted regularly by (mostly) lawyers who came in to ask a question about another case, make an appointment or simply to greet the judge. In my view, judge Ibrahim was a master in multi-tasking. After an interruption, he would just continue from where he had left off, even if it was in the middle of a witness testimony. Testimonies of litigants, witnesses, and/or experts, and all other verbal exchanges were heard in colloquial Arabic. However, court hearings and proceedings were not transcribed verbatim. The presiding judge summarised and dictated what had to be written in the case file in Modern Standard Arabic to his clerk. This is not atypical, for it happens in all court sessions in Syria (Cardinal 2008: 138 n. 43; Ghazzal 2007b). I observed the same procedure in the Catholic and Greek-Orthodox personal status courts of Damascus. Similar procedures are followed in other Middle Eastern countries, such as the Egyptian family courts and Lebanese courts of personal status. Clarke provides an apt example in his study on kinship and Islamic law in Lebanon: 'The messiness of real life and personal testimony gets converted into crisp legalese. 'He's a monster, a tyrant! He beats me, abuses me, my life is unbearable...' enters the record as ' it emerged that the plaintiff stated that there was strife between her and the defendant, her husband'.' (2009: 60) It was during witness examinations in particular where patriarchal norms and views on marital life came to the fore.

When the plaintiff (*al-muddaʿī*) and the defendant (*al-muddaʿī ʿalayhi*) were heard by the court, they were required to identify themselves by presenting their government-issued identity cards. The clerk copied the personal data of the ID cards into the file, after which the questioning could commence. Witnesses also had to identify themselves by producing their ID cards to the clerk. Before witnesses were questioned by the judge they were also required to swear an oath (*yamīn*) on the

Qur'ān.²²⁰ They had to repeat the following oath after the judge: 'I swear by God, the Almighty, that I will tell the whole truth without adding or omitting anything' (*uqsim bi-llāh al-'aẓīm an aqūl al-ḥaqq kullahu dūn ziyāda aw nuqṣān*). When there were multiple witnesses (maximum five), they were instructed to appear, after they were identified by the judge and the clerk, in the courtroom one by one, in accordance with article 77 paragraphs 1 and 3 of the Law of Evidence. The witnesses had to await their turn in the central hall until the judge finished questioning the preceding witness. Sometimes the 'waiting' witnesses stood to close the door, then they were told by the judge or clerk to stand back, so that they could not overhear what the other witness was saying. In accordance with article 12 SLPS, women could only testify in unison in a *shar'iyya* court: a clear example of the gendered nature of this law, as it assigns a different status to men and women. I only saw this happen once, two sisters of a female plaintiff, who had filed a judicial divorce petition, were called in to testify. Not just the testimony was heard simultaneously, but also the oath was administered in unison.

At times, it seemed that lawyers, litigants, and witnesses in the *shar'iyya* courts were fighting to get the judge's attention, whereas in the Catholic and Greek-Orthodox courts this was not the case. As we shall see in the next chapter, the Catholic court in particular observes a strict court agenda, with cases processed one at the time. The most obvious explanation for this difference in method of working is the workload of the *shar'iyya* judges. Most *shar'iyya* judges are faced with an immense workload and a heavy backlog of cases, due to 'cumbersome court procedures, weak administrative capacity and lack of adequate infrastructure' (UNDP 2006: 9; Haidar 2009).²²¹ As a result, litigation is often a slow and tedious process. What is more, the *shar'iyya* judges have to process more cases simply because the majority of Syrians are Muslim (roughly 85 per cent), but also because they are the general competent courts to hear cases involving non-Muslims. The *shar'iyya* courts are exclusively competent to judge cases concerning

²²⁰ Apparently, there were also copies of the Old and New Testament present in the *shar'iyya* courtrooms, i.e. for Jews and Christians witnesses respectively. During my presence, however, I have never seen a Jewish or Christian witness in the court.

²²¹ Personal communication with lawyers Ahmed, Nawal, and others.

certain specified matters, most importantly legal guardianship (*wilāya*) and paternity (*nasab*) (see chapter 2, § 2.2).

According to some of the lawyers I worked with, judge Ibrahim was quite an exceptional judge. He was considered exceptional because of his humanity and moral standing, and being a true mediator. I was told that judge Ibrahim was one of the few judges who visited litigants at home to try and resolve disputes between the parties by finding a solution acceptable to all (see section on ‘judicial divorce – *tafriq*’ below).²²² That was the reason why some lawyers, when they had a case that deserved special attention, tried to get judge Ibrahim on the case. Also, I met a few women in judge Ibrahim’s court room who had come to see him specifically because others had recommended him because of his characteristics described above.

In the previous chapter I have discussed the provisions related to marriage and divorce in the SLPS, in this chapter I describe several aspects of the practical implementation of these provisions and other dimensions of the judicial process in the *shar‘iyya* courts. It will become evident below that, in addition to the legal rules, other (non-legal) norms and extra-judicial practices related to marriage, divorce and other family relations find their way into the courtroom and, in fact, play an important role in the judicial process.

5.2 Marriage

There is no official or reliable data available (at least, not to my knowledge) on the average age for marriage in Syria. According to an article of the national news agency SANA, the Syrian Commission for Family Affairs (SCFA) stated in its second national report on the Syrian Population Status 2010 that the average age for marriage ‘rose from 25,9 to 29 years for males and from 20,6 to 25,1 years for females between 1981 and 2000’.²²³ Unfortunately, no information is provided about differences between urban and rural areas, the educational and professional

²²² Personal communication with lawyer Ahmed, 26 February 2009.

²²³ Unfortunately, I could not find the primary source, i.e. the report of the Syrian Commission for Family Affairs (SCFA), to verify the information provided in the article.

background of the contracting parties or the age difference between the spouses. Through my interaction with several legal professionals I learned that custom (*'urf* or *'āda*) continued to play a dominant role in family relations, despite state efforts to regulate them. The prevalence of customary practices provides an explanation as to why the phenomenon of early or child marriages still prevailed in Syria, particularly in rural areas, notwithstanding the statutory required minimum age for marriage, i.e. eighteen for men and seventeen for women (Art. 16).

'The age for marriage was set not by law but by practice'; this comment was made by Ms. Mouna Ghanem, one of the Syrian delegation members who met with the Committee on the Elimination of Discrimination against Women (CEDAW) in New York to discuss Syria's initial periodic report in May 2007 (CEDAW 2007, par. 54). Her comment confirms the commonly held view that customary practices continue to be applied and often override statutory law provisions. In its initial report, Syria reported that approximately 85 per cent of women from rural areas got married under the age of twenty (CEDAW 2005: 69-70). How many women of this 85 per cent were younger than seventeen years (the legal age), remains unclear.²²⁴ As the SLPS allows for girls to marry from the age of thirteen and for boys from the age of fifteen, provided the marriage guardian gives his consent (Art. 18.1), one could claim that the SLPS itself facilitates early (or child) marriages by providing this opportunity.

According to my sources, marriages are generally concluded by a marriage official (*al-ma'dhūn al-shar'ī*).²²⁵ By virtue of article 43 SLPS, marriage officials are (as assistants to the *shar'īyya* court) authorised to conclude a marriage contract, either in court or at the home of one of the spouses, usually the bride. Marriage contracts are generally written up by marriage officials at people's home after the court's

²²⁴ I could not find any ('reliable') data on how many men, or boys, marry between the age of 15 and 18 or how many women, or girls, marry between the age of 13 and 17. Rabo writes in her study on the province of Raqqā (conducted in the late 1970s-early 1980s) that villagers in Raqqā's countryside married their children before the legal age. Also, they did not register marriages, births, and deaths with the authorities. According to Rabo, the villagers played fast and loose with the state promulgated laws and procedures (1986: 88).

²²⁵ The marriage officials are generally 'regular' employees of the Ministry of Justice. However, one can only be a marriage official if one has applied and obtained for special permission from the Ministry to draw up marriage contracts. Damascus' main courthouse has at least 25 marriage officials at its disposal (personal communication with lawyer Ahmed, 15 January 2012).

office hours, usually in the evening, in return for a small fee.²²⁶ Before a marriage can be concluded, the marriage official or judge ought to review that the marriage application includes all the required documents (Art. 40.1). In addition, a so-called marriage dossier (*muṣannaḡ zaṭwāj*) needs to be submitted. This marriage dossier is a six-page pre-printed folder issued by the Ministry of Justice that can be purchased at the court (for 35 SP), it lists the information that is required for the issuance of a marriage contract. All the relevant information can be filled out on dotted lines and checked off in the pre-printed boxes, including the name of the marriage official, the date, hour and place on which the marriage contract was concluded. It also includes a section for the head of the court's registry (*ra'īs al-dīwān*) to legitimise its authenticity and add a registration number, and a section for the judge for validation of the contract.

The availability of marriage officials does not exclude the possibility of contracting a marriage in court, in the presence of a judge. During my presence in the *shar'iyya* courts, I witnessed a few marriage conclusions. These marriages were usually concluded in an expeditious manner. The marriage company that showed up in court generally consisted of the bride and groom, two witnesses, and oftentimes the marriage guardian (*walī*) of the bride. In some cases, one or two other family members would also be present. An example:

Judge Ibrahim's court room was chock-a-block with lawyers, litigants, witnesses and so on, all trying to get the judge's attention. Amidst the boisterous crowd tucked away to one side stood the clerk at the far end of the dais with a small crowd squashed together in a corner. I could not hear everything that was being said but I could make out that the small knot of people consisted of the bride and groom, two male witnesses and the marriage guardian. The clerk was reading out the marriage contract. He asked who was acting as the bride's guardian, the older man said he was. The judge asked the bride whether she agreed to the marriage, she almost shyly (hiding behind the back of the older man) indicated she did. The two

²²⁶ The amount of the fee is not fixed, people can decide at their own discretion. The average amount lies somewhere between 1,000-2,000 Syrian pounds (personal communication with lawyer Ahmed, 15 January 2012).

witnesses signed the contract, the clerk stamped and registered it and that was that. Over and done within a few minutes.²²⁷

Marriages in court were generally not considered a festive event, in that they were no festive elements such as a wedding dresses or flowers. The wedding party (*zifāf*) was usually held weeks or months after signing the marriage contract. After the wedding celebration the couple would start living together, meaning that marital life had begun.

In chapter 4, we saw that the SLPS describes marriage as a contract between a man and a woman, concluded in the presence of two witnesses. Marriage is considered a contractual relationship, the aim of which is 'to establish a union for a shared life and procreation' (Art. 1). The marriage contract is an essential element in a Muslim marriage, for only a valid contract can generate legal effects a marriage, most importantly rights and duties of the two contracting parties (Article 49). What exactly are these marital rights and duties?

5.3 Financial obligations of the husband – providing maintenance (*nafaqa*)

As mentioned in the previous chapter, various studies on Muslim personal status laws have demonstrated that a Muslim marriage was generally depicted along the lines of the maintenance-obedience divide, both on a legal as well as a societal level (for example, Buskens 1999; Shehada 2009a; Sonneveld 2012a; Tucker 2008; Welchman 2011). This maintenance-obedience divide was laid down (and subsequently changed or abrogated) in several Arab personal status laws in varying degrees. As of late, several states (e.g. Algeria, Morocco, Tunisia) have removed the wife's duty of obedience to her husband from their legislation, however maintaining the husband's maintenance obligation (Welchman 2007: 94-97). The Syrian government has not introduced similar changes; the SLPS therefore continues to present marriage as a relationship based on exchange of rights and duties: the husband will take care of the wife, in exchange for her cohabitation and obedience.

²²⁷ Case A, Damascus *shar'iyya* court, 31 March 2009.

According to the SLPS, the husband 'first' financial obligation is to pay his wife a dower (*mahr*). When a wife receives the prompt dower (*mahr mu'ajjal*), she is obliged to live with her husband, provided he prepares a suitable house for her. Dower amounts vary depending on the financial means of the husband and the social standing of both spouses. In my observation, the amount generally started at a few tens of thousands up to hundreds of thousands (or millions) of Syrian pounds as a prompt dower; the deferred dower (*mahr mu'ajjal*) was usually either the same or higher. The question whether or not the husband had actually paid the prompt dower was sometimes disputed, particularly in relation to divorce claims (see below). In addition to the dower, the husband would generally also give his wife a trousseau (*jihāz*), often gold and furniture.²²⁸

Next to paying a dower, the husband has to pay his wife maintenance (*nafaqa*). This maintenance obligation includes, most importantly: a marital home, clothing, food, and medical care. The level of maintenance depends on his financial situation, although a minimal level (*ḥadd al-kifāya*) has to be met. According to one of the lawyers I worked with, the so-called 'minimum maintenance' (*nafaqa kifāya*) amounted to 1,000-1,500 Syrian pounds (roughly 15-23 Euro) per month.²²⁹ In addition, the husband had to pay maintenance for the children, which was around 800-1,000 Syrian pounds per month.²³⁰ The minimum maintenance amount was based on an average Syrian monthly income; for example, a teacher without a university degree made between 6,000-7,000 Syrian pounds (94-110 Euro) and a teacher with a university degree made approximately 10,000 Syrian pounds (157 Euro) per month. A financially well-off husband ought to pay more maintenance to his wife than the minimum maintenance, but the wife would have to prove that her husband was suitably well-off.²³¹ This would be not an easy task for most women.

²²⁸ When a betrothal ends, the wife will have to return the received dower and trousseau (Art. 4); besides this article (and article 307 pertaining to the Druze community), no further mention is made of the trousseau in the SLPS.

²²⁹ The converted Euro amounts are based on the exchange rate of 1 Syrian pound to 0,015 Euro (the average exchange rate in spring 2009).

²³⁰ Personal communication with lawyer Ahmed, 15 February 2009.

²³¹ Personal communication with lawyer Ahmed, 15 February 2009.

One day I witnessed a rather peculiar case in judge Ibrahim's courtroom. A handcuffed man wearing a grey-blue prisoner's suit was brought in by four policemen in the already packed courtroom. The man's cuffs were removed and he was made to sit down next to me on one of the side benches, where he had to wait until it was his turn. The judge summoned the man, assisted by his lawyer, and what turned out to be his wife to approach the dais. It appeared that the couple had concluded a so-called customary marriage (*zawāj 'urfī*)²³² a few years back. The wife wanted their marriage to be registered officially, she requested a proof of marriage (*tathbīt al-zawāj*). She and her lawyer handed over the 'urfī marriage contract, which stated a full dower of 100,000 SP, the dower amount was thus not divided into a prompt and deferred dower. The wife demanded that a new dower would be recorded in the contract, she insisted on getting double the amount. On top of that she demanded that her husband would pay her maintenance every month. The judge suggested an amount of 2,000 SP, to which the husband agreed, but this was not to her liking. She demanded more. In the end the contract was adapted and registered by the court. Judge Ibrahim told the wife that if she wanted more maintenance (*naḥaqa*) she had to prove to the court that her husband was well-off and she would be entitled to more than the awarded 2,000 SP. Whereupon he dismissed both parties, the husband was handcuffed again and escorted out of the courtroom by the policemen. Almost the entire time the wife was very emotional, arguing with her husband and his lawyer, she was making a dreadful scene. Even after the man was taken away, she kept coming back to plead with the judge to accommodate her wishes.

A few days later I asked judge Ibrahim why the husband was brought in handcuffed by the police. According to judge Ibrahim, the wife had gone to the police, where she had told lies about her husband, as a result of which he was arrested and taken into custody. The judge did not know what he was charged or convicted for. Judge Ibrahim was of the

²³² See section 'unregistered marriages' below for a more detailed discussion on 'urfī marriages.

opinion that the husband was a good man, in contrast to the wife, who he thought was a morally bad person.²³³

This case raises a number of questions, for example, what were the charges the wife made against her husband; and why did judge Ibrahim think that the husband was a good man, as opposed to the wife, whom he thought was a morally bad person? I will focus on the latter question, which is in keeping with the ‘shared norms’ argument that patriarchal views and norms of social propriety and marital behaviour are continuously emphasised and reinforced across the various personal status courts (see chapter 4). In that context, the most interesting aspect of this case is the final comment of judge Ibrahim, uttered in a fleeting moment. The moral qualifications he attributed to the litigants (i.e. ‘the husband was a good man, the wife a morally bad person’) is a good example of the general appreciation of moral virtues. In my observation, moral views, opinions, expectations of the proper social decorum were commonly expressed in the legal setting, not only by judges but by most participants in the proceedings of the various personal status courts (see, in particular, the next chapter). Critical assessment of spousal or parental behaviour is based on expectations of how a person in one’s gender or religion-based role or position (as wife, husband, father or mother) ought to behave (cf. Carlisle 2007c: 255 ff). Also, critical assessments of a person’s character or personality permeate the courtroom, as became evident in the above-mentioned case. Judge Ibrahim clearly sympathised with the husband and showed himself indifferent to the wife’s pleas to impose payment of higher monthly maintenance fees.

The example given above is somewhat extreme in that the husband was detained due to his wife’s (false or true) allegations. In any case, if a husband fails to provide maintenance to his wife, she can go to court and file a *nafaqa*-claim against him, forcing him to fulfil his obligations. A husband, on the other hand, is entitled to cease maintenance payments if the wife fails to keep her end of the ‘patriarchal bargain’ (Kandiyoti 1988), namely obedience to him and in particular to co-habit with him. The financial obligations of the husband are inextricably bound up with her legal obligation to co-habit and obey him.

²³³ Case A, Damascus *shar‘iyya* court, 22 March 2009.

5.4 Duty of the wife – marital obedience

In chapter 4 we saw that a wife is obligated to co-habit with and obey her husband. If she is found to be disobedient (*nāshiza*) to her husband, she can lose her right to maintenance. Generally, a wife will be considered disobedient if she leaves the conjugal house without a lawful reason or if she works outside house without her husband's consent.

Article 49 lists the requirement of a wife to 'follow' her husband or, in other words, to practice 'marital obedience' (*wujūb al-mutāba'a*²³⁴) as one of the legal consequences of a valid marriage contract. The SLPS does not include provisions that would allow the courts to (physically) enforce obedience upon a disobedient wife.²³⁵ A Syrian husband can, however, take legal action against his rebellious wife. If a wife remains persistently disobedient to her husband, he can go to court and ask the judge to be suspended from maintenance payments to his wife based on the claim that his wife is disobedient. He can file a claim for 'marital obedience' (*da'wā al-mutāba'a*), requiring his wife to return to the marital home. The deterrent effect of an official court ruling declaring a woman *nāshiza* may persuade her to return to the conjugal home or even threatening to file such a claim can already compel a wife to return home.

That being said, Sonneveld argues in her book *Khul' Divorce in Egypt* that Cairene husbands often file an obedience (*ṭā'a*) claim in response to a judicial *khul'* divorce request filed by their wives, as a way of stalling the divorce proceedings or to 'redeem [their] shattered pride' (2012a: 125-28). I have not been able to verify whether Damascene husbands employed the same strategy, i.e. file a claim for 'marital obedience', in response to, for example, a wife's *nafaqa* claim. Although I never came across a case which involved a *mutāba'a* claim during my presence in

²³⁴ See chapter 4 (§ 4.6.2) for an explanation why I translate the term *mutāba'a* with 'marital obedience'.

²³⁵ For example, the institution of 'house of obedience' (*bayt al-ṭā'a*), as existed in Egypt, cannot be found in Syria. This legal institution enabled an Egyptian husband to obtain a 'house of obedience' ruling against his disobedient wife, upon which she could then be forced, with help of the police, to return to the marital home (Tucker 2008: 74). For an interesting perspective on the origins of the institution of 'house of obedience', see Sonbol (2003, 2007). She argues that the institution of *bayt al-ṭā'a* was modelled to the European legal doctrine of 'coverture', i.e. 'coerced incarceration of wives at the will of the husband enforced by the state through its courts and police' (2003: 112).

judge Ibrahim's court, I can imagine that a husband would file such a claim as a strategic manoeuvre in a marital dispute.

Upon inquiry with some lawyers about the composition of a *mutāba'a* petition, I was given a standardised form that is used for these claims. Lawyers generally work with standardised forms for petitions, motions, and other legal proceedings. They purchase these forms (on a DVD-ROM) from, for example, the company SyrianLaw.com or they download them from one of the Syrian Bar Association websites, e.g. the Damascus Bar Association branch. The form concerning a *mutāba'a* petition (*ṣiḡḥat istid'ā' da'wā mutāba'a*) I used here, is taken from the above-mentioned DVD-ROM issued by SyrianLaw.com.

A *mutāba'a* petition is connected to article 66 SLPS, which concerns the wife's obligation to live with her husband once she has received the prompt dower. For that reason a *mutāba'a* petition should include a description of the house, the household furniture and other relevant amenities, the location of the house and other possible characteristics to prove that the house is a suitable house (a *maskan shar'ī*) as prescribed by the law (Arts. 65-70 SLPS). In addition, it should state that despite the availability of a suitable house and after mediation of relatives, the wife refuses (without any reasonable reason) to return to the marital home. When the court accepts a *mutāba'a* claim, it will examine (*kashf*) the marital house to investigate whether the house is indeed a suitable house. The wife is obligated to return to the conjugal home when the court concludes, based on the investigation, that the house is suitable.²³⁶ When she refuses to do so, she will be considered disobedient, in accordance with article 75 SLPS. Consequently, the husband is exempted from paying maintenance to his wife (Art. 74).

5.5 Valid seclusion: determining sexual opportunity

The concept of *nushūz* is closely connected to the obligation of the wife to live with her husband; co-habitation implies sexual availability of the wife to her husband. Consummation of the marriage can be a matter of importance in the dissolution of a marriage; in addition to questions regarding the validity and voidability of a

²³⁶ Email correspondence with lawyer Yusuf, 3 November 2011.

marriage.²³⁷ For instance, when a husband claims he has divorced his wife before the marriage was consummated and non-consummation is subsequently established by the court, the husband can be excused from paying his wife the full dower amount (see Appendix). For that reason, judge Ibrahim normally asked in divorce cases whether or not the marriage was consummated, for example before the *ṭalāq* was pronounced by the husband. In case the couple had children this question could obviously be omitted, for children born within a marriage are attributed to the husband by the SLPS (see below). In any event, in the majority of the cases I witnessed, the consummation question was answered in the affirmative.

But what can a judge do in the event that consummation is disputed? It will be difficult to prove that actual consummation has taken place. Often it is simply his word against hers. This is where the legal concept of seclusion (*khalwa*) comes into play, meaning that the couple had the opportunity to consummate the marriage. When a couple spent a reasonable amount of time alone together, it is assumed they had sexual intercourse. If the court established that valid seclusion (*al-khalwa al-ṣaḥīḥa*) between the couple occurred, the marriage is considered consummated.

A spouse (usually the wife) who claims that he/she had sexual relations with his/her spouse will have to prove that valid seclusion took place. For that purpose, the claimant will present witnesses to the court, regularly close relatives, such as parents and siblings (see also Carlisle 2008: 64).

A young woman appeared in judge Ibrahim's courtroom accompanied by two of her brothers. Her husband claimed that he divorced her before having consummated their marriage. The wife had taken her brothers to court to testify against her husband's claim; the alleged husband was present with his lawyer to hear what the opposing party had to say. The judge swore in the two witnesses and began to question them, submitting each of them to a separate interrogation. The judge asked them if private seclusion (*khalwa*) between the spouses had taken place, and if so, to describe the circumstances in which the seclusion took place. Both witnesses were submitted to a lengthy and careful inquiry, in which the

²³⁷ See Appendix.

judge asked them to describe the house where the seclusion took place in great detail. According to the witnesses, the couple had retreated into the parlour of the bride's family home. Upon which judge Ibrahim asked them the following questions: What did the house look like? What did the room where the couple allegedly spent 4 hours together look like? How many doors, windows, entries and exits did the house and the room have? Was it possible for any one outside to look into the room? Did the room have a balcony? Did they see the couple enter and leave the house and the room? How long were they inside together? According to the second witness, they were together (alone) in the family house a number of times, always for at least two hours, and so on.²³⁸

This is an example of a case where a dispute over whether or not sexual intercourse had taken place or, more accurate, a dispute over whether the couple had had the opportunity to have sexual intercourse, had been taken to court. The husband in the above-mentioned example wanted to try to wiggle himself out of his dower payment obligation. However, it is also possible for a woman to bring the *khalwa* issue to court, for example if she wants to re-marry without having to take the legally required waiting period (*'idda*) into account.

As we saw in the previous chapter, a woman's sexual propriety is connected to the reputation and honour of her family. Male family members will commonly consider it their responsibility (and are also expected to do so by others) to control and monitor their, in particular, younger female members' (sexual) behavior (see for example Joseph 1994). The fact that the institution of valid seclusion exists in the SLPS and legal practice corresponds with the prevailing social norm that non-related men and women should not be together unsupervised or alone in a private setting. It is commonly accepted that this can create an opportunity for possible unlawful (i.e. extra-marital) sexual interactions. This view is (again) a shared norm, shared among Christians and Muslims alike, although in varying degrees.²³⁹

²³⁸ Case J, Damascus *shar'iyya* court, 12 May 2009.

²³⁹ For Christians, interaction between non-related men and women is slightly more acceptable, but also Christian girls can be looked down upon when they are seen with a non-related man in public, especially in conservative Christian-majority communities (see chapter 4).

5.6 Unregistered marriages

As explained before, marriages ought to be concluded in or through court. However, marriages concluded outside the court can also be considered valid, provided certain procedures (stipulated by the SLPs) are met. These marriages are often referred to as traditional or customary marriages, in Arabic denoted by the term *zawāj ‘urfī* (lit. ‘customary marriage’). The phenomenon of ‘*urfī*’ marriages in the contemporary Arab world will be discussed in more detail below.

Customary marriages are not always registered at court; there are therefore no statistics or other data available to prove how commonly they occur. Syria’s Central Bureau of Statistics only publishes the total number of marriage contracts registered at the Civil Registry of each governorate.²⁴⁰ In 2009, for example, 241,422 marriages were registered in the country, of which 23,649 marriages in Damascus proper.²⁴¹ It is, however, not specified by the type of marriage or where the marriage is contracted, inside or outside the courts, or whether it is a retroactive registration or not. In February 2009, I had the opportunity to personally study the notebooks (*daftars*) used to register cases filed at the Damascus six *shar‘iyya* courts. I counted the cases that were filed in January 2009 and a total of 699 cases were filed. The overwhelming majority were divorce cases (474), immediately followed by registration of marriage contracts or ‘proof of marriage’ (55), so-called *tathbīt al-zawāj*. Notwithstanding the lack of statistical data, through observation of court practices and interactions with lawyers and other legal practitioners, it became clear to me that such marriages took place on a regular basis (cf. Carlisle 2008; Rabo 2011: 34-35). It appeared that people only decided to register their ‘*urfī*’ marriage when there was a legal reason to do so, for instance when children were born from these marriages.²⁴²

²⁴⁰ It should be noted, however, that the accuracy and reliability of the statistical data published by the Central Bureau of Statistics is disputed by many.

²⁴¹ Central Bureau of Statistics, *Statistical Yearbook 2010*, issue 63 (available online at: <http://cbssyr.org/yearbook/2010/Data-Chapter2/TAB-15-2-2010.htm>, accessed 9 December 2011).

²⁴² The same practice was observed by Rabo in the late 1970s-early 1980s in the Raqqā governorate (1986: 55 n. 6).

People have different reasons to marry the so-called *'urfī* way. It may be because such marriages are common in the community to which the spouses belong, for example in the rural areas *'urfī* marriages are more common. A man, originally from the area around the city of Deir Atiya (about 90 kilometres north of Damascus), told me once that in the past so-called *al-iḥrām*²⁴³ marriages were concluded in his village. To perform the pilgrimage (*ḥajj*) to Mecca, a woman had to be accompanied by her husband or a male family member (*maḥram*), as she could not travel unaccompanied.²⁴⁴ According to my informant, men therefore sometimes married a woman who wanted to go on *ḥajj*, but could not because she did not have a husband or a close relative to accompany her. Whether these marriages are still contracted today is unknown to me.

There are other reasons for marrying the *'urfī* way, such as: the spouses belong to different (Muslim) sects (see example below) or the couple marries against the family wishes or because it concerns a polygamous marriage (with or without the first wife's knowledge). It is also possible that the man serves in the army and did not get (or does not want to ask for) permission to marry from the army (cf. Carlisle 2008) or because the groom cannot meet the costs of a traditional wedding (cf. Hasso 2011; Sonneveld 2012b). Finally, a man can also agree to contract a *'urfī* marriage to make sure the wife's illegitimate child receives a (his) family name. This latter example will be addressed in more detail below.

5.6.1 *'urfī* and other marriage practices

However, before discussing *'urfī* marriage practices in Syria, I will first address the phenomenon of *'urfī* marriages within a broader Middle Eastern context. First of all, it is important to mention that *'urfī* marriage is an umbrella term employed to denote various (old and new) marriage practices, including traditional or customary marriages, those concluded in conformity with Islamic law, but also those whose Islamic legal status is disputed. As explained earlier, a Muslim marriage is typically defined as a contract between a man and a woman, contracted in the presence of two witnesses and (possibly) a marriage guardian. As long as the basic conditions are met (i.e. offer and acceptance, two witnesses, and a contract

²⁴³ The word *iḥrām* refers to the 'state of ritual consecration of the Mecca pilgrim' (Wehr 1994: 202).

²⁴⁴ According to Tucker, this requirement was prescribed by most Hanafi jurists (2008: 181).

including a dower), the marriage will generally be considered valid according to Islamic law (Schacht 1995; Shaqfa 1998: 162). However, for it to be legally valid, i.e. according to the statutory laws of most Muslim countries, the marriage contract has to be registered with or drawn up by some official or central state authority. In most countries, the registration requirement only became a necessary legal formality from the late nineteenth century, when governments tried to implement a centralised, uniform civil registry of marriages, births, divorces, and deaths (Schacht 1995; Welchman 2007: 53 ff.). Despite this statutory provision, traditional *'urfī* marriages continue to be concluded, next to the registered ones. In the last decade, however, the *'urfī* marriage seems to have resurged in various guises (see for example Carlisle 2008; Hasso 2010; Sonneveld 2012b).

As of late, the *'urfī* marriage phenomenon has been subject of much debate in many Muslim countries, especially in Egypt (cf. Sonneveld 2012b). In Saudi Arabia, the approbation by the Grand Mufti of so-called 'ambulant (*misyyār*) marriages' in 1996 sparked off debates on informal marriage practices (including *'urfī* marriages), not only in the Kingdom of Saudi Arabia²⁴⁵ but also in other Middle Eastern countries (Hasso 2010: 89).²⁴⁶ The main feature of a *misyyār* marriage is that the wife waives her rights to maintenance and housing (i.e. she will agree to continue to live at her parental house), by doing so the husband is excused from his financial obligations (Arabi 2001: 147 ff.). The validity of these marriages is often disputed because they are usually contracted in secret, i.e. not registered, (and are oftentimes polygamous) and preclude, in particular, the financial marital rights of women, despite the fact that they voluntarily waive these rights (cf. Sonneveld 2012b). What is more, these marriages are often temporary, i.e. contracted for a set time period, which also makes them controversial, for temporary (*mut'a*) marriages are only recognised in Shi'i law. According to Sunni law, the institution of *mut'a* marriage is unacceptable; Sunni Muslims commonly consider it a legalised form of prostitution.

²⁴⁵ Yamani contends that the increase in wealth of many Saudis, due to oil revenues, and the promotion of polygamy by the Saudi government and '*ulamā'*' led to an increase in polygamous practices, including *misyyār* marriages (2008: 47-53, 215).

²⁴⁶ Most notably, Shaykh Yusuf al-Qaradawi, an influential Sunni scholar from Egypt, declared *misyyār* marriages religiously valid (Hasso 2010: 92).

The term '*urfī*' seems to be blurred with these new types of marriages like *misṣyār*, but also other types have emerged, for example: *sharʿī*²⁴⁷ (lawful), *miṣyāf* (summer holiday), *maḥaṭṭa*²⁴⁸ (station), *zawāj al-frind* ('friend marriage'),²⁴⁹ and *misfār* (travel). Most of these marriages are temporary and concluded for various reasons, for example enabling a young woman to study abroad.²⁵⁰ They can be found in various Middle Eastern countries, particularly in the Gulf countries, but also in Syria. So-called 'summer marriages' (*zawāj al-ṣayf*) are known to be contracted between local women and men from the Gulf visiting Syria during summer holidays.²⁵¹ These unions are often temporary, without the legal and financial obligations and duties that are normally associated with marriage, such as spousal maintenance, a marital home, and recognition of children born out these marriages. The outcome of these marriages is not always very rosy, the wife regularly ends up as a divorcee, possibly pregnant or with child (cf. Sonneveld 2012b). As we saw in chapter 3, Syrian mothers can generally not pass on their nationality to their children (Article 3 paragraph b Nationality Act).²⁵² When a marriage is not legally registered and/or the non-Syrian father does not recognise the child according to the law of his home country, the child will not only be without nationality but also without citizenship. I will elaborate more on the subject in the section 'nameless children'.

5.6.2 Registration of a customary marriage

Now let us return to the subject of the customary or unregistered ('*urfī*') marriage. To reiterate what was stated in chapter 4, a '*urfī*' marriage concluded outside a Syrian court is eligible for registration, provided the required procedures are met (Article 40.2). However, also in cases where not all requirements are fulfilled, judges tend to agree to register the marriage contract, especially when children are born from the union (Carlisle 2008: 67). When a couple marries the '*urfī*' way and a

²⁴⁷ Buskens 1999: 449 (Morocco).

²⁴⁸ Yamani 2008: 105.

²⁴⁹ Sonneveld 2012b: 85.

²⁵⁰ See for example: <http://www.islamwomen.org/EngIw/NwsDetails.aspx?id=1334>, accessed 15 December 2011.

²⁵¹ See, for instance, Muhanna 2011.

²⁵² Legislative Decree 276, 24 November 1969. In addition, Syria entered a reservation to article 9, paragraph 2 CEDAW on granting children the nationality of their mother, because the CEDAW article was considered incompatible with *sharīʿa* (CEDAW 2005: 43).

child is born from this union or a pregnancy is apparent, the registration procedure of the marriage and the filiation of the child can be settled promptly.²⁵³ One example.

A young couple (mid twenties to early thirties) entered judge Ibrahim's courtroom. The woman appeared to be well into the second trimester of her pregnancy and carried a toddler girl on her arm. As it turned out, the woman was a daughter of a high ranking official and belonged to the Druze community. The husband, on the other hand, was her father's driver and was Sunni Muslim. They had contracted a '*urfi* marriage and came to court to register their marriage (*tathbīt al-zawāī*), in addition to the paternity of their daughter (*tathbīt al-nasab*).

Apparently, the wife's father had come to court earlier to state that his daughter never converted to Islam and that she was still Druze. The judge asked the wife if she converted to Islam, and if so, when exactly did this happen. The wife affirmed that she had become a Muslim and that she had converted a year before she got married. To support their claim, the couple had brought two witnesses to the court. Both witnesses (neighbours of the couple) had acted as witnesses to the marriage and had thus been present at the time the marriage contract was signed. The judge asked the two men if they knew whether the wife was Muslim before she signed the marriage contract. They said that she was Muslim before she got married. The judge asked both witnesses who contracted the marriage. They replied by saying that a religious man (*rajul al-dīn*), studying at the *sharī'a* faculty in Damascus, had concluded the marriage. The judge accepted the statements of the witnesses and said the marriage would be considered valid and could be registered. The judge issued a decision (*qarar*) by which the marriage contract was legalised and valid, which also entailed recognition of the child being born in wedlock, i.e. proof of paternity.²⁵⁴

²⁵³ Carlisle concluded that only when 'proof of marriage' is disputed, the court examines if all legal criteria were fulfilled (2008: 67).

²⁵⁴ Case A, Damascus *shar'iyya* court, 26 February 2009.

In theory, *'urfi* marriages can be contracted anywhere and by anyone. However, in practice, it is mostly done by a 'religious man' (*rajul al-dīn*). It should be noted that the 'religious man' who concludes such a marriage without verifying (wittingly or not) all the legal requirements stipulated in article 40 SLPS is liable to legal punishment (Arts. 469-470 Penal Law). In addition, the spouses, their representatives, and the witnesses are also liable to legal sanction (Art. 472 Penal Law). In legal practice, the couple registering a *'urfi* marriage are usually charged to pay a fine of 100 SP.²⁵⁵ This rather insignificant amount does not really have a deterrent effect, as becomes clear by the high frequency and prevalence of these practices.

Carlisle observed that in reality the *shar'iyya* courts tend to turn a blind eye to these practices and will not refer these cases to the criminal courts (2008: 62). This observation corresponds with the attitude of judge Ibrahim, as described in the case above. Judge Ibrahim did not make any inquiries about the 'religious man' who concluded the marriage. Instead, he was more interested in establishing the exact time and circumstances of the wife's conversion to Islam, whether it had occurred before the spouses signed the marriage contract. The testimony of the spouses and the two witnesses on this point satisfied Judge Ibrahim, he did not make any further inquiry into the matter.

Even though the conversion was dealt with rather matter-of-factly, it raises a number of questions. First of all, why was it necessary for the wife to convert to Islam? After all, the SLPS does not prohibit a Sunni Muslim man to marry a non-Sunni woman.²⁵⁶ A Muslim man can marry a woman who belongs to one of the other two monotheistic religions (Article 120 Qadri Pasha). The likely problem here was that the wife was Druze, and the Druze do not belong to the 'people of the book', i.e. Jews and Christians. That being said, there is no consensus among Islamic scholars, nor among the Druze themselves, about whether or not Druze can be considered Muslim. Also, some Druze identify themselves as Muslim, whereas others do not.

What is clear is that interfaith marriages are a highly sensitive issue. Druze personal status law may not explicitly forbid an interfaith marriage, but Druze

²⁵⁵ Personal communication lawyer Ahmed, 26 February 2009.

²⁵⁶ The only marriage which the SLPS considers invalid (*bāṭil*) is a marriage between a Muslim woman and a non-Muslim man (Art. 48.2)

doctrine does (Bennett 1999: 134; Layish 1982: 108-110). That is the reason why, according to Bennett, a Sunni-Druze marriage cannot be concluded in a Druze *madhhabiyya* court. It is, however, possible to contract such a marriage in a *shar'iyya* court, as became evident from the example above. The Druze community, like most other religious communities, strongly prefer marriages within their own group (see chapter 4). Endogamous marriages are essential for the survival of the Druze community (cf. Drieskens 2008: 101); the more so because one must be born a Druze, one cannot convert to the Druze faith (Layish 1982: 110). The chances are that this marriage, validated by judge Ibrahim, has created problems for the couple. In particular the wife's family would have (in all probability) opposed the marriage and (especially) because she is Druze, she is at risk of being ostracised by her family, or worse, of being killed (Drieskens 2008: 102; Refugee Review Tribunal Australia 2006).

The way how judge Ibrahim handled this case was fairly straightforward. Although the circumstances of this union were secretive and complicated, judge Ibrahim decided to legally recognise the facts as they were presented to him. This recognition was most likely motivated by the need to legalise this union, especially because it was in the best interest of the children, born and unborn. Had he taken a more legalistic stance, the couple and children would found themselves in an even more difficult position. This is a good example of an advantage of the versatility of Syrian law, for the flexibility of the law allows for a wider discretion of the judge. The possibility of contracting a *'urfi* marriage and the *ex post facto* registration thereof, allows for (in this case) an impossible union to become possible, that is to say, at least, legally possible.

5.7 Nameless children: establishing and providing paternity

We saw that in the event of a customary (*'urfi*) marriage, couples do not just register their marriage, but also their born and unborn children.²⁵⁷ The child's paternity is generally registered simultaneously with the *'urfi* marriage before the

²⁵⁷ It should be noted that the Syrian government discourages these practices. For example, in 2007, an amendment (by Decree No. 26 of 12 April 2007) was made to the Law of Civil Status (*qanūn al-aḥwāl al-madaniyya*), Law no. 376 of 2 April 1957, which obligates parents to register all children at birth (CRC 2009: par. 119).

court.²⁵⁸ Once a ‘*urfi*’ marriage is registered, it will be considered a legally valid marriage. As a result, the regulations pertaining to paternity of children born during a valid marriage are applicable (Art. 49). In line with the Islamic notion that the child belongs to the marriage bed (*al-walad li-l-firāsh*), the SLPS considers a child born during a valid marriage attributable to the husband (Art. 128 ff.). Hence, establishing the paternity of children born from a ‘*urfi*’ marriage poses no serious problems. But what if there is no proof of marriage (or no marriage at all) and the father has disappeared or is unknown; such cases, although rare, do occur. The child will be considered illegitimate and a child born out of wedlock can only be affiliated to the mother. Since a mother cannot pass on her surname to her child, let alone her nationality (see chapter 3), the child will be without a last name and thus without citizenship. Without a surname, the child cannot get a government-issued identity card (*huwīya*) and will not be able to go to school, travel abroad or own property. This leaves an unwed mother with few options: She can either abandon her child as a foundling (*laqīṭ*), i.e. a child of unknown parentage, at an orphanage or, if she wants to keep the child, try to find a man who is willing to marry her and recognise the child as his own.²⁵⁹

If she opts for the latter option, the provisions regarding ‘proof of paternity’ (*al-iqrār bi-l-nasab*), however, do not apply (Arts. 134-136), because the child is not born from a legitimate union between the mother and the ‘new’ husband. The ‘new’ husband/father also cannot legally adopt the child, for the SLPS does not recognise adoption. Adoption (*tabannī*) is prohibited in Islamic law²⁶⁰ and therefore not

²⁵⁸ In 2009, a total of 670,793 children were born and registered. An additional 50,794 children, who born before 2009, were registered during that year. One may assume that the latter number refers to *ex post facto* proofs of paternity (Source: Central Bureau of Statistics, *Statistical Yearbook 2010*, issue 63 (also available online: <http://cbssyr.org/yearbook/2010/Data-Chapter2/TAB-13-2-2010.htm>, accessed 9 December 2011).

²⁵⁹ This brings to mind a famous paternity case between two Egyptian celebrities, Hind al-Hinnawy and Ahmad al-Fishawy, whom had secretly contracted a ‘*urfi*’ marriage and conceived a child. Al-Fishawy denied he had married Al-Hinnawy and refused to recognise the child as his own. In 2004, Al-Hinnawy filed a case against him and requested he be compelled to submit to a DNA test; in 2006, an appeal court decided in her favour, recognizing the marriage and the child as Al-Fishawy’s legitimate daughter (Hasso 2011: 1-2).

²⁶⁰ The prohibition is based on two verses of the *Qur’ān* (33: 5 and 37), which state that giving one’s name to someone ‘who does not belong within his “natural” descentance’ is forbidden (Chaumont 2004). Having an adopted child in the family is deemed problematic because it might infringe on the inheritance rights of the ‘natural’ family members and it might lead to moral corruption because the

recognised by Syrian legislation. It is interesting to note that when Syria ratified the Convention on the Rights of the Child (CRC) on 15 July 1993, it did so with reservations to articles 14, 20, and 21; the latter article relates to the right of adoption.²⁶¹ Syria explained its reservation to article 21 by stating that the article contravened 'the principles of the Islamic shari'ah which prevail in the country but also with the provisions of national legislation for which Islamic legislation constitutes one of the principal sources' (CRC 1995, par. 124). Interestingly, Syria lifted the reservation to article 21 (and 20) in 2007.²⁶² Syria states in its combined *Third and Fourth Periodic Report* that it retains its reservation to article 14 concerning the right to freedom of thought, conscience and religion in relation to the subject of adoption. It states that

[t]he reasons for this reservation are related to the religious teachings of Islam. The religion provides for the system of *kafalah* (guardianship) and placement in foster families, on condition that the filiation of the children concerned is not altered to prevent them from enjoying the right to know who their natural parents are (if their identity subsequently comes to light) and to rejoin them.' (CRC 2009, par. 171)²⁶³

Various Christian communities, on the other hand, such as the Catholics and the Greek Orthodox Church, recognise the possibility of adoption. That is to say, adoption regulations are laid down in their substantive laws, but they cannot apply these provisions due to article 308 SLPS. Article 308 does not list 'adoption' as one of the recognised areas of law in which the Christian and Jewish communities are allowed to apply their own law. The situation was different for the Catholic community from June 2006 until September 2010. During those four years, the Catholics of Syria were solely governed by the provisions of the Catholic Law of Personal Status (CLPS) of 2006, which allowed them to apply provisions

adopted child is not religiously prohibited in marriage to his/her close family members (Clarke 2009: 72-73).

²⁶¹ Article 14 relates to 'freedom of thought, conscience and religion'; article 20 relates to 'children deprived of their family environment'.

²⁶² Decree No. 12 of February 2007 (CRC 2009, par. 171).

²⁶³ The position of foundlings (or children of unknown parentage) and the connected system of fostering (*kafāla*) are regulated by a separate law, i.e. the Law of Custody of Foundlings (*qanūn ri'āya al-luqaṭā*), Law No. 107 of 4 May 1970.

which were previously not implementable by the Catholic personal status courts, such as provisions regarding adoption. As we saw in chapter 3, amendment no. 76 to article 308 SLPS of 29 September 2010 ended this exceptional legal position for the Catholics, for it stipulated that matters of personal status other than those listed in the revised article 308 (such as 'adoption') were abrogated by the amendment.

If adoption is not permissible, what options does a newlywed couple have to pass on the 'father's surname to the 'adoptive' child? Some lawyers find creative ways to provide an illegitimate child with a paternal name and, in consequence, an identity. These lawyers find a man who is willing to be the 'fictitious' father to the child, which means he will agree to sign and register a fabricated '*urfī* marriage contract. As they register the '*urfī* marriage, they simultaneously register the child with the father's last name. Following the registration, the 'husband/father' and mother usually agree upon contracting a *mukhāla'a* divorce (see below), which dismisses the 'husband' from any marital or post-divorce financial obligations. Several legal steps thus have to be taken to give mother and child a new chance on life.

I wondered why men were willing to go through such a rigmarole, what was in it for them? My informants said that men were usually willing to cooperate because of philanthropic reasons or because they did not have children of their own. Lawyer Nawal told me of one such example, an arranged marriage between a young man and a young mother with a child born out of wedlock.

Alaa, a 32 year old Muslim woman from a poor Damascus suburb, was mother of a four-year-old daughter, Farah. Farah was born from a secret '*urfī* marriage between Alaa and a Lebanese man. At the time, Alaa lived and worked together with her brother in Lebanon to support their family back home in Damascus. In Lebanon she fell victim to sexual abuse by some family members. She eloped with a man and contracted a '*urfī* marriage with him in Beirut. After some time, it turned out that the husband had used a false identity card for the marriage.²⁶⁴ The husband disappeared, leaving Alaa pregnant and unmarried. She found relief in a

²⁶⁴ Lawyer Nawal assumed that the Lebanese husband was non-Muslim, because he used a false identity card, which belonged to a Sunni Muslim.

women's shelter where she gave birth to Farah. Some people in Damascus, who regularly provide assistance to women like Alaa, arranged a marriage for her with Muhammad, who was three years her junior. They registered a (pre-dated) 'urfī marriage contract (*tathbīt al-zawāj*), as well as the proof of paternity (*tathbīt al-nasab*) of Farah in a Damascus *shar'īyya* court.

However, in this particular case Muhammad and Alaa did not divorce. Beyond all expectations, Muhammad and Alaa actually fell in love. The marriage was not just marriage on paper, for Alaa fell pregnant shortly after the registration process. But Alaa's brother disrupted their marital bliss by instituting legal proceedings against the newlyweds. The brother claimed the marriage and (accordingly) the proof of paternity had to be annulled (*faskh tathbīt al-zawāj wa-tathbīt al-nasab*). He argued that he was Alaa's legal guardian (*walī*) and that Muhammad was not Farah's real father, which meant he (the brother) was the lawful legal guardian to the girl.²⁶⁵

According to lawyer Nawal, the brother's main goal was to get custody over his niece. Her defence was that the brother's claim was inadmissible (*radd al-da'wā*). He was not Alaa's legal guardian and therefore he had no right or legitimate interest (*sifa*) to take legal action against Muhammad and Alaa. I accompanied lawyer Nawal to the *shar'īyya* court (not judge's Ibrahim's court) on the day she was scheduled to submit her defence. Lawyer Nawal was the only one present at the court hearing, the brother (plaintiff) did not appear before the judge. She asked the judge to dismiss the case because the brother did not take the matter seriously. The judge suggested to wait and see whether the plaintiff would make an appearance later that day.²⁶⁶ If he did not, the court would decide the following day to summon him again or dismiss the case all together.²⁶⁷

Lawyer Nawal told me that the absence of Alaa's brother was beneficial to the case. She had intentionally not submitted her written defence because if the brother would decide to come to court, he would be able to read her defence and

²⁶⁵ Personal communication with lawyer Nawal, 18 February 2009.

²⁶⁶ A writ of summons (*tablīgh*) only specifies the day, not an exact time.

²⁶⁷ Damascus *shar'īyya* court, 10 March 2009.

know what her defence strategy was. She hoped that Alaa's brother would be half-hearted about pursuing his claim against his sister, which would make the judge more lenient towards Alaa and more likely to dismiss the claim. Besides his claim for annulment of proof of marriage and paternity, the brother considered initiating criminal proceedings against Alaa on the grounds of illicit sexual behaviour (*zinā'*).²⁶⁸ If *zinā'* could be proved in court, Farah would be a bastard child (*ghayr shar'ī*), as well as her unborn child. This would of course put Alaa and her daughter in a difficult position. Lawyer Nawal hoped that if the annulment claim would be dismissed, the brother would be discouraged to commence criminal charges.

Upon inquiry with lawyer Nawal, a month later, it appeared her strategy and hopes had materialised for the court had dismissed the brother's claim. However, Alaa heard he had hired a lawyer and wanted to file another claim against her. Lawyer Nawal cautioned Alaa to be careful, she was worried that Alaa would receive a court summons in the near future.²⁶⁹ I stayed in touch with lawyer Nawal over the course of four months, but the case had seemed to come to a standstill. The brother did not file a new claim.

The possibility of registering customary marriages and establishment of paternity of children born from these marriages (including 'illegitimate' children), is one example of the versatility of Syria's legal system. This versatility also offers the possibility for lawyers and other legal practitioners to find creative solutions, within the legal framework, for women like Alaa, when the existing laws do not provide an adequate or favourable solution. Extra-judicial instruments, such as the possibility to obtain an *ex post facto* proof of marriage provide a welcome alternative. Lawyer Nawal took the view that, because of the unfair laws against women and the disadvantaged position of women in general, she is 'forced' to use the existing procedural gaps and legal loopholes (which are many) if this is needed to help her (predominantly female) clients.²⁷⁰ With the help of connections in the

²⁶⁸ In other words, sexual intercourse between a man and a woman who are not legally married to each other.

²⁶⁹ Personal communication with lawyer Nawal, 6 April 2009.

²⁷⁰ Personal communication with lawyer Nawal, 10 March 2009.

right places, the rules can be circumvented and facts recreated in a manner that they make sense for the purpose at hand.²⁷¹

Obviously, fabricating a marriage contract or proof of paternity is not in accordance with the law. Lawyers who provide legal assistance in these cases knew very well that they were liable to punishment, as the Penal Code forbids any illegal changes in a child's identity, i.e. paternity fraud (Art. 479). In addition, the Syrian Bar Association tried to step up against these practices by threatening to impose sanctions on transgressors. For that reason, these lawyers had to be prudent when employing extra-judicial strategies. Even so, I was told that paternity fraud happens with some regularity. One lawyer told me he 'resolved' about 15 cases this way, including an imprisoned single mother and an abandoned Iraqi woman in Damascus, all with the purpose of giving an illegitimate child a last name.

Analogous to Shehada's observations in the Gaza city *shar'iyya* courts concerning the way Gaza's judges handle child custody cases, I would argue here that these Syrian lawyers, litigants, judges, and other legal experts involved in the process of legitimizing an 'illegitimate' child's descent, exploit the 'gaps of indeterminacy' of the legal order (Shehada 2009c: 248). The legal structure does not provide an adequate solution and therefore the 'good-doers' push the boundaries of the system for the benefit of mother and child.

5.8 Dissolution of marriage

*'The Prophet (peace be upon him) said: If any woman asks her husband for divorce without some strong reason, the sweet odour of paradise will be forbidden to her'*²⁷²

²⁷¹ For an adoption case in Syria, in which similar extra-judicial instruments are employed, see 'Ahmed's story' recounted by Clarke (2009: 21-25). Bargach states in her study on abandoned children in Morocco that similar practices occurred in Morocco (2002: 110-111, 116). Likewise, Voorhoeve states that Tunisian family judges are willing to manoeuvre around the rules to establish legal paternity of an illegitimate child (2012: 220-21).

²⁷² This *ḥadīth* is said to be narrated by Thawbān and can be found in the *Sunan* of Abu Dawud (*kitāb al-ṭalāq*, book 12, *ḥadīth* 2218).

This *ḥadīth* (traditions of the prophet Muhammad) was pinned up on of the cupboards in judge Ibrahim's courtroom. Apparently the *ḥadīth* did not have the intended effect as I came across numerous women who had come to the *shar'īyya* courts to seek divorce. Especially so-called *mukhāla'a*²⁷³ divorces, often named wife-initiated divorce, appeared to be a popular way to dissolve a marriage. As explained in chapter 4, *mukhāla'a* is one of three types of divorce mentioned in the SLPS, in addition to unilateral divorce or repudiation by the husband (*ṭalāq*) and judicial divorce (*tafrīq*).

In the past, according to senior lawyer, 'Ali Mulhim, about 75 per cent of family disputes were settled informally, by a *shaykh* or by another respectable, older person. He claimed that nowadays (late 2000s) about 60-70 per cent of family disputes were brought to court. His (probably romanticised) explanation for why the traditional way of dispute settlement had fallen out of fashion was due to the fact that many *shaykhs* and other religious figures lost their authority and because many people moved from the countryside to the cities.²⁷⁴ The estimates of lawyer Nawal, an experienced family law lawyer, concerning the number of divorce cases taken to court were similar to those of lawyer Mulhim. She estimated that about 70 per cent of all family disputes were taken to court and that approximately 50 divorce cases were filed each day at the Damascus *shar'īyya* courts.²⁷⁵

According to the Central Bureau of Statistics website, a total of 29,525 divorce certificates (*shahādāt al-ṭalāq*) were registered in Syria (5,292 in Damascus proper) in 2009.²⁷⁶ During my stay in Damascus, I made copies of the printed edition of the Statistical Yearbook of 2007, which provides more data than the online edition. In 2007, a total of 19,506 divorce certificates (5,080 in Damascus proper) were registered (*shahādāt al-ṭalāq al-musajjala*) in Syria (Central Bureau of Statistics 2008:

²⁷³ Also commonly referred to as *khul'* divorce; I will use the term *mukhāla'a* because that is the term used in the SLPS.

²⁷⁴ Interview with 'Ali Mulhim, lawyer and member of the Board of the Syrian Bar Association, Damascus, 13 April 2008.

²⁷⁵ Interview with lawyer Nawal, 15 April 2008, Damascus.

²⁷⁶ Central Bureau of Statistics, *Statistical Yearbook 2010*, issue 63 (available online: <http://cbssyr.org/yearbook/2010/Data-Chapter2/TAB-15-2-2010.htm>, accessed 9 December 2011).

73).²⁷⁷ In addition, the yearbook provides the number of divorces issued by the *shar'iyya* courts (*qaḍāyā al-ṭalāq al-ṣādira 'an al-mahākīm al-shar'iyya*), which was a total of 15,916 in Syria, of which 5,430 were issued by the Damascus proper *shar'iyya* courts (2008: 408). The difference between an issued divorce and a registered divorce lies in the fact that the first one is a divorce pronounced by (or before) a judge, whereas a registered divorce is a divorce pronounced by the husband, usually at home, and later (*ex post facto*) registered at court. Similar to the statistics on marriage, the yearbook does not elucidate what is exactly classified under a registered or issued divorce. For example, does a registered divorce also include a divorce pronounced under the terms of a *mukhāla'a* contract? The difference between the various divorce types will be explained below.

Similar to what has been observed in other Arab personal status courts, the majority of divorce petitions filed at the *shar'iyya* courts are initiated by women (cf. Buskens 1999; Carlisle 2007; Shehada 2009; Sonneveld 2012a; Welchman 2000). In Syria, petitions for judicial divorce (*tafrīq*) and *mukhāla'a* are the most common divorce cases (again, the majority of them initiated by women), the former usually on the ground of judicial discord (*shiqāq*). Senior lawyer, 'Ali Mulhim, commented that these (i.e. *tafrīq*) cases often end in *mukhāla'a*, a divorce by mutual consent.²⁷⁸

Finally, it is important to note, as I was told numerous times, that people generally prefer to settle marital disputes amicably and that only when a dispute cannot be solved informally, the disputing parties will turn to the court. Filing a divorce petition at court is oftentimes considered the final step at the end of a long process of reconciliation and mediation by family members and respectable individuals who belong to the spouses' immediate community (cf. Carlisle 2007b: 95; Shehada 2009a: 27). The preference to settle disputes through amicably mechanisms (if needed through negotiation with a judge) is another example of a shared norm. In

²⁷⁷ In comparison, a total of 237,592 marriage certificates (26,135 in Damascus proper) were registered in Syria in 2007 (Central Bureau of Statistics 2008: 73).

²⁷⁸ Interview with 'Ali Mulhim, lawyer and member of the Board of the Syrian Bar Association, Damascus, 13 April 2008. His claim corresponds with Carlisle's findings, who observed that *tafrīq* petitions on the grounds of discord often end in a *mukhāla'a* divorce (2007c, see also § 5.8.4)

the next chapter, for example, I will demonstrate that the Catholic court also places strong emphasis on reconciliation and restoring social harmony.

That being said, studies on family law practices in the Middle East have also demonstrated that litigation is sometimes used as a strategy to achieve a particular goal, which does not necessarily entail a court ruling (see for example, Shehada 2009a; Sonneveld 2012a). For example, as we saw earlier (§ 5.4), a husband can file (or threaten to file) a ‘marital obedience’ claim to compel his wife to return to the conjugal home. What is more, these studies showed that the majority of filed cases were dropped and never proceeded to trial (Shehada 2009a: 27; Sonneveld 2012a: 128). According to Sonneveld this suggests that plaintiffs (usually women) were only interested in achieving their particular goal, for example pressuring a husband to fulfil his financial obligations (2012a: 127-28). Hence, all of this has to be born in mind when looking at marital disputes in court, as litigation is only part of the picture.

5.8.1 Divorced or not divorced? Out-of-court *ṭalāq*

As became evident from the statistical data concerning divorce (see above), the registered (or out-of-court) divorces outnumbered the divorces issued by a judge. Similar to the registration of customary marriages and proofs of paternity, a divorce pronounced outside the court can also be registered at a later date. A unilateral repudiation (*ṭalāq bi-l-irāda al-munfarida*) pronounced at home can only be legally validated once it is registered at a *shar‘iyya* court. Among legal professionals, this type of divorce was therefore commonly referred to as ‘administrative’ (*idārī*) *ṭalāq*. The husband has to notify the court that he divorced his wife, upon which the court ought to defer acting upon the case for a month in the hope of reconciliation. If, after that month, the husband returns to the court and insists on the divorce, the court will summon the wife to appear in court. If she fails to come, the judge will recognise the divorce and the court will take care of all the required administrative procedures, including sending a notification to the wife to inform her she is divorced. If, however, she does appear in court and objects against the divorce, the husband’s *ṭalāq* is suspended and a process of

reconciliation will be initiated (Shaqfa 1998: 412-13). The subject of reconciliation will be dealt with in more detail in below.

Extra-judicial instruments, such as the out-of-court *ṭalāq*, have their advantages. It is cheaper and faster than filing a petition for a judicial divorce and some might consider it beneficial to the already overburdened legal system. However, this male-privileged divorce stands out in stark contrast to the available divorce rights of women, irrespective of the deterrent effect of the financial obligations on the husband following such a divorce. A woman seeking divorce, by contrast, has few options other than waiving her financial rights by agreeing to a *mukhāla'a* divorce or filing a judicial divorce petition, which could be a costly and long-winded process. What is more, the legal indeterminacy of out-of-court *ṭalāqs* frequently proves to be troublesome, forcing women to approach the court to establish if they were divorced or not. Some men exercise their divorce rights and then simply disappear or divorce their wives without registering the divorce, sometimes leaving her behind with children and continue life elsewhere with another wife. Again, the wife is put in a predicament because she will be the one who has to go to court to obtain clarity on her marital status and enforcement of financial payments by the husband.

Obviously, the *ṭalāq* rights of men are not unlimited. The Syrian legislator took measures to prevent (or limit) the occurrence of arbitrary divorces (*ṭalāq ta'assufi*). As explained earlier, the SLPS includes provisions to prevent abuse of *ṭalāq*. Article 117 stipulates that a woman can seek compensation (*ta'wīd*) from her former husband when he divorced her without reasonable cause and she suffered hardship as a result. Pursuant to this article, the judge can impose maintenance (*nafaqa*) payments up to three years on the husband, in addition to the 'regular' post-divorce *nafaqa*.²⁷⁹

On several occasions, I witnessed women who had come to court to determine whether or not their husbands had in fact divorced them. Either it was not clear how many times the husband divorced his wife or whether the husband had taken

²⁷⁹ This post-divorce maintenance generally covers the period of three menstrual cycles after the dissolution of the marriage (Art. 121).

her back and if he had done so during the prescribed waiting period.²⁸⁰ Most women lived with their families from the moment they were repudiated by their husbands for the first, second, third and sometimes even fourth time (i.e. a husband can only repudiate his wife three times). Some men left their wives in a state of limbo because they did not register the divorce, as a result these women did not know whether they were divorced or still married. Several women came to court either to claim their deferred dower and post-divorce maintenance or simply to get some formal recognition of the divorce. These women usually brought male family members as witnesses to the court, typically their fathers and/or brothers. The judge would try to establish whether the husband had said to the wife 'you are divorced', where it happened, in which circumstances, how many times, and whether the husband had taken her back. The husband would be summoned to court to tell his side of the story.

On a morning in April, a young couple in their twenties entered the courtroom. The woman, accompanied by her lawyer, had come to court hoping that judge Ibrahim could provide some clarity on her marital situation. The wife recounted that she and her husband went to visit her family July last. One night, during this visit her husband divorced her by saying 'I divorce you' three consecutive times. She assumed that he divorced her and that they were no longer married, but now her husband claimed that he had taken her back, which was not true according to the wife. The judge asked the husband to speak. The husband confirmed that he divorced her while they were at her parents' house, but that (after he said 'I divorce you') she started to cry and pleaded with him to take her back. Two weeks later he told her on the phone and in person that he was willing to take her back. The wife contradicted him and said that he was lying, that was not the way it happened. Her two brothers, who had come with her to court, were sworn in by the judge and questioned one after the other. Both brothers recounted the same story as the wife, they testified that they were both present (as well as their father), when the husband divorced their sister. All they wanted, i.e. the brothers and the wife, was

²⁸⁰ To reiterate what was explained in § 4.7.1, a husband may divorce or repudiate his wife and subsequently take her back two times, a third repudiation will be final and irrevocable.

that the judge would acknowledge the divorce and register it. Judge Ibrahim sent the couple off with the task to try and work out their differences. Then after a month, if they had not overcome their differences, they could return to court and he would decide on the case.²⁸¹

Judge Ibrahim's decision to defer ruling on the case for a month in hope of reconciliation is in line with the provisions of article 88. Under this article the judge is required to undertake reconciliation efforts as part of SLPS divorce proceedings. Despite the fact that the SLPS obliges a judge to try to bring about reconciliation in almost all divorce actions, these reconciliation attempts were often conducted in an expeditious manner (see below).

In another case a young woman had come to court claiming that her husband divorced her and threw her out of the house, but that he never met his financial responsibilities associated with divorce. In this particular session the debate revolved around the unpaid (according to the wife) dower.

Both the husband and the wife were present, accompanied by their lawyers. The hearing was a bit chaotic with lawyers constantly interrupting the judge during the testimonies. The husband claimed he paid the wife a prompt dower, in addition to gold and a number of household goods. To support his claim he presented three witnesses to the court: his father, a neighbour, and a friend. The father gave the first witness testimony.²⁸² Judge Ibrahim asked the second witness, the neighbour, if he knew what the prompt dower was. He said it was 75,000 Syrian pounds (roughly 1,180 Euro) and that the husband gave her a trousseau (*jihāz*), including a bedroom suite. The trousseau was worth about 40,000 Syrian pounds (630 Euro). The wife interrupted him and said that was not true. The judge asked the witness if he saw the bedroom and, if so, to describe it (the seize, the furniture). The witness affirmed that he saw the bedroom but he was unable, despite the judge's repeated questions about the room, to describe it properly, nor could he give an

²⁸¹ Case A, Damascus *shar'īyya* court, 7 April 2009.

²⁸² Due to the constant interruptions and noise I missed parts of his testimony.

estimated value of the room he claimed he saw. For some reason, judge Ibrahim was somewhat casual about the regulations concerning the examination of witnesses during this hearing, for all three witnesses were present in the courtroom at the entire time. I saw witness number one, the father, whispering into the ear of witness number three during the second testimony.

Witness number three was also questioned about the dower. He listed (almost in the same breath) that the prompt dower was 75,000 Syrian pounds, the deferred dower 35,000 Syrian pounds and, furthermore, the husband had also given a trousseau of 40,000 Syrian pounds. According to the witnesses, the fathers of the spouses had reached an agreement on the dower before the marriage. The judge asked him how he knew about this agreement; he said he heard about it. The wife protested against his statement and claimed that this was not what happened. The judge asked the witness if he knew if the husband actually paid the dower to his wife. He replied that he (the husband) spent it all on the bedroom suite. Upon which the lawyer of the wife mockingly asked the witness if he actually knew what the difference between a prompt and a deferred dower is.²⁸³

A divorced wife is entitled to her dower, this includes any part of her (unpaid) prompt dower and her deferred dower. The woman in this case tried to prove she never received her prompt or her deferred dower. If judge Ibrahim decided to rule in her favour, the outstanding dower would be considered an unpaid debt owed by the husband to his wife and would be recorded as such (Art. 54.3 and 5).²⁸⁴

Similar to what happens in cases concerning customary or unregistered marriages, here too the judge needs to find out what happened based on the statements of the litigants and witnesses. This allows him wide discretion in deciding on an out-of-court divorce case, since he needs to make sense of the often conflicting facts and statements presented to him and decide on what is (or appears to be) the most plausible reality. Especially when claims are disputed, the judge has to reconstruct the events and 'establish a credible narrative' in order to render a fair judgment

²⁸³ Case H, Damascus *shar'iyah* court, 12 May 2009.

²⁸⁴ Unfortunately, I do not know how judge Ibrahim settled this case.

based on the evidence presented to the court (Carlisle 2008: 60). It is important for the contending parties to present witnesses to the court who can recount the course of events. If the judge finds himself faced with two opposing narratives, he can offer the plaintiff or the defendant to take an oath to assert or deny certain facts or their claim entirely. If the plaintiff or defendant accepts to take a decisive oath (*yamīn ḥāsima*), the judge will then admit this oath as conclusive evidence upon which he can decide the case.²⁸⁵

5.8.2 *mukhāla'a* divorce

In February 2009, I did a personal count from the court's Registry notebooks and counted a total of 699 cases that were taken to the Damascus *shar'iyya* courts. The highest number (264) were *mukhāla'a* cases, compared to (for instance) 186 *tafrīq* (judicial divorce) cases. These numbers also correspond with what I saw in the courtroom and what I learned from my interactions with lawyers, namely, that *mukhāla'a* divorce was a popular way to dissolve a marriage, especially for women.²⁸⁶

A *mukhāla'a* divorce is generally referred to as divorce by mutual consent or divorce for compensation (Linant de Bellefonds 1965: 421-22). In classical *fiqh* and in contemporary literature, divorce by mutual agreement is also denoted as *mubāra'a*.²⁸⁷ The difference between *mukhāla'a* (or *khul'*) and *mubāra'a* is that the former is generally regarded as divorce on the initiative of the wife in which she gives some form of compensation (i.e. dower and/or marital maintenance) to her husband. *Mubāra'a* is a divorce by mutual agreement in which the wife or both parties renounce their financial obligations (Esposito 2001: 32; Schacht 1982: 164).

²⁸⁵ Arts. 112-120 Law of Evidence; see also Carlisle 2007c: 52, 135-144.

²⁸⁶ Studies on other Muslim-majority countries in the region also showed that divorce by mutual consent was very popular amongst women, see for example: Layish 1975 (Israel); Mir-Hosseini 2000 (Iran and Morocco); Moors 1995, Welchman 2000 (Palestine); Sonneveld 2012a (Egypt).

²⁸⁷ See for example Linant de Bellefonds for references to classical *fiqh* (1965: 421 n.1). Contemporary studies, see for example, Esposito 2001: 32; Mir-Hosseini 2000: 38-39; Nasir 2002: 115; Welchman 2007: 112. Divorce by agreement has also been described as *ṭalāq 'alā māl* (divorce for money or 'divorce in exchange for a consideration'; Linant de Bellefonds 1965: 446) or *ṭalāq muqābil ibra'* ('divorce in return for renunciation') or simply as *ibra'* (release or renunciation) in the West Bank and Egypt (Welchman 2000: 347; Sonneveld 2012a: 33, respectively).

Welchman states that most Arab personal status laws use the term *mukhāla'a* (or *khul'*) without making a distinction between the different types of divorce; the default type may be denoted as *mukhāla'a*, whereas it may technically be a *mubāra'a* divorce (2007: 211 n. 2).²⁸⁸

In Syria too, the SLSP uses the term *mukhāla'a* as a collective noun and does not differentiate between different types of *mukhāla'a*. In legal practice, however, a distinction is made between a *mukhāla'a* by agreement and a judicial *mukhāla'a*. If the couple jointly agrees to end the marriage through *mukhāla'a*, it is denoted as *al-mukhāla'a al-riḍā'iyya*, i.e. *mukhāla'a* by agreement. This type of divorce bears strong resemblance to the above-mentioned *mubāra'a* divorce, although is not denoted as such. If, however, only one of the spouses brings the action to court, it is referred to as a judicial *mukhāla'a*, (*al-mukhāla'a al-qaḍā'iyya*). The latter action is essentially a *ṭalāq* pronounced by a judge (*da'wā al-ṭalāq*).²⁸⁹

In Syria, a *mukhāla'a* divorce requires the consent of both spouses, contrary to (for example) Egypt and Pakistan, where a woman has the right to initiate a *mukhāla'a* divorce without her husband's consent (Sonneveld 2012a; Kruiniger 2013 forthcoming, respectively).²⁹⁰ When a couple agrees to file a *mukhāla'a* by agreement (*al-mukhāla'a al-riḍā'iyya*), they will generally draw up a contract outside the court and register it later at the court. Generally, a *mukhāla'a* contract will stipulate that the wife compensates her husband, typically by forgoing her outstanding financial rights, in exchange for his *ṭalāq*. The wife relinquishes, at least, her right to any unpaid or outstanding dower amount and her right to the marital maintenance (*nafaqa zawjiyya*).

Mukhāla'a contracts are often negotiated by the parties with help of a lawyer, who submits the contract (on their behalf) for registration by the court.²⁹¹ Nevertheless, the wife has to be present in court to register the divorce, because the

²⁸⁸ For example, the Moroccan family law makes a distinction between divorce by mutual consent and *khul'*, but does not attribute the term *mubāra'a* to the former. Pakistani divorce law, on the other hand, does make a distinction between *khul'* and *mubāra'a* divorce (Kruiniger 2013 forthcoming).

²⁸⁹ Email correspondence with lawyer Yusuf, 10 February 2012.

²⁹⁰ Welchman states that other Arab states (e.g. Jordan, Algeria, Qatar) have also introduced (or attempts were undertaken) this Egyptian-styled *khul'* divorce (i.e. without the husband's consent) (2007: 116-22).

²⁹¹ See also Carlisle 2007a: 242.

judge has to verify with her if this is what she really wants. If she accepts the terms of the contract, the *mukhāla'a* contract can be registered by the court. Whether or not this consent is always completely voluntary is questionable. Other studies on Muslim divorce practices showed that women are sometimes pressured into a *mukhāla'a* divorce, because it can offer a husband a cheap way to obtain a divorce, as he can evade paying post-divorce maintenance and any remaining dower amount that normally come with *ṭalāq* (Moors 1995: 141; Sonneveld 2012a: 125-27; Welchman 2000: 353-54).

On one occasion I accompanied a young trainee lawyer to court; she was assigned to finalise a *mukhāla'a* petition file, which her mentor would submit to the court later that day. The trainee needed to collect several documents with the required seals and stamps to certify them. First she had to obtain a copy of the marriage contract from the court's registry office. The second stop was the Civil Registry (*qayd nufūs*), located in a building about a 15 minutes walk from the courthouse, to obtain a statement about the couple's marital status.²⁹² The file also included the *mukhāla'a* contract (*ṣakk mukhāla'a riḍā'iyya*), already signed by the husband. Once the trainee was done with all the administrative requirements (which took her about two hours), she called her mentor to come to the court in order to register the file. About half an hour later, the mentor lawyer arrived with the wife, who then signed and fingerprinted the *mukhāla'a* contract. The next step was making an appointment with one of the judges, who would then pronounce the divorce.

I was allowed to make a copy of the *mukhāla'a* contract, it included the following information:

The wife Lina, a 42 year old woman, was married to the husband Mamun (aged 50) for 22 years. The contract read that because marital life became impossible (*wa-naẓarān li-istiḥālat al-ḥayāt al-zawjiyya baynahum*) they agreed to 'divorce by agreement' (*al-mukhāla'a al-riḍā'iyya*). Mamun agreed to divorce Lina in exchange for being released from any financial obligation (*barā'a dhimma*), including the (paid) prompt dower of 30,000 Syrian pounds and the deferred dower (registered as a debt), also 30,000 Syrian

²⁹² This was written down on the back of the marriage contract and certified with seals and stamps.

pounds. In addition, Lina could no longer claim any trousseau (*jihāz*), jewellery, gold, marital maintenance (*nafaqat al-zawjiyya*), post-divorce maintenance (*nafaqat al-‘idda*) or any other right associated with the marriage contract. The contract had been drawn up eight days before the registration of the agreement at the court. Mamun’s exact wording on the contract reads as follows (translation from the author):

“I ‘release’ you from my marital bond and marriage contract, in exchange for being released from my financial obligation of any dower, trousseau ‘goods’, gold, jewellery, marital maintenance, post-divorce maintenance, and any other right resulting from the marriage contract, in exchange for (*liqā’*) a divorce (*khul’*) recompense amount of 100 SYP, which I pay to you now. In return I release you from all the responsibilities that follow from my marital contract with you.”²⁹³

Upon which the wife immediately answered, saying:

“I accept that you divorced me as you stated it. I received from you a divorce (*khul’*) recompense amount of 100 SYP. I release you from all financial obligations towards me and I accepted your ‘release’ (from me).”²⁹⁴

The agreement contract ended with the promise of both parties that they will get the divorce effectuated at the court, and the promise of Lina that she would observe her legal waiting period as of that date (of effectuation).²⁹⁵

What is remarkable here is that the husband paid the wife a recompense amount (i.e. *badal al-khul’*) of one hundred Syrian pounds (roughly 1,5 Euro). In a *mukhāla’a* by agreement, according to my informants, it is normal for a husband to pay his wife a symbolic amount (*badal al-khul’*); the couple can agree on a higher amount,

²⁹³ "خلعتك من عصمتي وعقد نكاحي لقاء براءة ذمتي من المهرين والأشياء الجاهزية والمصاغ والحلي والنفقة الزوجية ونفقة العدة وأي حق آخر ناشئ عن قد الزواج لقاء بدل الخلع البالغ مائة ليرة سورية أدفعها لك الآن وبالمقابل أبرئ ذمتك من كل حق ناشئ عن عقد زواجي بك"

²⁹⁴ "قبلت منك مخالعتك لي على ما ذكرت وقبضت منك بدل الخلع البالغ مائة ليرة سورية وأبرأت ذمتك تجاهي وقبلت إيراك لي"

²⁹⁵ Damascus *shar‘iyya* court, 28 April 2009.

but one hundred pounds is the minimum amount for a valid *mukhāla'a*.²⁹⁶ It is remarkable because generally, i.e. in other Muslim countries²⁹⁷ and according to Hanafi doctrine (cf. Zantout 2006), the wife offers or pays the husband a compensation (in exchange for divorce). However, according to Syrian legal practice, the wife not only compensates the husband by forgoing her financial rights, but the husband also pays the wife a (symbolic) recompense amount of one hundred Syrian pounds.

A *mukhāla'a* by agreement is generally considered an expeditious way to obtain a divorce for both spouses. For the husband it can be an easy and cheap way out because he can terminate the marriage by paying a symbolic amount and, what is more, a *mukhāla'a* divorce does not come with the financial obligations of a divorce by *ṭalāq*.²⁹⁸ The wife, on the other hand, wife avoids a lengthy litigation procedure that generally comes with a judicial divorce (*tafrīq*), where the outcome cannot be guaranteed; or if she would file a judicial *mukhāla'a*, the husband may demand additional compensation, i.e. in addition to her forgoing her outstanding financial rights.

Lawyers repeatedly told me that *mukhāla'a* is the most efficient way for women to obtain a divorce, especially since the amount of maintenance (during the waiting period) awarded in case of judicial divorce is often so low that it is hardly worth filing a petition for judicial divorce in the first place.²⁹⁹ In contrast to a judicial divorce case, divorce by *mukhāla'a* is not about determining fault or blame and the wife is not required to establish grounds for divorce. Though on the other hand, it should be borne in mind, as stated earlier, that women might be pressured to contract a *mukhāla'a* divorce. Divorce by mutual consent can thus be advised by lawyers because it is more efficient and expedient than a 'regular' divorce, as will be explained below. Similarly, Carlisle observed that arbiters often advised the

²⁹⁶ Personal communication with lawyer Ahmed, 11 February 2009; and lawyer Yusuf, 10 February 2012.

²⁹⁷ See, for example, Sonneveld 2012a (Egypt); Moors 1995 and Welchman 2000 (Palestine); Buskens 1999 (Morocco).

²⁹⁸ See also Tucker 1998: 99; Sonneveld 2012a: 125-27.

²⁹⁹ As we saw in § 5.3, the minimum monthly maintenance awarded by a judge was generally not very high and only covered a three to four months period.

couple, during the mandatory arbitration sessions, to resolve their marital dispute by concluding a *mukhāla'a* divorce (2007a, 2007c).³⁰⁰

5.8.3 Judicial divorce - *tafrīq*

As stated earlier, the SLPS recognises various grounds for judicial divorce (*tafrīq*), which include the following: a husband's impotence or insanity, long-term absence or imprisonment of a husband, a husband's failure to provide maintenance, and discord between the spouses. As expected, only the latter divorce ground can be invoked by both the husband and the wife. When a spouse brings a judicial divorce petition to court on the grounds of discord (*al-tafrīq li-l-shiqāq bayna al-zawjayn*), he/she will claim that marital life became impossible on account of the other spouse. Men who cannot afford to repudiate their wives by *ṭalāq*, because they cannot pay the unpaid dower and post-divorce maintenance, can seek divorce on this ground. If it is established that at least part of the harm can be attributed to the wife, the husband may be (partly) excused from his financial obligations under the marriage contract. However, the majority of the claimants are women.

According to Carlisle, judges prefer to settle judicial divorce cases on the grounds of discord, because the other grounds are more susceptible to failure due to their evidence requirements (2007c: 157). For example, if a woman invokes the ground of 'non-payment of maintenance' the husband can start (or resume) paying maintenance during the course of the proceedings and/or it may be difficult to prove that maintenance has not been paid. Or if a woman files a petition claiming that her husband is absent, she will be required to put an advertisement in three national newspapers, not once but two times.³⁰¹ This is an expensive strategy for a woman to take, especially if the wife is impoverished.

The SLPS stipulates that when a divorce petition on the ground of discord is presented to the court, the judge first has to try to reconcile the disputing parties. Similar to *ṭalāq* and *mukhāla'a* procedures, the judge is also required to defer a *tafrīq* on the grounds of discord petition for a month in hope of reconciliation (Art.

³⁰⁰ Sonneveld observed the same practice was employed by mediators in the family courts of Egypt (2012a: 130).

³⁰¹ Personal communication with lawyer Ahmed, 11 February 2009.

112.3). However, in contrast to the other two types of divorce, a *tafriq* case on the grounds of discord requires proof of harm (*darar*). If harm cannot be established by the judge and his reconciliation attempt has failed, he has to appoint two professional arbiters who will try and reconcile the spouses during closed reconciliation session, usually conducted outside the court. I will elaborate more on this latter phase in the following sections, but first I will give an example of judge Ibrahim's own reconciliation attempt in his courtroom.

An agitated man (a university teacher) and his wife (a doctor) burst into the court of judge Ibrahim as he was mid-way through the dictation to his clerk of a witness statement he just heard from another case. He told the couple to stay quiet and wait until he had finished. Once the other couple and their witnesses had left the room, they were summoned to the dais by judge Ibrahim who inquired into the reason for their disagreement. The husband said that his wife had left him a year ago and that she wanted a divorce, but he did not agree. He claimed that his wife (in fact) wanted to return to him but that her mother prevented her from returning to the marital home. The judge asked the woman if this was true. She replied that she did not want to return to him because she did not want to upset her family. She claimed that he was very impolite to her mother and that this was the only reason why she had left him. The wife's brother concurred with this statement and added that the husband treated their mother badly, for instance by raising his voice to her. The wife started to cry and said that she did not know what to do. The judge tried to calm everyone down and proposed to accompany them to the mother's house later that day, after the court closed. At the same time, the judge urged the husband to apologise to the mother and told him that they should try to find a solution to this situation. Everyone agreed to act on the judge's advice. Before leaving the court, the husband told the judge that they had a child and that his wife loved him and he loved her, but that pressure was placed upon his wife by her family. The judge reassured him that he would do his outmost best to try and help them to resolve their differences.³⁰²

³⁰² Case B, Damascus *shar'iyah* court, 26 February 2009.

It should be noted that such an approach is not necessarily common practice amongst the *shar'īyya* judges in Damascus. Like I mentioned earlier, judge Ibrahim was a somewhat exceptional judge, especially when it came to resolving social conflicts. I was told that he was one of the few judges who personally visited litigants at home to try and resolve disputes between the parties and families involved.³⁰³ Whereas most divorce cases were handled swiftly, sometimes a case would be concluded within a few minutes (for example the registration of a *mukhāla'a* divorce), in this particular case judge Ibrahim was willing to spare no effort to reconcile the spouses. Seeing that the wife's statements about her reason why she left her husband and the reason why she wanted a divorce mostly revolved around her family's interests and interferences (i.e. 'I did not want to upset my family' and 'because he [the husband] was very impolite to my mother'), judge Ibrahim saw an opportunity for true reconciliation. If he could convince her family, especially her mother, to resolve their differences and to make this marriage work, in particular for the interest of their child, the divorce claim could be dropped.³⁰⁴ This case study illustrates the importance of family and the influence of family members can have on the success or failure of marital life. It calls to mind the case study described by Carlisle (2008) in the article 'Mother Love', where a couple was forced to divorce under pressure of the wife's family (see § 4.3). Because marriage is very much a family (i.e. and not exclusively a spousal) affair, interference of family members can make or break a marriage. This will also be demonstrated in the next chapter, where I will describe some cases in which relatives had an important influence on the marital relationship of couples who appeared in the Damascus Catholic court.

I asked judge Ibrahim once about the importance of conciliation (*ṣulḥ*) in divorce disputes. In his opinion reconciliation (*muṣālaḥa*) is important in all disputes, especially when there are children involved. He maintained that a negotiated solution is always better than a court-ordered ruling, as an amicable divorce settlement can offer parties an opportunity to overcome their past differences and

³⁰³ Personal communication with lawyer Ahmed, 26 February 2009.

³⁰⁴ I was not been able to find out what the divorce grounds were nor do I know whether a divorce petition was already filed with the court.

to try and restore their relations. Again, this is especially desirable if a couple has children.³⁰⁵

5.8.4 Court-ordered arbitration - *taḥkīm*

In *tafrīq* cases the actual reconciliation sessions are generally undertaken by arbiters appointed by the court. Article 112 paragraph 3 stipulates that these arbiters should be family members of the spouses or persons the judge considers capable of bringing about reconciliation. In actual practice, however, the court usually appoints professional arbiters employed at the court. In 2009, 31 official arbiters were appointed for the six Damascus *sharʿiyya* courts, the majority of them were trained lawyers.³⁰⁶ Judge Ibrahim told me they did not receive special training in arbitration or dispute settlement; my presumption was that they were selected based on their social skills, character, and religious demeanour.

The arbitration sessions are generally conducted outside the court, usually in the arbiters' private offices (Carlisle 2007b: 93). But before the case is handed over to the arbiters, the couple first meets with the judge and the appointed arbiters in the judge's office in the court. This first meeting, as well as the subsequent arbitration sessions outside the court, are private; lawyers and family members are not allowed to be present at these sessions. Judge Ibrahim reserved Thursday mornings for these 'kick-off' meetings. On two occasions I was allowed and able to observe a number of them.³⁰⁷ The two arbiters I met in judge Ibrahim's office were two middle-aged men and (similar to Carlisle's description of the arbiters she met) 'well versed in religious ethics' (2007b: 93). During the various sessions they frequently quoted *aḥādīth* (Prophetic traditions) and often tried to reassure the litigants with statements as 'with God's help all will be well', 'God is the only judge', 'through God's guidance, the best solution will present itself'.³⁰⁸

The sessions I attended were very brief (5 to 10 minutes), in contrast to the subsequent sessions which usually lasted for one to two hours, according to one of

³⁰⁵ Personal communication with *sharʿiyya* judge Ibrahim, 21 May 2009, Damascus.

³⁰⁶ Personal communication with *sharʿiyya* judge Ibrahim, 21 May 2009, Damascus.

³⁰⁷ The reason I did not attend more of these 'kick-off' sessions is because they collided with the Greek Orthodox court sessions, also on Thursday mornings, which I attended regularly.

³⁰⁸ See Carlisle for similar observations (2007b: 94-95).

the arbiters.³⁰⁹ One by one the couples or, more often, the plaintiff (the defendant often failed to attend) would be called into the office. The judge and arbiters asked the couple or plaintiff to explain why he/she filed the divorce claim and more specifically what (according to him/her) the reason was for the disagreement between them (the spouses). They asked the litigants to 'elaborate' on questions regarding the husband's profession and/or the wife, how much money was made, if there were children (and if not, why not), if the husband had paid the prompt dower, why the wife had left the marital home, and so on. The questions obviously depended on the nature of the claim. According to the arbiters, the majority of the plaintiffs were female and commonly complained about their husbands failing to provide maintenance for her and the children because he, for example, used alcohol or drugs.³¹⁰ In all the cases I saw (about ten in total), the plaintiff was indeed the wife, only in three cases the husband made an appearance and all of them were against a divorce. The most common accusation against the husbands was that they failed to provide maintenance to their families, just as the arbiters maintained. The husbands, for their part, blamed their wives for, respectively: adultery, being preoccupied with herself and the children, and theft. It turned out that the latter husband had taken a second wife, two months earlier; despite his allegations of theft against her, he said he was ready to reconcile with his first wife.

Judge Ibrahim took notes of each session and wrote them in the file. He concluded each session by officially assigning the two arbiters to the case, which meant that they took an oath to perform their task in equity and honesty (*bi-'adl wa-amāna*), in accordance with paragraph 3 of article 112.³¹¹ After this 'kick-off' meeting in judge Ibrahim's office, the arbitration process would be taken over by the arbiters. They are required to conduct a series of reconciliation sessions. If they fail to reach reconciliation, they will need to determine the reason for the disagreement and in the end submit a report to the judge advising the court how to dissolve the marriage (Art. 114).

Since I did not attend any of these arbitration sessions, i.e. those conducted in the arbiter's private offices, I cannot report on how they were carried out. In 2005-2006,

³⁰⁹ Office judge Ibrahim, Damascus *shar'yya* court, 21 May 2009.

³¹⁰ Office judge Ibrahim, Damascus *shar'yya* court, 21 May 2009.

³¹¹ Interestingly enough, the judge and arbiters all took this oath, however, not on the *Qur'ān*. Instead, they stood up and placed their right hand over their hearts and took the oath simultaneously.

during her fieldwork, Carlisle observed several arbitration sessions; I therefore refer to her PhD thesis for a detailed description of these sessions, conducted in arbiters' offices in Damascus.³¹² That being said, I do want to share some of her findings here.

As mentioned earlier, Carlisle observed that arbiters often advised the spouses to dissolve their marriage by concluding a *mukhāla'a* divorce, because it provided spouses with 'an opportunity to settle a case immediately and on known terms' (2007c: 189, 202-206).³¹³ When the arbiters realised there was no chance of saving the marriage and reconciling the spouses, they offered them an expeditious alternative for dissolving their union. By proposing to resolve the dispute by means of *mukhāla'a*, an agreement by mutual consent was reached, which is generally preferred over a court-imposed judgment (see above). Even though it was not the perfect outcome (that would be restoration of the marital bond), it was at best an amicable solution. In addition, a negotiated arbitration outcome was efficient both for the litigants and the judicial system. According to Carlisle, the work of arbiters unburdened the judicial system (i.e. the courts) and since an arbitration ruling was binding, it was therefore unlikely to be sent to appeal, especially if it was a negotiated outcome. It was also efficient in terms of costs, again both for the litigants and the judicial system, the litigants only paid an arbitration fee of 1,000 Syrian pounds and (again) the unlikelihood of appeal was beneficial to the judiciary (2007c: 209).

5.9 Conclusion

In this chapter I have combined a variety of sources and objectives. Several aspects of the judicial process in the context of the *shar'iyya* courts of Damascus were discussed, focusing on procedures and legal practices in one court in particular, i.e. the court of judge Ibrahim. The chapter described the circumstances in which judge Ibrahim and his colleagues had to work, in particular the tumultuous work environment, the immense workload, and the versatility of the legal system (cf.

³¹² Carlisle 2007c (in particular chapters 5 to 8) and 2007b.

³¹³ See also Carlisle 2007a: 251, 258. Likewise, Sonneveld asserts similar strategies are employed by Egyptian mediators working for the family courts (2012a: 130).

Shehada 2009c). It was this versatility or flexibility of the SLPS and the legal system that was the focal point of this chapter.

The versatility of Syria's personal status law became most apparent in the discussion on of unregistered '*urfi*' marriages and out-of-court divorces. The SLPS allows for registration of proof of marriage, divorce and paternity *ex post facto*, meaning that customary marriages and divorces pronounced or agreed upon outside the courtroom can be registered at a later date at court. The law itself is thus extremely flexible, in a sense that it does not claim regulatory exclusivity on marriage, divorce, and paternity. In other words, the Syrian government, similar to other Muslim-majority countries, allows for other 'forms of normative ordering' to work alongside the legal system of the state. Despite its efforts to discourage traditional practices such as '*urfi*' marriages and out-of-court divorces, the state continues to recognise them. Hence, there are several 'forms of normative ordering' at work in the domain of Syrian family law: the statutory laws are part of only one order among several.

These extra-judicial options proved beneficial to a great variety of people, for example for couples who did not wish to marry in court because they married someone against their families' wishes or because the spouses belong to different (Muslim) sects. Another group that benefited from these extra-judicial possibilities was the judiciary itself. The *ex post facto* registrations of marriages, divorces and proof of paternity unburdened the already overloaded judicial system.

Besides, the versatility of the SLPS proved to offer opportunities for creative legal solutions, in particular to legitimise children born out of wedlock. Because of the possibility to register proof of paternity *ex post facto*, an illegitimate child could be given a paternal name, even if the name came from a 'fictitious' father. However, extra-judicial instruments also offer ample opportunities for those who are not very strict with the law. It can encourage people to resort to corruptive practices or simply ignore the law; for example, husbands can divorce and abandon their wives, leaving them in a state of legal uncertainty. In that regard, the extra-judicial options only degrade the already poor legal position of women and children, especially in divorce and extra-marital circumstances.

Finally, I have argued that the patriarchal family model is not only laid down in the SLPS but also fostered in Syrian society, by participants and visitors to the personal status courts. Women in judge Ibrahim's court for example often complained that their husbands did not take on their (legal) responsibilities as a husband: they failed to provide maintenance or they spent their money on other things than their families (sometimes drugs or alcohol) or they hit their wives. The SLPS and the *shar'īyya* judiciary could only enforce the patriarchal norms to a certain extent, as its regulatory authority and capacity could not always keep pace with social realities. Unfortunately, social realities do not always correspond with legal and societal values, for there are numerous failing husbands, abandoned wives, mothers and children, marital disputes and children born out of wedlock, as was demonstrated in this chapter and will be demonstrated in the next chapter.