

Formal Litigation or Informal Mediation?! Egyptian Women's Struggle to Attain Their Personal Status Rights^(*)

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Abstract:

Family issues, shape all facts of women's lives and have a significant impact on their well-being. In fact, they restrict their ability from fully participating in public and private spaces. In most parts of the world, personal status laws and cultural norms discriminate against women, seek to expand male power over women, and minimize women's right to make decisions and to take independent action. In Egypt, the rule of law also implies very little for the vast majority of women. This paper hypothesizes that laws and informal mediation, including all mediation parties (disputing spouses, children, family, friends, community, and religious leaders), interact together to help women to attain their rights. Drawing on the adaptation of the socio-ecological model, our analysis using the mixed methodology to supplement the qualitative data with analysis of a quantitative survey with divorced males and females that measured their experience towards their disputes in personal status field.

Keywords: dispute resolution, personal status law, divorce, mediation, customary law, litigation mechanisms

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تعد قضايا الاسرة من أهم القضايا التي تؤثر علي حياه النساء ورفاهيتهن داخل المجتمع. حيث تحد تلك القضايا من أوضاع النساء سواء في المجال العام او المجال الخاص. فعلى الرغم من الإصلاحات القانونية التي تمت من أجل تمكين النساء على مستوي العالم في قضايا الأحوال الشخصية، إلا أن تلك القوانين مازالت يشوبها بعض التحديات التي تدعم التمييز ضد المرأة. ولم يقتصر الامر على القوانين فقط بل ان التوسط غير الرسمي أيضا بما يحتويه من أعراف وتقاليد مجتمعية يدعم أيضا من اللامساواة بين الجنسين اثناء التقاضي. ولذلك تفترض الدراسة الحالية أن كل من القوانين الرسمية واليات التوسط غير الرسمي، بالإضافة الى جميع الأطراف المشتركة في عمليات التقاضي (الرسمي وغير الرسمي) مثل الأزواج المتنازعين والأطفال وأفراد الأسرة والأصدقاء والقادة العرفيين والشرعيين... الخ، يلعبون أدوارا مهمة تؤثر على تمكين النساء للحصول على حقوقهن في مجال الأحوال الشخصية، ومن ثم تعتمد الباحثة على توظيف النموذج السوسيو-ايكولوجي في فهم الأسباب الجذرية لتمكين او إعاقة النساء لنيل حقوقهن خاصة خلال عملية تسوية النزاعات الاسرية. وذلك بالاعتماد على اسلوب المناهج المختلطة (الكمية والكيفية) في جمع وتحليل البيانات .

الكلمات المفتاحيه :

الأحوال الشخصية، الوساطة، تسوية النزاعات، الطلاق

INTRODUCTION

There is a growing focus on the use of informal mediation (¹) to settle conflicts over divorce. In developing countries, up to 80percent of conflicts are resolved by informal mediation processes (UNDP, 2005), which cover up to 90percent of the population in parts of Africa. According to the Arab Barometer results, only 12percent of women victims in the MENA region seek support from local police, and most of them (88percent) turn to their relatives. In certain cases, informal mediation addresses issues that have a direct impact on the best interests of women and children, such as marriage and its dissolution, custody, inheritance, and property rights, etc. Overall, the data available suggests that women prefer informal mediation rather than formal litigation. While legal reforms in many countries have strengthened women's legal roles vis-à-vis males, in practice, women face a wide range of difficulties in implementing the rights to which they are entitled in divorce cases by the courts.

The main objective of this paper is to understand the association between formal litigation and informal mediation to help women in attain their rights in the personal status field by applying the socio-ecological model, by employing the multidimensional levels (personal, interpersonal, community and societal) for exploring and defining the above research objective. This study will be one of the first studies in the region and the world to employ this model in the field of personal status issues. In addition, this study will employ the results to develop recommendations that would provide a practical solution to problems of litigation in the field of personal status. In order to achieve Egypt's Vision 2030 and Goal 5 of the Sustainable Development Goals 2030, adopted in 2015, in order to achieve justice and gender equality in Egyptian society.

1- The term informal mediation will be used throughout this paper when referring to dispute resolution mechanisms falling outside the scope of the formal litigation by laws including traditions, customary, religious, and in some cases lawyer who are mediating outside the court and without using laws (this case will be explained later during the analysis).

Research Methodology

To examine the socio-ecological Model for understanding the role of informal mediation and formal litigation in empowering women to attain their rights in the personal status field. This paper adopted a combined quantitative and qualitative methodological approach

- Quantitative Data

Quantitative data were taken from a secondary data source of a survey conducted by the Egyptian Center for public opinion in Egypt (Bassera), for the purpose of studying the conditions of the divorced people in Egypt. Participants participated in surveys by using phone calls to capture a sample of 556 of divorced females and 471 divorced males from all governorates around Egypt (Annex1). The data were analyzed by using SPSS for data analysis.

- Qualitative Data

The qualitative approach was adopted by conducting In-depth interviews (IDIs) and Focus group discussions (FGDs) to address the various objective outlined above. The study areas were Cairo and Gharbia governorates. The governorates were selected purposively based on several criteria that representing urban areas (Cairo) and rural area (Gharbia). Both areas had sufficient presence of local NGO who could collaborate in conducting the field work. In addition, Cairo has the highest percentage in divorce (4.9) compared to the other governorates, while Gharbia one of the lowest percentages in divorce (1.9) in Lower Egypt. (CAPMAS. 2019). Both IDIs and FGDs were conducted as follows:

- i. 20 IDI were conducted with female litigants (Annex 2).
- ii. 20 IDI were conducted with mediation specialists (Annex 3).
- iii. 4 FGDs were conducted with male and female litigants (Annex 4).

Theoretical Framework

Multidimensional approach, was raised by **Urie Bronfenbrenner** (1977), through providing the Socio-ecological model, he argues that behavior is seen as affecting on and affecting by multiple levels of

impact. Bronfenbrenner divides environmental effects on behavior into four levels, namely, the micro-system, the Meso-system, the exco-system, and the Macro-system. The micro-system refers to effects that occur between individuals face-to-face, such as interactions within an individual's immediate family. The Meso-system refers to the interactions between the individual and other community members such as the family, the school, peer groups and the religious leaders. The exco-system is the external or larger social system in which the individual is integrated, it's including state policies and laws. Finally, the macro-system refers to cultural beliefs and values that affect both the micro-system and the macro-system. **Belsky** (1980) then developed a framework for identifying individual, family, social and cultural influences in child abuse, dividing the causes of child abuse into four levels: (1) The individual level includes psychological and social characteristics as well as the determinants of the behaviour of parents or individuals, (2) the family level "the microsystem", in which individuals interact with other family members, (3) the third level is society "the exosystem" which consists of formal and informal social structures such as the world of work, informal social networks and services that affect individuals' perceptions and behaviors and, finally, (4) culture "the macrosystem", which is the cultural values and beliefs that promote child abuse, within which the individuals and the family interact

In 1988, **McLeroy, Bibeau, Steckler, and Glanz** developed five levels that affect human behavior, which is the personal factor, personal processes, primary groups, institutional factors and, finally, societal factors and public policies. **Lori Heise**(1998) was able to apply the ecological model in studying violence against women, emphasizing that previous theoretical entrances used a monolithic interpretation centered on the strong imbalance between men and women, or to suggest some social and political interpretations, as in the theory of power and gender, where Laura criticizes those theories, saying, "Why do some men not commit violent crimes?" **Lurie** therefore emphasizes the need to adopt the ecological framework to explain the causes of violence against

women, where abuse of women is at a number of levels that interact between individual, environmental, social and cultural factors. **Lori** builds the **Belsky** approach, where the ecological model levels of interpretation of violence against women are in four overlapping circles. The primary circle is the behaviors and relationships of individuals, both men and women. The second includes the context of abuse, which is a family or a partner/spouse, while the third level includes institutions and social construction, whether formal or informal, such as the business world, the neighborhood, social relations, and finally the fourth level is public perceptions and trends that permeate public culture.

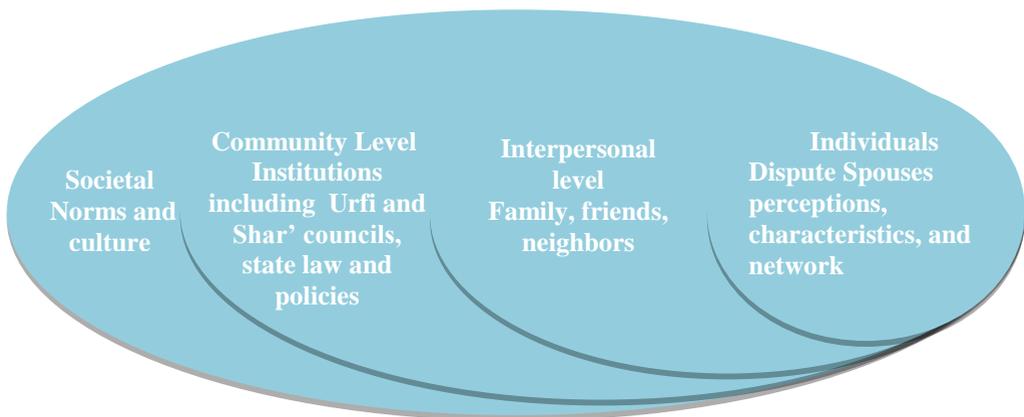
This paper will adopt the socio-ecological model to identify the interaction between formal litigation and informal mediation, to categorize drivers which help women attain their personal status rights. This model explaining the role of societal and community factors in influencing individual behavior, while focusing emphasis on four dimensions: interpersonal, personal, community and societal. This model assumes that each dimension affects the other (McLeroy et al., 1988). The first level of this model is the individual level that includes the disputing spouse's perceptions, which individually and collectively, use their assets (human, social, cultural and financial) to build relationships, and affect and affected by the second level (interpersonal level) which including their families, friends and neighbors, this interpersonal level is very effective in the mediation process which support the dispute spouses' rights within their communities. This leads us to the third level (community level) which including institutions and councils (Urfi and Shar') as well as state policies and laws as a tool to enforce the dispute spouses to commit to and obey the mediation process and decisions that embodied in informal social control. Finally in the fourth level (societal) we assume that norms and culture can play a vital role on affecting on the three previous levels and plays vital role to help women to get their rights. Cognitive dimensions, the many ways in which these four-dimensional forces and influences will be the theoretical structure used in this research paper to explain how disputed spouses (as personal factors)

and relatives, neighbors, friends (as interpersonal factors) influence the attainment of women's rights. In addition, how informal mediation, including customary law ('Urf and Shar') (as a group factor), plays a vital role in controlling human behavior and affecting their beliefs and thoughts on supporting or marginalizing women. In addition to these three factors, this socio-ecological model aims to understand the role of norms and culture (societal factors) in preventing or helping women to achieve their rights (figure 1).

BACKGROUND LIT REVIEW

Informal mediation addresses issues that have a direct impact on the

Figure 1: The Factors of helping women to attain their rights in the field of personal status along the levels of the socio- ecological model



best interests of women and children, such as issues of marriage, custody, dissolution of marriage, inheritance and property rights, etc. Overall, the data available suggests that women prefer informal mediation rather than formal litigation. While legal reforms in many countries have strengthened women's legal roles vis-à-vis males, in practice, women face a wide range of difficulties in implementing the rights to which they are entitled in divorce cases by courts. Some of these difficulties are attributed to the alleged conservatism of judges. It could be because of the attitude of the judiciary that Moor1978 and Griffiths1986 have

reported that judges, lawyers and litigants are responsible for obstructing, deflecting and transforming the law. Also, Welchman, L. 2007 notes that customary law supplements state law when a state fails to follow through on its own legislation.

In her research, Al-Sharmani 2014 found that while family courts have been set up to simplify and speed up proceedings in cases involving the break-up of marriages, the legal process has been gendered and women discriminated against by male-dominated courts through its rhetoric and practice. Accordingly, lawyers and judges regard women as emotional and incapable of making reasonable decisions to end their relationships, which some mediation experts and judges use when trying to reconcile the parties. In addition, lawyers' briefs and court judgements include legal claims that are based on this notion. Samaha 2016 found that the numbers of family court experts, especially the psychological and sociological, who are in charge of handling the disputes between the spouses during the pre-mediation period is not enough compared to the number of litigants. In addition, many of these professionals lack the requisite expertise to work adequately in the reconciliation of the spouses.

Scholars also found that the majority of women, especially the poor and illiterate, are challenged by lack of legal knowledge, high costs of formal litigation, lack of skills and financial resources for arbitrators in dispute resolution, lack of capacity for arbitrators. (Maugiron and Dupret 2008, Singerman, D. 2009; Sonneveld, N. 2010).

Mediation is generally seen as a better form of dispute resolution for divorced spouses, since it is acceptable particularly in conservative communities, especially in marginalized and rural communities, and is the less costly and time-consuming choice for dispute resolution. Many researchers have recognized that mediation is a critical tool for family disputes, and that it can increase the satisfaction of divorced spouses. In addition to flexibility on the basis of family needs, enhanced psychological adjustment of partners, more satisfied spouses, decreased

rates of re-litigation, less post-divorce conflict and more co-parent cooperation, and increased perceived influence of mediation outcomes by participants. (Taylor 2001, A. Wall et.al 2001, Bailey & Robbins, 2005, Zuberbuhler 2001, Schepard & Bozzomo 2003, Centrone 2007,etc).

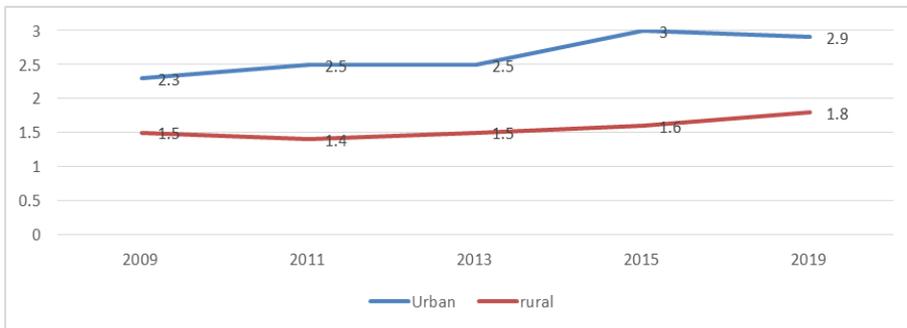
Many studies have shown that spouses who participated in mediation were empowered, in specific for custody cases (Bailey and McCarty, 2009), in addition, mediation allows the dispute parties the ability to work together to find the best solutions to their conflict and to seek the best possible agreement for their children (Kelli, 1996 and 2004, Zuberbuhler, 2001, Schepard & Bozzomo 2003).

Mediation in family disputes is a tool for resolving disputes between spouses outside courts through a friendly solution. It can greatly diversify and facilitate family dispute resolution mechanisms, as well as encourage separate spouses to make arrangements that reflect the needs of their children and, in some cases, prevent them from separating (Usova,2016). While informal mediation is prevalent in many cultures around the world, Feminists argue that mediation is discriminatory against and marginalizing women by support for patriarchal structures (M.Ndulo 2011, M.Htun and S. Laurel 2010). Some scholars argue that mediation ignores the imbalances between men and women that place women at a disadvantage when negotiating with men (Field, 1998). Samuel (1999) and Ndulo (2011) have argued that African customary law is discriminatory in areas such as bride price, guardianship, inheritance, appointment to traditional offices, the exercise of traditional authority, and age of majority. Women prefer to be seen as adjuncts to the group to which they belong, such as the clan or tribe, rather than equals. Due to the oppressive customs Tigist Hussen (2009) proposed that both laws and customs should work together to settle family disputes, the state also needs to reform informal social practices.

Egyptian Personal Status Law and Litigation Procedures in Egypt

In Egypt, divorce rates have been increased from 1.9 in 2012 to 2.3 in 2019. These rates are generally higher in urban than in rural areas. Data for the period (2009-2019) show that the divorce rate in urban areas rose from 2.3 per thousand population in 2009 then reached to 2.9 per thousand. while divorce in rural areas was stabilized during 2009, 2011, 2013 and 2015, reaching 1.6 per thousand population to 1.8 per thousand population in 2019(Figure2). It was found that Cairo governorate had the highest rates (4.9 per thousand of the population) compared to all other governorates in Egypt. The highest number of divorce certificates in Egypt was due to Take-off “khul” where the number of certificates reached 7,199 certificates, while the lowest number of divorce certificates was due to marital infidelity only 3 certificates (CAPMAS, 2019).

Figur2 : The distribution of divorce certificates in Egypt (CAPMAS, 2019)



In the last decade, there have been a number of reforms to Egyptian personal status laws that have had an impact on the struggle to enhance women's legal rights in the field of marriage and family. In 1920 and 1929, women got their right to get a divorce when they experience any kind of harm such as failure to provide maintenance or absence of the husband through his condemnation to jail or serious disease or incurable defect. In 1985, law No 100 was established to allow divorced women to get financial compensation for her and her children's financial support (mut'a and Nafaqa) and to keep the marital home until the end of child custody. In 2000, the Egyptian Parliament passed Law No 1 which aimed

to facilitate and expedite the litigation process in personal status disputes, giving women the legal right to initiate khul'a or divorce herself (Bernard, 2010). Also, in August 2000, a new form of the marriage contract was issued. The new contract had a section in which the couple could insert their conditions before marriage. In 2004, two more legal reforms were passed, the first law establishing family court (Law No.10) and the second establishing family insurance funds (Law No. 11.). This facilitated the implementation of court orders for alimony and child financial support through Nasser Bank (Al-Sharmani, 2009).

Despite this reform, the personal status law is still a discriminative law. Men and women don't have equal rights to divorce. Men have the unilateral right to divorce by telling their wives that they are divorced and registering the announcement at a religious notary office or "Ma'zon", while women can't do this and have to file a lawsuit as well as prove to judges that they have experienced any kind of abuse even if it was physical or psychological abuse (UNDP, 2018). Unfortunately, judges have the right to decide the threshold of harm required to grant women a divorce, taking into account their social and economic background. So, if the judge refuses the divorce, women have to ask for a unilateral divorce "Khul'" and end up renouncing their financial rights (Farida Def, 2005). Additionally, by law, the husband enjoys arbitrary power to compel his wife to return obediently to the marital home even if their cohabitation as a married couple has become impossible. Wives lose their right to maintenance if they refuse to return, especially if their husband required her to do so via a bailiff's notification (GIZ, 2009).

RESULTS AND ANALYSIS

In our following analysis, we will focus on the factors which determined the formal litigation and informal mediation, this will include the process and strategies that promote the successful outcomes and helping women to attain their rights. This analysis will adapt the ecological model to explore these factors. Data shows that the mediation process comes in many different levels and sizes, it is depending on all participated parties including disputing spouses (individual level),

Families and relatives (interpersonal level), community leaders and religious leaders (Community level), as well as lawyers who represent the law rules and principals (societal level).

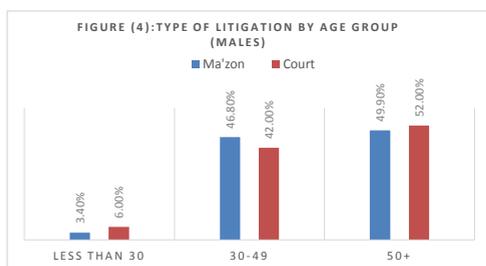
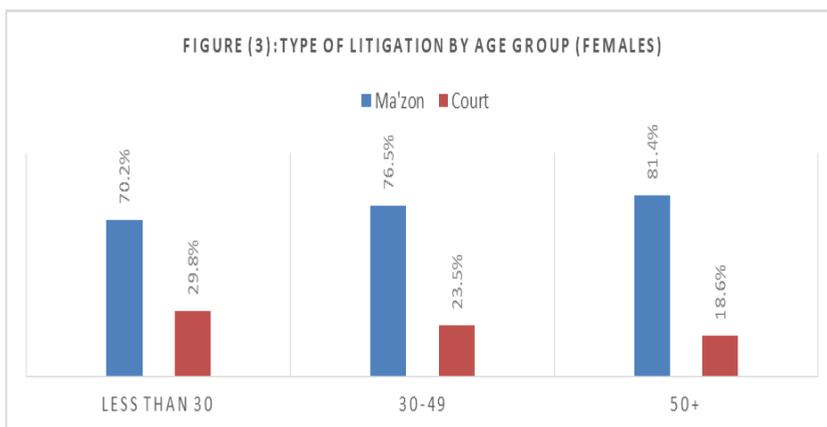
Quantitative and qualitative data have shown that males and females have mediated others to dispute their resolutions. In quantitative results, the majority of males and females who used mediation for divorce are divorced by mediation (70.6 percent of males and 68.2 percent of females), while the majority who did not use mediation are divorced by the court (80.4 percent males and 76.2 percent females). Almost all respondents stated in the qualitative data that they used mediation as their first strategy to gain their rights, even for those who filed a case before or after the court had used mediation.

1- Individual Level Factors

The characteristics and behavior of the disputed spouses are very significant in the decision-making process of mediation in particular and the attainment of rights in general. In the following, we will examine the background characteristics of the litigant in order to understand who is using mediation vs. litigation, in addition to understanding the behavior of divorced spouses and perceptions of mediation through litigation.

a- The Characteristics of Litigants

Quantitative data indicate that the majority of both males and females were divorced by mediation (82percent males and 76percent females), the percentages of divorced spouses by the court is increasing among females compared to males (24percent females and 10.7percent males). In addition, that the younger females were divorced by court compared to the older ones (29.8 aged less than 30, 23.5 aged 30-49 and 18.6 aged 50+), while the opposite is totally clear among males (6percent aged less than 30, 42percent aged 30-49 and 52percent aged 50+) (Figure 3&4).



Employment has a close association with women's litigation, Data reveals that the majority of women who are out of the labor force are divorced by mediation (83.8percent) compared to (64percent) of employed women divorced by the court. Turning to women’s education, we found that the less educated women were divorced by mediation compared to the educated (82percent less than intermediate, 65percent intermediate and above, and 77percent University and above). This data means that women who are not working and are less educated use mediation rather than their right to divorce in the courts.

b- Determinants of Formal Litigation and Informal Mediation

All respondents were asked about the use of formal litigation or informal mediation, and the majority of males and females indicated that

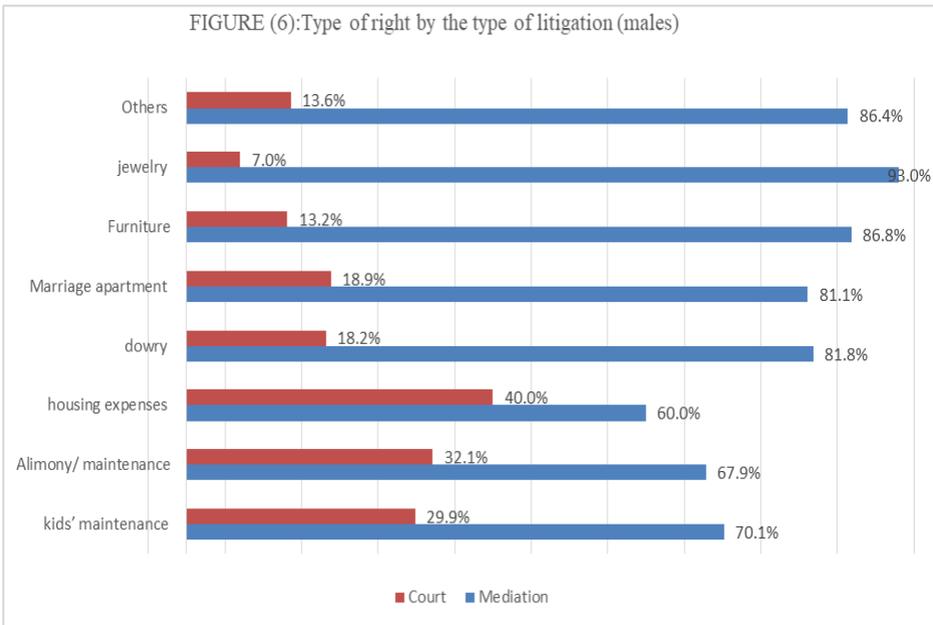
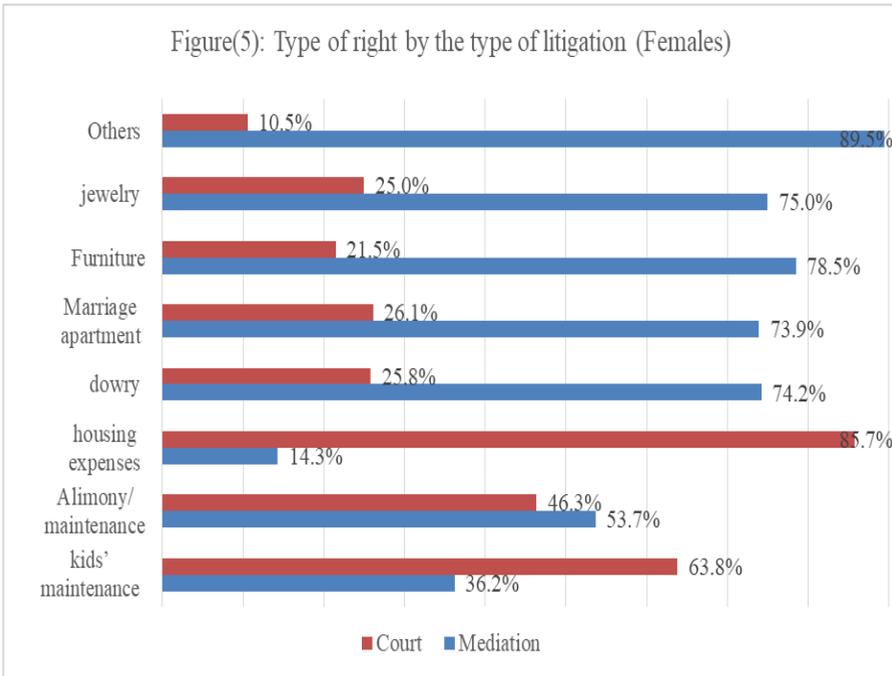
they/the husband refused to divorce (75percent males and 27percent females). In addition, data shows that 19.6percent of males reported refusing to divorce because they believed that their wives were unfaithful, and 17.9of them said that it was their wife's decision. Also, 13.2of the females recorded that their husbands had abandoned them for a long time. 9 percent indicated that their husbands had asked them to give up their rights, so they decided to use the law.

The negotiation strategy for getting the divorce right was very clear in the qualitative data, females reported that during the mediation, they were asked to leave their financial rights or at least some of these rights. This issue was confirmed by some males who argued that they asked their wives to leave all of their rights to get the divorce.

"I told her (his wife) that if she needed to be divorced, she had to leave all her rights. Then she would be divorced!" (Male, FGD, Gharbia)

"He refused to divorce me without leaving all my financial rights, and I agreed" (Female, IDI, Cairo)

Getting rights was a key factor listed by all respondents surveyed and interviewed. Quantitative data showed that 68.3percent of divorced women had their rights through mediation, including: alimony/maintenance 53.7percent, dowry 74.2percent, marriage apartment 73.9percent, jewelry 75percent, furniture 78.5percent, and other 89.5 percent. This result was very evident in the men's answers to the question as to whether their divorced wives had their rights after divorce, and what rights did they have?! We found that 86.6percent of respondents said that their divorced spouses had their rights through mediation. Although some of the women surveyed indicated that they had been given housing and child maintenance rights by the court rather than Mediation (85.7percent and 63.8, respectively) (Figure 5&6).



Backed by qualitative data, the majority of female interviewees said that having a good mediator in their family or community helped them achieve all their rights. This is a very important outcome that examines

how women can attain their rights if they have a strong network in their communities.

(Because Urf (Mediation) is real, the mediator knows you and if they judged, they will see first everything including my kids, apartment, in addition, that they know very well my husband and knows his salary, but the court you need to approve everything. (Female, Gharbia).

Results also showed that the cost of divorce was one of the key factors. Surveyed males and females noted that the cost of divorce by mediation was totally lower than that of the court. The average cost of divorce was 469 EGP for women and 4169 EGP for men who divorced by mediation, which increased to 4513 and 6835 for women and men who divorced through court. Qualitative respondents supported this result, with most women stating that mediation was better because of its cost than the high cost of formal litigation. For those who went to court could not pay for the lawyers' fees that required them to use mediation instead of securing their right to divorce.

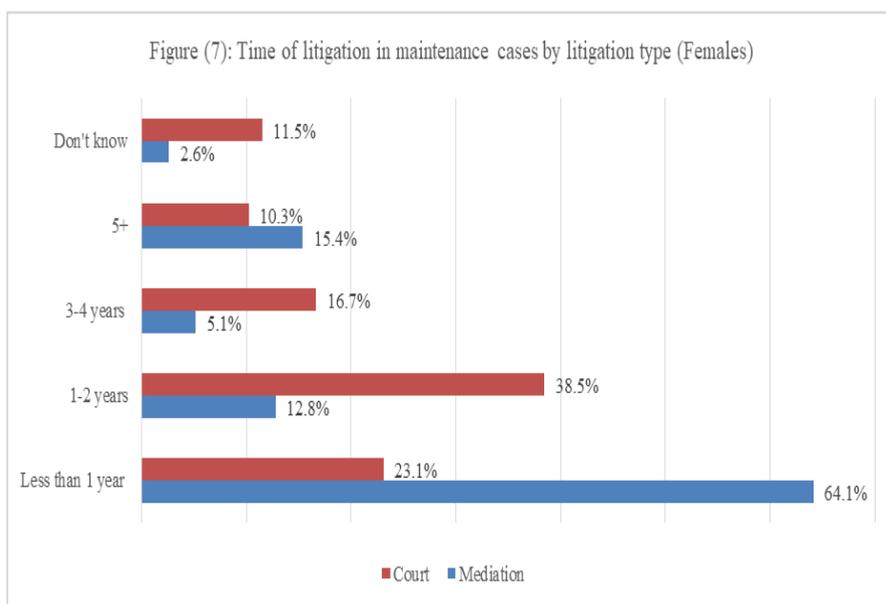
I went to the lawyer, and it took 5 years in the courts to take my rights, and the lawyers' fees were expensive and I couldn't pay for him, so my husband negotiated with me that if I left my financial right, he will divorce me, and I agreed (FGD, female, Cairo)

Social costs, on the other hand, were another factor that led respondents to divorce by mediation. Most respondents saw that mediation had a good relationship with their divorced-husband, particularly for those who had children from this divorce, 58.4percent of women who had children from the last divorce were divorced via mediation, compared to 41.6percent of women who had no children. The same result was observed among males, 52 percent of males who had children from the last divorce, divorced through Mediation, compared to 23.5 percent who had no children.

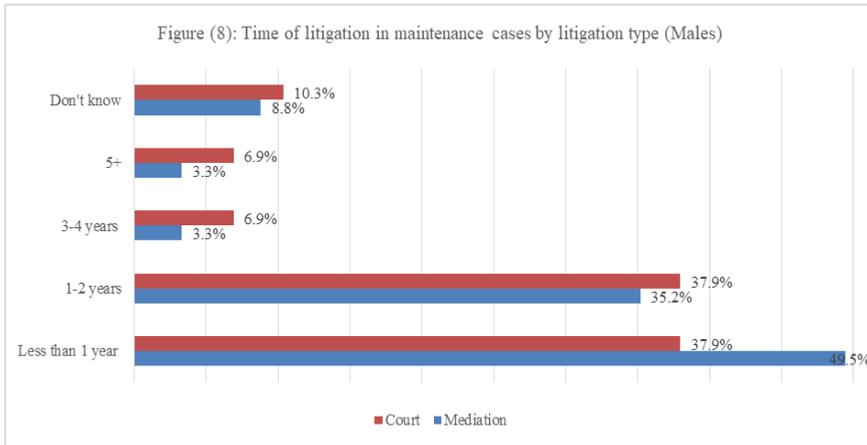
Mediation is better for both of us, especially if we have kids, we are keeping the good relations between us (Male, Gharbia)

Finally, the Respondents stated that mediation processes usually take less time than the court. While a court case can take months or years to settle, mediation typically resolves in a matter of hours or days. This finding was very evident when people surveyed asked about the time they spent taking their rights to maintenance. In figures 7&8. Most people spent less than one year obtaining their maintenance rights by mediation (64% female& 49.5%male) compared to the court (23percent females& 37.9percent males). Similar findings from the qualitative data, both male and female interviewees who resolved their conflicts through mediation and mediation, reported that the mediation process lasted less than a week to settle disputes and obtain their rights.

Disputers are saving their time, by the court they spend many years with paying a huge amount of money, but by mediation, they pay nothing and during one visit we can solve their disputes, (Mediator, Cairo)



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c- Accessing to Rights (Formal Vs Informal)

I. Custody and visitation Cases

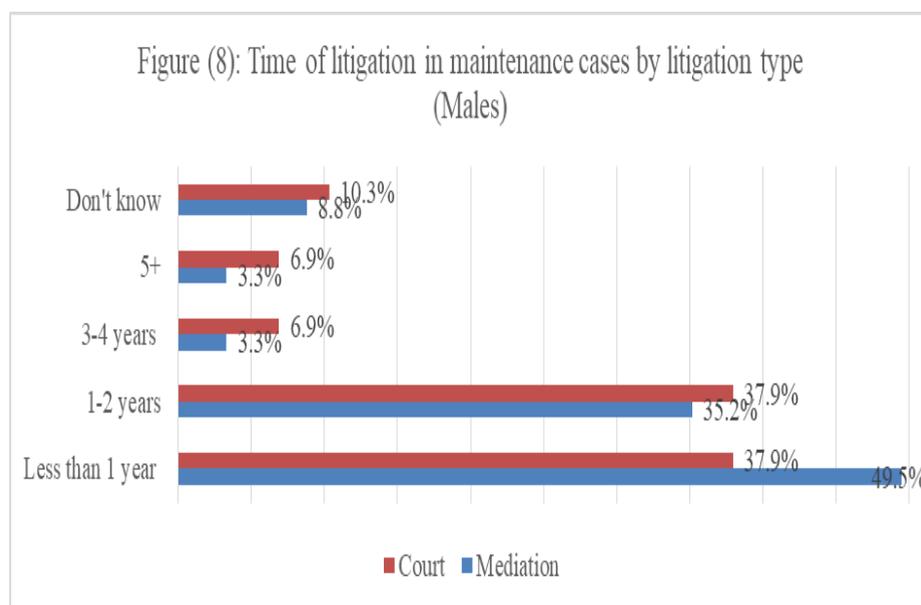
The right of custody of the child granted to the mother, then to female relatives on the mother's side who are not allowed to marry relatives under Islamic law (including various blood, step, and foster), then to the father himself and then to male unmarried relatives (Law no 25 of 1929). In 2000, a ministerial decree declared that the non-custodial parent should see the child in a place where the custodial parent accepts or decides, preferably on holidays, by the court for a period not less than 3 hours per week. (Article 5 of Decree 1087 of 2000). While the right to custody of the mother or other relative of the mother ends at the age of 15 for both boys and girls, after that age, the law granted the child the right to choose whether to stay with the mother (without custody fees) or the father (Art. 1 of Law no. 4 of 2005).

In practice, child custody in Egypt is a vital argument. According to the law, children can only see their fathers three hours a week, although in many cases it can be less than that. In addition, without the permission of the mother, the father does not have the ability to stay in his children. Some males stated during the FGDs that their divorced wife prevented them from visiting their children, particularly those who used the court to get the divorce right. While males who divorced via mediation indicated that they could see their children at any time and with prior agreement

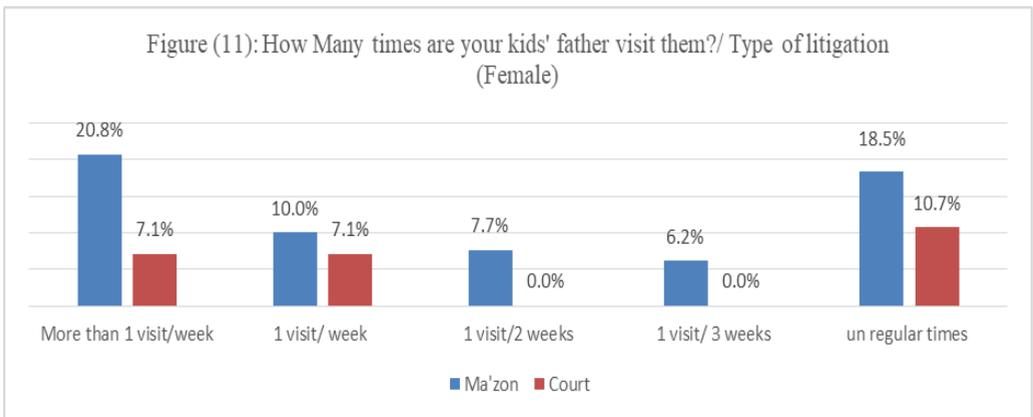
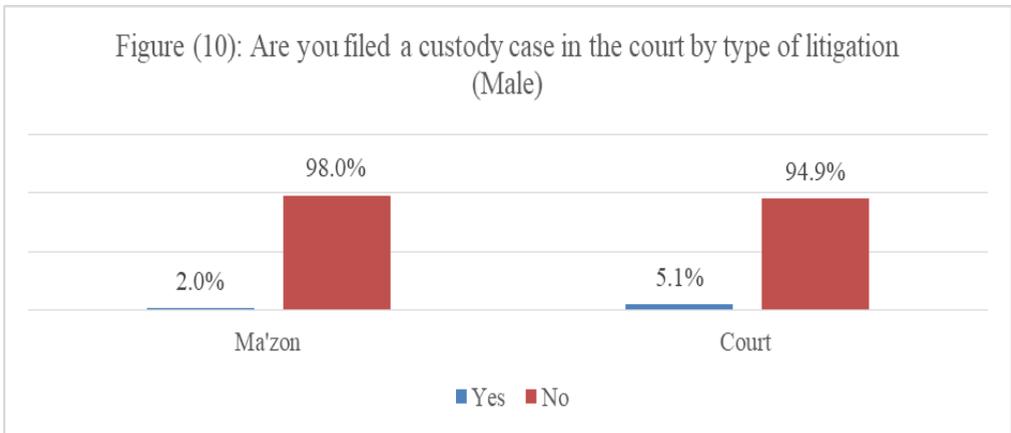
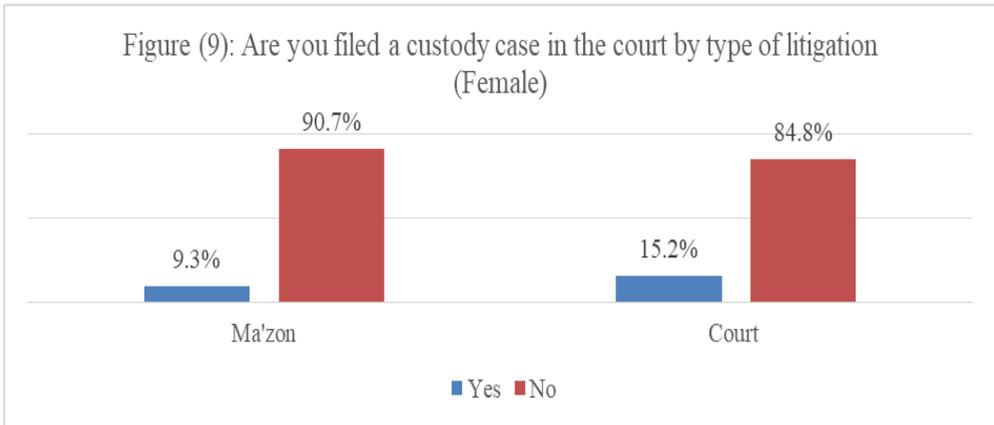
with their divorced spouses.

I left my daughter when she was 7 weeks, and now she is 2 years and a half, when I'm asking to see her, my ex-wife family refuses, they want to insult me (Males, Cairo).

This result found by the quantitative data shows that the percentage of those who filed a custody case at the court and divorced by mediation is less than those who divorced by the court (9.3percent by Mediation, 15.2 by the court for females, and 2percent by Mediation, 5percent by the court for males). (Figures 9&10). In addition, the time of child visitation among those who divorced by mediation is more than for those divorced by the court (Figure 11&12).



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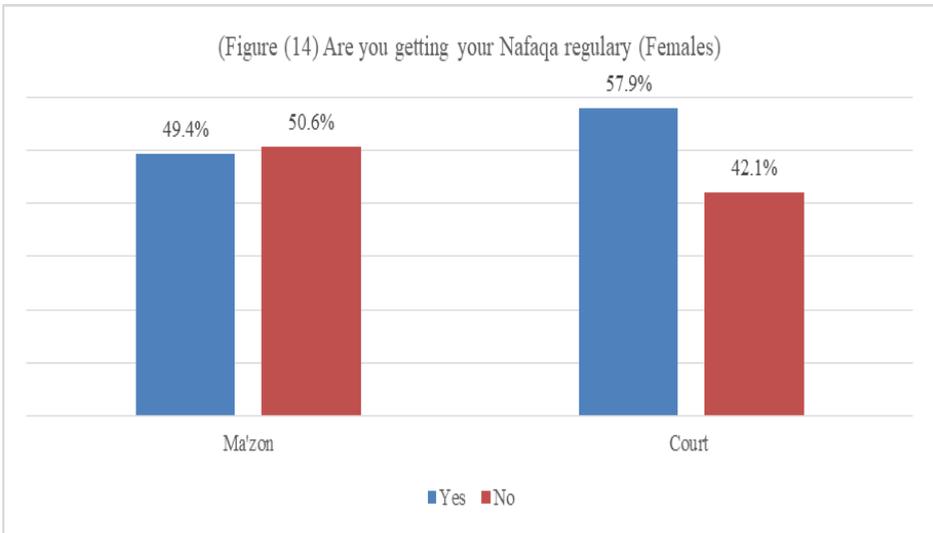
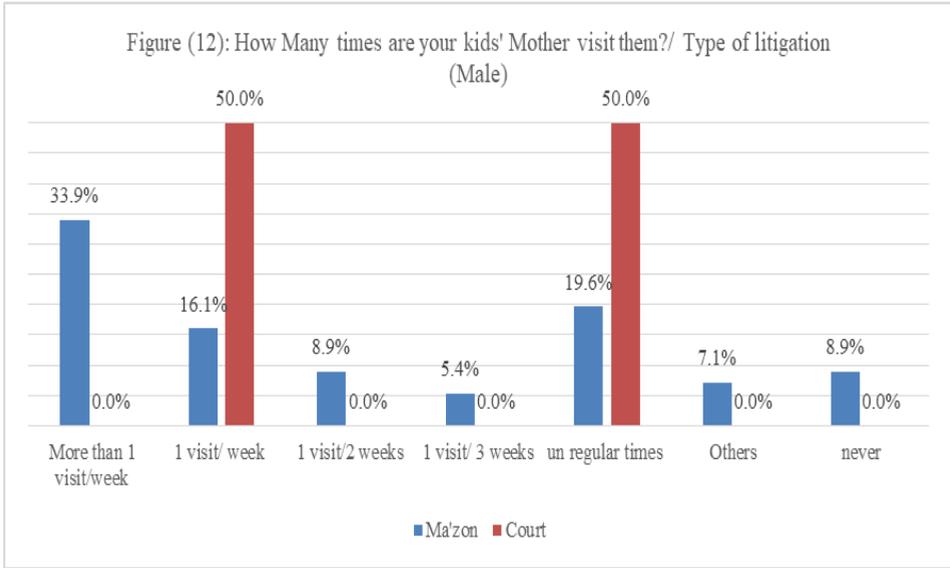
II. Child Maintenance Cases (Nafaqa)

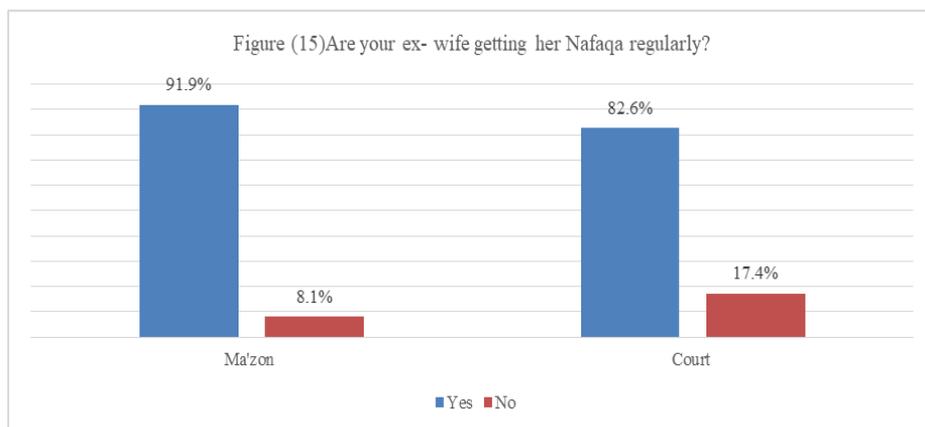
According to the Egyptian law, the father has a personal obligation to provide his minor children with maintenance. Maintenance is due by

the father until the boy reaches the age of 15 and until the girl marries or is able to earn an income sufficient for her expenses. During the marriage or after the divorce, many males are refusing to provide maintenance, in this case, women have to file a case in the court, and providing proof of their husband's financial assets and earning capabilities. Shermani (2008) noted that when the court orders investigation of the husband's earning capabilities. She found that this mechanism of investigation is informal, unsystematic, and is often abused by litigants because husbands often pay bribes to the investigator so that the latter would conceal their true income and assets to the court. E. Emery and his colleague (2001) argued that most disputing parents reached an agreement in mediation, thereby dramatically reducing litigation rates. Same results found by the quantitative data, 35percent of divorced women by mediation filed a maintenance case at the court whereas 61.6percent of divorced women by the court (Figure 13). While the regularity in providing child maintenance was totally different among males and females respondents, women who divorced by Court, reported that they got their child maintenance regularly more than those who divorced by mediation (49.4percent and 57.9percent respectively), Males, in contrast, the majority of who divorced by mediation said that they ex-wife are got their child maintenance more than those who divorced by the court (91.9percent and 82.6percent respectively). (Figures 14& 15). This was explained during the qualitative data. Divorced women noted that during the mediation they negotiated about a specific amount of the child mediation, but in many cases, their ex-husbands were not providing this maintenance regularly, and there is nothing that can make him committed to this monthly payment. While in all cases in which women hired lawyers as a mediator, they wrote a contract that included a penalty clause, their ex-husband was more committed. At the same time, some males in FGDs said that women who asked for the court divorce, have to take all their rights by the court, their discourse was including some threats which mean that they will never give them any money and they will spend a long time in the formal litigation.

Formal Litigation or Informal Mediation?! Egyptian
Women's Struggle to Attain Their Personal Status Rights

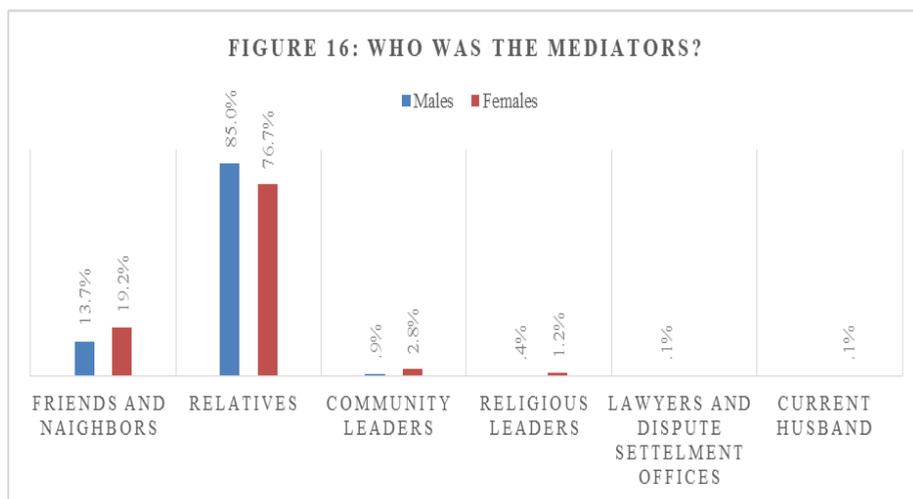
Once my ex-wife asked to divorce by the court, she has to continue asking for her rights by court, and I'll let her spend her life there without paying anything for her. (Males, Gharbia)





2- Interpersonal Level

Data has shown that interpersonal relationships with family members, and networking with friends, and neighbors, are important sources of influence in the mediation process, and are more likely to have a positive outcome on divorced women’s rights. It provides important social and technical resources that support women to attain their rights. According to the Quantitative data, the Majority of males and females, reported that the majority of people who mediated to dispute their resolutions was their relatives (85percent males & 76.7percent females), also 13percent of males and 19percent of females said that their mediated their friends and neighbors. (figure 16)



In the qualitative section, women were asked if they were knowing their legal rights before the divorce or not, we found that the majority of them didn't know any rights, but they asked for relatives and friends help to know these rights especially their relatives who are working in legal institutions. This issue was very clear in many interviewed cases. Below we will discuss 2 cases of interviewed women in Cairo, to show how are networks and relationships including relatives and friends can play a vital role in helping women to attain their rights.

Mai is one of my interviewed cases, she was 33 years old and graduated from Media college, Mai is a divorced woman who has a son aged 7 years, 1 year ago, before Mai getting a divorce, she had many disputes with her husband and she asked him for a divorce, he refused several times, but when she insists to get her right, the husband went to his son nursery and took him and disappeared. When Mai knew that, she went to the police office to file a kidnapping report against her husband, but according to the law it's not a crime because he still his father. Here Mai started to mobilize all her resources to bring her son as the following:

- **Asking friends help:** Mai has many friends in NGOs who are working on women's rights and she asked their advice, who advised her to file 3 different reports against her husband, the first report was about waste or damage of movables (chattels), the second that stole her jewelry, and the third report that her son was kidnaped from a stranger and she looking for him. Mai said that she filed these 3 cases to prevent make the police to find her husband and son in addition to preventing him to travel abroad with the kid.

- **Social Media campaign:** Using her education, Mai created a Facebook campaign on social media for mobilizing people to find her son or at least to help her through their networks. Mai was successful in her campaign, she reached to Egyptian TV and asked people live to help her, in addition, one of the followers was working in a telecom company and contacted Mai and told her all the details about his husband during the last days. Which allowed Mai to know that her husband moved with a

friend to the Port-Said governorate.

- **Using relatives' connections:** Mai's uncle was a police officer and have some friends who were working in Port Saied governorate, so they know her husband's place and found him, then they negotiated with him informally and got both the son and divorce right.

While Mai succeeds to get her son back, we interviewed Noura in a similar case who her husband also took the daughter and disappeared. But in this time, Noura didn't have the same networks and relations as Mai, she was 45 years old, with secondary education, unemployed, her family didn't support her and she doesn't have any friends or neighbors to support her. Noura couldn't find her daughter for two years, she was looking for her daughter in all places in Greater Cairo (Giza, Cairo, and Qalubia) until she found her daughter buying tissue in the traffic (her father was exploiting and trafficking her).

The above two cases were explaining many similar interviewed cases in our study, similar cases were in Gharbia, Shimaa was an educated woman and her father was support her even when she got a divorce and had 2 daughters, her father meditates with her ex-husband and hired a lawyer to negotiate with the ex-husband lawyer to attain his daughter right, while Sawsan was a poor, illiterate, unemployed and her parents were divorced. When Sawsan asked for her rights and her daughter's rights, her husband exploited her illiteracy and forced her to sign a contract that makes her waive all her rights, in addition, that it was including that she will leave her daughter to him. Sawsan was with her illiterate sister. And until Now Sawsan can't get her daughter and can't file a case because she hasn't money for the lawyers.

3- Community Level

Qualitative respondents placed considerable emphasis on the impact of community-level on getting rights in divorce, in this section we will discuss the importance of using customary laws or as known in Egypt by "Urf council" which using ('Urf and Shari'a) as an informal mediation in disputes resolutions. customary law or "Urf Council" is the primary

means of informal dispute resolution which elderly people used to do voluntarily to protect their community from disputes. 'Urf council, an ad hoc council of community notables and elders, almost always exclusively men, who are gathered to resolve a specific dispute between individuals, families, villages, or tribes. These bodies are most often engaged as mediators, using their knowledge of custom and Islam principles (Shari'a Islamia) as well as social and financial pressure – to establish a consensual settlement. The fundamental goal of a customary or 'Urf process is to restore community harmony, which is generally achieved by arriving at an equitable settlement that corrects harm done to honor and/or property. The following analysis will focus on understanding the process and strategies of mediation that promote the successful outcome for women to attain their rights. The mediation process and mediators themselves come in many different shapes and sizes.

a. The Characteristics of Mediation and Mediators

In the qualitative guide, the participants were asked whether people in their communities rely on courts or mediation to solve their disputes, the majority of them reported that people are always relying to use mediation, while the features of mediation may be different based on the community. In Cairo (Urban area). Mediation was usually depending on relatives and community leaders, and sometimes it was contained of a group of people known as ('Urf council), while in Gharbia governorate (rural areas), the majority of people noted that 'urf councils were more common in their community. This 'urf council was including community leaders to represent 'urf practices or costumery law, religious leader (Shekh or Imam) and in some situations including lawyer as a volunteer.

b. Mediation Process

Interviewed mediators noted that 'Urf council usually contain the community and religious in addition to, one family leaders from each disputing families, all of them are males and volunteers. When women have a dispute with their husbands, one of her male family members, go

to the council and complaint, then the council committee meets and discuss the complaint with the second party (husband's family) and set a date to discuss it with both disputing parties. In some cases, mediators noted that before the meeting, both disputing parties are paying a specific amount of money for the meeting under the name of honesty commitment. The majority of mediators said that the wife guardian (who has to be male) is the only one who can attend the meeting and it's not allowed for women to join this meeting except if there was a sensitive or violent case and the council member need more explanation, so it is allowed to her to set with one of the committee members in the presence of her guardian

"maybe her father, brother, uncle, or any elderly male in her family, but if there any sensitive issue or she may be violated, we can sit with her and ask some specific questions in the presence of her guardian,, Mediator, IDI, Rural area "

Some interviewed cases in the rural areas noted that at the beginning of the meeting, the mediators asking the two disputing parties to pay a specific amount to approve their honesty commitment with the committee's final decision. Then the meeting is beginning by asking each family to tell their story without any interpretation from the other dispute party. After listening again, the two stories, the committee process their own investigation, by asking questions to both parties, then the committee makes a close discussion between its members to make the decision, then they are setting with each party privately to negotiate to discuss his/ her mistakes. Finally, after the negotiation, the committee meets again and taking the final decision.

c. Negotiation Strategies

Mediators were asked about their strategies in negotiation, especially if one of the parties of the disputes refused to negotiate, the majority of them reported, that it will be based on the disputing party's belief, in some disputes mediators may found that they have to start their negotiation with the current traditions and 'Urf and what is common to

do during a similar situation. While in some cases especially in rural areas they are starting with the religious leader who is talking about marriage and divorce rights in Islam. In some cases, one of the disputing parties refusing to participate in the negotiation, so the council members are usually looking for the most effective person in his family and trying to enforce them to negotiate, it's usually being successful especially in a rural community while it's a close community, but in urban communities, mediators noted that it's harder. So, they resort to lawyers, who explaining rights according to the law.

The majority of mediator confirmed the important role of lawyers in the negotiation, especially in urban areas, because by the end if one of the disputing parties refused after all this process of negotiation, they raise women awareness about her legal rights and help her to file a case in the court. In some cases, some mediators mentioned that they can go with her to the court as a witness to approve her rights.

d. Disputing Parties' Commitments

According to the interviewed mediators, the disputing parties 'commitments depending on the shape of the mediation, if this was an 'urf council, so by the end of the mediation, all participated members in the mediation process will sign on a written reconciliation record (Mahdar solh) as evidence to approve their agreement. But if one of the disputing parties breaks the agreement, so the second party can take the signed papers and file a case in the court and it will be easier for women to prove their rights with evidence. Also, in the case of child maintenance, divorced husbands are usually signing a trust receipt every month to be committed that he will pay the required amount.

(if she has kids, so we ask the ex-husband and his guardian to sign a monthly trust receipt and to pay his kid's expenses, but if he didn't commit, she can file a case and she can get the same amount easily from the court... Mediator, Gharbia).

In some cases, mediation doesn't include the same shape as the 'Urf council, and only including community leaders or one of the religious

leaders or in some cases only the elderly family members, in this case, the committee will be only a verbal agreement Without any written evidence. This case was strongly approved by the interviewed females in both IDIs and FGDs, as one of the main mediation challenges.

e. Discrimination during the Mediation

Discrimination against women was one of the main disadvantages of mediation. There was an imbalance in the mediation process especially that almost all the mediation council has to be males and women are not allowed to participate. Some interviewed females noted that during the mediation, the mediator was not fair and tend to believe their ex-husband's story, especially that her guardian couldn't explain well her complaint. *(he was claiming that he needs me and my son if she left my work and my family and never visited them again, they believed him and I can't explain my complaint, especially that my uncle didn't say everything because he is also male and didn't abuse my ex-husband in the public. IDI, Female, Rural area)*. In some cases, women reported that the mediators asked them to give up on all their rights versus taking only the child maintenance fees

4- Societal Level

The interaction between law and culture embodied at the societal factor constitute the outermost circle of the ecological model, influencing all of the levels nested within this broader context. Culture had a significant influence on women litigation decision, females' respondents said that their relatives discourage them to file any cases at the court, even if these cases were related to the children financial rights, this were because of their fear of social stigma particularly in rural communities. This finding was also supported by interviewed males and mediators, most of them noted that that people in rural people are completely different from urban areas, since rural societies are very similar to each other and people know each other very well, and both contestants and their families do not like to be stigmatized.

..., *if I went to the court, people will say that I want to put my*

husband in the jail, especially if he refused to pay the maintenance (Nafaqa). Court means that people will call my name among strangers and they will know my personal problems and it is a sham in my community, I don't want that for my kids. (female, Gharbia)

According to the law, the qualitative fieldwork revealed that the women interviewed said that, after the mediation process had failed to settle their disputes, they had access to lawyers to raise a case to the court, but the lawyers advised them to negotiate first before using the court, which was quite successful for the majority of them. In particular, in order to draft legal contracts and to write all the terms of the agreement negotiated by the two parties and to ensure the commitment of the parties to the dispute, lawyers shall write penalty terms in the contract and, after the settlement, all the parties and their witness shall sign the contract. This semi-legal contract was found in rural areas more than in urban areas. In some cases, lawyers take this contract and record it at the family court to legitimize the case. Interviewed lawyers as mediators supported this case, especially that they consider that this is the shortest way for both disputing parties to get their rights, in the same time lawyers can take fewer fees during weeks compared to more fees during a year. Some lawyers mentioned that some ex-husbands refusing the negotiation at the first time, which makes them file a case at the court but when they get the court ruling, ex-wives refuse to implement it because of the social norms that stigmatize women who are filing cases against their "children's father". In this time, the lawyer's situation became stronger and can enforce the ex-husbands to accept the negotiation.

Interviewed lawyers mentioned that this way is very effective in disputing resolutions because they're raising the awareness of the disputing parties first and before taking any legal reaction, especially that they believe in the legal gaps for both women and men especially during the current critical time and COVID-19 pandemic. *(During the pandemic last month, I developed 3 contracts, especially that courts are closed and people can't get any rights, and both parties are satisfied, IDI, Lawyer, Urban area)*

CONCLUSION

Our findings indicate that there are several factors that can help women attain their personal status rights at different levels of the ecological model. All of these factors interact equally to ensure access to rights for both divorced women and men. The personal level was very significant. In particular, the characteristics of women can play a crucial role in their decision to use formal litigation or informal mediation, in addition to the determinants of litigation, including the behavior of all parties to access rights that have been very evident in our study. Interpersonal factors, including family relationships and networking with friends and neighbors, have been the main causes of mediation influence and are more likely to have a positive effect on divorced women's rights. It offers essential social and technical resources to support them in obtaining their rights. In addition to the personal and interpersonal level, data has shown that respondents have placed considerable emphasis on the influence of the community level on obtaining divorce rights, which can be evident from the use of customary laws or the "Urf Council" which combines ('Urf and Shari'a') as an informal mediation in dispute resolution. And how this customary law plays a key role in social control and in restoring community harmony, which is usually accomplished by achieving a fair resolution that corrects the harm done to honor and/or property. Finally, we have found that the three levels described above cannot be separated from the border context of a societal level, including the laws and culture that shape the outermost circle of the ecological model, which affects all levels nested in this broader context. Data demonstrates that even though the courts are not accessible to marginalized women, they can use the law actively in their negotiations to obtain their rights. This indicates that the presence of lawyers in the mediation process, as well as community and religious leaders, in addition to networking and personal characteristics, allows women to achieve access to rights in the field of personal status.

Recommendations

According to the findings, there is a well-established interaction between formal litigation and informal mediation to assist women in obtaining their personal status rights. As a result, this paper recommends to develop and establish a **Family Mediation Committees**; these committees will serve as a link between official litigation and informal mediation and will be disseminated throughout all Egyptian governorates, including towns, centers, and villages. It will also be developed into a partnership with the national council for women, the ministry of religious endowment (Awqaf), and the church for Christians, as well as local councils in each governorate, and will be led by the Ministry of Justice.

The **Family Mediation Committee's** main vision is to create a healthy and safe environment for family disputes in Egypt by assisting separated spouses in finding an appropriate solution to communication and family decisions including visitation, custody, and all financial issues related to the wife or the children, etc.

The **high committee of Family Mediation** will include central committees in each governorate, and each committee will include a well-trained and professional mediator, with those mediators consisting of 5 trained persons (social worker, psychological worker, lawyer, religious leader, community leaders, and researcher to document and work on data analysis). They will be carefully chosen after receiving special mediation certification from the high mediation committee.

The committee, after coordinating with the parties concerned, will undertake the following tasks:

- The committee members will study the issues from all disputes parties and identifying them to be resolved and encourage each party to listen to the other's point of view.
- The committee members will make sure that each party understands their social, psychological and legal rights and duties for themselves and their children.

- The committee members will try to keep each person on track and focused on the best interest of themselves and their children. Ideas and options will be shared with the aim of coming up with workable solutions.
- The committee members will help to develop a parenting plan to set out arrangements for the sake of children. They will also make sure that everyone understands what is being said and agreed upon.
- After resolving the disputes, the committee member will write a commitment paper with a panel term that makes both parties committed to the agreed solutions.
- Preparing a central data base database by coordinating with the responsible researcher in each committee in each governorate for Monitoring, studying, and addressing the problems associated with family disputes classified by each governorate.
- Developing policies, programs and plans to raise awareness and build capacity in the field of family disputes, along with preparing research, studies, and media awareness campaigns.

Annexes

Table 1: Background Characteristics of Males and Females in the quantitative data

	Female	Male
Age		
Less than 30	29.8	3.4
30 -49	44.7	48.0
50+	25.5	48.6
Education		
Less than secondary	56.6	50.2
Secondary and above	34.8	36.4
University and above	8.6	13.4
Employment status		
Employed	18.1	69.9
Unemployed and looking for a job	22.1	7.8
Out of the labor force	59.8	22.3
Region		
Urban	49.6	51.4
Rural	50.4	48.6
Children From Last Divorce		
Yes	36.1	44.3
No	63.9	55.7
Type of Divorce		
Mediation	75.9	82.1
Court	24.1	10.7
Total Number	556	471

Table (2): Background Characteristics of Women Who Participated in the In-depth interviewed.

Females	
Age	
18-25	3
26-35	5
36-45	11
NA	1
Education	
illiterate	2
prep	1
Secondary	7
University and above	10
Employment status	
Employed	13
Unemployed	7
Region	
Cairo	10
Gharbia	10
Children_From_Last_Divorce	
Yes	19
No	1
Age at first marriage	
less than 17	2
18-25	14
26-35	1
NA	3
Marriage period	
less than 1	2
2-4	4
5-7	4
7+	8
NA	2
Total	20

Table (3): Background Characteristics of Mediators Who Participated in the In-depth interviewed.

Mediators	
Gender	
Male	15
Female	5
Age	
18-26	1
26-35	2
36-45	6
46- 55	5
56+	7
Education	
Secondary	7
University and above	10
Employment status	
community leader	9
Lawyer	2
psychological worker	1
Religion leader	6
Social worker	2
Technical employer	1
Region	
Cairo	11
Gharbia	10
Mediation Type	
Customary / Urfi	9
Customary and online	2
Religious	6
Legal	2
Online Mediation	2
Total	21

Table (4): Background Characteristics of Males and Females Who Participated in the Focus group discussions

	Cai ro	Ghar bia
Gender		
Male	7	8
Female	8	8
Age		
20-25	2	5
26-30	4	2
31-35	4	1
36-40	3	5
41-45	1	1
46-50	1	2
Type of litigation		
Court	6	6
Mediation	9	10
Total	15	16

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