

Women in Law – ‘Her Honourable Judge’

Despite the international progress of women’s empowerment movements and women’s ability to legally enjoy equal rights to men in the professional field, it is no secret that they still do not have equal access to several opportunities as men and continue to experience prejudice due to their gender.

1. Women and Authority

In Egypt, women’s participation in public life, such as assuming official roles within the State and its authorities, is limited, and their contribution to the public decision-making process is underrepresented. However, we are beginning to witness a positive shift; according to a report issued by the National Council for Women in 2021, the percentage of female representation in the Egyptian parliament has increased from 2% in Q1 - 2018 to 15% in Q4 - 2018, then almost doubled with a current presentation of 27%.¹ This increase is most likely attributable to the 25% female representation mandated by recent amendments introduced to the Egyptian constitution.

Nevertheless, while women enjoy equal rights to men in some areas, previous generations have passed on various social and cultural prejudices against women, which in turn, barred them from participating in public life, despite enjoying the legal right thereto. For this reason, enacting new laws that demand a positive attitude towards women, such as the 25% female representation in the parliament mandated by the constitution, is a healthy, legal tool to change such social prejudice.

Similarly, until recently, women were factually barred from joining the judiciary for social considerations, even though such a position seemed to contradict the requirements of enhancing the legitimacy of courts and sending a strong message that justice is accessible to everyone who seeks it.

2. The Road to Joining the Judicial System

In Egypt, one can categorize the judiciary system into three main clusters: military courts, civil courts and administrative courts, which decide upon cases involving a State authority or person acting in such capacity. The civil courts’ cluster is divided into several categories, such as family courts, criminal courts, commercial courts etc. On top of these three clusters sits the Supreme Constitutional Court. However, the Supreme Constitutional Court’s scope is limited to deciding on the constitutionality of laws and conflict between judicial bodies.

Generally speaking, promoting female representation in State courts has been a unique undertaking. Though no legal constraints prevent women from acting as judges, women were barred from joining the judiciary for a prolonged period.

Although several cases invoked women’s right to join the judiciary since the early twentieth century, only in 2003 was the first female judge, Tahany Al Gebaly, appointed by a presidential decree to sit at

¹ The National Council for Women, “*Women’s Empowerment - the National Strategy for Empowering Egyptian Women 2020*”, (May 2021), <http://ncw.gov.eg/Pdf/643/Reporting-on-the-National-Strategy-on-Women-s-Empowerment-2030> (last visited 26 May 2022, @11:41 CLT).

the Supreme Constitutional Court. However, when the Islamist President, Mohamed Morsi, was elected in 2012, he removed Al Gebaly from her post after ten years of serving. It is also worth noting that between Al Gebaly's appointment and 2021, only a limited number of female judges were appointed at different courts in a country with a population of around ninety million.

However, these numbers changed significantly in 2022. On 31 July 2022, His Excellency President Al-Sisi ("H.E.") issued Presidential Decree No. 338 of 2022, appointing roughly 70 female judges at the courts of first instance of the civil courts. Moreover, H.E. previously issued his Decree No. 446 of 2021 to assign approximately 100 judges to the State Council who swore their oath in March 2022. The latter decree was celebrated with great pride by all people advocating women's empowerment in Egypt.

3. The State Council and Female Judges – Arbitrary Rejection or a True Reflection of the Egyptian Society?

The State Council is the judicial body in Egypt which decides on administrative disputes and disciplinary cases relating to State personnel. Throughout the past decades, the State Council demonstrated the most resistance against any campaign advocating the joinder of women to the judiciary. It also rejected any application by a female citizen to assume an office thereat.

In 1952, Aisha Rateb famously lost the case against the State Council, where she demanded her right to be appointed as a judge thereat; the Prime Minister seconded the State Council's approach stating that the presence of a female judge is against the Egyptian community tradition and that the society is not ready to accept just function.

The State Council, in a more subtle approach, explained that "*restricting some roles such as roles at the State Council, public prosecution and the judiciary to men, to the exclusion of women, is a balanced approach considering the requirements of this role; where the authority, in the exercise of its discretionary authority has studied the requirements of the roles, circumstances, cultural constraints and tradition [...]*".

It could be argued that, out of appropriateness and tradition, the social structure did not generally enable both partners in wedlock to be employed. Indeed, technology was less advanced than nowadays; hence, a lot of manual work had to be done at home. Also, support and flexibility were different from what they were back then. For instance, day-to-day household chores were considered more strenuous and time-consuming back then, which could explain why women were discouraged from joining public life.

This is a fact of life that the State Council acknowledged, and whilst not completely agreeing with it, as stated in the excerpt cited above, it was transparent and courageous enough to declare it without fear. Some readers could argue that the State Council's approach is unfortunate, especially because this is a body entrusted with enforcing justice and making justice be seen. But, there is no definite answer to this question which remains subject to one's interpretation. However, the State Council was vocal, courageous, and transparent in stating the status quo back then.

4. Welcoming Female Judges to the State Council

The judicial system of any country is considered its pillar of fairness, transparency, and impartiality. The State Council is no different. When Egypt's social structure became more open to women's representation in the judicial system, the State Council established objective criteria for candidates wishing to join. These criteria could be classified into two categories: (a) general conditions and (b) educational requirements.²

The general conditions are as follows:

- a. The candidate has to be an Egyptian national and enjoy full civil capacity;
- b. The candidate should not have been convicted by courts or disciplinary boards for having committed crimes of dishonour and shall enjoy a good reputation;
- c. The candidate shall pass the interview at the State Council; and
- d. The candidate shall be occupying (i) the position of Deputy Administrative Prosecutor of the excellent category or (ii) the position of Deputy at the State Cases Authority, if applying as a deputy at the State Council, and (i) the position of Chief Administrative Prosecutor of category "B" or (ii) the position of Assistant Counselor of category B at the State Cases Authority, if applying as Assistant Counselor B at the State Council.

Concerning the educational requirements, the candidate must (a) hold a Bachelor of Law degree with an accumulative grade of 'Very Good', (b) hold two postgraduate diplomas, one of which is in administrative sciences or public law, and (c) preferably, be top-ranked among her class.³

Once admitted to the State Council, female judges are treated equally to male judges. To our knowledge, both are treated equally in terms of salaries, promotion, rank, serving their role and contribution to rendering an award. In fact, we were informed that there is no clear discrimination in favour of women at the State Council, unlike other offices within the State, where women could face some challenges because of their gender. At the State Council, men and women are on equal footing and are assessed solely on objective criteria absent any bias. Indeed, this is the true reflection of justice and fairness, representing the values of the institution they serve.

5. Female Judges and Arab Culture

Historically, the lack of female representation in courts was not only attributable to the social structure but also the general perception of the female gender by some conservative views, which dominated the public sector and deemed women incompetent to serve in public roles, especially positions involving authority. Therefore, compared to the 'strenuous' roles of the public sector, this most likely explains the increase in female representation in the private sector in the 1950s. The female participation and integration in the former roles were much faster and smoother than other roles involving 'authority'.

² El Watan Journal, "*The Requirements for Female Judges appointment at the State Council*", (September 2021), <https://www.elwatannews.com/news/details/5693410> (Last visited on 6 January 2023 @4:17 CLT)

³ El Watan Journal, "*The Requirements for Female Judges appointment at the State Council*", (September 2021), <https://www.elwatannews.com/news/details/5693410> (Last visited on 6 January 2023 @4:17 CLT)

Similarly, Arab culture tends to reject the idea of a woman in charge or to assume a role that grants her authority over men.

In addition, conservatives tend to view that, because of their ‘female nature’, women are not ready to rule over criminal cases due to the possible violence involved. Accordingly, the general approach in the Arab world, not only Egypt, has been tolerant of women working in civil courts rather than criminal or military courts. Also, it was contended that given the ‘nature’ of women, it is more appropriate to allow them to serve at urban courts and less in rural areas, where access to modern facilities and decent accommodation is limited.

Nevertheless, one must acknowledge that this approach has been changing with the progress of education, liberalization, and awareness campaigns. Also, the change we are currently witnessing is faster in less conservative countries such as Tunisia, Lebanon and Morocco, in contrast with the GCC countries, except Bahrain, which is relatively changing faster than the rest of the GCC countries.

Egypt should not be viewed in isolation from its sister Arab countries that share the same culture. Thus, even if Egypt’s steps to welcome women to the judiciary may seem slow in comparison with the Western world, Egypt is progressing within the realm of the Arab world. Also, this advancement is not only attributable to the changing society but also primarily to the approach of the State that aims to allow women to voice their opinion and contribute to public life.

In this context, and generally speaking, while some people may view laws and rules that introduce positive discrimination as not fair considering that they involve some ‘discrimination’ after all, still, positive discrimination is sometimes encouraged to change rigid societies that are less inclined to change, especially if such changes relate to deep-rooted perceptions.

Therefore, similar to the case of mandating a 25% female representation at the parliament that eventually resulted in a current 27% female representation, the appointment of female judges at the State Council in 2022 would send a strong message to society and reflects a high wave of change in the perception of women, women empowerment and the liberation of women from obsolete social chains.

“Here is to strong women. May we know them. May we be them. May we raise them”. (Michelle Obama)

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