

# WHEN A MARRIAGE BREAKS



**THE WIFE FINDS ITS CHALLENGE IN ARTICLE 1 OF UAE PERSONAL STATUS LAW NO. 28 OF 2005, WHICH GIVES EXPATS THE RIGHT TO SELECT THEIR HOME COUNTRY LAW TO RULE OVER.**

Ashraf El Motei heads the dispute resolution practice in Motei & Associates, a Dubai based law firm. He specializes in civil, commercial and family disputes before local courts in the UAE and focuses on international arbitration. Here he narrates a true story that sheds light on the application of the UAE Personal Affairs ('Sharia') versus foreign laws. The case of a Hindu divorce granted by the Sharia Court in the UAE to the wife with full custody of the kids as well as alimony.

The UAE recorded the highest divorce rate in the region. In Dubai alone, 1,129 divorces took place last year - more than three per day. Amongst the cited reasons, the most common is the pace of life style in the UAE that is supercharged by the "easy-come easy-go" approach that could be one of the main reasons for divorce among expats.

Like many areas in the UAE laws, expats seem to be unclear when it comes to the specifics of the divorce process. While it can take spouses time to regain emotional equilibrium, there are serious challenges to be involved in a court proceeding claiming for the wife and children's legal rights.

Article 1 of UAE Personal Status Law no. 28 of 2005 ('UAE Personal Status Law' or 'Sharia Law') gives expats residing in the UAE the right to select their home country personal laws to rule over their families disputes.

The story begins in 1986, when a Hindu girl finds her soul mate (Hindu) and gets married to commit for a lifelong happy family with her husband. Seeking for a secure future, the couple decides to move to Dubai. But unfortunately the unexpected down turn happens. Caught up in Dubai's frantic life, the husband's behaviour towards his wife changes dramatically. When all the family's friends attempt to rift the gap between the couple and save the family proves fruitless, the wife, with the hope to restore peace into her life, decides to move out with her two children.

Under the intense financial pressure of living expenses in Dubai, the wife is forced to file a lawsuit against the husband before the Dubai Courts requesting financial support for her and her children (*nafaqa*). >

THE STORY BEGINS IN 1986, WHEN A HINDU GIRL FINDS HER SOUL MATE (HINDU) AND GETS MARRIED TO COMMIT FOR A LIFELONG HAPPY FAMILY WITH HER HUSBAND. **SEEKING FOR A SECURE FUTURE, THE COUPLE DECIDES TO MOVE TO DUBAI. BUT UNFORTUNATELY THE UNEXPECTED DOWN TURN HAPPENS.**



Before the Dubai Court of First Instance, the husband denies all his wife's allegations and requests the Court to reject the lawsuit on the grounds that according to the UAE Personal Status Law the wife's right in *nafaqa* is subject to her fulfillment of her matrimonial duties under *Sharia* Law.

The court of first instance decides that the fact that the wife had moved out of her husband's house is a proof of her failure to comply with her 'obedience duty' towards her husband; hence, her request for *nafaqa* must be rejected. The wife doesn't accept the decision and files an appeal before the Court of Appeal. The wife finds its challenge in Article 1 of UAE Personal Status Law No. 28 of 2005, which gives expats the right to select their home country law to rule over. In this respect, the wife requests the application of Article 18 of the Hindu Act No. 78 of 1956 on adoption and maintenance ('Hindu Act') which gives the Hindu wife the right to life time financial support from her husband despite the fact that she has moved out of the matrimonial house.

After deliberation, the Court of Appeal overturns the decision rendered by the First Instance Court and orders the husband to pay his wife and two children the appropriate monthly financial support. Before the Dubai Court of Cassation (highest level of Court), the husband claims

that the application of the Hindu Act is in conflict with the *Sharia* Law and must be rejected. The husband claims that under the *Sharia* Law the wife's entitlement in *nafaqa* is dependent on the wife's fulfillment of her matrimonial duties including her obligation of obedience to her husband. The fact that the wife has departed the matrimonial house on her own will, is considered, under *Sharia* Law, as *nashz* (condescension/ non-submission of the woman to her husband's needs and desires), hence, her right in *nafaqa* must be forfeited. The Dubai Court of Cassation decides to reject the husband's claims and confirms the decision rendered in favor of wife by the Court of Appeal.

**Following all legal procedures, the Court of Cassation ruled the following:**

- Despite the conflict with *Sharia* Law, the wife was granted right to financial support even though she departed from the matrimonial house.
- This was given due to the fact that she requested the application of her home country law, which granted said support, and was as per Article 1 of UAE Personal Status Law No. 28 of 2005.
- The application of the *Sharia* Law was especially exempt due to the fact that neither party is a UAE national nor a Muslim expat. 

