Reforms Concerning Women Rights in the Family Act of 1917 in the Ottoman Empire

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Abstract:

In this paper, we will discuss the reforms concerning family life that started with Tanzimat finished with the Family Act of 1917 (HAK=*Hukuk-i Aile Kararnamesi*). Women's rights and the value given to women in Islam have always been on the world's agenda. The Family Act that was prepared in the final years of the Ottoman Empire is the most important legal work in the Islamic world with respect to women's rights.[1]

1. ITS PLACE AND IMPORTANCE IN OTTOMAN LEGAL HISTORY

The reforms concerning family life that started with Tanzimat finished with the Family Act of 1917 (HAK=*Hukuk-i Aile Kararnamesi*). Actually, the legal regulations and reforms regarding marital laws started with *Majalla*, which was ratified in 1876. There were, however, no new laws or regulations on family life and inheritance.[2] It can be said that when *Majalla* was being prepared, there were three different religions trying to coexist in the Ottoman Empire. Because of this, the religious laws that had been put in place centuries ago could not be easily changed without creating a great deal of controversy. The discussions on *Majalla* were already quite vehement and led to the dismissal of Ahmed Cevdet Paşa from his post. If family law had also been put on the table for review, *Majalla* might have never been approved and enacted. Later, when HAK was being prepared and written, the influence of these complaints during the preparation of *Majalla* was evident in the final version of HAK. *Majalla*, which was written with high hopes, was not very successful and was soon repealed because of these complaints. Despite all its deficiencies, it can be said that *Majalla* was completed 50 years later by HAK.

When the Ottoman Empire entered the 20th century, it was going through tough times both economically and politically. The influence and interference of European powers especially in Ottoman affairs could be felt in most state affairs.

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[1] The major parts of this article have been taken from the Master Thesis which has been defended succesfully at the Islamic University of Rotterdam under the title *Reforms about Women Rights in 1917 Family Acts in Ottoman Empire* on 5 May 2006.

[2] Ahmed Akgunduz and Said Ozturk, *Ottoman History; Misperceptions and Truths* (Istanbul: OSAV, 2011), pp. 513ff.

HAK, which was prepared in a period of chaos and instability, lacks regulations on important issues such as *hidane* (child custody) and maintenance due to the tough conditions of its time of preparation and the haste in which it was processed. Still, it can be said that it was an acceptable solution to many problems and reasons for complaint of the time. Unfortunately, the acts created unrest among the Empire's non-Muslim minorities due to its sections dealing with minorities' rights. Islamic conservatives were also unhappy due to the clauses dealing with having a second wife and marriageable age. The unrest caused in the society by these reasons caused HAK to be rather short-lived. The act was cancelled one and a half years after its approval.

HAK, which became a part of life on 25 October 1917, is important because it is the first official family and marriage status law of Islamic and Ottoman history. It is also the first set of laws that is not based only on the Hanafi school of Islam but encompasses the ideas of other schools of Islam as well. This allowed some of the complaints from the other schools' members about the Ottoman legal system to disappear since the problem areas and issues were addressed as much as possible within the boundaries of Islam. For example, the new rights that women received with respect to both the ability to divorce and post-divorce life are some of these issues that HAK dealt with.

HAK consists of two volumes and 157 articles. The first book, called Marriage, consists of six sections, 11 chapters and 101 articles. The second book, called Divorce, is made up of three sections, five chapters, and 51 articles.

Regulations in HAK are not geared towards Muslims only. There are different sections dealing specifically with Christians and Jews. For centuries, Muslims lived under a legal system based on Islamic law while Jews and Christians were treated according to their religion's laws. This fits with the heterogeneous structure of the Ottoman Empire of the time. In practice, HAK was used in courts as the basis for law.

Despite the fact that family law differed from religion to religion, for the first time in Ottoman history, dualism was replaced by a single set of laws and a single court. Before HAK, non-Muslims used their specific community (*jamaat*) courts while Muslims settled their cases in *shar'iyya* (Islamic) courts. With HAK, all the courts became *shar'iyya* courts since the rights of the community courts were abrogated. The reason given for this regulation, according to Esbab-ı Mucibe Layiha,[3] is the idea that community courts were too far outside state control and as a result produced unfair and unacceptable decisions.

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[3] Esbab-ı Mucibe Layihası; ratio legis, rationale and grounds for an action.

2. REASONS FOR HAK

It is impossible to bring all the reasons for the preparation and use of HAK under one topic. A conglomerate of social, cultural, and economical reasons led to the creation of the first official family act, HAK, for both the Ottoman Empire and the Islamic world. It must be noted here that the reforms in society were inevitably extended to family life. This is not a reaction that would occur only in the Ottoman Empire; it would happen in all societies where such a period of radical change and reform was under way. There were enormous changes in a typical Ottoman family especially in the first years of the 20th century,.[4]

This change was hastened by the economic and social effects brought by the First World War. The fact that men had to go to war meant that women, surprisingly and unexpectedly, had to start working and participate in commercial life. Women had to replace their husbands or fathers in almost every area of business. Many businesses, such as groceries or barber shops, were run and operated by women. They were not only involved in continuing their family businesses. For the first time, in this period women became civil servants as well. Before the war, women could only be teachers. Due to the war, there was a shortage of workers in almost every area of the state. 2000 women responded to civil servant recruitment posters for the telephone company. Seven were appointed. In many areas women also went to war. For example, in Adana, women were recruited into the army by Cemal Paşa's order, and special areas for their stay were prepared.[5] The sudden and necessary participation of women in the work force resulted in a change in their living standards and ideologies as well. The beginnings of the first feminist movements in the Ottoman Empire date from this period as well. Society was going through a distinct change as far as women's rights were concerned.

Many women communities were also created in this period. Some of these were aid organizations for the men who had gone to war. For example, Cemiyet-i Imdadiye, founded by Fatma Âliye Hanım, is one of these organizations. Others were cultural organizations. Halide Edib's Teali-i Nisvan Cemiyeti is an example of these organizations. The goal of this organization was to increase the knowledge, education, and culture of the Turkish women. Still, other organizations worked on providing job opportunities for willing women.[6] Almost all of the 20 women's organizations created in this period were founded and led by women.

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[4] Zafer Toprak, "II. Meşrutiyet Döneminde Devlet, Aile Ve Feminizm," *Sosyo-Kültürel Değişme Sürecinde Türk Ailesi,* vol. 1 (Ankara: Turk Aile Kurumu, 1992), p. 228.

[5] Cin, *Evlenme*, p. 291.

[6] Şefika Kurnaz, *II. Meşrutiyet DönemindeTürk Kadını*, p. 193.

There were also improvements in education. High-level education was opened to female students in 1917, finally, after the initial reforms during the Tanzimat period. First, Istanbul Darülfünun started offering courses to women. Later on, the same university opened a faculty for women only.[7]

As a result of all these social and cultural changes and reforms, women, who had active social lives, started to discuss and debate their problems aloud and openly. The practice of informing oneself about and discussing women's problems through newspapers and literature, which started in the Tanzimat period, also accelerated. Not only female authors, but male authors also agreed that the place and role of women in society had to change. Articles that offered solutions to this issue were published. This subject and articles will be discussed below in connection with mainstream ideologies and ideas of the time.

Furthermore, due to war and economic difficulties, especially in cases of divorce, women were victimized, because the wives of the soldiers who went to war did not have any legal security. The regulations of the Hanafi school were inadequate for this special situation. Two decrees issued in 1916 were attempts to solve this problem. Unfortunately, they were not enough either. There was a clear need for a family act to resolve the issues and end the discussions. During that period, the idea of ending this chaos and preparing a family act to complete *Majalla* was being brought to the public attention.[8] Majalla, which was prepared after Tanzimat during an intense period of legislation, was successful in filling a huge legal hole in civil law. But regulations concerning family law were nonexistent in *Majalla*. To complement this lack of family law in Majalla, a few laws were issued but they were not sufficient. The old rules in ancient Islamic law books were not able to meet changing circumstances. This was mainly because jurists were not able to deduce any rules from these books for the new circumstances, and the amount of different cases also increased with social and economic changes.

Moreover, Muslim cases were brought to *shar'iyya* courts whereas the cases of non-Muslims were brought to community (*jamaat*) courts. This led to differences in practice that eventually entailed the lack of sufficient governance.[9]

If we consider all these circumstances, it is clear that preparation of the family law act was necesary.

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[7] Şefika Kurnaz, *Cumhuriyet Öncesinde Türk Kadını*, pp. 80-81.

[8] İbrahim Hakkı, *Medhal-i İlm-i Hukuk* (Istanbul: A. H. 1319), p. 38.

[9] Akgunduz, *Külliyat*, pp. 313–16 (Esbab-i Mucibe Layihası).

3. THE IDEAS THAT WERE GAINING GROUND

When the decree was being prepared, due to the freedom of speech brought by the Second Constitutional Monarchy (*II. Meshrutiyet*), everyone was allowed to express their opinions. When we look at what had been written during these days, we observe three mainstream schools of thought; Islamists, Westernists, and Turkish nationalists. As the discussion about women rights evolved, we see the evolution of three main ideas parallel to these schools. Before we look at these ideas one by one, I would like to make it clear that everyone was uneasy about the position of women in society. Therefore, there was a consensus that something had to be done about this issue. However, differences arose about the reasons and solutions.[10]

According to the Islamists, the position given to women in Islam is far better than the one they had in the West. However, Islamic practice in society is different from true Islam. If people followed the rules of real Islam, the problems would be solved. According to Said Halim Pasa and Sheikh ul-Islam Mustafa Sabri Efendi, the women who made demands on this issue were not the women who lived in rural areas and worked in the fields but women who were part of large families in big cities. Women in Anatolia were already working outside the home with their husbands, even more actively than their husbands in some areas of social life.[11]

According to Sheikh ul-Islam Musa Kazim, Islam gives women some rights that are not granted in other legal systems. There is no regulation against the education of women. On the contrary, education is a religious duty for women as much as it is for men. According to Musa, women have to go to school (primary, secondary, and higher education), just like men. Further education is not necessary for women, however. A woman's main education should be focused on her own responsibilities. This means a woman should be educated with respect to raising a child or house duties. In short, a woman should be educated, but this education should be helpful to her throughout her life. Additionally, women can engage in business, but they do not have to because it is men's responsibility to earn money for household expenses.[12]

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[10] Tarık Zafer Tunaya, *Türkiyenin Siyasi Hayatında Batılaşma Hareketleri* (Istanbul: Filiz Kitabevi, 1970), p. 77.

[11] Said Halim Paşa, *Buhranlarımız* (Istanbul, 1919), pp. 87-89; Mustafa Sabri, "Aile Hayatı, Tesettür Meselesi, Kadın Hukuku," *Sosyo-Kültürel Değişim Sürecinde Türk Ailesi*, vol. III (Ankara: Turk Aile Kurumu, 1992), p. 1115.

[12] Sheikh ul-Islam Musa kazım, "Hürriyet- Müsavat," *Sosyo-Kültürel Değişim Sürecinde Türk Ailesi*, vol. III (Ankara: Publisher, 1992), p. 1044.

Among the Islamists, a woman named Fatma Aliye Hanim was especially eager to bring women's issues into public discussion. According to Hanim, Islam is not an obstacle to women's education and their ability to participate in societal life. It is possible to improve oneself while keeping one's Muslim identity. There are misunderstandings about the issues related to women. For example, if it could be explained to Europe that polygamy is simply allowed and not viewed as a religious duty by Islam, Europe would be able to understand this issue much better.[13]

On the other hand, Mehmet Akif drew attention to the following points: because the ideas imported from the West, industrialization, and the position to given to women by Islam were not well-known, mistakes were being made about practices related to women and family life. To prevent this from happening, religion had be studied directly from its original source.[14]

In short, according to Islamists, there were problems regarding the position of women within society, but these deficiencies stemmed from the fact that rights given to women by Islam were not sufficiently utilized. Hence, the existence of a problem is accepted but the solution is offered within Islam. On issues like polygamy, there were different approaches. According to Mustafa Sabri, multiple marriages are a necessity for the sake of the continuation of lineage. On the other hand, according to Fatma Aliye Hanim, multiple marriages are not commanded but simply permitted. Thus, this permission should be used only in certain circumstances.

According to Celal Nuri, who can be said to have been a soft Westernist, the reasons for the problems concerning women were not caused by Islam but by ignorance and despotism. Islam does not deny women the right to participate in society nor does it deny them their own rights. On the contrary, the rights granted to women by Islam were far better than those granted by Western societies. For instance, in Europe, women were allowed to have attorneyship only under certain circumstances whereas, in Islam, women are allowed to have attorneyship without any limitations. Moreover, according to some scholars, women were even allowed to be heads of state in Islam. In short, Islam gives women all kinds of rights. But they were being prevented by tradition from exercising these rights. Nuri argued that, by using the rights given to women, a wise woman could easily achieve a position in society equal to that of a wise man. An example is Hz. Aisha. According to Celal Nuri, the most significant problem of the Orient was the women's issue. A reorganization of this issue was needed, but this should not be blind imitation. Ideas imported from Europe should be used within the limits of Islam.

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[13] Fatma Aliye, *Ta'addüd-ü Zevcat-Zeyl, K.M.Kütüphanesi* (Istanbul: h. 1316), pp. 1-18.

[14] Faruk Kadri Timurtaş, *Mehmet Akif ve Cemiyetimiz* (Ankara: 1987), pp. 75-79 and 138-42.

Nuri had serious criticisms on issues like marriage in general, the registration of marriage, marrying at a young age. According to him, couples were marrying on their friends' advice without seeing each other or getting to know each other. Sometimes, they did not even see each other until the wedding, which led to an abuse of the *talaq* system (the divorce of a woman by her husband). There were wrong practices in the wedding procedure as well. The requirements of Islam were being neglected through tradition, and, because of this ignorance, a great many miserable cases were brought to courts related to *talaq*, *iddah*, and *hidane* (custody). But if the marriages were registered properly, none of this would have happened. There were serious problems regarding marriageable age as well. Boys and girls married at a very young age. To prevent this, the state should issue laws that set a younger age limit for marriage. In short, reorganizations concerning marriage, divorce, and wedding procedures should be prepared immediately and problems related to family law should be addressed.[15] People like Halil Tahmid or Tahsin Hamid made similar arguments.

People who were considered to be radical Westernists, on the other hand, blamed religion directly for the problems of women. For example, one of the prominent members of this group, Abdullah Cevdet, used the following catch-phrase: "Open both the Qur'an and women!"[16] According to Cevdet, monogamy should be the rule. Women should be allowed to dress as they please. European laws regarding marriage and divorce should be implemented.[17] But ccording to Selahaddin Asim, women's biggest problems – the veil, right to a divorce, inequality in inheritance and polygamy – all stem from Islam and tradition. As long as people clung to these, there was no hope for a solution.

Among Turkist nationalists, the most prominent ideas were those of Ziya Gokalp. In his article "Family Morality," Gokalp argued that the Islamic family consists of elements from four sources: the Arabic family, the Islamic family, the Iranian-Roman family, and the Turkish family. The anti-women traditions that were ascribed to Islam by Europeans did not really stem from Islam but could be traced to Iranian-Roman culture. To solve this issue, Gokalp tried to explain most of the Islamic practices as customs. By giving examples from the Hz. Omer period, Gokalp argued that the head of state had too many legislative powers – so much so that, in cases where custom went contrary to Islamic law, Hz Omer chose custom. Gokalp continued by saying that this was the case in the Ottoman Empire as well, as in the prohibition against marriage without the consent of a guardian. There-

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[15] Celal Nuri, *Kadınlarımız, Matbaa-i Ictihad* (Istanbul: A.H. 1331), p. 1066.

[16] Kurnaz, *Cumhuriyet Öncesinde Türk Kadını*, p. 98.

[17] Peyami Safa, *Türk İnkilabına Bakışlar* (Ankara: 1981), pp. 49-51.

fore, this method should be used now as well, so that the head of state could make regulations concerning problems in family law.

According to Gokalp, women should be given equal rights in divorce, marriage, inheritance, working rights, and political rights. There could be no improvement unless women acted together. If absolutism in the state was being abolished, absolutism in the family should be abolished as well. According to Gokalp, one of the duties of a constitutional monarchy (*mesrutiyet*) was, like the other sections of law, to turn family law into law and to make it subject to normal courts.[18]

After these opinions were brought to public attention, especially on the issue of polygamy, vehement discussions arose between Islamists and Turkish nationalists. An especially interesting argument took place between the writers Sebilurresad and Mansurizade Said, both of whom were known to be Islamists.[19]

According to Mansurizade Said, polygamy did not suit the conditions of the contemporary world, and it was possible to ban this practice within Islamic law. To do so, all one needed was to have the head of state use his powers. If something is banned by Islam, the head of the state is not allowed to practice it. But if something is not banned by Islam, the head of the state can ban it and does not act against Islam in doing so. For example, a marriage agreement should be made before two witnesses. If head of the state pleased, he could add the presence of a judge as a requirement as well. This is not contrary to Islam. This same logic could be used for polygamy, and, taking into account the conditions of today, the head of state could and should use his authority. He had to ban polygamy.[20]

Mansurizade Said brings up the point of the falsity of permissibility (*jawaaz*). According to Mansurizade, law consists only in restrictions and bans. Laws can only command or restrict. Permissibility implies that an action is free and not restricted. The Qur'an's "permissions" are there for another reason than giving permissions. The sentence about having a maximum of four wives is an example of this. The purpose of this allowance of four wives is not permission for polygamy but its limitation. It is neither permission nor freedom to marry as many women as possible. Thus, the government can enforce a law concerning an area that has

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[18] Ziya Gökalp, "Aile Ahlakı–3," *Yeni Magazine*, no. 12-17 (1917).

[19] For some articles on this issue see Mansurizade Said, "Müdafaa," *İslam Mecmuası* 2 22: 553-54, 570-75.

[20] Mansurizade Said, "Taaddüd-ü Zevcat İslamiyette Men' Olunabilir," *İslam Magazine* 1 8: 233-38; "Taaddüd-ü Zevcat Münasebetiyle" (Ahmet Naim'e cevap), *İslam Magazine* 1 9: 280-84.

already been limited by Islam. Hence, the head of state can make polygamy illegal. This does not go contrary to Islamic law.[21]

These ideas by Mansurizade were answered by Ahmed Naim. According to Naim, government officials had to use their authority in the best interests of the people. Forbidding polygamy would not benefit the people, but just the opposite: men could engage in sin in seeking to satisfy their desires. Those who cause sins are also sinners. Polygamy was already not very common in society but had limited use in practice, and regulations could cause problems.[22]

4. IDEAS THAT AFFECTED THE DECREE

Which ideology is most dominant in HAK? A simple answer to this would be incomplete. Rather than promoting an ideology, the dominant regulations of HAK were based on the changing nature of the times. Still, the three ideologies mentioned above influenced different parts of HAK.

As can be seen from the above, when HAK was being prepared, the needs of and changes of that time were taken into consideration, but they were not the only considerations. Centuries of basic religious provisions concerning family life were preserved in the reforms and laws of HAK. As in all legal areas, Islamic law was the basis. Unlike other reforms and laws, however, HAK did not follow the provisions of the Hanafi school alone. Instead, provisions from all schools of Islam and from different imams that fit the time period were used.

It must also be kept in mind that, along with all the reforms and changes that were being made, there were still three groups of educated and enlightened people who were discussing the future of social life in the Ottoman Empire during the Tanzimat period: Westernists, Islamists, and Turkish nationalists. Examining the effect of each of these groups on HAK, it can be said that the effect of the radical Westernists was much less than the other two groups. On the other hand, the more moderate Westernists led by Celal Nuri and his friends did have some impact on HAK, especially on the issues concerning the registration of marriage contracts since their criticism was taken into consideration when preparing these parts of the reforms.

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[21] Mansurizade Said, "Şeriat ve Kanun," *Darülfünun Hukuk Fakültesi Mecmuası*, no. 8: 604-05, no. 10: 295-97; Mehmet Akif Aydın, *Islam ve Osmanli Aile Hukuku*, pp. 172-73.

[22] Ahmed Naim, "Taadüd-i Zevcat İslamiyette Men olunabilir mi?" (Mansurizade Said'in aynı isimli makalesine cevap), *Sebilür-Reşad*, no. 298: 219.

The same evaluation could be made about Islamists as well. The radical Islamists' views, and especially their arguments about having more than one wife, did not really prevail as a whole in HAK. One of the most important steps at the time was taken within the limits of Islamic law: to marry a second wife, the man had to ask his first wife's permission; if she did not agree, she could divorce her husband. This was the first step on the track to abolishing polygamy completely. It can also be seen that the Turkish nationalists had a minor effect on this decision. Despite the fact that Ziya Gokalp and Mansurizade Said repeated their criticisms of polygamous marriage many times, the final decision was not really parallel to the abolishment they wanted to see. This shows once again that ideas of tradition and permissibility did not really affect the final decisions of HAK.

Still, most historians who have been analyzing HAK agree on which group had the most effect: the Turkish nationalists or Islamists. Especially Ziya Gokalp's articles on reforming family law had a great impact on the creation of this council to write HAK. HAK's decisions were also clearly influenced by those articles. Changes to the family council and giving the state the right to interfere in the marriage contract are some examples of this influence.[23]

It would be unfair to say that it was Ziya Gokalp alone who exercised such influence. Despite the fact that he had mentioned and advised the foundation of a family council, the family council largely resembles the one in the Maliki school. In other words, it is impossible to say that Gokalp was the only influence. The same can be said about the right of the state to interfere in marriage contracts, since previous laws that had been approved in the Tanzimat period were already leading up to this. In some areas, HAK is a continuation of the previous reforms of Tanzimat.

To sum up, it can be said that the reforms and acts were prepared in accordance with the social changes of the times while not breaching Islamic boundaries. It tried to be moderate in all aspects by not offending any of the groups too much. But none of the groups got what it sought, and HAK was criticized heavily by all of them. This will be discussed under reactions to the act.

5. PREPARATION OF THE ACT AND THE COMMITTEE MEMBERS

The fact that there was no family law in *Majalla*, and the feeling that they were therefore incomplete led to the foundation of three different councils to "fix"

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[23] Aydın, *Aile Hukuku*, p. 178; Şefika Kurnaz, *II. Meşrutiyet D.öneminde Türk Kadını*, p. 109; Ziyaeddin Fahri Fındıkoğlu, *Code Familial* (Paris: 1936), pp. 29-30.

Majalla. The council was the Legal Family Council. The council's first meeting was held on 22 May 1916.

The council was made up of five members:

1. Mahmud Esad Efendi, council president, senator from Isparta;
2. Hafız Şevket Efendi, member, Fatwakhane examiner;
3. Mansurizade Said Bey, member, senator from Mentese;
4. Mustafa Fevzi Efendi, member, court of foundation judge;
5. Ali Baş Hamza Efendi, member, State Council member.

The council also had subcouncils since it had to deal with Jewish and Christian laws as well. The Family Act was prepared by taking all four schools of Islam into consideration. Jewish and Christian laws concerning marriage or divorce were written according to their religion. But the religious leaders' rights over marriage contracts and their abrogation, maintenance, and decisions about marriage problems were taken away. Thus, this was the first official regulation of the family life in the Ottoman Empire for both Muslims and non-Muslims.[24]

HAK specifically mentions these volumes and sections but does not have any articles or chapters as titles. It is written in a concise and clear language. To make sure that no confusion could arise, the articles were written very clearly. Even though some regulations are missing, HAK is considered in technical respects to be a successful set of family law.[25]

6. A GENERAL OVERVIEW OF LAWS CONCERNING WOMEN

6. 1. Engagement

The first article concerns engagement, and it clearly states that engagement does not equal a marriage contract.[26] This made Islamic law on this issue official in the Ottoman Empire. Islamic law contains the regulations on engagements under the name of *khitbah*. It has no legal binding. This first article restates the Islamic law clearly. The only change on this issue is the first ever mention of the term "engagement."

The second article covers the regulations and laws concerning the gifts and dowry given after engagements in case the marriage is cancelled before it be-

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[24] Cin, *Evlenme*, p. 292; Aydın, *Aile Hukuku*, pp. 163-65; Halil Cin and Ahmet Akgunduz, *Turk Hukuk Tarihi*, vol. I, p. 79.

[25] Cin and Akgunduz, *Turk Hukuk Tarihi*, p. 79; Aydın, *Aile Hukuku*, pp. 80-81.

[26] HAK, Article 1.

comes official. After engagement, if one of the parties dies or changes his or her mind, any dowry that was given needs to be returned. The gifts that were given are, on the other hand, considered charity. If the gift is unused, it can be given back; otherwise, no repayment needs to be made.[27] In the third article, this regulation is applied to the *drahoma* of non-Muslims as well.

As far as reparations in case of a broken engagement are concerned, since there are no rules concerning this in the Islamic law, HAK includes no such laws either.

6. 2. Marriage Licenses in HAK

Some important changes were made on the subject of marriage contracts. For the first time in the Ottoman history, an age requirement was put in place for marriage. Until HAK, there had been no age requirement in the Ottoman Empire for a marriage to be valid. HAK was the first to introduce regulations on this issue. The regulations were made in several categories, and changes to the marriage licenses' of mental patients and marriage via a representative were also made.

First of all, to acquire a full marriage license (being able to marry without permission from others) women now had to be 17 and men 18.[28] With this change, the marriage contract license was distinguished from other contracts. In *Majalla*, anyone who had reached the age of 15 could sign or accept a contract. In EML (Esbab-ı Mucibe Layihasi=ratio legis) it is argued that the marriage contract affects the lives of the individuals who marry in such a way that they should not be allowed to make that decision at a premature age. It is also stated that girls were the main victims of the previous system. Girls were married and given full responsibility for marriage at an age when they would normally be playing with toys. As a result, their physical and mental health suffered at an early age and their lineage was affected by these health problems.[29]

There was a difference between the marriage contracts made by a man or woman regarding a full marriage license. If a 17-year-old girl wanted to marry, the judge had to ask her if she had her family's consent. Any complaint by the family could be considered valid only if it concerned equality between the man and woman (*kafâ'ah*).[30] This should not be confused with the permission by the family. According to Islamic law, if the parents believe that there is a problem in equal-

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[27] HAK, Article 2.

[28] HAK, Article 4.

[29] Akgunduz, *Külliyat*, p. 320.

[30] HAK, Article 8.

ity, they can still ask for the marriage to be annulled even if the marriage has already taken place. HAK changed this and based its view on the Maliki school. Thus, the parents could complain and appeal to the judge only before the marriage contract had been accepted by both sides.[31]

If a girl under the age of 17 or a man under the age of 18 wanted to marry, they had to appeal to the courts for permission by telling them that they were mature enough. If the judge decided that the appellant was mature enough, permission may be given. Girls who wanted to marry before the age of 17 needed their parents' and the judge's permission.[32]

HAK regulated the age requirements for having a full license, but it also defined a minimum marriageable age. There had been no mention of such a "minimum age" in the Islamic law before. With HAK, boys under 12 and girls under 9 could no longer be married by anyone.[33] The opinions of the four imams had supported the Islamic law idea of no age requirement for marriage, thus HAK was the first in this respect. Quoting the Legal Family Council, families, whose true responsibility is to educate their children and prepare them for life, are marrying them off as soon as possible at an age where the children do not even realize what is happening to them without fulfilling these duties. This is one of the main reasons of the social problems that happened later. This can be easily seen in the court records of the last few decades. According to İbn Shubrumah and Abu Bekir Al-Asam, the guardianship and the deputyship that this brings can only be used in the individual interest of the child rather than the guardian. On the other hand, marriage is an institution that lasts for a long time; perhaps the entire life of the child, thus marrying small children before puberty can have a negative effect on their entire life. No one has the right to do this, but no punishment can be given either. Since this regulation has been approved by the examples of centuries of Ottoman social life, the law concerning minimum age for marriage will remain.[34]

This was a regulation that was made by HAK for the first time.

Another change made by HAK concerning the marriage contract was the marriage of people with mental problems. According to the Hanafi school, mental patients can be married by their parents. The Ottoman Empire's policy was the same until HAK. In HAK, this law was abandoned in favor of Imam-i Shafii's views. People with mental problems could not marry at all after HAK. This was not definitely

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[31] Akgunduz, *Külliyat*, p. 321.

[32] HAK, Articles 5-6.

[33] HAK, Articles 7.

[34] Akgunduz, *Külliyat*, pp. 320-21.

forbidden. Mental patients could marry if the judge consented.[35] There are, however, no laws concerning which types of mental patients could marry and which could not. One example of this in practice was the marriage of a mentally challenged and pregnant woman marrying with the judge's consent.[36]

HAK changed a centuries-old regulation on who the guardian was. Ever since the early period of the Ottoman Empire, the decree by Imam-i Azam was used, which stated that, if there were no close male relatives, the guardianship rights were passed on to other relatives like the mother or grandmother. HAK removed this decree from the legal system and replaced it with Imam-i Muhammad's decree that narrowed the number of people who could act as guardians. Guardians, according to Imam-i Muhammad, could only be relatives. The son, grandson, father, or grandfather could be guardians.[37]

6. 3. Those Who Are not Allowed to Marry and Having More Than One Wife

There are not many differences between the Islamic law schools concerning those who are not allowed to marry. Thus, the regulations and laws in HAK on this issue only repeat the previous rulings from Islamic law. The first chapter of the second section clearly lists the categories of Muslims who cannot marry. There are two differences regarding this issue. First of all, according to Hanafi jurists, if adultery is committed, all the consequences of a marriage contract are also applicable, and the family ties that marriage creates apply to adultery as well. Marrying a blood relative of the person with whom adultery has been committed is considered to be a sin. The Ottoman legal system accepted this provision for centuries, but HAK abandons this stream of thought and instead uses Imam-i Shafii's decree. According to the latter, a physical relationship without permission does not create any serious ties, including blood and family ties. It is also very difficult to learn about such a matter.[38]

Three issues, which created temporary obstacles for marriage contracts, were not included in HAK, probably because they were no longer relevant to the time. First of all, Jews and Christians were the only adherents of other religions left in the Ottoman countries. According to Islamic law, Muslim men may marry Chris-

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[35] HAK, Article 9.

[36] Aydın, *Aile Hukuku*, p. 186.

[37] HAK, Article 10; Cin and Akgunduz, *Turk Hukuk Tarihi, vol. II*, p. 89.

[38] Akgunduz, *Külliyat*, p. 322.

tian or Jewish women, but Muslim women may not marry Christian or Jewish men. This rule is also retained in HAK as well.[39]

The second issue is that since slavery was abolished when HAK was being prepared, there was no mention of the prohibition against having a second wife who is a slave while being married to a free woman. The third issue, *li'ân*, was not mentioned by HAK.

6. 4. Marriage Contracts

The changes HAK made to marriage contracts can best be discussed in two categories.

6. 4. 1. Changes Made Regarding the Proof and Declaration of Marriage

HAK makes reforms in two areas to avoid any future problems in these areas. First of all, with regard to the issue of pre-marriage, the regulations brought by HAK aim for it to be declared early so that the complaints and appeals can be made before the marriage takes place. Thus, the *Sunnah* of the marriage contract declaration was made official for the first time.

The second regulation concerned the recording of marriage contracts. If one investigates Ottoman family law, he will observe that, since the early times of the Empire, the marriage contract was completed and signed before a judge or governor. But it is impossible to call this a method of registration subject to control. Despite reforms and regulations made from time to time, none of these were final or enough. The first reform ever made was during the time of Yildirim Beyazit. Later on, by Ebussuud's decree, marriages were required to be solemnized before the court, and, if this requirement was not met, the courts would investigate problems that arose in those marriages. This was not a long-lived decree however, since it was complied with less and less over time.[40]

The Population Record Laws that were approved and enforced after Tanzimat tried to set up a system for this issue, but, due to the harsh and chaotic nature of the times, the recording system could never be fully used. The main reason none of these recording systems worked is that, according to Islamic law, having two witnesses present during a marriage ceremony is enough to make that marriage

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[39] HAK, Article 58.

[40] Cin and Akgunduz, *Turk Hukuk Tarihi, vol. II,* p.100.

valid. Because of this Islamic rule, despite the fact that the government did try to make a record of all marriages, the marriages that were not registered were still considered valid. These marriages caused some confusion in legal issues. Through Article 37 of HAK, the government had full control over marriages and could regulate them as deemed appropriate.[41]

Regulations regarding family law prepared in the year 1336 (*hijra*[42]) described the requirements those who wanted to marry had to fulfill in more detail.[43]

In the light of these changes, the procedure that those who wanted to marry would have to follow was this. Women and men who were about to marry first had to receive identification papers from the local officials. These identification papers would include personal information on both sides. They would also contain information on if those people still had full marriage licenses, and what kind of requirements they had to fulfill. These documents would also indicate if the family's permission is needed, depending on the religion. These identification papers, along with ID cards of both individuals, were given to the local courts and judge. If the parents had not given their permission, the judge would summon the parents to hear their objections. If there were any objections or problems with identification papers, he would reject the marriage application. If there were no valid objections, the papers would be checked against the local civil servants' registry to see if they could be registered. If no problems arose, the marriage intent was declared. Those who had objections would then have 10 days to present them to the court. If one of the parties lived elsewhere, the declaration of marriage intent would also be made there. One copy of the declaration would be presented to the court, and the other would be placed in a public place in the couple's town or city. If any objections were made, the court would decide if they sufficed to stop the marriage. If they did not, the marriage contract and ceremony could take place either in court or somewhere else. If the marriage took place somewhere else, the court would appoint a representative to witness the marriage. This representative had to be a civil servant, a teacher, or an imam, or at least someone who respected by the local populace. The representative of the court would prepare a summary of the marriage contract and send it to the civil registry. This register would contain the names of those who were marrying, the witnesses, and the court representative.

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[41] Cin, *Evlenme*, p. 296.

[42] *Hijra* calender: the Muslim calendar (based on 622 A.D., the year of the Hegira).

[43] 1336 tarihli Nizamname, Ceride-i İlmiye, p. 35.

If these regulations and laws were complied with, then, according to the council, none of these types of marriages would be considered valid anymore. There is no way to end this situation in Islamic law. Since no legal action could be taken, Article 200 of the Penalty Laws of the Ottoman Empire tried to enforce the registering of marriage contracts. The fines that were put in place after Tanzimat concerning non-registered marriages applied directly to HAK as well. According to this law, anyone who did not comply with the above laws would be sentenced to six months in jail. The same regulations were put in place for imams who serve as witnesses to marriage contracts without permission.[44]

6. 4. 2. Parties, Marriage Statements, and Witnesses

Article 35 explains how the marriage ceremony had to be performed. "Marriage becomes a reality through the consent of either party or their representatives."[45] With this statement, HAK makes some means of concluding marriages that were prevalent in the Ottoman Empire obsolete. One example of this is the *fuzuli* marriage contract. As stated before, the Hanafi school accepts marriages concluded on behalf of others without their consent; these marriages were considered to be pending until the consent of both parties were given. This type of marriage is called *fuzuli*. A decree that was not accepted by other Islamic schools is made obsolete without directly mentioning it. The same holds for marriage contracts concluded through letters. This type of marriage was also abolished without directly mentioning it.[46]

Another important issue that Article 36 deals with is the question of when a marriage becomes official. Does the marriage become official after the declarations of will or after the contract has been prepared and registered? This article clearly states that the marriage became valid the moment both declarations of will had been given and no objections had been made. In other words, the consequences of a marriage started as of that moment, and if a divorce occurred, the legal consequences of a real marriage were applied.

Article 36 explains how to make a declaration of intent with the following statement. "The acceptance and beginning of a marriage can only be achieved by clear and understandable statements of *tenkih* and *tezvic*."[47] According to the Hanafi school, the words used for the declarations of intent do not matter. A mar-

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[44] Ceride-i İlmiye, 34/1021-22; Aydın, *Aile Hukuku*, p. 190; Cin, *Evlenme*, pp. 297-98.

[45] HAK, Article 35.

[46] Aydın, *Aile Hukuku*, p. 190; Cin and Akgunduz, *Turk Hukuk Tarihi, vol. II*, pp. 90-91.

[47] HAK, Article 36; *Tenkih* and *tezvic* mean giving in marriage.

riage can be accepted by directly mentioning it or implying it. Shafi'i and Hanbeli lawyers argue that marriage can only be accepted if the declarations of intent are clearly stated. HAK, in Article 36, rejects the Hanafi school's decree and accepts the Shafi'i and Hanbali lawyers' decree.

Unfortunately, the clarity of the explanations regarding the declarations of intent and the statements that needed to be used did not carry over to the rules regarding witnesses. Article 34, which concerns the witnesses, leaves room for a great deal of controversy. "During the marriage ceremony, the presence of two witnesses are required, the government representatives should also be witnessed and controlled by the witnesses."[48] There is no clear indication here as to what defines these "two witnesses." If the number two means two men, then the Hanafi view has been abandoned for the policies of the other schools of Islam. The Hanafi school also accepts one man and two women as witnesses. If it can mean two men or women, the decree does not fit Islamic law. The general consensus is that the article is referring to two men. Thus, HAK once again moves away from the Hanafi school and uses the regulations of other schools.[49]

6. 5. Having More Than One Wife (*Ta'addüd-ü Zawjcat*, Polygamy)

One of the most important issues that HAK brings up about the marriage contract is that of polygamy in Article 38. According to this article, the marriage ensures that the man would not marry a second wife and could marry again only after divorce.[50] As stated above, this was one of the more controversial issues of the time. The discussion between the Islamists and Turkish nationalists on this issue was especially heated. Female writers such as Fatma Aliye Hanim kept this issue alive through their articles. The council's decrees on the issue also indicate that the debate raged within the council as well. The Turkish nationalist Mansurizade Said was a member of the council, as was the Islamist Mahmud Esad. Despite the controversy, HAK did not completely forbid polygamy and the idea of needing the first wife's permission was also rejected due to the fact that it would practically amount to forbidding polygamy. But the objections could not be refuted, and, within the bounds of Islamic law, the decree of the Hanbali school of Islam was applied to the Ottoman Empire. In other words, the woman could ask to have an article included in the marriage contract that would forbid her husband from marrying a second wife. The council believed that the woman could thus protect

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[48] HAK, Article 34.

[49] Cin and Akgunduz, *Turk Hukuk Tarihi, vol. II,* p. 96; Aydın, *Aile Hukuku,* p. 191.

[50] HAK, Article 38.

herself against polygamy, should she wish to do so. "Therefore, the aforesaid condition in the contract is enough of a prevention of some objections that may stem from polygamy; it is not considered a necessity to insist on the obligation of polygamy and, instead, it has been contended through article 38 that contains those conditions."[51] Islamists criticized this decree strongly. The most important reason is that the Hanafi school simply refuses the possibility of such a law.

6. 6. Equality (*Kafâ'ah*)

The third chapter of HAK regulates the laws about the equality required in a marriage. The Hanafi school states that the man must be equal to the woman in some areas: lineage, acceptance of Islam, job, wealth, and freedom. According to Islamic law, equality is a requirement for a valid marriage. If there is a deficiency in this area, the woman or her family can abrogate the marriage. HAK reduces the number of the required equality areas to two. "It is a precondition for binding a marriage contract that a man be equal to a woman in some issues like property and occupation. Equality in property means that the man is able to pay *mahr-i mu'ajjal* (cash dowry) and able to maintain the woman. Equality in occupation means that the career in business or services in which the man is involved is of equal standing with the career of the woman's guardian."[52] This article clearly states that the areas where equality was required were reduced to wealth and job. The other areas were not used too often and HAK did not even feel the need to make a statement about them. The equality of nobility and freedom especially were not issues that were even discussed any more in the 20th century. The same can be said about piety, since Westernists and Turkish nationalists would have criticized such a requirement for marriage.

Previously, the woman's parents could have the marriage annulled after the ceremony if they had an objection concerning equality. With the regulation in the Article 8, the objection could only be made before the marriage took place. According to this article, a girl above the age of 17 could appeal to the court to marry. The judge would then ask her family if they had any objections, and would marry the couple if they had none. For this reason, Article 47 made sure that the abrogation was possible only if the girl had been hiding from her family in order to marry without their consent.[53]

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[51] Akgunduz, *Külliyat*, p. 325; cf. Mansurizade Said, "Cevazın Ahkâm-ı Şer'iyeden Olmadığına Dair," *İslam Magazine* 1 10: 295-303, 397-403; Şerafettin, "Cevazın Ahkâm-ı Şer'iyeden Olmadığına Dair Makalesi Münasebetiyle," *İslam Magazine* 1 12: 357-60, "İntikada Cevap," 425-29.

[52] HAK, Article 45.

[53] HAK, Article 47.

Article 47 also changes the regulations concerning the *mahr-i misl*. According to Imam-i Azam, this is an area where equality is required and the parents do have the right to object. The Ottoman Empire's law system supported this decree until HAK, which states, "If any adolescent girl marries a man without her legal guardian's knowledge and without his permission, it is investigated; if she has married a husband equal to her, than the contract becomes a binding legal contract, even with a dowry that is less than *mahr-i misl*."[54] The council explains this change by saying, "If a girl reaches the full legal age with adolescence, guardianship is no longer required for fiscal transactions. At the same way, the guardianship must be abolished in this case too."[55] Thus, the views of Imam-I Azam were abandoned in favor of the views of İmameyn, İmam-ı Shafii, and Hanbali.

The other decrees concerning equality in HAK did not change previous laws in the Ottoman Empire.

6. 7. Defective (*Fâsid*) and Void (*Bâtil*) Marriage Contracts

The fourth chapter of HAK deals with the issue of defective or void marriages. According to Islamic law, if any of the *in'iqâd* requirements or marriage factors is missing, the marriage is void. If any of the validity requirements is missing, the marriage is considered to be defective, for example, forced marriage during the *ikrah* period. Imam-i Azam alone distinguishes between defective and void marriages. HAK accepts Imam-i Azam's views on the subject and separates the two. The council's explanations reflect this. The laws of the Hanafi school were not, however, followed when dealing with the decisions regarding which marriages are defective and which are void. For example, of the marriages enacted by those without marriage licenses or marriages where the couple cannot be together, only the latter is considered defective in HAK.

One of the most notable of the changes made concerning the defective and void marriages had to do with the marriage ceremonies performed through *ikrah* (by force). Up until HAK, in the Ottoman Empire, forced marriages were consid-

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2 Akgunduz, *Külliyat*, p. 324

3 HAK, Article 47.

ered to be valid. HAK on the other hand, considers them defective.[56] Thus, instead of the Hanafi school's decree, the Shafii's decree is used in HAK. The council explains the reason for this by stating, "Forced marriage is lawful according to preferred legal opinion of the school. According to legal experience throughout ages, the preferred legal opinion has encouraged many bad people and violated the honor and personal dignity of many honest families. Many divorced women in a period of waiting have been kidnapped and forced to marry some immoral men through violence and force. After these events, attempts by their families became unsuccessful, and these cases caused many major calamities."[57]

6. 8. Consequences of a Marriage

Both the material and spiritual consequences of a marriage are mentioned in section five. In other words, this chapter deals with issues such as dowry, subsistence, residence, and mutual rights of husband and wife. For example, Article 73 discusses getting along well together: "A husband must treat his wife properly and, in return, she should obey him if his request is appropriate."[58] These are the general rules that could be found in any Islamic law book in any period of history. The question is how many of these rules are actually used in family life. The last three articles of this chapter deal with the consequences of immoral or superstitious marriages.

6. 9. Dowry (*Mahr*)

Regulations about *mahr* could be found in the first chapter of the 6th section. In this issue, some differences from previous family law can be seen. The first of these is the minimum *mahr*. The Hanafi school had always held that the minimum *mahr* that had to be paid was 10 *dirhems*. This amount was too low for the times. Thus, Article 80 changes this to "any amount that both sides agree upon."[59] Once, again, this moves away from the Hanafi school and chooses the Hanbali decree on the issue.[60] Thus, no limits were imposed on the *mahr* payment. The maximum amount of *mahr* that could be paid was regulated before, after the Tanzimat period, by classifying society into four groups, each with different maximum amounts

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[56] HAK, Article 57.

[57] Akgunduz, *Külliyat*, p. 325.

[58] HAK, Article 73.

[59] HAK, Article 80.

[60] Akgündüz, *Külliyat*, p. 326.

of *mahr* that could be paid. HAK makes no mention of this, most likely because the previous regulations could simply not be applied.[61]

Another change that was made concerned what to take as a basis if the parties could not agree on a *mahr*. Up until HAK, the rule applied was from the Hanafi school, which meant that in case of a disagreement, *mahr-i misl* would be paid. *Mahr-i misl* is the *mahr* decided by looking at what women of the same social class would receive as their *mahr*. It is a fairly subjective concept that is difficult to measure. Thus, Imam-i Yosuf's decree was used in HAK, stating that, "in cases of disagreement on a *mahr*, the man's word must be obeyed." Article 87 makes this statement law.[62]

Other laws in HAK include the fact that the *mahr* paid to the woman does not have to be spent and no payment needs to be made to the family of the wife. These are also laws that have always been accepted in Islamic law. Unfortunately, they are not enforced very well. These two issues are still major problems in eastern Anatolia today. These practices, which were never sanctioned by Islamic law, are purely traditional. Unfortunately, from time to time, they have been attributed to Islam.

6. 10. Laws about Divorce (*Talaq*)

HAK's second volume contains decrees and regulations about divorce. Despite the fact that some of the laws remained the same as before, with the Hanafi School as the basis, some regulations were changed by using other schools of Islam. One important issue that was first created by HAK is the registering of divorces, just like marriages. The man must report a divorce within 15 days after it happens for it to be valid.[63] Otherwise, there is a possibility of being sent to jail.

HAK gives the right to divorce to the husband.[64] The first article on this issue is Article 104. "A drunk's divorce is not valid."[65] Before HAK, there were two types of considerations for men who divorced their wives while being drunk. If the drunkenness was an effect of acceptable substances such as drugs or any type of medicine, the divorce would be invalid. If the drunkenness was an effect of sinful substances, the divorce was valid. The council's explanation of the issue would be

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61 Aydın, *Aile Hukuku*, p. 196.

62 HAK, Article 87.

63 HAK, Article 110.

64 HAK, Article 102.

65 HAK, Article 104.

beneficial at this point.[66] "There must be no difference between the legal and illegal ways that caused the drunkenness with respect to the effect on divorce. Nevertheless, there is no relation between the two cases; in the first case, due to the husband's having perpetuated an unlawful act, he has been punished; in the second case, although his act in the situation of temporary madness does not necessitate any legal judgment, he has been sentenced and through this sentence destroyed a family life. Instead, it is thought that, especially in the period in which the commisson of sins is prevalent as in our era, to build the constancy and continuity of families on the difference between legal or illegal ways of drunkenness is to make them depend on a wrong basis."[67] As can be seen from this explanation, rather than using the Hanafi decree concerning the issue, HAK uses other schools.

According to the Hanafi school, both divorce and marriage through force are acceptable.[68] HAK on the other hand, considers forced marriages to be defective (*faasid*) and forced divorces invalid. The council explains this by stating that such a practice is simply not appropriate and would encourage similar treatments, and thus HAK uses other Islamic law schools on this issue.

The words that were to be used in connection with divorce were also changed. In divorces that were not clearly stated, the husband's will is accepted as final.[69] The collapse of an important institution such as family could not depend on a misunderstood sentence.[70] Once again, rather than using the Hanafi's method of divorce, Imam-i Shafii's words on the issue were used in HAK.

There is some lack of laws on some issues concerning divorce in HAK. For example, there are no laws concerning divorce through letters or representatives. There are also no explanations concerning divorce phrases that were used as jokes.[71]

6. 11. Revocable and Irrevocable Divorce (*Talaq al-Rij'î* and *Talaq al-Bain*)

There were no changes made concerning revocable and irrevocable divorces. Previous practices were simply summarized in Articles 111-118. The only appar-

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[66] HAK, Article 110.

[67] Akgunduz, *Külliyat*, p. 327.

[68] HAK, Article 105.

[69] HAK, Article 109.

[70] Akgunduz, *Külliyat*, pp. 327-28.

[71] Aydın. *Aile Hukuku*, pp. 198-99.

ent changes were those concerning *tahleel*. There are also laws concerning mutually agreed upon divorces to which many Ottoman women often appealed.

6. 12. Divorce by a Court Decision (*Tefriq*)

The most interesting part of HAK for women rights are the laws under the heading of *tefriq*. The regulations made about these divorces through courts gave an important right to women who were not happy in their marriage. Islamic laws, which mention this practice under the heading of *tefriq*, say that a woman can divorce her husband if she appeals to the court with a valid reason such as her husband's physical sickness or his disappearance. Such a divorce does not occur through the will of only one party but through the decision of the judge. It differs from mutually agreed upon divorce in that the man does not have to agree as long as the judge decides to divorce the couple.

Under what conditions can a woman apply for a *tefriq*? This is the main issue here. Normally, all Islamic law systems accepted the idea of *tefriq*. In practice, however, the Hanafi school differs from other schools of Islam and states that a *tefriq* can be performed only if the man is impotent. The woman has no other means of divorcing her husband.

Actually, the first reforms concerning *tefriq* and women's right to divorce were achieved in 1916 through two decrees by the sultan. These became actual laws that were practically applicable only in HAK.

6. 12. 1. Divorce because of Illness and Deficiency

The first case where women had the right to apply for a divorce is if the husband had physiological deficiencies. Articles 119-124 regulate this issue. However, the issue of illness was evaluated with a few different judgments.

As we have stated before, a man's impotence was the only reason on which all Islamic scholars agree for a divorce by the woman. But in order for this impotence to suffice as a reason to divorce, a few conditions had to meet: 1) the woman should not have a similar deficiency; 2) there was to have been no sexual intercourse between the woman and man.[72] If the illness was not sexual impotence but one preventing a healthy family life, then, for this illness to be a good enough reason for divorce, the woman had to have had no knowledge about it before marriage.[73]

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[72] HAK, Article 119.

[73] HAK, Article 120.

By the way, article 121 regulates the route to be taken by the judge in a case of such an application for divorce. According to this article, the judge would rule for immediate divorce if there was no hope the illness could be cured. He delayed the divorce for one year if there was hope of a cure. If, during this one year, one of the parties contracted an illness that prevented sexual intercourse or the woman ran away, these periods would not be included in that year. After the waiting period was over, if the man did not want divorce but the woman still did, the judge would rule for divorce. In court, if the man said he had sexual intercourse with his wife, and if the woman was not a virgin, the court would take the man's statement as the basis for judgment. On the other hand, if the woman was found to be virgin, then the court would take the woman's statement as its basis.[74]

Diseases like leprosy and venereal disease, which make family life impossible, are seen as a reason for immediate divorce. This judgment stems from Imam-i Muhammad, a Hanafi scholar, along with three other schools. It was first decreed right before HAK in 1916 and was retained in HAK. The procedure followed here was the same as that in the previous paragraph. Hence, the judge would rule for immediate or delayed divorce according to the course of the disease. While the decree mentions these diseases, it keeps blindness or similar deficiencies outside of this ruling and does not accept as a good enough reason for divorce.[75]

The last illness that is seen as a reason for divorce is insanity. According to the Hanafi school and Ottoman law, insane people could be married under the monitoring of their guardians. But HAK allows the marriage of insane people only under special circumstances. This avoids marriage between insane people before marriage comes to the divorce stage. But Article 123 also makes it clear that a divorce is imminent in case of insanity after marriage.[76] Actually, insanity was mentioned as one of the illnesses that could lead to divorce in the 1916 decree.[77] The judge could delay divorce just as he could in the case of other illnesses if there was hope of a cure.

Are the same rules applied if the woman is the one who became ill? This question is one of those that led to differences of opinions among different schools. Imam-i Muhammad's view is different from that of other schools. According to him, since the husband already has the right to divorce, he does not need to go to court. But the other three schools argue that man also has the right to go to court. The decree took Imam-i Muhammad's opinion as its basis.

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[74] HAK, Article 121.

[75] HAK, Article 122.

[76] HAK, Article 123.

[77] *Düstur*, II. Ter. VII/853

Women can go to court in one of the cases mentioned above, delay the case, or can take a break. But if a woman remarries her ex-husband after divorce, then she can not apply for divorce again.[78]

6. 12. 2. Absence of the Husband

There are two different regulations in the case of the absence of the husband, One is if he left home without leaving any subsistence money, which is regulated by Article 126. The second one is if he left home with leaving subsistence money, which is regulated by Article 127.

If the husband went into hiding, left, or became *mafquud* (a missing person),[79] and the woman had difficulties meeting her expenses, she could then apply to the court and the judge could rule for divorce.[80] If the husband was absent but left subsistence money, and the woman applied to the court, then the judge would investigate the case. But if there was no sign of the husband and no hope left that he was alive, then judge would delay divorce for four years. If at the end of this period, the husband still did not show up and the woman still wanted to divorce, then the judge would rule for divorce. If the husband became missing during war, then the judge would wait for 1 year after the war was over and then rule for divorce. In both cases, the woman had to wait out the *iddah* period.[81]

The regulations of the Hanafi school that were used in the early period of Ottoman empire made divorce for the woman in the case of the husband's absence (*gâ'ib*) or if he was missing (*mafqûd*) almost impossible because, if the husband was missing, the wife had to wait until she was 90. Only then was the property divided, and the woman's application for divorce accepted. In the case of war or danger, only if there was strong evidence that he was dead was he considered as such.[82] There were always complaints about this throughout Ottoman history,. Although during the 16th century, the regulations of the Shafi'i school were followed, this arrangement did not last long. Especially when the Ottoman Empire entered the era of chaos and constant war, this issue started to concern a larger part of the society, because, as war continued, the number of women who never heard from their husbands after they went to war was steadily increasing. Be-

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78 HAK, Article 124.

79 *Mafqûd* means not knowing if a husband is dead or alive.

80 HAK, Article 126.

81 HAK, Article 127.

82 Akgunduz, *Külliyat*, p. 328.

cause of this emergency situation, in the year of 1916, one of the two decrees that were issued dealt with this problem.[83]

Possible problems after divorce were dealt with in the following articles. If the judge decided for divorce for one of the above-mentioned reason and the woman married another man after her divorce, if her ex-husband came back, the second marriage was considered to be valid.[84] However, if divorce was granted because of the possibility of the husband's death and if the husband came back after the woman had remarried, the second marriage was considered void.[85] The reason for this regulation was given by EML as follows: because a man has the right to take back all his property that was distributed as an inheritance during his absence, he also has the right to take his wife back. Otherwise, there would be two different regulations on the same case, which is not permissible.[86]

6. 12. 3. Divorce due to Discord

Discord between husband and wife is a constant reason for divorce in all societies and times. The same was true for Ottoman society as well. The route to be taken in the case of discord between two sides is completely different before and after HAK. The regulation made by HAK is unique. Before HAK, discord within family was not seen as a reason for divorce. Thus, in case of discord, there was nothing a woman could do unless her husband divorced her. Although the practice of *khula* provided women with an escape, it was still not enough because *khula* was only possible if both parties agreed to it, and it was not easy to persuade the man. To solve this problem, HAK followed the Maliki school, which argued for establishing a family council and letting this council decide on a possible divorce.

A council was to be established by the members of both families. If there was no one in the family able to do this, then suitable people from outside were to be assigned. The council was to listen to both sides and look for possible solutions; if there was no way to solve the problems, it was to rule for divorce. If the woman was found guilty, then *khula* was implemented for all or part of the dowry, meaning that the woman would renounce the decided amount of dowry. If the council could not agree on a decision, a new council would be established.[87]

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[83] Cin and Akgunduz, *Turk Hukuk Tarihi, vol. II,* p. 120.

[84] HAK, Article 128.

[85] HAK, Article 129.

[86] Akgunduz, *Külliyat,* pp. 328-29.

[87] HAK, Article 130.

Actually, the idea of a family council in case of discord is present in the Hanafi school as well. However, it was not practiced much. There are a few reasons for that. First of all, according to the Hanafi school, the aforementioned family council does not have a right to rule for a divorce. It is only allowed to act as a mediator between the two parties. However, this was already done by judges. Whenever any party applied to a court, judges tried to mediate between them. Moreover, both parties should delegate a committee. This, however, was impossible, because the guilty party would never agree to delegate a committee.[88]

Why was discord handled this way when all other reasons for divorce were entrusted to a court decision? Most probably, this was because illness or absence can easily be proved; anyone who does not know both parties can decide on these cases. However, discord is usually based on mutual accusations. Therefore, it was probable that a committee who knew both parties well was commissioned to decide on it. There is no explanation why this difference exists in EML. If a divorce was for the reasons listed above, then, this divorce was seen as irrevocable (*talaq al-bain*).[89]

6. 13. The Prescribed Period and its Alimony

The first two chapters of the decree under the "Third Section" deal with the prescribed period and alimony. The regulations in HAK concerning these issues are not hugely different from previous laws, aside from the fact that in Article 140 the Hanafi school's opinion was replaced by the Maliki school's. Therefore, it will be enough to look at Article 140 to understand the changes made.

The waiting period for a divorced woman is three times the prescribed period. But sometimes the prescribed period may end due to a physiological sickness; in this case, it is very difficult to arrange the calendar of a waiting period. There are different opinions among the law schools relating to this issue. According to the Hanafi school, the woman should wait until the age of 55 which is the end of the prescribed period and should wait three months more after this. Thus she finished the waiting period. Implementing this rule could cause some problems for the man and the woman because the woman had to wait and the man had to maintain her her whole life. This rule, which was so impossible for both parties was modified in HAK and the view of the Maliki school was preferred. According to the new law, women who have such diseases were to wait three months if they reached the end of the prescribed period; otherwise they were to wait nine

[88] Akgunduz, *Külliyat*, p. 329.

[89] HAK, Article 131.

months.[90] There is nothing new concerning the prescribed period. All the regulations are continuations of previous ones.[91]

Article 155 states that, unless stated differently, these rules apply to non-Muslims as well.[92] Article 156 is the most important article regarding non-Muslims; it abolishes the judicial authority of non-Muslim spiritual leaders concerning family law.[93]

7. EVALUATION OF THE DECREE

After these explanations about the articles of the decree, it would be appropriate to evaluate HAK regarding regulations about women, which is the main focus of this article.

HAK was the first family act in Islamic law. In the Ottoman Empire, right from the early period, there were always reference books on family law, such as *Multeqa* or *Ahval-i Shakhsiye* by Kadri Pasha. But these did not have the completeness of a law. In this respect, HAK was not only the first but also constituted the basis for similar works in the Islamic world that followed.

The work was done by taking the changes in the world and the criticisms made within the Ottoman Empire into consideration. It was prepared within the limits of Islamic law by using opinions from all schools. For the first time, schools other than the Hanafi school were taken seriously. As a result of this, different practices with regard to Islamic law entered Ottoman law.

HAK also included special regulations about Christian and Jewish family law. During the preparation of these regulations, the opinions of Christian and Jewish scholars were listened to. Moreover, by abolishing the judicial authorities of spiritual leaders, unity in law has been established and possible victimizations avoided.

Issues like marriageable age were rearranged in favor of women. It is stated in EML that marriages at an early age victimize girls the most. By bringing a lower limit to the age of marriage, the marriage of girls at a very early age was prevented so that the girls would not have to assume the responsibilities of difficult life conditions at a very early age.

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[90] HAK, Article 140; Aydın, *Aile Hukuku*, p. 204; Cin and Akgunduz, *Turk Hukuk Tarihi, vol. II*, vol. 2, p. 124.

[91] HAK, Articles 150-54.

[92] HAK, Article 155.

[93] HAK, Article 156.

The regulation brought by the decree to marriage and divorce also attempted to decrease the victimization of women. Actually, the works on this issue did not start with HAK. On the contrary, it is quite a long process, but it is possible to say that HAK is the last link in a chain of regulations. By making the registration rules of marriage clear, it tried to prevent grievances on the part of women in issues like dowry or lineage.

HAK ruled that forced marriages and divorces were invalid. Thus, women were protected against choosing a life they did not want. Everybody knows that it is easier to force a woman than a man. And by invalidating the divorce of a drunken husband, they avoided punishing an innocent woman with a sinful act that has been committed by the husband. In this situation the wife who suffered from a disaster that can destroy her family life.

HAK, with its new regulations, allowed women to have a clause placed in their marriage contracts that prohibited their husbands from marrying another woman while they are still married to them. This was an important step in removing the disharmony and lack of trust that could last for a lifetime. Some researchers criticize the fact that HAK could not completely remove polygamy from Ottoman social life. Practically speaking, however, such a possibility at the start of a marriage and the fear of losing one's marriage in case of polygamy makes this rather trivial and technical. Unfortunately, the most important problem with this legislation was that it did not translate into practice very well, at least in the short period that HAK was in force in the Ottoman Empire. The marriage contracts post-HAK show that not many contracts involved a clause using this new legislation.[94] Even today, many Muslim women are not aware of this right. The use and spread of this legislation did not apply to the whole Ottoman Empire. The fact that the HAK was short-lived is one reason for this. If the council's explanations regarding this matter are taken into consideration, the goal of this legislation can be seen as the abolishment of polygamy. Some researchers already claim that if this legislation had been used by Ottoman women, it would have been the same as forbidding polygamy.[95] But it is possible to say that this legislation was an example for other Islamic laws written after the demise of the Ottoman Empire, and thus was the first step towards the abolishment of polygamy within the Islamic world[96].

Reforms in the *tefriq* area were also much needed and appreciated by women. A short discussion of these reforms would be in order: in the case of the husband

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[94] Akgunduz, *Şer'iye Sicilleri*, vol. I., section on family law.

[95] Fahri Ziya Fındıkoğlu, *Hukuk Sosyolojisi* (İstanbul: Filiz Yayinevi, 1958), p. 254; Aydın, *Aile Hukuku*, p. 216.

[96] Aydın, *Aile Hukuku*, p. 214.

missing during wartime, the waiting period of a woman who had to endure many hardships due to this was reduced to a more reasonable amount. The same also applied to health problems: women no longer had to live their entire lives with a mental patient. In cases of a lack of harmony or disputes in the marriage, the referee council's authority was extended to make the decision of divorce according to the Maliki school. Thus, the woman did not have to continue to live in an unhappy marriage against her will. The changes to *tefriq* and giving women the right to divorce can be called the start of a new era in Islamic law. If investigated, many similarities between today's family laws and *tefriq* can be seen.[97]

The reforms made to the *iddah* system were also aimed at easing women's lives. As stated above, women had to wait unacceptable amounts of times between being married and single due to physical illnesses. HAK solved this problem.

The work done within these limitations were quite significant for the time. However, some subjects are simply not addressed. There are no laws concerning the guardianship of children in the event of divorce and lineage. The decrees concentrate more on the actual events and reasons for marriage and divorce.

The reason for this might be the difficult times the Empire was going through at the time. The decrees were written during a time of war, a period of chaos. Everyone had their own opinion and advice on how they should be written. The different approaches of Turkish nationalists, Islamists, and Westernists caused a great deal of controversy on every article of HAK. It is also the first work done in this area of a legal system. Every first usually has some points missing. Most importantly, all the reforms could only be made within the limits of Islamic law.

In conclusion, it is impossible to say that HAK did all there was to do for women's rights. But it certainly was an important step in the right direction. Despite its deficiencies, within the limits of Islamic law it could solve many problems that women faced by using the different ideas of the four schools of Islam. This characteristic makes it unique in the Islamic world.

8. REACTIONS TO THE DECREE

The 1917 Family Act, as the first family act in the history of Islamic law, was criticized by Muslim scholars who were sensitive to sectarian differences and also by non-Muslims who did not want to have a unified legal system. The most prominent critic of the Family Act was a scholar from Darul-Funun (i.e. Istanbul University) called Sadreddin. In approximately 40 articles he criticized all the revisions

[97] Cin, *Boşanma*, p. 124.

to Hanafi law made by the Family Act.[98] According to Sadreddin: "40 of the 103 articles that pertain to Muslims are full of mistakes. So much even, that some of them go blatantly contrary to Islamic law, such as the second part of section one, Article 52 and Article 130 which deals with ending marriage. In some of the articles, however, preferred opinions were used rather than controversial ones. So much so that, in some cases, *telfiq* was implemented even though it was known to be fallacious."[99]

The commission that prepared the decree, as can be easily seen from EML, attempted to cover some of the articles, which they prepared as they saw fit for the contemporary world, by trying to attribute those articles to the opinion of an Islamic scholar. In that way, they degraded the value of Islamic decisions to the second degree.

Certainly, all states have the right to legislation and can issue any law they please. But a state that has accepted a religion as state religion should not act contrary to that religion in their laws. According to Islamic scholars, a law should be in accordance with people's affairs, but this is only permissible in interpretative issues. Otherwise, on issues where Islamic law is very clear, to adopt alterations to Islamic law, just for the sake of people's affairs, is to disrespect the opinions of Islamic law. Polygamy, which is clearly permissible according to the Qur'an, was subjected to conditions through this decree. This again shows this legal problem.

Sadreddin argues that its reasonings show no righteousness whatsoever and there are fallacies in the essence of the decree. He also says that there are many mistakes in the sections and, finally, that there are no benefits where it claims there are benefits. Sadreddin explained all these mistakes and claims in his various articles. This formally written petition against HAK was first banned by government, but the complete version was later published in the journal *Sebilurresad*.

Reactions to the decree are not limited to these. Non-Muslims were not happy with HAK either. Article 156 especially, which abolishes the judicial authority of spiritual leaders, was criticized heavily by non-Muslims. This new regulation was considered to be a violation of the tolerance shown by Ottoman Empire for centuries. The Greek Orthodox Church, along with all other community churches and Jews, applied to Entente commanders and foreign consulates to put pressure on the Ottoman Empire to remove this new regulation from the act.[100]

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[98] Sadreddin, "Hukuk-ı Aile ve Usul-i Muhakemat-ı Şer'iyye Kararnameleri Hakkında," *Sebilürreşad*, pp. 382-445.

[99] *Telfiq* means the performance of an act by unifying or mixing the easy ways of *madhhabs* and in a way that is not compatible with any of them.

[100] Aydın, *Aile Hukuku*, p. 223.

Turkish nationalists and Westernists also did not think these changes were enough. An article published in the newspaper *Ikdam* argued: "Because of the inadequacy of the decree, there is a family and women crisis, and the decree cannot be fully implemented."[101]

9. APPLICATION AND DURATION OF THE DECREE

The decree was prepared during wartime; therefore, it was not presented to Parliament. Instead, relying on the authority granted by Article 36 of the Constitution (*Qanun-u Esasi*), it was published as a provisional act. Unfortunately, as a decree that was the first of its kind and was prepared with great hopes, it had a limited area of application. It was not even applied to villages.[102] Only a small number of women in the cities were able to benefit from it. For instance, the first couple to use the Family Act's rule about polygamy was Halide Edip Adivar and Salih Zeki Bey.[103] That the Family Act remained so limited in terms of application was because it was short-lived and women were not aware of their own rights.

The propaganda opposing the act appearing in articles in journals like *Sebilurresad* along with the pressure by non-Muslims not to apply the articles of the Family Act that concerned them soon bore fruit. The Family Act that was issued on 25 October 1917 was abolished on 18 July 1919. According to the abolition decree, after the Family Act was abolished, previous laws were once again in force.

But another evaluation of this subject is possible. A law that was enforced after the foundation of the Turkish Republic stated that all laws and regulations introduced after the occupation of Istanbul were invalid. The date that was accepted as the beginning of the occupation of Istanbul was 1918, and HAK was first published to take effect in 1919. Thus, the law that was introduced by the Turkish Republic invalidated HAK only a year after it was in force. Even though there were studies and uses of HAK during the preparation period of the Turkish civil law, these were not officially accepted by the Republic. It can thus be said that the HAK was in force until 1926.[104]

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[101] Ziyaeddin Fahri Fındıkoğlu, *Aile Hukukunun Tedvini Meselesi* (Istanbul: 1944), p. 51; Kurnaz, *II. Meşrutiyet Döneminde Türk Kadını*, p. 110.

[102] Tezer Taşkıran, *Cumhuriyetin 50. Yılında Türk Kadın Hakları* (Ankara: 1973), p. 48.

[103] İlber Ortaylı, *Osmanlı Toplumunda Aile*, p. 155.

[104] Cin and Akgunduz, *Turk Hukuk Tarihi, vol. II*, p. 81.

10. EFFECTS OF THE DECREE ON LATER PERIODS

Although the decree was short-lived, it had a great influence on the family laws that followed. Especially in the Islamic world, because it was the first of its kind, it became a model for other family laws. Meanwhile, Turkey changed its family law as well. In 1926, the new Civil Law was accepted. Did the Family Act have any influence on civil law? If so, to what extent? What can be said about its influence on other Islamic countries? We will deal with these two questions in separate sections below.

10. 1. The Effects on Turkish Civil Law

After the war, some elements of the Family Act were still applied. First, a civil law commission was established. After a long period of hard work, the commission prepared a family law proposal that was very similar to the previous Family Act. Actually, there was no difference between them at all. Most of the major issues, like polygamy and divorce, were treated the same. Therefore, the proposal was eventually withdrawn.[105]

Second, a new commission was established in 1924. This time, it was stated openly that elements of the European legal system would be borrowed. This commission prepared a family law proposal consisting of 142 articles. Although this proposal also had strong similarities to the Family Act, it did introduce some new adjudication. Some of the examples of these changes were as follows. The right of divorce was given to men and women equally. Monogamy was taken as the standard rule for marriage, unless the wife allowed her husband to marry a second wife. Different rules for Muslims and non-Muslims were abolished. With these features, this proposal stood between Western and Islamic law. This proposal was also withdrawn eventually because, by that time, the idea of borrowing an entire Western legal system was gaining in strength.[106]

Turkish civil law was not affected by the Family Act at all because Turkish civil law was borrowed from Swiss civil law. Still, there are some similarities. For instance, the way the marriage agreement is prepared before two witnesses or the rule requiring an officer to be present during the agreement. As stated above, divorce in the Family Act is also similar to civil law in many respects.

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[105] Ansay, *Islam Hukuku*, p. 136.

[106] Cin, *Evlenme*, pp. 306-08.

10. 2. The Effect on Islamic Countries

The Family Act was the first Family Act of the Islamic world. It was used for years in many Islamic countries. Some of these countries are Lebanon, Syria, Palestine, and Jordan. It is still being used in Lebanon. Of course, this law is only used for Sunnis. Non-Muslims and Shias are subject to different rulings. The Family Act was abolished in Syria in 1953. Just like in Jordan, non-Muslims were subject to different rulings. First, Article 156, which denies the casual authority of non-Muslim spiritual leaders, was abolished. Afterwards, all articles related to non-Muslims were abolished. Jordan, like Syria, also used the Family Act for years. Although changes were implemented, it remained operative until 1951.[107]

As can be seen from all these examples, the Middle Eastern Muslim countries that had been part of Ottoman Empire for centuries used the Family Act for years. From this perspective, the Family Act, although short-lived with respect to Turkey and the Ottoman Empire, lasted a long time within the Islamic world. Moreover, the Family Act became the basis for other laws that followed it. Especially the fact that all Islamic sects were taken into consideration posed a new perspective for works in the field of family law.

Looking at the articles of the Family Act, the changes made by Lebanon, Syria, and Iraq were clearly affected by it. For instance, the marriageable age in Jordan is 16-17, in Iraq 18, and in Syria 17-18, which clearly shows the influence of the Family Act. Similarly, the prohibition against mental patients marrying was adopted by Syria, Iraq, and Jordan. The rule that considers the divorce by drunk people as void was, again, a rule that was taken directly from the Family Act. The requirement of the consent of the wife for polygamy was adopted by Jordan, although there, if the requirement is not met, there are no regulations concerning the second marriage. Only the first wife is given the right of abrogation. The regulations about divorce in the Family Act were also used by Jordan, Syria, and Iraq with minor modifications. There are some small differences. For example, to be jailed for a long time is considered a reason for divorce. On the issue of *iddah*, Article 140 of the Family Act, which is the only article that deviates from the Hanafi school, was adopted as it was by Jordan, whereas Syria changed the waiting period of 9 months to 1 year.[108]

In short, Syria and Jordan took the Family Act as a reference even when they made changes to it after using it for long time. Therefore, although the titles and the way the articles are organized are different, the content of the Family Act is still intact in many countries.

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[107] Aydın, *Aile Hukuku,* pp. 226-27.

[108] Aydın, *Aile Hukuku,* pp, 227-31.

11. CONCLUSION

Let us now summarize what has been said above.

Women's rights and the value given to women in Islam have always been on the world's agenda. The greatest problems related to women's rights stem from the issues raised in the discussion on family law. If family law could be arranged properly, most of the problems women experience would be solved as well. Just like today, women experienced many problems then as well. They will continue to have problems in the future too. But at that period, due to the heavy costs of World War I, the problems of women were more intense. The distortions that first became the subject of novels were brought to the attention of the public by intellectuals later on.[109]

The Family Act that was prepared in the final years of the Ottoman Empire is the most important legal work in the Islamic world with respect to women's rights. It represents the last link in a chain of changes that were made at the time. Despite its missing parts, HAK takes marriage and divorce as a whole and deals with many issues without contradicting itself. It is also written in short and clear sentences.

The Family Act had reviewed many cases where women were treated unjustly. The changes that had been made were not really small-scale for that time. Many issues that caused unrest within society had been adjusted. Every decision in the law had been prepared in accordance with Islamic law. Each entry had certainly been based on the opinion of one of the schools.

Unfortunately, the fact that there were many factions calling for different social orders at the time that HAK was in use undermined the authority and continuity of HAK. The fact that none of the factions wanted a compromise by improving HAK's laws kept positive reforms to it to a minimum. Everyone criticized HAK. Some found it too reformist, while others thought it did not go far enough.

HAK was completed as the Ottoman Empire fought for its very survival under the occupation forces. At such a time, it can be truly said that the reforms and influences of HAK were lost in the chaos. Many women did not even learn about the rights they received through the legislation; only a small number of women in large cities and information centers learned about HAK. A large number of Muslim women knew nothing about their newly aquired rights.

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[109] Abdul Hadi al-Hakim, *A Code of Practice for Muslims in the West* (London: 1999), pp. 225-30; Joseph Schacht, *An Introduction to Islamic Law* (Oxford: 1986), pp. 161-68.

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Although a century has passed since it was published, HAK's laws can still be found in the laws of many Muslim countries. This alone proves its long life and acceptance as a modern civil law. HAK was an important source of information in preparing laws in Islamic countries for Muslim women and still is. It will most likely keep its status of importance in the future.

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