

Far Reaching Reforms

Legal Rights of Women in Turkey

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*The reform of personal laws has been a very contentious issue in India. This is the first in a proposed series of articles examining the rights provided or denied to women in different countries in the world. We start with Turkey because in this country far reaching reforms were carried out as early as 1926 under Mustafa Attaturk. (See **Manushi** No. 100) These are extracts from a report prepared by Women for Women's Human Rights, Turkey We invite our readers in India and abroad to provide us information about societies they know well — Editor*

TURKEY is a secular state governed by the rule of law: i.e. people have to obey the State enacted laws regardless of their religious beliefs. Under the Turkish constitution everyone is equal before the law, irrespective of religion, race, language or sex.

That is the theory. But, in practice, customs and tradition play a very important role in what is a predominantly Muslim society. Women are generally regarded as being inferior to men and, inevitably, their theoretical legal rights are violated. It is very difficult to deal with the type of discrimination that is observable in practice but which does not actually exist in law.

The Turkish Civil Code does not contain any provisions taken directly from Islamic Sharia Law. It is based on the Swiss Civil Code. If the superiority granted to man resembles that in Sharia Law, this can be more easily explained by the global dominance of men rather than the Swiss Civil Code being influenced by Islamic Law. Nevertheless, the Turkish Civil Code affords women considerably more rights than they enjoy under Sharia Law. There is no discrimination between men and women in applications for divorce. Should they so wish, women can win custody of their children (in practice,

custody of children is usually awarded to the woman). They enjoy equal rights of inheritance. Their children can be registered as Turkish nationals.

Age of marriage

According to Article 88 of the Turkish Civil Code: "The minimum age for marriage is 17 for men and 15 for women." However, the minimum age for all other legal procedures except marriage is 18. In cases defined as extraordinary in law, a judge may grant permission for the marriage of a woman who is a minimum of 14 years old. Such a special dispensation is

entirely at the discretion of the judge. The pregnancy of the girl concerned is only one factor in the judge's decision. However, if the girl is not sufficiently psychologically or physically mature to marry, pregnancy alone cannot constitute a reason and justification for marriage.

According to Turkish law, only persons deemed "competent" may marry. Anyone suffering from any kind of mental illness is strictly forbidden from marrying (Article 89). Girls younger than 15 and boys younger than 17 can only marry if they themselves consent, have the consent



Young girls participating in a sports festival : one of the symbolic markers of Republican Modernity

of their parent or guardian or, if their parents are divorced, the person to whose custody they have been given (Articles 90-91). If the guardian withholds his/her consent, the person can apply to the court for permission from the judge. Parental consent must be in writing, indicating the name of the person their son or daughter is to marry. Oral consent is not valid.

The prospective bride or bridegroom's consent is necessary even if they have not yet reached the minimum age for marriage. Even if the person is too young for marriage her/his consent is still necessary. If the person has fulfilled the minimum age required by law, she/he may still answer in the negative to the officiating registrar's question of whether she/he wished to marry her/his prospective spouse, and no one can force her/him to act against her/his own wishes. If she/he is younger than 18, she/he cannot be forced to marry a person against her/his will. If, despite all of these safeguards, a woman/girl is forced to marry under material or moral pressure, she may:

- Refuse to consummate the marriage. But if she is forced to consummate it, she may apply to the Public Prosecutor to press charges of sexual abuse by force and violence.
- Apply for the dissolution of the marriage under, depending on the circumstances, Article 116, 117 or 118 of the Civil Code, if it has taken place without her consent. The application to the courts should be filed within six months of the plaintiff learning of the reason for the dissolution or after the threat disappears, but not more than five years after the date of the marriage. No such case can be filed more than five years after the date of marriage (Article 119).

In cases where parental consent is required, if the girl is younger than 15 but older than 14 she needs the

permission of a magistrate from the local Court of First Instance. The judge must hear the views of both parents before making his/her final decision.

There are no legal provisions regarding dowries brought by the bride. However, Turkish law includes a separation of property regime, according to which all persons are regarded as the legal owners of their own property. Traditionally, the bride is responsible for furnishing the bedroom. Providing that she can supply the necessary proof, the woman can recover all that she brought to the marriage as her dowry. Any kind of proof can be submitted, the best being the original invoices for the property concerned. The dowry can only be recovered in the case of divorce.

Dowry Paid by Bridegroom

The dowry paid by the bridegroom to the father of the bride is in recognition of the cost of raising her and in compensation for the deprivation of her services following her marriage. It is a relic of a patriarchal society. It has no validity or place in Turkish law.

The woman can always reject the match. If she is an adult, she can refuse to marry a man despite pressure

from her family to do so because of the large dowry he is offering them. She may also marry a man who does not pay any dowry to her family.

If she is still legally classed as a minor, she may file for the dissolution of the marriage if she has been forced to marry solely for the sake of the dowry (Articles 116, 117 and 118 of the Turkish Civil Code).

Marriage Contract

A marriage is legalised by the mayor of the relevant district or a civil servant acting with his/her authority. In villages a council composed of the village elders has to be notified of the intention to marry (Article 97 of the Turkish Civil Code). The marriage is legalised by the village headman. In other words, the marriage can only be legalised by the competent authorities.

A religious ceremony can only be held after the civil ceremony (Article 110 of the Civil Code). Otherwise, the couple is in breach of the Criminal Code (Article 237, Paragraphs 3 and 4). Furthermore, if the religious official conducts the religious ceremony without documentary proof that the civil ceremony has already been completed in accordance with the law, he too is committing an offence which is punishable under the terms of the Criminal Code.

Article 152 of the Civil Code designates the husband as the head of the marriage. It is the husband who decides where they will live and who is responsible for adequately supporting his wife and children. It is because of this that the wife takes her husband's surname (Article 153).

The husband acts as the representative of the married couple. Whatever system the couple have chosen for the management of their property, it is the husband who is responsible for their savings (Article 154).

Until 1990 the woman could work outside the home only if she received



express or tacit permission from her husband. Since its inception in the 1980s one of the most important achievements of the women's movement has been the repeal of Article 159 of the Civil Code under a ruling by the Constitutional Court of 29 November 1990. Today, a woman no longer requires permission from her husband in order to be able to work outside the home.

A married woman may travel abroad whenever she wants. All she needs is her passport. She is not required to seek permission from anyone to travel either inside or outside the country.

Separated Wives

The wife's place of residence is the residence of her husband. All official communications to be sent to wife are sent to the residence of her husband and any time period foreseen in law is considered as beginning subsequent to that date.

A married woman may choose to live apart from her husband whenever she so wishes. No one can force her to return to her husband's residence. However, if the husband wants her to return, he may send her an official letter inviting her to return and thus initiate the procedural period required by law before suing his wife for divorce on the grounds of abandonment.

Rights of Deserted Women

The first consideration should be whether the woman whose husband has left her does, or does not, want a divorce. Article 132 of the Civil Code states that desertion is considered a valid ground for divorce. It states that one party has the right to file an application for divorce if she/he has been deserted by the other party in order not to fulfil his/her marriage obligations or has not returned home, without a valid reason, for three months. If this *de facto* separation continues for three months and appears set to continue, an application

can be filed for divorce. A certain period of time has to be allowed to pass before the application for divorce can be filed.

If the man abandons the woman, she can apply for maintenance payments because the husband is considered the head of the marriage and responsible for providing for the family.

Rape in Marriage

Marriage is an institution which provides people with means to fulfil their sexual needs in accordance with the law. For this reason, the issue of rape should not appear in a marriage. This is how the question is treated/considered under the Turkish Criminal Code.

The Criminal Department of the Supreme Court of Appeal considers an offence to have been committed only if the violence is used to force the victim to engage in sexual relations, in which case the law requires evidence of the use of physical violence. A woman can file for divorce if she is forced to engage in sexual relations through the use of physical force. If she can prove that physical force was used, she can also claim compensation.

The Turkish Criminal Code does not contain special provisions relating to the use of violence against women in marriage, unlike the statute books in the US and Europe. The husband is usually charged under the general provisions of the Criminal Code, including Article 478, which provides for imprisonment of up to 30 months for the maltreatment of a family member in a manner which contravenes the accepted understanding of affection or mercy.

In order to initiate the legal process the victim must first go to the nearest police station and make a statement detailing the charges. The police will normally then send

the woman to a state-approved or court-approved doctor, who will give the woman a certificate specifying how many days she must rest at home as the result of the assault by her husband. If the period is ten days or less it is up to the woman to file charges against her husband in the Court of First Instance. If the period is longer than ten days, or if the husband's assault has left a permanent scar on the woman's body, then the case is deemed to be of public interest and charges will be filed by the Public Prosecutor (Article 456 and following of the Civil Code). In cases filed by the public prosecutor which are dependent on evidence given by the victim, the charges are dropped if the victim withdraws the accusation before judgement has been passed.

A woman assaulted by her husband may file for divorce, compensation or legal separation at the Court of First Instance in addition to bringing a separate criminal lawsuit against him.

Polygamy or Fornication

Under Article 440 of the Civil Code, fornication by women is defined as sexual relations between a married woman and a man other than her husband. The term marriage refers to a civil ceremony. A marriage consisting only of a religious ceremony is not considered as being legally valid and thus a woman who has not undergone a civil ceremony cannot be found guilty of fornication. Fornication is a criminal offence because it is considered to threaten the family union and the members of the family. In order for charges to be brought, an accusation has to be made by the husband of the woman concerned. The man who engaged in sexual relations with the woman is liable to the same punishment as the woman regardless of whether or not he knew that

the woman was married. The woman is considered to have committed the crime of fornication the first time she engages in sexual relations with a man other than her husband. She is sent to the court hospital, where she undergoes tests to prove that fornication has taken place. The Court of Appeal considers a crime to have taken place only if the couple have engaged in full sexual intercourse. The discovery of the man and woman in an intimate position is not in itself evidence of fornication.

Fornication by a married man is covered by Article 441 of the Turkish Criminal Code. The definition of the offence is much stricter than it is for a married woman:

- The married man in question must have had relations with an unmarried woman.
- He must have been living with the woman in the house he shared with his wife or he must be openly living with the woman in another residence.

Religious Marriage

A religious marriage ceremony confers no legally-binding rights. A woman who has only been married in a religious ceremony has no more rights than a mistress. She can neither claim maintenance in the case of separation, nor can she qualify as the legal heir to her husband's property in the event of his death.

A child is considered illegitimate if her/his parents were unmarried from the time of her/his conception till her/his birth. Under the Turkish Civil Code there are two ways in which the child can be legitimised, namely: the marriage of the mother and the father; a court ruling legitimising the child.

Several special laws have been enacted since 1933 regarding the legitimisation of children. Illegitimate children who are legitimised can take the surname of their father and enjoy the same rights, such as inheritance, as legitimate children.

Divorce Rules

The Turkish Civil Code does not provide for different grounds for divorce for men and women. They are the same for both the wife and the husband. The rule is that applications for divorce are filed by the party less responsible for the breakdown of the marriage against the party more responsible for its failure. As a result, if the party more responsible for the breakdown files and applies for divorce, and the party less responsible for the failure of the marriage does not agree to the divorce, the case may be dismissed, providing that the less guilty party can prove her/his relative, or total, innocence, as regards the failure of the marriage. However, if the couple are not reconciled or begin to live together again as man and wife within three years of the rejection of the application for divorce, the court may rule in favour of a divorce if one of the parties submits such an application. In cases of divorce, the judge rules for the assignment of maintenance of the wife and children if there are any, beginning from the date of application since the husband is the head of the family responsible for providing for the family.

Divorce Recompense

Each party may demand material recompense from the other provided that the party making the application is not held responsible for the breakdown of the marriage (Article 143, Paragraph 1). For example, if the innocent party has been deprived of existing or potential benefit as a result of the divorce, she/he may claim material recompense from the other party. Material recompense and maintenance payment may be paid periodically or in a single lump sum, depending on the situation.

The party who, by virtue of an agreement or a court decision,

acquires the right to material recompense or maintenance in the form of an income, may be deprived of this income, unless agreed as otherwise by the parties, if; she/he ceases to be poor; she/he adopts an immoral lifestyle; she/he lives with somebody else as wife/husband without a formal marriage; she/he remarries; one of the parties dies.

The Turkish Civil Code defines three different regimes for property;

- Separation of goods;
- Union of goods;
- Aggregation of goods.

If the parties have not concluded a prenuptial agreement determining the regime applicable to property before, during and after marriage, they are considered to have accepted the separation of property regime. According to this regime, each party owns the goods and property that are registered in her/his name. She/he also retains ownership of goods and property acquired in their name prior to the marriage.

In practice, this regime works to the disadvantage of women. Even if the woman has money, she tends to follow Turkish customs and traditions and does not object to her husband managing the couple's money and accepts that goods and property bought with that money is registered in the man's name. Consequently, she does not have any claim on these goods or property in the event of separation or divorce.

The fear of being left without property of goods is a major factor in many women's decisions to suffer extreme violence and maltreatment in the marriage rather than leave their husbands to seek a legal separation or divorce. A petition signed by 100,000 people has been submitted to the Turkish Grand National Assembly calling for the amendment of the articles in the Civil Code relating to goods and property so as to ensure an equitable division of all goods and property acquired after marriage, with

the exception of donation to the parties individually.

If the husband does not allow the woman to enter the house where they live together, the woman has the right to rent another house and claim the rent as maintenance from the husband.

The property regimes also put women at a disadvantage in a number of other ways:

Most Turkish women work in the home caring for their husband and children. Even if they used to work before marriage, they usually quit their job when they get married and become housewives. Consequently, the husband, as the party who earns money outside the home, acquires control over the family finances and everything that is bought is usually registered in his name.

There are also instances where real-estate has been bought with the woman's money or through financial support from the woman's family. In such cases, the Supreme Court of Appeals accepts neither the annulment of the land register nor payment of a sum of damages to the woman in question. However, the women's movement succeeded in persuading the Supreme Court of Appeal, through its decision no. 1994/564 of 28 September 1994, to acknowledge the woman's right to reclaim her share in the purchase of real-estate, providing that she is able to prove that she made a financial contribution to its purchase.

In Turkey marriage is considered to provide a means whereby the sexual demands of the two parties can be met in accordance with customs, traditions and the law. Therefore, if one of the parties declines to have sex with the other (e.g. if the man declares that he sees his wife as his sister or mother and not his wife), this can be considered the basis for severe discord in the marriage and can quickly lead to divorce.

Custody of Children

When it comes to custody the Turkish Civil Code does not distinguish between the father and mother and says that the custody of any children belongs to their parents. Accordingly, the parents are responsible for providing their children with the appropriate formal (Article 265) and religious education (Article 266). Parents name their children, represent her/him against third parties and, in brief, are expected to do everything necessary to ensure that they are brought up properly.

During the normal course of a marriage the custody of children is shared equally between the father and mother, but in the event of a dispute, the final word belongs to the father (Article 163). However, the mother has the right to reclaim custody of the child if the father does not exercise his rights properly. If one of the parties dies during the marriage, the other party automatically assumes full custody of the child.

In the event of separation or divorce, the rules regarding custody do not treat the father and mother differently. The judge awards custody of the children to whichever parent she/he believes will look after the child better. Men are not regarded as being superior to woman in this respect (Article 148). The party who has not been awarded custody is expected to share the financial burden of caring for the children, relative to her/his financial means. The court will also rule on the party's access to the children.

If separation or divorce is the result of violent conduct by either the husband or the wife (although the latter is very rare), it is not usually difficult for the victim of the violence to convince the judge that the perpetrator should not be granted custody of the children.

Women's Sexual Freedom

A woman has the right to live with any man, providing that she understands that such a relationship does not confer upon her any rights to maintenance, inheritance, etc. However, if the man has bought goods or property for the woman, he cannot reclaim it after separation.

A woman always retains the right to file a complaint if she has undergone any kind of sexual abuse or harassment. If the person who has harassed her is a fellow civil servant to whom she is subordinate, she/he is liable to an increase (by one third to one half) in any resultant punishment (Article 251 of the Turkish Criminal Code). However, this provision does not apply to the sexual abuse or harassment of subordinates in the private sector, which are governed solely by Article 421 of the Criminal Code. Article 421 provides for:

- Imprisonment for three months to one year for the verbal abuse of women or young men.
- Imprisonment from six months to two years for the physical abuse of women or young men.

The Turkish Criminal Code does not have any provisions specifically governing cases of sexual abuse. Such cases are dealt with under Article 421 on verbal and physical abuse. Acts considered as verbal or physical abuse include: improper sexual remarks; fervent, forcible kissing on the lips; the conscious display of the male organ in a lewd manner; and harassment by offensive written material. Under Article 421 physical contact is not a prerequisite for behaviour to be considered "abuse".

The Turkish Civil Code lists rape as a crime. However, it is classed as a crime not against the individual but against the general customs, rules and family order of society. The punishment varies according to the age of the victim (i.e., whether she is

younger or older than 15). In addition to actual rape there are also two other offences, namely: attempt to rape and total attempt to rape.

If the rape victim is older than 15, then the use of force and/or violence must be proved. In other words, the law considers that a woman older than 15 is capable of initiating sexual relations of her own free will. The terms rape and attempt to rape do not apply to all kinds of sexual activity against the woman's will. Here, the focus is on use of violence.

Turkish laws do not make any specific provision for violence against women in marriage. Violence in marriage falls under the same laws as violence outside marriage (namely Article 456 and following of the Turkish Criminal Code).

Abortion Rights

Abortion is covered by the section entitled "Crimes against the unity and health of the nation" in the Turkish Criminal Code. Article 468 states that the mother of an aborted foetus and the doctor who performs the operation should both be subjected to penalty unless the pregnancy is considered to be detrimental to the health of the mother. However, this was amended by the 1983 bill on "Demographic Planning". Abortion is now legal up until the end of the tenth week of pregnancy and provided the woman gives her consent. Foetuses older than ten weeks can only be aborted if they pose a threat to the health of the mother, and if this threat has been verified by a report from a gynaecologist, or if the foetus is expected to be abnormal or pose a threat to the health of future generations.

If the woman is married, the consent of her husband is also required. If the woman is unmarried and under 18, the consent of her guardian is also required.

Economic Independence

Until 1990 a married woman could work outside the home only with the permission of her husband. Nevertheless, the woman could circumvent this restriction if she could prove that her working outside the home was beneficial to the preservation of the family union. But having to produce proof was a heavy burden for many women.

Women do not face any restrictions regarding the purchase or sale of property or goods. If the two parties in a marriage have accepted the aggregation of goods regime, the woman cannot reject an inheritance without her husband's consent. If the husband insists on objecting the woman can apply for a court ruling. If married women wish to establish or become a shareholder in a joint stock company, they must first obtain written permission from their husbands.

Although, under the Turkish Civil Code (Article 169), any kind of legal transaction is permitted between a husband and wife the following are invalid unless they are approved by a Court of the First Instance:

- Legal transactions with regard to the woman's personal goods or

goods covered by the aggregation of goods regime.

- Debts undertaken by the woman against third parties in the interest of her husband.

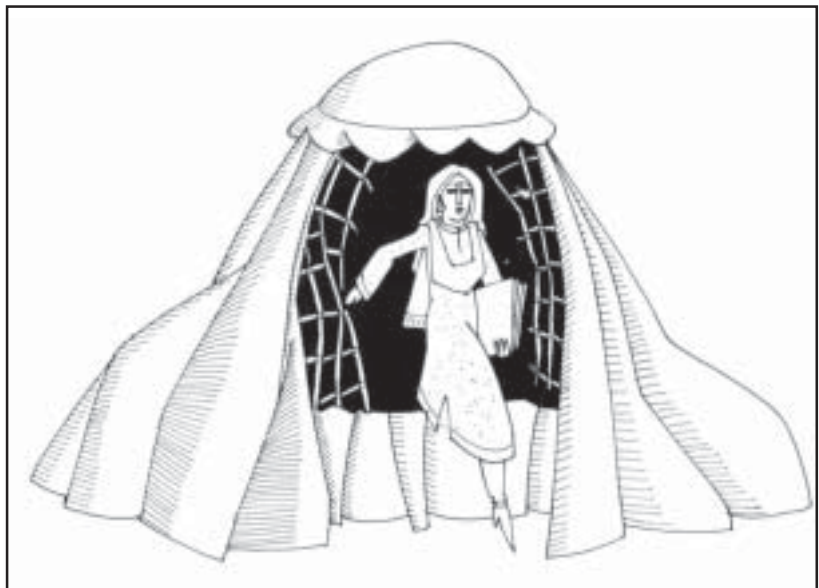
Licensed Prostitution

Prostitution is only legal if licensed. Women working in brothels are also covered by the social security system. Their employers have to pay the necessary premium the same as any other employer.

However, forcing women to sell their bodies is illegal. The punishment varies according to the age of the women. If the woman forced to sell her body is younger than 15, anyone forcing her to sell her body is liable to a prison sentence of not less than two years. The sentence is longer if the guilty party is a relative of the young woman or has influence over her (Article 417 of the Turkish Criminal Code).

Inheritance Rights

Under Turkish law, daughters and sons have an equal share of their parents' inheritance without any sexual discrimination. This equal share corresponds to three quarters of the legal inheritance and is divided equally among the children.



The proportion of the inheritance inherited by the living partner (whether the wife or the husband) varies according to the others with whom she/he shares the inheritance:

- If she/he shares it with their common children, she/he will receive one quarter of the total.
- If the couple were childless and she/he shares it with the father/mother of the deceased, she/he will receive half of the total.
- If she/he shares it with the grandparents of the deceased, she/he will receive three quarters of the total.
- If there are no other heirs, she/he will receive all of the inheritance.

A woman's marital status does not affect her right to inherit from a blood relative, e.g. her parents. Even the will of the deceased cannot change the obligatory legal share of the woman in any way. If there is any infringement of this right, the woman can have recourse to the courts.

The Rights of Daughters

According to Article 88, Paragraph 1 of the Turkish Civil Code, women cannot marry before they are at least 15 years old. In exceptional circumstances a court may permit a girl of 14 to marry. As mentioned above, pregnancy is not by itself sufficient reason. The woman who is going to marry should have the capacity and awareness to meet the responsibilities of marriage.

Any betrothal of children by their parents at birth has no legal validity. If the girl is at least 15 years old, she may refuse to marry someone against her will. She cannot be forced to marry merely because either her, or her prospective husband's parents had agreed to the match some time in the past.

There is no legal validity for the custom of the dowry paid by the



bridegroom to the bride's family. The bridegroom cannot be forced to pay the dowry, although tradition may require it. This creates problems if the engagement is broken off before the wedding. The Supreme Court of Appeals holds that, if the engagement is broken off, all presents must be returned except for this dowry payment, as it is contrary to ethics and customs.

There are no special legal provisions for violence suffered by girls within their own families. Under the Turkish Criminal Code there is no distinction between male and female victims of violence in the family. But the definition of "violence" does not include physical violence such as beating that is considered to have been administered as part of the parents' responsibility for educating the child. If the beating is deemed excessive, then the provisions of the law on assault apply. Generally, a slap on the face or on the back is not considered "misuse of custody rights". If the child is beaten with a belt and is injured, then it may be defined as violence. Official authorities normally only hear of such cases if the child is taken to hospital or someone else notifies the authorities. However, the latter is rare as most people are reluctant to be seen interfering in what are considered to be a family's internal affairs.

There is no legislation specifically addressing the issue of a girl undergoing sexual abuse in the family. The Supreme Court of Appeals defines physical/verbal abuse as importunate behaviour carried out with sexual desire. The law foresees only third persons as the perpetrators of this crime and its provisions are designed for cases of assault by strangers. The Turkish Criminal Code does not contain any legislation specifically addressing the subject of sexual abuse.

If the concept of sexual abuse is extended to include rape or attempt to rape, then Article 417 provides for a 50 per cent increase in the punishment if the offender is a blood relative of the child.

Participation in Religious Life

There are no Turkish laws specifically addressing the possibility of a woman becoming an *imam* (a religious leader), *hafiz* (one who has learnt and memorised the Koran by heart) or *hodja* (religious teacher).

According to the Paragraph 1 of the "Law concerning the Forbidden Clothing" (no. 2956), no religious clothing can be worn outside the places of worship and religious ceremonies, regardless of the religion or religious sect of the person. However, Islam bars women from becoming an *imam*, although in Turkey they can become a *hafiz* or *hodja*.

The increasing number of Turkish women opting to dress according to Islamic precepts has triggered considerable debate. In principle, women are not allowed to take examinations with their faces completely covered, to visit public institutions or go to school wearing a *carsaf* (a black overgarment) or to attend court hearings as a lawyer with their head and faces covered. □