

Problematics of minor-girls reporting of violent crimes in Egypt



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INTRODUCTION

Law expresses the competing of conflict interests within a society, to the extent that each party possesses tools to influence the formulation of legal rules, these rules come to light to express balance of power within each society.

Since marginalization and oppression have historically accompanied women, it is not surprising that law marginalizing their interests to varying degrees that differ one society to another, and from one era to another.

Because oppression calls resistance, feminist legal theory emerged a few decades ago, this theory that includes the study of philosophical foundation for law, and justice in the light of women experiences, as the main goal of reading law from feminist eye perspective is to change the legal system to another, more equitable for women, and understanding to their needs, which will ultimately reflect on life quality for women.

Within the framework of endeavor of “Bent Al-Nile” foundation (under establishment) to dismantle the patriarchal vision of the legal system in Egypt, and to shed the light over difficulties which face women before justice.

The Foundation issues this paper to analyze problems which face minor-girls in particular when reporting violence crimes against them, which start with (allowance) of number of forms of violence against women, and girls, exit from crime cycle, beside shortage in justice system in Egypt in dealing with survivors from violence, in order to address problems of minor-girls appearing before law enforcement authorities, while they are incompetent, and finally discussing the issue of removing minor-girl survivors from threaten/violence source, by displaying survivors hosting services of violence provided by the state.

In the end of these paper, “Bent Al-Nile” Foundation (under establishment) submits a set of urgent recommendations to help improve women, and girls’ enjoyment of legal protection from every violence, and abuse forms.

METHODOLOGY

This paper relies on the content analysis method as one of the most appropriate qualitative methodologies for studying legal rules. The paper will include an analysis of the legal adaptation of some crimes of violence against women and girls, in addition to relying on the analysis of some data related to the services provided to survivors in the context of their various forms of violence.

As for the terms used in this paper, the term “violence against women” refers to “any violent action that is motivated by gender bias, and that results in, or is likely to result in, harm or suffering for women, whether from physical, sexual, or psychological point of view, including the threat of actions, coercion or arbitrary deprivation of liberty, whether it happens in the public or private life”, as the term minor-girl/boy, differ according to the legal scope of its use -as we will see in this paper- but from our side we prefer to use the term minor-girl/boy, as a synonym for the word child, it means that minor is all who don’t reach to 18y old.

FIRST CRIMINALIZATION SCOPE

The first obstacle which faces the minor-girls, when they considering reporting violence which they have been exposed,

is the lack of legal recognition, that what they have been exposed basically is a crime

although the penal code is supposed prescribe accuracy, and discipline and to apply to everyone without discrimination, we find that the same law intervenes to differentiate among crimes committed between individuals, and the same crimes which committed within the family -usually the victims are women- so the law punish for the first, and consider the second (permitted), although the criminal act is same in both cases, as well as law ignoring itself to punish some crimes, as minors marriage crime.

The main flaw in the Egyptian Penal Code with regard to non-serious crimes committed against women, girls within family scope back to article 60 of Penal Code, that provide a reason to allow serious crimes, such as shelter confinement, and beating women, just because the committed perpetrator is a member of the family, claiming to have practicing for his (legal rights).

This article defines it as legalizes one of permitting reasons of criminal acts, and permitting reasons are “those reasons which would remove criminal character of the act in the circumstances in which it occurred, it violates the legal element in the crime, thus removing the act from the punishing acts circle to permitting field” , what is known as “right to discipline “ is the most famous applying to this article in judgments of the Egyptian Courts, thus the Egyptian Courts have used to consider the unhurt beating, which doesn't leave visible traces, such as fractures, permanent disabilities, and disease on the body of the wife or children, one of permitting acts by law,

so according to one of judgments of the cassation court: “it is stipulated that discipline even it is a right to the husband, and he has the right to abuse, but it isn't permitted to go beyond light abuse, if the husband exceeds this limit, and causes harm to his wife's body, he will be punished by law, even if the effect which occurred on the wife's body is simple hurts” .

“ Article 60 of the Penal Code states: “the Penal Code provisions do not apply to every act happened with good intent in pursuance of a right established in accordance with Sharia.” ”



Also, article no. 60 itself make practicing of shelter arrest crime for girls “a permitting” act,

shelter arrest for girls means forcing the girl, wife, sister, or any other to stay at home completely, and forbidding them to go out, or prevent them to go to a certain place, such as preventing women to leave the country which they leave in, or preventing them from education, or work.

Although restricting a person freedom without legal justification is a crime **according to article no. 280 of penal code, which states:” anyone who arrested, imprisons, or detains any other person without the order of one of the competent rulers to do so, and in cases other than those in which laws and regulations authorize the arrest suspects, shall be punished by imprisonment or a fine not exceeding two hundred Egyptian pounds”, however this provision is disabled if a male of the family committed this crime as father, brother, or husband, practices this crime against those whom the law considers subject to his disciplinary authority,**

which we find echo in many rulings of the Egyptian courts, as it was stated in one of the rulings of the Court of Cassation:

If the guardian, in order to get his under-aged daughter to obey his commands, which should be followed by nothing but the politeness of her morals and the correction of her behavior, that he put an iron cuff on her leg when he is away from the shelter, noting that it does not prevent her from moving inside the shelter, and that it does not hurt her body. Exceeding the limits of the disciplinary right granted to him by law”.

Also, in this context, **“marital rape”** absents from criminalization circle of Penal Code, given that husband`s sexual intercourse with his wife is an absolute “legal right” to him, without considering her will, and her physical, and psychological conditions.



As for **the crime of minors marriage**, despite its all serious harms that affect the girls lives, these crimes still “permitted”, according the Egyptian Law, and the solo penalty which found by the Egyptian legislator for these crimes, is inability to document the marital bond, when wife or husband under 18 years old, it is a punishment also, from which girls are harmed, as a result of absence of the legal protection, in which provided by documenting the marriage contract for them, as if this penalty was drafted to punish them, for being victims for these crimes.

The article no. 31 bis, which added 2008 to law 143 of 1994 clearly prohibits documenting the marriage contract, if one of the parties is less than 18 years old, **but it doesn't prohibit the convening of the marital union itself, even if an official employee violated the Law, by documenting the minor marriage contract, the penalties which will be applied to him are just disciplinary penalties, without any criminal penalties.**

The legislative void regarding criminalization the minor marriage leads to a state of contradiction between the declared discourse of all state agencies rejecting these practices, and the legal reality which doesn't consider minor marriage a crime itself.

The manifestation of this contradiction is evident in reports that child helpline receives, and transfers it to the security authorities, or even reports that girls themselves submit to security services, asking for protect them from imminent minor marriage, that end in nothing, rather the security men find themselves at loss between, following the official directions declared by the state, and applying law, so they try to overcome this matter by discussing with the girl's guardian, and force him to sign an illegal declaration, and doesn't have any evidence, that he will not marry her before reaching to eighteen years old, in the end the security men are forced to hand over the reported girl to her guardian himself, in compliance with the legal rules in force in dealing with minors.

“**The article no. 31 bis, which added 2008 to law 143 of 1994**, regarding civil statute states, that “it is not permitted to document marriage contract for a person has not reached the full eighteen Georgian years of old.... Whoever documented a marriage in violation of the provisions of this article shall be disciplined.” ”

In the end of this section, it is important to point out the clear flow imposed by that Penal Code by its failure to protect women, despite stipulation that protecting women from violence, is one of the state duties, article no. 11 of the Egyptian Constitution states: “the state guarantees of the equality between women and men in all civil, political, economic, social, and cultural rights, in accordance with the provisions of the constitution, The state takes the measures to ensure adequate representation to women in assemblies, as determined by law, and also it guarantees women right to access the public service, managements supreme position in the state, and appointed in judicial authorities, and bodies, without any discrimination against her, the state obligated to protect women against all forms of violence, and ensure to empower women to reconcile work and family life, It also committed to provide caring, protection for motherhood, childhood, breadwinner, elderly, and women most in need.

5- Added under Article 5 of law no. 126 of 2008, amending some provisions of Law Child, issued by Law no. 12 of 1996, Penal Code issued by Law no. 58 of 1937, Law no. 143 of 1994 regarding civil status.

6- Bent Al-Nile (under establishment), “minors marriage crimes in Egyptian Law-legal paper”.
<https://bit.ly/3pNnHNr>

Difficulties which face minor girls aren't only related to the flawed legal reality, a large part of these difficulties is related to dealing with law enforcement agencies, starting from police station, that the girl directs to, to file a report about the harm she faced, which in his turn transfer her to public prosecution -which has the competence to act- with the potential for more additional violations stemming from the fact that the police, and prosecution men are sons of this society, **therefore most of them don't find no rejection to a father beat his daughter under the title "discipline"**, that's of course, if we ignore the legal problems, which make the police man himself is unable to file a report, because of no criminalization some of violence forms against minor- girls.

Even in crimes out of the family scope, such as sexual violence crimes in the street and others, basically the victim is usually frightened from filing a report, or trying to persuade her to change the accusation from sexual harassment to theft.

beside the psychological pressure which female survivors face inside police stations, prosecution offices, for many reasons, such as **they force to say an accurate details of the assault before many persons -usually men- for many times.**

In the Prosecution, problematics of minor's legal submission to her guardian renew, whom she may go to sue before the Public Prosecution, additionally to her inability to hire a lawyer due to her lack of eligibility, that we will discuss in the following.

SECOND DEALING WITH THE JUSTICE SYSTEM IN EGYPT

THE POLICE THE PUBLIC PROSECUTION FORENSIC MEDICINE



THIRDD THE LEGAL REPRESENTATION.

there is another challenge facing minor-girls in particular, not all women when reporting gender-based violence crimes, it is a challenge related to minor-girls right to do legal acts, or afford a lawyer under power of attorney.

First of all, the process of taking legal action requires reaching the age of majority. However, the age of majority in Egypt varies according to the law regulating it. The Child Law and then the Penal Code differ in the legal age from the Civil Code (the general law governing the rules of agency), which in turn differs from the Personal Status Law

This discrepancy in defining the age of majority among different laws, in reality, when reporting violence crimes against girls poses various problems, starting with the girl often sues a person has “legitimate jurisdiction” over her, that means he is her natural legal representative, until she reaches the age of majority, the age of majority also raises a problem in inability of the minor-girl survivor, to afford a lawyer to follow up on behalf of her any of legal acts, because she doesn't have the capacity to legal act, and to appoint a lawyer.

7- a look at feminist scholars, report “survivors of violence... Where do they go?: problems of safe shelters to women in Egypt, and gaps in responding to survivors' needs”, released in May 2016 <https://goo.gl/1kHsrB>



15
YEARS

IN LEGAL MATTERS
AND FAMILY ISSUES

18
YEARS

THE CRIMINAL AGE

21
YEARS

THE CIVIL AGE

In these matters, the age of majority of is fifteen years old, as the second article of Law no. (1) of 2000, which regulating some litigation conditions, and procedures in personal status matters as: “the eligibility for litigation in personal statues matters established for self-guardianship, for a person who completed fifteen full calendar years old, and enjoying with mental power.

A legal representative shall act on behalf of incapacitated, or incompetent, if he has no one to represent, there is a way to initiate litigation procedures, in violation to his representative opinion, or in confronting him, the Court appoint on its own, at request of the Public Prosecution, or third part, a litigation trustee.

the age of criminal – and political majority, at which the right to vote begins, is eighteen years old, that is according the article 2 of Law no. 126 of 2008, amending some provisions of Child Code issued by Law no.12 of 1996, Penal Code issued by Law no. 58 of 1937, and Law no. 143 of 1994 in the matter of civil status, which stipulates: “A child in childcare in this law, is meant for anyone under eighteen full Georgian years, the age is proven by a certification of birth, national ID number card, or any other official document, if the official document is not found at all, the age is estimated by one of the bodies which determined by a decision of the Minister of Justice in agreement with the Minister of Health.

Civil Code regulates various matters of citizens` lives, including the civil acts, and delegation, according to the Civil Code provisions, anyone who has not reached twenty-one years old is considered a minor, as article 44 stipulates that: “(1) everyone who has reached to the age of majority, enjoying with his mental power, and has not been under interdiction order, shall be fully competent to exercise his civil rights, (2) the age of majority is twenty-one full Gregorian years.

FOURTH PROBLEMATICS OF KEEPING SURVIVOR GIRLS AWAY FROM THREATEN SOURCE.

The problems surrounding the reporting of violence crimes against minor-girls, are not limited to all of above, but there is an obvious question, that raises in domestic violence crimes in particular, where will the girl go, after she reports? Will she report -if we overcome all previous obstacles- then she returns to the same shelter, where the person who attacked her?.

In fact, regardless of the legal factors which limits the minor-girl's ability to seek formal remedy and protection, that lack of finding a place to stay after reporting, may be a sufficient reason for not reporting.

Within the state protective umbrella for women and girls who exposed violence, it is supposed to provide safe shelters for them, in case they force to leave the family shelter, to avoid violence practiced, the state is supposed to provide a sufficient number of these shelters, and distribute them fairly all over the country.

The first safe shelter established in 2003 in Egypt for women after two ministerial decrees issued in 2000, and based on them, according to them the Ministry of Social Solidarity (the Ministry of Social Affairs at that time) established seven safe shelters for women, and the number increased later.

According to the website of the Ministry of Social Solidarity, there are nine safe shelters belonging to the Ministry of Social Solidarity,

actually it was found one safe shelter in Alexandria, and the other one stopped working, and there is one safe shelter separates from Ministry of Social Solidarity, it is the shelter of the Association for the Advancement and Development of Women (ADEW), its location is not announced as a protection for survivors, so **actually there are 9 safe shelters in Egypt**, whether it affiliated with the Ministry of Social Solidarity or NGO's.

According to The National Council for Women, **the total number of beds in all shelters is 214**, it means **1 bed for every 380.000 population** of Egypt, while the European Council's Experts group on combating violence against women indicates that it should be offered at least 1 place in shelter for every 7.500 of population.

And according to the Director of the women's Department in the Ministry of Social Solidarity statement, during her participation in a dialogue event during September 2021, there were 3 new shelters were added to these 8 shelters, including one of them dedicated to victims of human trafficking crimes.

Also, it is common in couple of countries of the world, **there are three different types of safe shelters: emergency shelters, short-term shelters, long-term shelters.**

It is assumed that the emergency shelters to provide quick, direct service, and temporary protection, that doesn't exceed 3 days, but in the safe short-term shelters, women can stay in for a period not exceeding one year in most cases, and it rehabilitate women during this period, to have the ability to be independent, or to take a decision to return home after the specified period.



(1) in Cairo, (1) in Giza, (1) in Qalyubia, (2) in Alexandria, (1) in Mansoura, (1) in Beni Suef, (1) in Fayoum, (1) in Minya

214

8- the national council for women: Book "violence against woman" released in 2012 <http://ncw.gov.eg/wp-content/uploads/2016/05/ar11.pdf>

9- discussion session titled "A look at the National framework for referring women, and girls who are survivors from violence", organized by Edrak for Development and Equality Foundation 23 September, 2021. <https://www.facebook.com/efdegypt/posts/912067439714051>

10- look at feminist studies, report "survivors from violence..... where do they go?: problems safe shelters for women in Egypt, and special gaps for responding to survivors needs", released in May 2016. <https://goo.gl/1kHsrB>

In the end of this paper, and before we list the recommendations, we remind decision-makers at its various levels, of their constitutional duty to protect women, and girls from all violence forms, we recommend with the following to improve remedies for crimes against women, and girls in Egypt:

1- Hurry with criminalizing all forms of violence against women and girls, which are not currently covered by the Penal Code, such as minor-girls marriage crimes, physical, and moral violence within the family, and other forms.

2- Drafting, adapting a serious national strategy to deal with ending violence crimes against women, and girls in Egypt, especially after ending of the timeframe for the strategy which the state adapting in 2015, without achieving a significant progress.

3- Providing female police cadres within police station in Egypt, and make receiving survivors complaints from violence the prerogative of these cadres, after training them to deal with survivors.

4- Training members of Public Prosecution Office, and Forensic Medicine Authority on the optimal standards to deal with survivors of violence.

5- Take urgent procedures to increase number, and capacity of safe shelters for women, and girls who survived of violence.

6- Drafting real, and real frameworks to cooperate with civil society organizations, and involving them in formulation of the national planes, and interventions to deal with challenges posed by wide spread of various forms of violence against women, and girls in Egypt.



RECOMMENDATIONS