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The American University in Cairo
School of Global Affairs and Public Policy

**THE "MARRY TO WORK" APPROACH: UNDERSTANDING THE MECHANISMS OF
MARRIAGE OF CONVENIENCE AMONGST SYRIAN REFUGEE WOMEN IN EGYPT**

**A Thesis Submitted to the
Department of Law**

September 9, 2021

**In partial fulfillment of the requirements the degree of
Master of Arts in International Human Rights Law**

By

Doha Khaled Badr

September 2021

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THE "MARRY TO WORK" APPROACH: UNDERSTANDING THE MECHANISMS OF
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Doha Khaled Badr

Supervised by Professor Hani Sayed

ABSTRACT

Transnational marriage of convenience in refugee context is a unique perspective to reflect the livelihoods reality of Syrian female refugees in Egypt as a host country. Transnational marriage of convenience is a gateway for many Syrian female refugees to be legally integrated and socio-economically incorporated in Egypt, setting challenging conditions for refugees to attain a work permit. This paper employs the bargaining power model to uncover how different legal regimes contribute to shaping the dynamics of the transnational marriage of convenience. The paper argues that the position of Syrian female refugees in the Egyptian labor market is closely linked to the intersection between four main legal regimes: Egyptian family law, nationality law, Egyptian labor law, and international refugee law. This intersection determines the bargaining power structure in a transnational household in the refugee-hood setting. The bargaining power model explains how Syrian female refugees adopt an opportunistic behavior to retain the restricted right to work where they take advantage of the fruits of intersection between two different legal regimes, which are the Egyptian nationality law and family law, to overcome the negative implications of the intersection between the Egyptian labor laws and the international refugee law. The operational way to achieve this gain is to get involved in transnational legal marriages of convenience more progressively.

KEY WORDS: female, refugees, marriage of convenience, bargaining power, legal regimes, labor, nationality, family, livelihoods.

TABLE OF CONTENTS

I.	Introduction.....	1
II.	The Case Study of Female Syrian Refugees in Egypt as Empowered Brides and Prohibited Workers.....	6
	A. Why Female Syrian Refugees in Egypt?.....	6
	B. Continuity and Change in Marriage Practices among Female Syrian Refugees in Egypt: The Time Factor.....	8
	1. Syrian Female Refugee Marriage Pre 2013.....	9
	2. Syrian Female Refugee Marriage Post 2013.....	11
	C. Continuity and Change in Marriage Practices among Female Syrian Refugees in Egypt: The Space Factor.....	13
III.	Theoretical Framework of Female Refugee Transnational Marriage of Convenience....	16
	A. Contributors to Marriage of Convenience as a Coping Mechanism to achieve Economic Resilience.....	16
	B. The Critique of the Conventional Model.....	24
	1. Principles and Assumptions of the Conventional Model.....	25
	2. Determinants of Women's Position in the Conventional Model.....	27
	C. Rules structuring Alternatives to the Conventional Model: Bargaining over Conventionality.....	29
	1. Principles and Assumptions of the Bargaining Model.....	31
	2. Determinants of Women's Position in the Bargaining Model.....	33
IV.	Applying the Bargaining Model on the Marry to Work Approach in the Forced Displacement Context.....	36
	A. Intra-household Bargaining Mechanisms in the Context of Forced Displacement.....	37
	1. Social Norms of the Patriarchal Society.....	38
	2. Patriarchal Household's Position.....	39
	3. Support From NGOs.....	40
	4. State Support.....	42

B.	Extra-household Bargaining Mechanisms in Refugee Host Market.....	44
5.	Access to Employment and other Income-earning Means.....	45
i.	Labor Law No.12 of 2003 and Regulative Decree No. 305 of 2015	
ii.	Law No.79 of 1975 Regarding Labor Social Insurance	
C.	Transnational Marriage of Convenience is the Lifeline?.....	48
V.	Transnational Marriage of Convenience under the Spot: The Intersection Between Family Law and Nationality Law.....	50
A.	Nationality as a Determinant of the Bargaining Power in the Egyptian System.....	51
B.	Naturalization as a Source of Bargaining Power for Female Refugees in Egypt.....	52
C.	Conditions for Acquiring Nationality set the rules for the Bargaining Power Model in Transnational Marriages.....	54
1.	Article 20: Women caught in the middle of the conflict between the judiciary and the executive powers.....	55
2.	Article 7: Two years of marriage and then?.....	56
3.	Article 15: State Absolute Authority.....	57
VI.	Conclusion.....	59

I. Introduction

Egypt is one of the signatories to the 1951 Refugee Convention, which is the cornerstone of refugee law, according to presidential decree No. 331 of 1980, and it ratified the 1967 additional protocol issued according to presidential decree No. 333 of 1980.¹ Egypt received displaced Syrians fleeing the conflict in the Syrian Arab Republic in the aftermath of the Syrian revolution since the end of 2011. According to figures issued by the United Nations High Commissioner for Refugees, the number of Syrians fleeing Syria and seeking asylum in Egypt reached 129,210 individuals until February 2019, in addition to an unknown number of unregistered refugees, where women exceed 48% of the Syrian refugees.²

In light of the prevailing shift from the open-door policy to the closed-door policy towards Syrian refugees as a result of the Egyptian political and security distress in the aftermath of the 2013 events, Syrian refugees experience tough living conditions considering the restrictive nature of the labor law provisions relating to the work of foreigners in Egypt. Although Egypt did not make any reservation to Article 17 of the 1951 refugee convention regarding wage-earning employment, refugees are subject to the restrictive measures applied on foreigners' employment in Egypt, including the requirement of a work permit, the 10% foreign employees policy,³ and other restrictive rules that I explain further in Chapter IV. Accordingly, refugees are treated as foreigners without any specificity to Article 17 of the 1951 refugee convention. Therefore, many female Syrian refugees seek to acquire Egyptian nationality through getting involved in transnational marriages of convenience as a mechanism to cope with their disadvantaged economic position in a politically polarized and economically disturbed host country as Egypt.

In this respect, The Egyptian Nationality law No. 26 of 1975, amended by law No. 154 of 2004⁴ determines the conditions required for a foreign females to apply for citizenship where the

¹ UNHCR Global Appeal 2011 Update, UNHCR.ORG, <https://www.unhcr.org/en-ie/4cd96bae2c.pdf> (Last visited July 12, 2021).

² UNHCR Refugee Data Finder, UNHCR.ORG, <https://www.unhcr.org/refugee-statistics/download/?url=eQ023g> (Last visited July. 12, 2021).

³ Law No. 12 of 2003 (promulgating the Labor Law), *Al-Jarida Al-Rasmiyya*, 7 April 2003 (Egypt), https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=64693&p_lang=en (Last visited July 12, 2021) [Hereinafter, *Labor Law*].

⁴ Law 154 of 2004 (Amending Some Provisions of Law No.26 of 1975 Concerning the Egyptian Nationality), *Al-Jaridah al-Rasmiyah*, vol.28 bis, 14 July 2004 (Egypt), available at

marriage relationship is valid, per the provisions of Islamic *Sharia* and the marital relationship shall continue two years,⁵ given that the minister of interior may have any objections.⁶ This response raises a crucial question: how Syrian female refugees take advantage of the intersection between the Egyptian nationality law and labor regulations to retain their agency through the marriage of convenience?

This question is precisely significant for three reasons. First, while substantial scholarships identify the Egyptian legal frameworks of the refugee right to work⁷ and transnational marriage in terms of refugee and migration context on their own, this thesis adds to the current body of knowledge by examining the entwined binary of the constricted right to work of refugees and the emergence of the marriage of convenience among Syrian refugee population residing in Egypt. Second, I adopt the bargaining power model to explain how different legal regimes, namely, the Egyptian family law, nationality law, foreigners labor law contributes to shaping new family and market structures in the context of forced displacement. This model helps in understanding the available options for each contracting party inside and outside the family structure with a particular focus on the opportunities available for female refugees. These options are correlated to the change witnessed in refugee women's economic role. Accordingly, the bargaining model analysis contributes to explaining two main arguments: first, it demonstrates the mixed scenarios of the transnational marriage of convenience in the refugee context in Egypt, which are determined by the outcomes of the intersection between different legal regimes; second, it determines the conditions under which some of the female refugees do increase their bargaining power in the labor market by entering into a marriage of convenience. Thus, this research aims to explain how applying the bargaining model on the "marry to work" approach helps to better understand the dimensions of refugees' right to work in Egypt through employing an in-depth case study of female Syrian refugees living in Egypt involved in

<https://www.refworld.org/docid/58bebc444.html> (Last visited July 12, 2021) [Hereinafter, *The Egyptian Nationality Law*].

⁵ *Id.* at Article 3.

⁶ Between 1986 and 2004, seven foreign women married to Egyptians were refused to get Egyptian nationality by the minister of the interior for national security reasons, with no further explanations in this regard. See, AbdAllah Khalil, *Halat Isqat wa Zawal Al-Genseya Al-Misriya* (Cases of Revocation and Loss of Egyptian Citizenship), 5(2005).
⁷ *e.g.*, Katarzyna Grabska, *Who Asked Them Anyway? Rights, Policies and Wellbeing of Refugees in Egypt*, The American University in Cairo (2006); Amira Hetaba and Claire McNally, REFUGEE ENTITLEMENTS IN EGYPT, (The American University in Cairo, Working Paper No.14 Feb. 2020), available at <https://documents.aucegypt.edu/Docs/GAPP/Refugee-Entitlements-Report%202.0.pdf>

transnational marriages of convenience with Egyptian nationals.

The scope of this research paper is selective. It focuses on a specific nationality to examine the aforementioned binary. Although reviewing and comparing other nationalities in this regard would be of great value, the thesis is primarily concerned with the situation of female Syrian refugees who live in Egypt from late 2011 till the present. The specificity of the female Syrian refugees is linked to the fact that many of them have been involved in transnational marriages with Egyptian men, either in formal or customary marriage relationships.⁸

On the one hand, many Egyptian men exploited the dire economic conditions of female Syrian refugees in Egypt, their lack of documents, and their illegal entry to the Egyptian border. In addition to exploiting the high cost imposed by the Syrian embassy to extract documents or amend the data, and even the impossibility of extracting some of the documents, which left no option other than getting involved in customary marriages. In most cases, these marriages soon end by the husband. Thus, the problem exacerbates where a female refugee cannot obtain the wife's rights after divorce according to the Egyptian family law, such as receiving alimony. Even in some cases, a woman cannot record the proof of her baby's lineage.⁹ On the other hand, some of the female Syrian refugees escaped from the Syrian civil war. They got formally married to Egyptian nationals, marriages of convenience, once they arrived in Egypt to provide themselves and her children if any, with a livelihood opportunity in a country with restrictions on refugees' right to work through attaining the Egyptian nationality via this marriage arrangement. Accordingly, both cases implicate the absence of sensitivity of female refugees' legal position in Egyptian family law.

This study argues that the legal position of female Syrian refugees in the Egyptian labor market is closely linked to the intersection between main four legal regimes, namely, the Egyptian labor law regulating the labor of foreigners, the nationality law, the family law, and

⁸ Although there is no formal estimate of the percentage of Syrian women who got married to Egyptian nationals since 2012, the National Council for Women in Egypt, for the first time, condemned the transnational marriage between Egyptian males and female Syrian refugees and described this act as human trafficking claiming that 12,000 marriages have taken place since then. It is notable to mention that the Council did not claim the exploitation of any other refugee nationality in this regard. See, The National Council for Women, *The National Council for Women expresses its strong rejection and condemnation of what was recently circulated in the media about the phenomenon of Syrian refugee women marrying Egyptians* (Jan.23, 2013), available at <http://ncw.gov.eg/News/256/87>

⁹ See, e.g., Ihab Zeidan, "A Temporary wife..." *The dilemma of Syrian Refugees in Egypt* (2019), available at <https://daraj.com/14457/>

international refugee law. It further argues that the intersection between these legal regimes contributes to determining the bargaining power structure in the transnational household in refugee context and in the labor market, which in turn determines if the transnational marriage of convenience pays off to legally retain the constricted right to work in the Egyptian labor market.

Chapter one brings forward for examination the case of Syrian female refugees who moved to Egypt after 2011. In this chapter, I seek to examine the myriad forces and perceived imbalances currently driving and shaping the involvement of Syrian female refugees into transnational convenience marriages across different time laps. Together, this chapter shed light on the distorted agency of female refugees between the entrenched social constructs and the gendered nature of law. The chapter demonstrates the complexity in understanding the essence of the transnational marriage of convenience in the context of forced migration. In chapter two, I revisit distinct literature that examined different marriage arrangements in migratory context. In doing so, the various reasons and competing purposes of the emergence of the "Marry to Work"¹⁰ marriages among refugee communities can be understood, especially among the Syrian refugee community in Egypt. I explain the conventional model vs. the bargaining model of the marriage of convenience, which proposes different interpretations of the dynamics of various legal regimes that contribute to shaping new family and market structures in the context of forced displacement. The analysis reveals the intersection between Egyptian labor laws, international refugee law, nationality law, and family law, which have not only paved the way for the emergence of the marriage of convenience, but it also explains how law exacerbates females' vulnerability. In chapter three I employ the bargaining power model as analytical lenses in an attempt to understand the dynamics of the marriage of convenience in the context of forced migration. I introduce the legal framework of the Egyptian state obligation towards refugees' right to work according to international and regional accountability framework.¹¹ It aims to

¹⁰ I use what I refer to as the "Marry to Work" approach to demonstrate how refugee women get involved in transnational marriages of convenience as an access gate to the right to work in Egypt through naturalization.

¹¹ Egypt is a signatory of the following refugee sensitive international and regional conventions: the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol (published in the Official Gazette on 26 November 1981); The UN Convention on Migrant Workers and their Families (ratified in July 2003); The 1981 African Charter on Human and Peoples' Rights (published in the Official Gazette on 23 February 1992); The International Convention on the Elimination of Racial Discrimination (ICERD) (published in the Official Gazette on 11 November 1972); the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

explain how the Egyptian labor law has contributed in the emergence of the transnational marriage of convenience among female refugees in Egypt. Within this framework, chapter four helps to define the determinants of the bargaining power relations acquired by the Egyptian nationality law in respect of transnational marriages by explaining the intersection between two different legal regimes: the Egyptian nationality law and family law.

(ratified in October 1981); The International Covenant on Economic, Social and Cultural Rights (ICESCR) (published in the Official Gazette on 14 April 1981). See, Ratification status for Egypt, OHCHR.ORG, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=54&Lang=EN (Last visited July 14, 2021)

II. The Case Study of Female Syrian Refugees in Egypt as Empowered Brides and Prohibited Workers

After the outbreak of the Syrian revolution, a significant number of Syrians have sought asylum in Egypt¹² where they experienced becoming a refugee in different ways. They started to cope with the new reality in various ways since their experiences of being refugees are not linear. Thus, female Syrian refugees challenge the refugee's prototype by adopting various practices to contest their constrained right to work in the Egyptian labor market.

Accordingly, I seek to explain the strategies adopted by Syrian women in Egypt to contest their legal position as refugees, more precisely foreigners, in the Egyptian labor market. I also try to trace why Syrian females have resorted to transnational marriages of convenience as a coping strategy to increase their bargaining power in the host market. Thus, this chapter discusses how female Syrian refugees in Egypt re-arranged their lives around the newly imposed label "refugee" and their new livelihood reality during their forced displacement. Drawing upon data collected from various NGOs reports and facts sheets published by different stakeholders, including INGOs, UN agencies, and community-based organizations (CBOs) reflecting the reality of Syrian refugees living in Egypt from 2011 till present, this chapter shows that in Syrian females' daily lives, their refugee status is articulated through revisiting different realms, more specifically, the space where family and labor intersects. By articulating female Syrian refugees' livelihoods experiences, this chapter explains how Syrian females in Egypt distance themselves from the refugee label and try to naturalize themselves by getting involved in transnational marriage relationships with Egyptian nationals.

A. Why Syrian Female Refugees in Egypt?

There is no accurate estimate of the number of Syrian women who have married Egyptian men since 2012. Still, this phenomenon became more prominent through the spread of several social groups on various social media platforms, especially Facebook, which facilitate the marriage of Syrian refugee women under the title: "Marriage of Syrians residing in Egypt," "Syrians Group in Egypt for Marriage," "Syrians' Marriage in Egypt and Syria." These groups are mostly closed and require several conditions to be fulfilled before accepting the joining request from any

¹² See, *UNHCR Refugee Data Finder*, *Supra* note 2 (Last visited July. 14, 2021).

member, on top of which is marriage according to *Sunnah*.¹³

Besides, the marriage of two Syrian refugees in the country of asylum is extremely challenging for multiple reasons. Chief among them is the economic conditions that the Syrian refugee suffers from in Egypt. Therefore, this marriage relationship does not guarantee any financial or legal stability for any party due to the complexities of obtaining work permits in Egypt in light of the current restrictive labor legislations that hinder the capacity of Syrian refugees to secure a decent life for their female Syrian spouses and their children.

Do not only female Syrian refugees perceive transnational marriages as their gateway to better living conditions, but also Egyptian men share interests in these marital bonds. While some Egyptians claim to view the marriage of Syrian women as a religious and moral duty to protect them from "immorality," others view Syrian women as , obedient, and beautiful women who only care about their appearance, home, children, and accept the humble life and limited resources of the suitor due to the displacement conditions that she has gone through.¹⁴ This perception prevails among many Egyptian men influenced by the image reflected in the Syrian drama of the Syrian girl. This beautiful and obedient woman chooses to stay at home, unlike the Egyptian woman, whom the Egyptian man views as an ambitious competitor in the job market.

Also, some other Egyptian men believe that the hectic economic conditions are among the most important factors that push the Egyptian youth to marry Syrian women. Egyptian men believe that they will not incur much of the expenses and money required in case of getting married to an Egyptian woman as they believe that Syrian refugee families are very lenient when it comes to marriage requirements due to their refugee status in Egypt.¹⁵ Thus, they accept the suitor's inability to pay for *Mahr* or *Shabka* or owned apartment, which is not the case in most of

¹³These pages receive their visitors with several conditions before subscribing, such as that the page does not support temporary marriage, the participation of minors is forbidden, and the seriousness of sending data. " These pages publish marriage offers submitted by both parties. The page acts only as a mediator who receives the required conditions and publishes them on the group's wall, then waits for the phone number of the person who fits these specifications so that the page ends at this point. See, Hanan Shamrdal, *zawaj allajiat alsuwriat fi misr aightsab shareiun bi'iism aldiyn* (Syrian refugee marriage in Egypt is legal rape in the name of religion), *AlMasry Alyoum* (2012) available at <https://www.almasyalyoum.com/news/details/229576>

¹⁴ Dina M. Taha, "*Like A Tree Without Leaves*": *Syrian Refugee Women And The Shifting Meaning Of Marriage*, 7 *Mashriq & Mahjar* 7, 26 (2020).

¹⁵ *Id.* at 7.

the Egyptian families who are still sticking to marriage customs, traditions, and requirements in Egypt that overburden most of the Egyptian men.¹⁶

B. Continuity and Change in Marriage Practices among Female Syrian Refugees in Egypt: The Time Factor

Before talking about the patterns of continuity and change in the marriage practices¹⁷ of Syrian refugee women in Egypt, it is necessary to start with a fundamental question about the change in women's perception of their role through the years of asylum. Traditionally, women are habituated in their stereotypical genders roles accepted by the society, such as being a sister, mother, and wife. This vision has been confirmed in the minds of many women over multiple years because of different factors, chief among them is the determination of the society, state, and law to preserve these traditional patterns of roles and even refute any attempt to see women in a new status. In the realm of this conventional view of women's roles, a woman's marriage aims to produce the family institution.

In light of this vision, it can be said that several transformations have taken place regarding the role of Syrian refugee women in Egypt since their arrival from Syria to Egypt. These women arrived in Egypt carrying on cultural, social, and religious legacies that shaped how they view their role, and they even carried many disappointments towards these legacies. Regarding these transformations, the year 2013 is a turning point in the reality of Syrian refugees in Egypt in general and Syrian refugee women in particular as they had the opportunity to leave their traditional lives that are tainted by masculine hegemony to start shaping a new bargaining power equation.

1. Syrian Female Refugee Marriage Pre 2013

With the escalation of the Syrian crisis in the aftermath of 2011, the emerging refugee crisis produced the phenomenon of *sutra* marriage *Zawaj Al-sutra* under the pretext of protection from harassment and sexual exploitation. Female refugees have become content with this pattern of

¹⁶ Nancy A. Youssef and Amina Ismai, *In Cairo, desperate Egyptian men search in vain for Syrian brides* (2013), available at <https://www.mcclatchydc.com/news/nation-world/world/article24749116.html>

¹⁷ Keith Wrightson, *Courtship and Constraint: Rethinking the Making of Marriage in Tudor England*. By Diana O'Hara (Manchester and New York: Manchester University Press, 2000. xii plus 276), 35 *J. Soc. History* 1010,1012 (2002), available at <https://doi.org/10.1353>

marriage, driven by a hidden conflict with their parents on the one hand and multiple unwanted marriage offers on the other hand. The word *Sutra* reflects many connotations. It reflects how the society views unmarried women as unprotected. Thus, protection can only be achieved through marriage. This pattern results in a women's submission to men since she enters into his sphere of influence and power, which robs her of the ability to manage her agency and even manage her destiny. Thus, a female refugee's socio-economic role reflects her marginal capacity in the bargaining power equation in the framework of *sutra* marriage.

However, the bubble of *sutra* marriage among female Syrian refugees in Egypt did not take too much time to burst since, fortunately, the well-being of female refugees was a significant issue for multiple compassionate local, international non-governmental organizations (NGOs), and UN agencies. These concerned institutions have stepped in recent years to counter any attempt to exploit the position of female Syrian refugees, provide the necessary services to the refugees, and advocate for their rights.¹⁸ Besides, NGOs played a vital role in the fields of refugee protection and women empowerment. NGOs are currently implementing most refugee programs.¹⁹ These non-governmental organizations (NGOs), either local or international, assist refugees in their daily struggles while seeking asylum in Egypt. These institutions provided multiple services, including distribution of cash aid, humanitarian relief to families and individuals in need, health care, mother and child care activities, education services, and awareness-raising through seminars and publicity campaigns, creating sources of livelihoods including technical training, capacity building, and professional skills development in different areas, cultural and artistic activities, and conducting studies and research on refugee communities.²⁰

Besides, refugee services organizations which were primarily dependent on foreign funding managed to expand their activities and sourcing of funds from different foreign donors because law No. 84 of the year 2002 was imprecise about foreign funding governing procedures,

¹⁸ Ibrahim Awad, *Refugee crises in the Arab world* (2018), available at <https://carnegie-mec.org/2019/01/21/ar-pub-78167>

¹⁹ The MENA Civil Society Network meeting regarding Displacement- Regional meeting, UNHCR.ORG, available at <https://www.unhcr.org/ar/58e95d814.html> (last visited July 18, 2021).

²⁰ Katarzyna Grabska, *Rights, Policies and Wellbeing of Refugees in Egypt*, 29(American University in Cairo, July 2006), available at http://schools.aucegypt.edu/GAPP/cmrs/reports/Documents/kasiasreport_000.pdf

unlike the new NGO law of the year 2017.²¹ Before 2013, refugee services NGOs witnessed a massive boom in funding and correspondingly expansions of activities.²² In 2013, according to reports compiled by OCHA, refugee services NGOs, such as Save the Children, Catholic Relief Services, and other recipients received 8,234,863 USD from different foreign donors, such as Sweden, United Kingdom, and the United States, compared to less than half of this amount in the preceding years.²³

Accordingly, I believe that the position of female Syrian refugees from the marriage of convenience or other coping mechanisms fundamentally correlates to the amount of system assistances they receive in terms of financial assistance, food vouchers, health insurance, and educational assistance. In turn, these system assistances are related to the portfolio of the projects undertaken by these organizations that have been significantly affected by the Egyptian law governing the work of NGOs in Egypt. Accordingly, in light of the capacity of these NGOs to cover the needs of Syrian refugees and refugee perception of Egyptian as a transit country, female Syrian refugees did not perceive the transnational marriage of convenience as a tactical move towards achieving economic resilience before the events of 2013.

2. *Syrian Female Refugee Marriage Post 2013*

The situation of Syrian refugees after the events of the 30th of June 2013 is a clear example of the political manipulation of refugees exercised by the regime. Also, Egypt's political distress situation after 2013 caused changes in marriage practices among female Syrian refugees since the drives for getting married to an Egyptian national have subsequently changed to cope with the new Syrian /forced migration reality in Egypt.

After 2013, the nationalist anti-immigration discourse was exacerbated by the adoption of tight security measures against Syrian refugees and NGOs that provide them with assistance.

²¹Maha Ismail, *comparative analysis of legal frameworks governing NGO in Egypt with applications from global practices*, 50(2018) (Unpublished MPA dissertation, American University in Cairo), available at <http://dar.aucegypt.edu/bitstream/handle/10526/5336/Thesis-Maha%20Ismail-SID%20800070479%20%28Final%29.pdf?sequence=3>

²² In 2013, according to reports compiled by OCHA, refugee services NGOs, such as Save the Children, Catholic Relief Services, and other recipients received 8,234,863 USD from different foreign donors, such as Sweden, United Kingdom, and the United States, compared to less than half of this amount in the preceding years. See, Egypt in 2013 - related emergencies, UNOCHA.ORG, (May, 2019) available at <http://fts.unocha.org>

²³ *Id.*

Correspondingly, Syrian refugees were subjected to harassment by the Egyptian authorities, social media, and the local community after they were perceived as being loyal to former President Morsi and the Muslim Brotherhood.²⁴ In 2013, Egyptian law required Syrians to obtain a visa and security approval before entering the country, which exacerbated the difficulty of securing residency in Egypt. This volatile political environment has led to more restrictions on refugees' access to services.²⁵

At the same time, many NGOs, especially those working with Syrian refugees, were subject to security constraints that resulted in the prosecution of employees working there and revoking their licenses.²⁶ For example, the Minister of Social Solidarity revoked the license of the International Islamic Relief Services, which was a pivotal partner for UNHCR Egypt as the main provider of financial assistance and winter aid to Syrian refugees.²⁷ The organization was accused of having connections with the Muslim Brotherhood and facilitating the funds used in fueling violence in Egypt after the 30th of June.²⁸ As a result, the organization was shut down in 2015.

To stifle the role of NGOs, in November 2016, the Egyptian parliament passed the new NGO law that was submitted by the "Support Egypt" coalition and ratified by president Al-Sisi in May 2017. The law placed restrictions and obstacles that resulted in the politicization of civil work and the liquidation of some human rights organizations. Since the law also entailed that civil society activity must be compatible with the state's development plan and priorities. It constructed many obstacles and constraints that made independent execution of work almost impossible.²⁹

²⁴ Maysa Ayoub and Shaden Khallaf, SYRIAN REFUGEES IN EGYPT: CHALLENGES OF A POLITICALLY CHANGING ENVIRONMENT 4 (American University in Cairo, Paper No.7, Sep. 2014), *available at* http://schools.aucegypt.edu/GAPP/cmrs/Documents/Final_Syrian%20refugees.pdf

²⁵ The situation of refugees in Egypt, AMNESTYMENA.ORG, *available at* <http://www.amnestymena.org/magazine/Issue21/SituationofRefugeesinEgypt.aspx> (last visited Mar. 21, 2021).

²⁶ *NGOs under pressure in Egypt*, IRIN.ORG, (June 5, 2013), *available at* <https://www.refworld.org/docid/51b5b0614.html>

²⁷ *Minister: International Islamic Relief licenses revoked*, Egypt Independent, (2015) *available at* <https://www.egyptindependent.com/minister-international-islamic-relief-licenses-revoked/>

²⁸ *Id.*

²⁹ Ayoub and Khallaf, *Supra* note 25, at 50.

Law No. 70 of the year 2017 retains the restrictions and regulations imposed by law No. 84 of the year 2002 on international civil society organizations.³⁰ Likely, it places obstacles to the registration of these organizations, where authorities were entitled to refuse to register non-governmental organizations on vague grounds.³¹ The law also authorized the security authorities to prosecute NGOs employees since they breached the law,³² followed by the freezing of financial assets, and the prohibition of travel. These executive regulations hindered the operating environment of the human rights organizations in general and the refugees' services NGOs in particular. Accordingly, hundreds of associations have been closed, and their properties confiscated under the pretext of their relationship with the Muslim Brotherhood without any evidence.³³

Another significant amendment to the old law is the establishment of "the National Body for organizing foreign NGOs work," which is responsible for organizing and monitoring foreign NGOs and foreign funds (Article 2).³⁴ This body curbed the number of foreign funds received by different refugee services NGOs, especially those who provide services to Syrian refugees.

Accordingly, trends in reporting funds for Egypt show drastic fluctuations in the flow of funds received in response to the Syrian refugee crisis between 2012 and 2019. A decreasing flow of foreign funds is strongly noticed in 2018 and 2019 due to the adoption of law No. 70. The flow of foreign funds received by refugee services NGOs has decreased dramatically and negatively affected the concerned populations. On the other hand, these drastic fluctuations in aid trends corresponded to external changes related to the volatile global environment in which funding decisions are made.³⁵ Correspondingly, this economic constriction and the fear of deportation contributed to pushing Syrian refugee women to look for different coping mechanisms for survival. Thus, getting involved in transnational marriages of convenience with Egyptians for the sake of nationality is the only gateway to temporarily overcome residency

³⁰ Law No. 70 of 2017 (The Law of associations and other foundations in the field of civil work) Al-Jarīdah Al-Rasmīyah, No. 20, 24 May 2017 (Egypt), *available at* <https://manshurat.org/node/24867> [Hereinafter, NGOs Law].

³¹ Act No. 84 of 2002 (the executive regulations of the NGOs law) Al-Jarīdah Al-Rasmīyah, No. 244, 23 October 2002 (Egypt), *available at* <https://manshurat.org/node/604>

³² *Id.*

³³ The crackdown on civil society space in Egypt, AMNESTY.ORG, 19(2018) *available at* https://www.amnesty.at/media/5004/amnesty_laws-designed-to-silence_bericht-februar-2018.pdf

³⁴ *Supra* note 31.

³⁵ See, United Nations Office for the Coordination of Humanitarian Affairs, *Financial Tracking Services (Egypt 2019)*, *available at* <https://fts.unocha.org/countries/66/summary/2019>

problems until obtaining the Egyptian nationality that enables them to overcome the problematic legal situation of refugee labor in Egypt. Nevertheless, although marriage of convenience has become a reality of female refugees' and Egyptians' interests, this does not necessarily mean that this marriage bond shall end if each party has achieved his/her own interest. Transnational marriage of convenience, in the case of the Syrian woman residing in Egypt, differs from the traditional concept of marriage of convenience in the Western context, which necessitates the termination of the marriage contract when the interest of both parties ends. This is due to the fact that many of the Syrian women residing in Egypt are still viewing marriage as *sutra*. A *sutra* that drives the gaze of the society away from single mothers or single women who live on their own in a rented apartment, which society considers an anomalous unacceptable setting of living.

C. Continuity and Change in Marriage Practices among Female Syrian Refugees in Egypt: The Space Factor

Although many Syrian refugee women in Egypt resort to the transnational marriage of convenience to obtain Egyptian nationality along with achieving *sutra*, there is a noticeable increase in divorce cases among Syrian refugees in Western host communities.³⁶ Hence, there is a relative impact of the new society on female Syrian refugees' choices. Yet, this is not solely the reason behind the increase in divorce rates among female refugees, but there are various factors and accumulations of social and economic problems that women particularly have suffered from in their home country. Besides, there is no doubt that Western hosting countries hold out their hands to refugees to work, including women, which is a distant dream for most of these women in their home country where a patriarchal legal system of personal status reigns and restricts women's financial and emotional capacities. Thus, moving to Western society is not the direct cause of divorce. Rather, it created spaces for women to make their own decisions and retain their distorted agencies independently.

On the other hand, the Egyptian authorities have prosecuted and refouled a number of

³⁶ Ahmed AlAjlan, *Divorce and Domestic Violence Among Syrian Refugees in Germany*, 27 J. Interpersonal Violence 2, 27 (Jan 6, 2021) available at <https://doi.org/10.1177/0886260520985488>

Syrian refugees under the pretext of "national security preservation" since the events of 2013.³⁷ Since then, there is a problematic divergence between Egypt's legal commitments towards the non-refoulement principle and its political interests. Consequently, the Egyptian regime breached the absolute nature of the non-refoulement principle in the name of the "war on terrorism" and state sovereignty principle, claiming that its refoulement adjudications are legal since they build their rule based on Article 33(2) exception to non-refoulement in which "The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding him/her as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."³⁸

In a remarking case in 2013, 259 persons were returned from Cairo airport back to Syria after the Egyptian authorities had imposed a pre-arrival visa issuance before arriving in Egypt.³⁹ This condition represented significant obstacles, especially after the closure of the Egyptian Embassy in Syria during the era of Mohamed Morsi, and even the caused a decline in the visa applications' approval rates by the Travel Documents, Immigration, and Nationality Administration (TDINA) for "security reasons." Accordingly, many Syrian refugees could not find a way to access Egypt, except through traveling to Sudan. Then, they cross illegally into Egypt through the southern Egyptian borders. Accordingly, their presence on the Egyptian land is considered illegal according to the Egyptian anti-human smuggling and irregular migration law No.82 of 2016.⁴⁰ These conditions have contributed to the increase in the number of female Syrian refugees who decided to resort to marriages with Egyptians to secure legal residence in the Egyptian territory.

Consequently, Syrian women believe that seeking asylum in the global West represents a significant opportunity to maximize their bargaining power through achieving the dream of

³⁷International Refugee Rights Initiative (IRRI), *Rights Groups Call on Egypt to End Arbitrary Detention of Refugees* (2015), available at <https://reliefweb.int/report/egypt/rights-groups-call-egypt-end-arbitrary-detention-refugees>

³⁸ Convention Relating to the Status of Refugees, 28 July 1951, 189 U.N.T.S. 150, entered into force April 22, 1954. [Hereinafter, Refugee Convention]

³⁹ *Growing restrictions and harsh conditions: the plight of people fleeing Syria to Jordan*, AMNESTY.ORG, (MDE 16/003/2013, 2013), available at <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5278edcf4>

⁴⁰ Law 82 of 2016 (Issuing the Law on Combating Illegal Migration & Smuggling of Migrants), Al-Jarīdah Al-Rasmīyah, No.4 Bis, 7 November 2016 (Egypt), available at <https://www.refworld.org/docid/58b68e734.html>

economic independence away from men's grip. On the contrary, the restricting legal regimes in Egypt contribute to sustaining the traditional bargaining power dynamics between males and females. Accordingly, refugee women resort to different coping mechanisms, such as the transnational marriage of convenience to retain their bargaining power that keeps them away from the nightmare of deportation.

III. Theoretical Framework of Female Refugee Transnational Marriage⁴¹ of Convenience

This chapter aims to explain the conventional model vs. the bargaining model of the marriage of convenience, which proposes different interpretations of the dynamics of various legal regimes that contribute to shaping new family and market structures in the context of forced displacement. On the other hand, it deconstructs the distinction between the family and the market.

It is worth noting that this is not an economic paper *per se*, but it contributes to the current debates of refugees' struggle for economic resilience in the host country. A particular contribution significant to this study is employing the bargaining power model as an analytical lens to re-articulate transnational marriage as a transactional, interdependent, and conflicting yet cooperating agreement between two contracting parties to achieve personal interest. Hence, I introduce questions around the effects of the female refugee transnational marriage of convenience on the traditional gender roles intra-household and extra-household and critiquing the widespread perception of refugee women as vulnerable, fragile, and passive subjects. I do not mean to deny the patriarchal and unjust conditions which female refugees are subject to and the social legacies that shape their preferences to adopt marriage as a coping mechanism. However, I try not to de-contextualize the unique experience of female refugees in the marriage of convenience.⁴²

A. Contributors to Marriage of Convenience as a Coping Mechanism to achieve Economic Resilience

Before proceeding with the distinction between the conventional model(s) vs. the bargaining model, I intervene with a set of literature that examines similar opportunistic marriage approaches adopted by refugees and migrants in response to the displacement context. These views contribute to introducing how different determinants, such as legal, interpersonal, contextual inducements, and power dynamics can outline the choices of female refugees about

⁴¹ By transnational marriage, I mean marriages with a cross-national dimension, in which the spouses have different nationalities as the result of refugeehood and immigration to host countries.

⁴² Floya Anthias, *Transnational mobility, migration research and intersectionality: Towards a translocational frame*, 2 Nordic J. of Migration Research 102, 103-106 (2012).

marriage in the host countries. However, some of these pieces of literature have critically engaged with female refugees' struggle for economic resilience in Egypt with attention to questions concerning refugees' coping mechanisms, including transnational marriage. The objective of presenting the following literature is twofold:

- i. Rethinking of the similarities and differences between the notion of the marry to work vis-à-vis similar marriage arrangements, such as “Mail-order Bride/Groom” that are usually stigmatized by Western literature views as human trafficking, sexual exploitation, or even legislated prostitution;
- ii. Engaging with the significance of the bargaining model of refugee marriage of convenience vis-à-vis the conventional model of marriage as *Sutra* by revealing how the bargaining model covers the significance of the intersectional relationship between law, labor, and marriage, which is missed by the conventional model.

1. *The Practice of Marriage As a Tool for Survival in a Restrictive Migratory Context*

Transnational marriage of convenience in the migratory context is a not-so-novel phenomenon to female Syrian refugees in Egypt. Accordingly, marriage as a tool for maneuvering the dire living conditions, legal restrictions imposed, and cultural legacies have been introduced by different scholarship as a coping mechanism in the case of displacement and also immigration.

In this respect, the ‘mail-order bride’ notion has been discussed by different feminist literature. By which they mean the marriage of women who chase the dream of immigration to the global West escaping from the deteriorating living conditions of their countries or looking for a new experience in the modern West.⁴³ Some of the concerned scholarships, especially Western feminists, portray this marriage arrangement as a negative, humiliating, and manipulative coping mechanism in which women are viewed as victims of the exploitative industry of brides.

⁴³ Most of the scholarships engage with the case study of the mail order Asian and Russian brides in specific. This focus does not mean that the practice of the mail-order bride is exclusive for these two nationalities. Yet, this practice has been adopted by different nationalities. See, Thea Singer, *From Russia With Love: Movies, TV, and Massive PR Efforts Have Given American Men an Image of Elegance, Ambition, and Success*, BOSTON HERALD, July 3, 1994, (Magazine); Dan Reed, *Mail-Order Matchmakers: From Russia With Love for Money*, S.F. CHRON., (Nov. 6, 1992); Ninotchka Rosca, *The Philippines' Shameful Export*, THE NATION, (Apr. 17, 1995); Eddy Meng, *Mail-Order Brides: Gilded Prostitution and the Legal Response*, 28 U. MICH. J.L. REF. 197, 202 (1994).

Christine S.Y. Chun's contribution to theorizing this practice adopts this victimizing view by focusing on the “disadvantaged” experience of mail-order immigrant brides in America.⁴⁴ She organizes her narrative to reflect how harmful is the mail-order bride approach to women since she replicates that “the harms caused by the mail-order bride industry disproportionately affect the women who travel to the United States as potential brides.”⁴⁵ Similarly, Elisa Giunchi introduces cases of male and female Muslim refugees getting involved in mail-order bride/Groom marriages in Norway. She argues that transnational marriage of convenience between mail-order Muslim brides and male citizens or residents becomes a means to circumvent the strict immigration roles in European countries. This marriage arrangement helped them to establish a basis for legal residence on false premises in the host country, especially after the introduction of new regulations that lessen the possibility to acquire residency based on family reunification or obtaining a work visa.⁴⁶

According to the previous literature views, the "mail-order bride" notion is a negatively connoted marriage arrangement in immigration contexts. However, Marcia A. Zug traces the development of this practice across history in *Buying a Bride: An Engaging History of Mail-Order Matches*⁴⁷ from a progressive point of view. She started with depicting the movement of female immigrant ‘Tobacco Wives’ to the Jamestown colony in North America as a gateway from the “tyranny of covertures in England”⁴⁸ up till the conception of the mail-order bride as it stands today. Despite the humiliating connotation of the notion ‘Buying a Bride’ as mentioned in the book title, Zug's critical analysis of this ‘Buying’ proves that “the harms associated with mail-order marriage have been exaggerated and that the benefits have been underappreciated.”⁴⁹

Along the same lines of victimizing women who resort to extraordinary marriage arrangements, *Sutra* marriage has also been introduced as a tool to cope with the challenges faced by female refugees in the context of displacement. In the Arab culture, marriage is seen as keeping women away from the dangers of not getting married based on the famous Arab

⁴⁴ Christine S.Y. Chun, *The Mail-Order Bride Industry: The Perpetuation Of Transnational Economic Inequalities and Stereotypes*, 17 U. Pa. J. Int'l Econ. L. 1155, 1208 (1996).

⁴⁵ *Id.* at 1183.

⁴⁶ Elisa Giunchi, *MUSLIM FAMILY LAW IN WESTERN COURT*, Routledge Studies in Development, Mobility and Migration (2014).

⁴⁷ See, Marcia A. Zug, *BUYING A BRIDE: AN ENGAGING HISTORY OF MAIL-ORDER MATCHES* (2016).

⁴⁸ *Id.* at 23.

⁴⁹ *Id.* at 7.

proverb, “A shadow of a man is better than the shadow of a wall.”⁵⁰ This cultural legacy is constructed on the Islamic perspective of the purposes of marriage *Maqasid Al-zawaj*. Many Islamic scholars⁵¹ argue that achieving the legitimate interest *Al-Maslaha Al-Shar'ia* of the individual is a major objective of marriage in Islam. In this respect, Al-Ghazali defined the concept of *Al-Maslaha* as “preserving the intent of the *Shari'a* law. The *Shari'a*'s purpose of marriage is five-fold: preserving Muslim's religion, soul, mind, offspring, and money.”⁵² According to this vision, the primary interest of marriage revolves around self-control, lowering one's gaze, and controlling one's desires.⁵³ This vision of marriage as *Sutra* intersects with the mail-order bride notion in an important element, which is perceiving marriage as an interest *Maslaha*, such as obtaining residence/citizenship, securing *Halal* intimacy, or both as in the case of refugee marriage of convenience. However, there is a pivotal difference between both notions, which is the necessity of having the intention to continue in marriage, meaning that the marriage should not be with the intention of divorce as the case in the mail-order bride practice.

A different standpoint of *Sutra* marriage is crystallized in *seeking a widow with Orphaned Children: Understanding Sutra Marriage Amongst Syrian Refugee Women in Egypt*,⁵⁴ in which Taha remarkably touches upon the notion of protection marriage *Zawaj Al-Sutra*⁵⁵ as a survival mechanism adopted by Syrian refugee women seeking asylum in Egypt.⁵⁶ She examines the notion of *Sutra* marriage from an Islamic fatwa lens to see the extent to which a "gendered approach to Islamic fatwa"⁵⁷ can be essential for the understanding of female refugee position in the Egyptian family law and personal status law. Unlike the victimizing approach adopted by Chun and others to portray mail-order brides and similar to Zug, Taha approaches the notion of *Sutra* marriage from an anti-colonial perspective that “offers a critical language and a communication tool to respond to accusations from contemporary international humanitarian,

⁵⁰ Maria Golia, CAIRO: CITY OF SAND, Reaktion Book LTD, 180 (2004).

⁵¹ See, Imam Abu Hamid Al-Ghazali, *Ihya' Ulum al-Din (REVIVAL OF RELIGION'S SCIENCES)*, (2d ed.).

⁵² *Id.* at 24.

⁵³ Bushra Fayez Saeed Haj Hamdan, *Alzawaj walmaslahat alshareiat fi alwaqie almueasiri: dirasat taqwimiyahtahlilia (Marriage and Legitimate Interest In Contemporary Reality: An Analytical Study)* 35 (Unpublished MA Thesis, Int. Islamic Uni. in Malaysia, 2019).

⁵⁴ Dina Taha, *Seeking a Widow with Orphaned Children': Understanding Sutra Marriage Amongst Syrian Refugee Women in Egypt*, in *Migration and Islamic Ethics* 67, 68(2020), available at Doi:10.1163/9789004417342_006

⁵⁵ By *Sutra* marriage, the author means that a widow and a single mother seek to get married to a man with the intention of being provided with livelihood and emotional support.

⁵⁶ Taha, *supra* note 55, at 67.

⁵⁷ Taha, *supra* note 55, at 69.

refugee rights and feminist discourses and conceptions. Such conceptions often stigmatize similar conjugal arrangements under notions such as exploitation, sex trafficking and forced marriage.”⁵⁸

Similarly, Sahar Al-Makhamreh addresses the female refugee agency to access the labor market using the "womanist approach." She argues that notwithstanding the bitterness of displacement, women deal with their lives and create a space for adaptation by employing techniques that originate from the cultural environment in which they were born and raised instead of contradicting it.⁵⁹ The study participants demonstrate that marriage enabled them to deconstruct the patriarchal hegemony of their fathers and brothers. According to one of the participants, “Being married, it is much easier to access work and to negotiate approval from husbands.”⁶⁰ This is similar to Taha's claim that Syrian female refugees perceive marriage as “the decent” option that is shaped by social constructs.⁶¹

As the previously mentioned analysis of the mail-order bride practice and *Sutra* marriage phenomenon has reflected remarkable similarities between both marriage arrangements. I believe Marcia A. Zug's contribution in this regard is considerably critical as it shifts the research attention to the difference between *Sutra* marriage and the mail-order brides approach. On the one hand, religious and social constructions are the main drives for *Sutra* marriages. Yet, when it comes to the mail-order bride marriage, self-actualization and political representation are prioritized over religious affiliations, economic dependency, and cultural norms. Accordingly, Zug spots light on a different dimension of marriage of convenience, which is how such marriage arrangement can enhance women's legal and economic resilience in a disrupted context of displacement. Accordingly, employing Zug's cost-benefit analysis as lenses to analyze and understand the phenomenon of the transnational marriage of convenience contributes to discovering the different determinants and the resulting interactions that drive women's choices towards marriage in the context of protracted displacement and how can women improve their fall-back position in the context of displacement.

⁵⁸ Taha, *supra* note 55, at 87.

⁵⁹ Sahar Almakhamreh, Hana Zuhair Asfour ET AL., *Negotiating patriarchal relationships to become economically active: an insight into the agency of Syrian refugee women in Jordan using frameworks of womanism and intersectionality*, 47 British J. Middle Eastern Stud., 4 (2020).

⁶⁰ *Id.* at 13.

⁶¹ Taha, *supra* note 55, at 81-82.

2. *The Significance of the Bargaining Model: Analyzing Sutra Marriage Is Not Enough*

V. Spike Peterson contributes to the discourse of female refugees' marriage as a coping mechanism in a different way than that of Taha and Al-Makhamreh who focused on how *Sutra* marriage on its own represents a coping mechanism in the context of protracted displacement. Peterson is one of the very few scholars who rootedly theorize the intersections of forced displacement, labor, and gendered relations in a Modern Arabic setting.⁶² Her work on the 2003 Iraq war and the resulting influx of refugee waves features that war and forced displacement allow the emergence of different, informal, and profoundly gendered economies. Peterson introduces three analytical frames of gendered wartime economies surviving mechanisms: combat, criminal, and coping. I primarily focus on the coping mechanism to realize the transnational marriage of convenience as a coping economy mechanism in the context of forced migration. Another reason why I focus on the coping mechanism is that Peterson confirms that the coping economy is the “most obviously feminized.”⁶³ Since forced migration destabilizes social stability and disrupts traditional livelihoods, the emerging female position in the coping economy equation is central because women are often the ones who are relied upon to take care of their families and to maintain households functioning during forced migration on the ground that men are frequently battling wars, harmed, dead, or incapable to look for the women who take part in the coping economy.

Accordingly, the emergence of the economic position of women in the forced displacement context as breadwinner creates various forms of coping labor that incorporate untraditional forms of socio-legal activities, such as the marriage of convenience. Correspondingly, Nina Maadad shared somehow similar thoughts about marriage as a coping mechanism for Syrian female refugees.⁶⁴ Differently, the structured interviews held by Maadad with Syrian female refugees living in Australia, Sweden, and Lebanon proves the intersection between geopolitics and marriage of convenience as a survival, not only coping, mechanism. According to interviewee refugee women in Australia, they consider themselves privileged for

⁶²V. Spike Peterson, 'New Wars' and gendered economies, 88 *Feminist Rev.* 7,20 (2008), available at <https://doi.org/10.1057/palgrave.fr.9400377>; V. Spike Peterson, *Gendering informal economies in Iraq*, in *Women and war in the Middle East* 35,64(N. Al-Ali & N. Pratt ed. 2009).

⁶³ *Id.* at 15.

⁶⁴ Ninna Maadad, SYRIAN REFUGEE CHILDREN IN AUSTRALIA AND SWEDEN: EDUCATION AND SURVIVAL AMONG THE DISPLACED, DISPOSSESSED AND DISRUPTED, 96-100 (2020).

being in Australia since they claim to have "unlimited opportunities" finding a job and access to the labor market with no explicit mention of the marriage of convenience as a coping mechanism. In contrast, they mentioned the misfortune of their female relatives who live in Jordan and have to marry to attain livelihood and emotional support in a country that does not allow refugees to access the labor market. In this context, Najmeh, who is one of the interviewees, said, "Thank God I do not have to get married like my cousin Zahra who lives in Jordan and had to marry this much older man who promised to look after her and her family."⁶⁵ A similar scenario to Zahra's was articulated by an interviewee refugee woman who lived in Lebanon, called Hasnaa, saying: "It is not easy to avoid marriage when you know that it is the only hope for you to be able to survive and lessen the burden of your parents of having to support your family."⁶⁶

Another source of bargaining power is the gendered power dynamics entrenched by law. Accordingly, Enola's argument that "Marriage is political" entails how the state's gendered power dynamics determine the legal position of female refugees, which influence transnational marriage and access to the privileges of state citizenship. She primarily considers the power dynamics of marriage by asking, "Whose marriage to whom is recognized by which governments for which purpose?"⁶⁷ To address this multifaceted question, Enola pays attention to the centrality of power dynamics. She argues that one has to investigate who has the authority to decide that a male national of the host country can marry a woman of another country and thereby confer his citizenship status on his new spouse. In other words, the legal identity of a refugee woman, as a host country national, can only be acquired by her partner who is a national of the host country. Thus, a refugee woman is powerless as she depends on a man for her identity, and more precisely, she relies on the marriage contract to prove her identity and to achieve economic security.⁶⁸

Based on the aforementioned literature review, I observed that most of the scholarship views that recall the notion of marriage in both migratory and forced displacement contexts continue to focus on marriage, on its own, as a coping mechanism. They do not pay enough

⁶⁵ *Id.* at 96.

⁶⁶ *Id.* at 96.

⁶⁷ Cynthia Enola, *BANANAS, BEACHES, AND BASES: MAKING FEMINIST SENSE OF INTERNATIONAL LAW* 32 (2nd Ed., 2014).

⁶⁸ *Id.* at 32.

attention to the application of economics to the study of marriage in protracted displacement. While Zug has made a significant contribution to increasing the level of sophistication in understanding the economies of the mail-order bride practice,⁶⁹ the synthesis offered by her is based on western notions of individualism. Accordingly, employing Zug's approach fell short of understanding the socio-economic dimension of Arab women's marriage of convenience experiences. Furthermore, relying on the discourse of *Sutra* as a drive for marriage of convenience as depicted by Taha explains only one part of the equation, which is why many of these female Syrian refugees maintain their marital relationships even after being naturalized. However, relying on Islamic *Fatwa*, as claimed by the author,⁷⁰ fails to understand the drives of female Syrian refugees towards *Sutra* marriage outside the scope of religion. On the other hand, the approach of marriage as *Sutra* is oblivious to capture female refugee marriage fall-back position in the transnational marriage equation. Thus, I believe employing *Sutra* marriage as analytical lenses maintain the traditional gendered socialization patterns introduced by the "orientalized narratives that portray Muslim women and refugee women in particular, as the passive victims and the Arab man as the oppressive pariah"⁷¹ that the author claims to resist.

Accordingly, I suggest that the bargaining model offers a functional analytical tool to understand the dynamics of refugee marriage of convenience in a way that goes beyond the traditional gendered power imbalance analysis suggested by the conventional model of *Sutra* marriage or the mail-order bride practice as discussed in the literature review. Thus, the bargaining power model primarily focuses on both parties of the marriage contract and not only on women's vulnerable position to understand the earnings and the threat points of each party based on analyzing the intersection between different legal regimes. This economic approach of a mere legal analysis contributes to revisiting the intersection between laws, market, family values in the context of protracted displacement away from victimizing women and demonizing men.

⁶⁹ Zug, *Supra* note 48.

⁷⁰ Taha, *Supra* note 55, at 69.

⁷¹ Taha, *Supra* note 55, at 87.

B. The critique of the Conventional Model

In an attempt to recognize the various analytical models of the marriage of convenience explored by the previously discussed literature, especially in the context of protracted displacement, it is necessary to distinguish between two different yet interconnected versions of the conventional model of marriage. First, there is a conventional model of marriage that theorizes the family and the marriage relationship. On the other hand, there is a conventional model that theorizes the dynamics of the marriage of convenience. This model incorporates the traditional household structures and the stereotypical division of gender roles in both the family and the market in order to analyze the mechanisms of the marriage of convenience. This interconnectedness fails to capture the social change that occurs in the context of displacement and results in remarkable changes in the drives and mechanisms of the marriage of convenience.

1. Principles and Assumptions of the Conventional Model of Marriage Convenience

According to the conventional model theorizing marriage and traditional family, society is an integrated structure that consists of comparable social units. Each unit performs a specific function to support and stabilize this structure. Consequently, the permanent heterosexual two-adult family of procreation represents the basic cell of the society. A Conjugal family is a spontaneous union that results from the instinctive desire to assemble, which is imperative for the survival of the human race and perpetuating social existence. Accordingly, there is no place for voluntary childlessness in this stereotypical marriage model, which is "the deliberate decision of husband and wives to forego either procreation or adoption."⁷²

Consequently, I define the conventional family as a social structure composed of a husband, wife, and descending children who live in an independent residential entity. Also, this family is linked by extended relationships between the husband's family and the wife's family.⁷³

⁷² Eleanor D. Macklin, *Nontraditional Family Forms: A Decade of Research*, 42 *J. Marriage and Family* 905, 907(1980), available at https://link.springer.com/content/pdf/10.1007%2F978-1-4615-7151-3_12.pdf

⁷³ Stacy A. S. Williams, *Nuclear Family*. In: Goldstein S., Naglieri J.A. (eds) *Encyclopedia of Child Behavior and Development*. Springer,(2011), available at https://doi.org/10.1007/978-0-387-79061-9_1994

Accordingly, this unit can be identified by a predominant "we-community" identity,⁷⁴ where the husband is the ultimate party possessing power and authority. According to the conventional model of traditional marriage, the family is close to the trustee family structure introduced by Zimmerman. This structure is derived from the fact that members are not seen as individuals but merely "trustees" of the family's blood, rights, property, and social position for their lifetime."⁷⁵ Hence, there is no place for defining individual rights or any question of individual welfare, except in the framework of family wellbeing. The trustee family has major power over its members, and the husband's or the father's absolute power derives from his role as the family *guardian*.

In this context, the conventional model of the marriage of convenience relies on the argument that the conventional form of the patriarchal family still shapes women choices towards *Sutra* marriage, as argued by Taha: "I argue that the decision/ desire to marry for those women is determined by a complex web-shaped by societal patriarchal dictations that re-articulate marriage as the decent and almost the only solution; [...]"⁷⁶ Thus, according to this view, "women employ marriage of convenience as a moral and virtuous act that complements their existence and understanding of their femininity and gender."⁷⁷ In this respect, this form of social patriarchal authority represents discrimination in favor of the father, husband, or brother by virtue of their social, economic, and legal advantages prioritize them over the female's element within the family. This systematic sexism is motivated by the reciprocal relationship between religion, law, and economics. Correspondingly, the impact of this structure is reflected in individuals' economic roles inside and outside the family. Thus, it contributes to structuring the power relationships inside and outside the family.⁷⁸

Accordingly, the conventional model of the marriage of convenience conceptualizes this marriage arrangement as a practice marred by exploitation resulting from the power imbalance based on gender, nationality, and financial capability of each party, especially in the forced displacement context. Accordingly, Syrian female refugee marriage has always been viewed in a

⁷⁴ Ineke Lam & Ed Spruijt, *Conventional And Nonconventional Middle-Aged Husbands And Wives In The Netherlands*, 29 Int. J. Soc. Family, 31-32 (1999), available at <http://www.jstor.org/stable/23070604>

⁷⁵ Carle C. Zimmerman, *FAMILY AND CIVILIZATION* (1947).

⁷⁶ Taha, *Supra* note 55, at.82.

⁷⁷ Taha, *Supra* note 55, at 82.

⁷⁸ Williams, *Supra* note 74, at 60.

problematic way that represents these women as being vulnerable with distorted agencies. This perception intersects with many of the norms and traditions in the Syrian society that accept and even push towards early marriage under the umbrella of *sutra*, fearing the specter of delay in marriage. Besides, marriage is considered a gateway for many refugee families to earn their living amid refugees' dependence on dwindling sources of livelihood, lack of economic opportunities, and fear of sexual violence.

2. *Determinants of Women's Position in the Conventional Model*

According to the previous reading of the conventional family structure, the family is seen as the basic unit in the social structure as the fulcrum upon which other social systems are built. Thus, it is a means of social monitoring and control that aims to subject the individual to the values, traditions, norms, and behavioral patterns adopted by society under the *socialization* umbrella.⁷⁹ In this respect, women's intra-household conventional roles are viewed as the ideal responsible median for transmitting values, traditions, and behavioral patterns among family members through complete submission to the male partner in the family.⁸⁰ Consequently, this perspective views the family as the institution that is created and shaped by laws and moral standards that develops in parallel with the development of the legal, moral, and spiritual systems it reflects.

As a result, the conventional model of marriage of convenience represents marriage as if it is equal to family. In other words, marriage is a prerequisite for the establishment of the family. Thus, the family is merely a product of the marital relations interactions. According to law, heterosexual couples must live together in a commonplace and carry out sexually exclusive activities approved by law to be called married couples. Most importantly, these relationships shall be permanent with no deliberate intention to end the marriage contracts once the interests of any of the parties are achieved. Concerning the distinction of roles and responsibilities, the family is a legally productive unit whose members mutually interact to play his/her primarily defined role by the society and the market. Accordingly, women carry out the burden of intra-

⁷⁹ James W. Arroll, *The Inevitability of the Nuclear Family*, 1 *Humboldt J. Soc. Relations* 60 (1973), available at <http://www.jstor.org/stable/23261495>.

⁸⁰ Gill Eagle, *Learning to Become a "Natural Woman": The Process of Socialization*, *Agenda: Empowering 2 Women for Gender Equity*, 2 *AGENDA* 67, 67-69 (1988), available at doi:10.2307/4065701.

family responsibilities, while men perform the automated work roles outside the family to fulfill the family's basic needs.

According to this model of marriage of convenience, the change in women's family roles is the result of the change in the form of the traditional extended family, in which the role of women revolves around raising children and doing household chores which have been replaced by the nuclear family, where women started to participate in extra-household interactions, *only*, to keep up with the economic needs of the family that the man alone is no longer able to cover.

Thus, this system imposes a biased social, economic, and cultural structure of intra-household and extra-household relations that strengthens the parental will and authority of the "father" within the family through his domination of resources and power. Thus, patriarchal society does not recognize women's roles except in socially acceptable positions and within certain limits that women must abide by.⁸¹ This discriminatory pattern also reinforced the form of power within the family that significantly impacted women, where men dominated production resources and power sources. Thus, men dominated women in decision-making positions. Consequently, this patriarchal system led to a disparity in opportunities and imbalance in gender roles in the labor market, which affects the moods of production.

Nevertheless, the structure of the family and the motives of marriage in the Arab region have witnessed multiple changes, especially among the populations who had to seek asylum in neighboring and non-neighboring countries resulting in a change of the nature of intra-household and extra-household relations. Accordingly, the labor structure is re-identified inside and outside the family, and the pattern of family authority is re-determined. However, the conventional model dismisses the specificity of the transnational family structure neither in forced displacement contexts nor non-refugee ones. Thus, I introduce an alternative model to explain the specificity of the family structure in the case of transnational marriage of convenience, which is the bargaining power model.

⁸¹ Betty E. Cogswell, *Variant Family Forms and Lifestyles: Rejection of the Traditional Nuclear Family*, Fam. Coordinator 393, 393 (National Council on Family Relations, 1975), Available at <https://doi.org/10.2307/583026>

C. Rules structuring Alternatives to the Conventional Model: Bargaining over Conventinality

The *economics of marriage*, defined as “the application of economic analysis to the study of marriage,”⁸² and known as the “New Homes Economics approach,” incorporates household characteristics into formal models of labor force representation. This approach was introduced first by three main scholars Mincer (1962), Becker (1965), and Lancaster (1966).⁸³ According to the approach, the household is a unitary model and its members act as one. Therefore, all the family members work for one goal which is caring for the unitary family (Income pooling).⁸⁴ Also, any taken decision must be in the context of the unified strategy of the family, which is reflected in the behavior and interests of individuals.⁸⁵

Focusing on Becker's theory of the economics of marriage, marriage is viewed as a contract for labor distribution. Hence, marriage dynamics are not much different from those of the market that rely on the cost-benefit analysis of each spouse/party of the transaction. Each of the spouses is committed to his/her stereotypical spousal labor roles that are constructed by the intrinsic biological differences that shape the gendered division of roles.⁸⁶ Therefore, adhering to this division of spousal labor is the only guarantee for achieving the maximum utility of this marital relationship for all parties, including the children. Becker believed that the wide entry of women into the non-spousal labor market has reduced the economic profit of the husband on the one hand and eases divorce on the other hand. He also claimed that higher wages would upset traditional gender roles and encourage more women to join paid jobs. Accordingly, “[h]ouseholds with only men or only women are less efficient because they are unable to profit from the sexual difference in comparative advantage”⁸⁷ as hypothesized by Becker.

In this respect, different feminist theorists engaged with Becker's view of the relationship between labor and marriage markets. They argue that the economics of marriage as depicted by

⁸² Shoshana Grossbard, *ON THE ECONOMICS OF MARRIAGE – A THEORY OF MARRIAGE, LABOR AND DIVORCE*, (2nd Ed.,1993).

⁸³ *Id.* at 7.

⁸⁴ *Id.* at 7.

⁸⁵ Diane L. Wolf, *Daughters decisions and domination: an empirical and conceptual critique of household strategies*, *IN THE WOMEN, GENDER & DEVELOPMENT READER* 154, 157 (2nd Ed. 1997).

⁸⁶ Grossbard, *Supra* note 82 at 12

⁸⁷ Philomila Tsoukala, *Gary Becker, Legal Feminism, and the Costs of Moralizing Care*, 16 *COLUM. J. GENDER & L.* 357, 369 (2007).

Becker ignores "issues of power, inequality and other social factors"⁸⁸ that shape the gendered division of labor according to which he constructed his theory. Therefore, different feminist economists introduced the feminist economics of marriage approach that dismisses the intrinsic biological and sexual differences between males and females to justify the stereotypically gendered division of roles.⁸⁹ Hence, I focus on the feminist approach to the bargaining power model that is explicitly notable in presenting the power of women's agency away from the stereotypical gendered division of roles. This economic model reflects women's choice of the marriage of convenience by analyzing the rational comparison of costs and benefits of this socio-economic interaction.

As explained earlier in the literature review, marriage of convenience in the context of immigration and protracted displacement is not a novel practice to circumvent immigration barriers or access to the labor market in the host country. However, what is unique about the marriage of convenience in refugee context in Muslim Arab communities is that it can be equated to neither temporary marriage *Zawaj Al-Misyar*,⁹⁰ marriage in divorce structure *Zawaj Benyt Al-Talaq*,⁹¹ nor mail-order bride practice as the case of marriage of convenience in Western contexts. Therefore, it is hard to view the transnational marriage of convenience in refugee context through the previously explained conventional model that constructs marriage of convenience as a negative coping mechanism that indicates the fragility of female refugees' agencies, as adopted by different pieces of literature.⁹²

⁸⁸ *Id.* at 370.

⁸⁹ See, Ann Laquer Estin, *Can Families Be Efficient? A Feminist Appraisal*, 4 MICH. J. GENDER & L.1 (1996); Elizabeth S. Anderson, *Is Women's Labor a Commodity?*, 19 PHIL. & PUB. AFF. 71 (1990).

⁹⁰ By *Zawaj Al-Misyar* I mean a marriage between an adult man and an adult woman who is legally permissible for him on a known dowry and witnesses who fulfill testimony conditions. However, it includes the wife's giving up some of her legal rights over the husband, such as: not requesting maintenance or housing and staying overnight, but rather comes to her from time to time without determination and that by choice and compromise. This is not proven in the legal contract. See Noor Mohammad Osmani, *Misyar Marriage between Shari'ah texts, Realities and Scholars' Fatawa: An analysis*, 7 IIUC Studies 297, 298-299(2010).

⁹¹ By *Zawaj Benyt Al-Talaq*, I mean for a man to enter into a marriage contract with a legally permissible women for him to have a marriage contract that is fulfilling its legal conditions with the consent of the guardian and the witnesses. However, the husband/wife intends upon marriage to divorce this wife after a while, which may extend to years, shorten Months, or even days for his/her benefit. See Saleh Abdul Aziz, MARRIAGE WITH THE INTENTION OF DIVORCE, 43(1st Ed. 1421 CE).

⁹² For information about these contributions, See, Dina Khaled El Sherbiny, *The myth of Syrian-Egyptian marriages after 2011: the struggle for livelihoods of Syrian women in Cairo*, 3(Unpublished MA Thesis, the American University in Cairo, May 2015), available at <https://fount.aucegypt.edu/cgi/viewcontent.cgi?article=1074&context=etds>

1. Principles and Assumptions of the Bargaining Model

I employ Bina Agarwal's view of the bargaining power model to understand the interrelation between marriage and labor markets from a feminist perspective. Before tracing Agarwal's view, it is worth noting that there are three main approaches of the bargaining power model: Cooperative, non-cooperative, and mediatory approach which is a mix between the first two ones. According to the cooperative bargaining power model, cooperation between family members is in the best interest of all parties. At the same time, the parties agree among themselves on the bargaining powers of each of them. Correspondingly, an individual's bargaining power is determined according to many factors, chief among them the legal system that governs marriage and divorce - and the legal systems that govern female refugees' living conditions in Egypt.⁹³ Consequently, it is the fall-back position that the individual does not obtain in the absence of cooperation with his/her partner. This fall-back position drives him/her towards cooperation.⁹⁴

In between these two models, a mediatory approach represents a mixture of the two previous models. It looks at marriage as an arena for cooperation and conflict inside and outside the family space.⁹⁵ Accordingly, the work of Bina Agarwal is the most significant to understand the dynamics of the transnational marriage of convenience from a bargaining power approach. Although Agarwal does not specifically address marriage in forced displacement context in her seminal argument, two aspects of her contribution pave the way for constructing my argument: First, the analysis of the legal determinants of the cooperative yet conflictive nature of extra-household relations draws the determinants of the intra-household bargaining power. Second, Agarwal offered a wide range of non-formalized structures of bargaining power extra-household that help in determining the formalized bargaining power intra-household. Agarwal offers a

⁹³ There is a number of literature that have constituted the cooperative bargaining power model in the family context, chief among them is Nash's game theory approach of the cooperative model. See, John Nash, *The bargaining problem*, 18 *Econometrica* 155,162(1950).

⁹⁴ Michael R. Carter and Elizabeth G. Katz, *Separate spheres and the conjugal contract: Understanding the impact of gender biased development*. In *INTRA-HOUSEHOLD RESOURCE ALLOCATION IN DEVELOPING COUNTRIES: METHODS, MODELS, AND POLICY* (Lawrence Haddad, John Hoddinot & Harold Alderman ed.,1997).

⁹⁵ See, Amartya Sen, *Gender and Cooperative Conflicts*, IN *PERSISTENT INEQUALITIES: WOMEN AND WORLD DEVELOPMENT*, 123(Irene Tenker ed.,1990).

feminist explanation of the scope of women's intra-household position through analyzing the dynamics of her extra-household bargaining capacity.⁹⁶ She adopts a broader perspective while examining the family as she perceives it as a unit of production and consumption in which decisions related to work and the accumulation of sources of income are made.

Agarwal argues that women empowerment is linked to their status within the family, chief among them their right to equal opportunities for economic justice, which is determined according to the decision of the male household head. Such decision, she explains, is in line with the ideal of his authority/power continuity, associated with maintaining the patrilineal authority of the law represented in the male partner.⁹⁷ She further argues that "Some resources are both determinants of a person's bargaining power vis-à-vis other resources, and themselves need to be bargained for."⁹⁸ In this explanation, empowering women economically and enhancing their economic capabilities extra-household change their position in the intra-household bargaining power equation and the opposite goes the same way.

Agarwal's marriage model can be viewed as an inevitable alteration of the conventional model of marriage along the persistent process of changing economic and legal conditions, which reflects broader economic and social transformation. The non-conventional model previews marriage as a free choice process based on the mutual interest between two heterosexual persons. Also, this model articulates marriage bonds between two heterosexual parties as unilateral yet interdependent and with cooperative yet conflicting interests.⁹⁹ Household members adopt cooperative arrangements that achieve the interests of both parties, which make each of them better off compared to their fall-back positions in non-cooperation modes. However, "each party has strictly conflicting interests in her/his choice among the set of efficient cooperative arrangements."¹⁰⁰ In this respect, the outcome of this bargaining model, exercised in specific temporal and spatial spaces affects the results of the bargaining in other contexts, which means that bargaining power is cumulative.

⁹⁶ Bina Agarwal, *Bargaining and gender relations within and beyond the household*, 1(Discussion Paper No. 27, Int. Food Policy Research Institute, Mar. 1997).

⁹⁷ Bina Agarwal, *Engaging with Sen on Gender Relations: Cooperative Conflicts, False Perceptions & Relative Capabilities*, IN HOST PUBLICATION: ESSAYS IN HONOR OF AMARTYA SEN, 162(Kaushik Basu ed.,2008), available at https://www.research.manchester.ac.uk/portal/files/37902088/FULL_TEXT.PDF

⁹⁸ *Id.* at 9.

⁹⁹ Sen, *Supra* note 96, at 123

¹⁰⁰ Agarwal, *Supra* note 73, at 159.

2. Determinants of Women's Position in the Bargaining Model

Agarwal's argument digs deeper to explain the determinants of women's bargaining power within the family and its relationship with intra-household and extra-household power dynamics. Consequently, economic considerations, social norms, power resources, and a person's fall-back position play a determinative role in choosing the other contracting partner and deciding the contract conditions which maximizes his/her bargaining power.

By viewing marriage as mere transactional activity, the bargaining model allows considering the relation between the modes of production and the social, legal, and political systems associated with it. This relation affects the family structure, the marriage regimes that govern it, the nature of the roles and positions occupied by each of the members of this institution, and the arising social relations and processes. Accordingly, the family is represented as a primary economic unit that affects and gets affected by the bargaining rules between the spouses.

Consequently, the bargaining model offers a more accurate description of the nature of transnational marriage of convenience in the context of the emerging refugees' influx that resulted from internal conflicts and political instability that cast a shadow over the traditional form of the patriarchal family. Thus, the forms and motives of marital relations have changed. Accordingly, the roles within the family system have changed due to the development of their functions resulting from the receiving countries' legal order. Therefore, new household structures have emerged to cope with the interdependence between the economic, social, and legal systems on the one hand and various legal systems on the other one.

Accordingly, I seek to employ the bargaining power model in transnational marriage to understand the various interactions of four different legal regimes related to this unique social structure: Egyptian nationality law, Egyptian foreign labor law, family law, and international refugee law. Besides, it helps to demonstrate the forms of the resource management process, decision-making, roles, and responsibilities that characterize this unique household structure through dismantling the barrier between the market structure and the family one where intra-

household relations extend outside the family to the neighborhood, the local community, and the market.¹⁰¹

Besides, the bargaining model helps in understanding the available options for each party inside and outside the family structure by focusing on the opportunities available for female refugees. These options are correlated to the change witnessed in refugee women's economic role. Whereas the conventional model emphasizes the need for a division of labor based on gender so that the woman/wife carries out the process of childbearing and taking care of the family, meaning that her role does not go beyond being a wife, mother, and housewife. At the same time, the man/ husband has the privilege to participate in all the economic, social, and political aspects of society. The bargaining model does not adopt the same functional division of labor. Yet, it goes further to explain the role of different legal regimes in determining the available opportunities and the existing legal and non-legal space in which these opportunities can be exercised, in addition to the resources and powers in hand to gain extra bargaining power. For instance, female refugees employ their ability to enter into transactional sexual relationships with Egyptian males under the umbrella of the traditional marriage structure in exchange for the Egyptian nationality, enabling them to enter the labor market formally and enhance their economic position. On the other hand, the law allocates the burden of nationality proof to the male partner. Accordingly, the marriage of convenience-based family does not seek to disrupt the conventional family structure. Yet, it exploits the open spaces created by legal regimes to achieve different cooperation forms to achieve mutual benefits for both parties.

¹⁰¹ Agarwal, *Supra* note 97, at 15.

IV. *Applying the Bargaining Model on the Marry to Work Approach in the Forced displacement Context*

The bargaining power model adopts the concept of the household/ functional family, which differs in its concept and essence from the conventional concept of the family, which only focuses on the kinship relations. These relations are represented by a set of social relations that is defined by culture, religion, and law dismissing the consequent economic transaction that is offered by the concept of functional family/household. According to the bargaining model, production processes are affected by intra-household and extra-household activities. On the one hand, the position of both men and women within the family is determined by the types of activities they perform in the market. On the other hand, the position of women and men in the market affects the intra-household pattern of relationships, which drives women and men into a bargaining power relationship.

Accordingly, family members enter cooperative and implicit contracting relationships. These rules of these contracting intra-household relationships define the bargaining power ability of each family member. Besides, this power is determined by extra-household factors that include market position, wages, property, savings, and laws governing naturalization and labor, system assistance, and livelihoods intervention. In other words, these factors constitute the available conditions and possibilities that affect decision-making mechanisms, allocation of resources, and bargaining dynamics within the household, which in turn affects the merits of the intra-household and extra-household decision-making process. Hence, the household is viewed as a collaborative commitment aimed at achieving maximum gains for both partners. However, these factors create unequal bargaining power opportunities between men and women, especially in the refugee context. Consequently, women pursue strategies to secure their lives by collaborating with men in terms of the traditional family institution.¹⁰²

Accordingly, I tend to employ the bargaining power model to flip the conversation of female refugees' marriage of convenience as a negative coping mechanism that represents women as vulnerable and passive subjects into an argument of how female refugees' marriage of convenience demonstrates a mixed picture of costs and benefits that are constructed by the open

¹⁰² Elizabeth Katz, *The intra-household economics of voice and exit*, *Feminist Economics* 25,28(1997).

spaces found in the Egyptian family and nationality laws to gain access to the labor market under more favorable conditions.

A. Intra-household Bargaining Mechanisms in the Context of Forced Displacement

The concept of intra-household bargaining power constitutes a key analytical framework for understanding the mechanisms of resources management, decision-making, and the distribution of roles within the family. It also explains the factors that contribute to granting a better fall-back position to a particular spouse within the family compared to the other one. Thus, this section contributes to defining the rules and institutions available to women as well as men, in light of the marriage of convenience, which constitutes the dynamics of the bargaining within the family. It also defines the rules that contribute to the decision of both parties to either continue in the cooperation mode or to search for other alternatives in the case of protracted displacement.

As explained in chapter III section C2, Bina Agarwal explains the role of main eight factors that determine the intra-household bargaining power of each party, including: "ownership of and control over assets, especially arable land; access to employment and other income-earning means; access to communal resources such as village commons and forests; access to traditional social support systems such as of patronage, kinship, caste groupings, etc.; support from NGOs; support from the state; social perceptions about needs, contributions and other determinants of deservedness; and social norms."¹⁰³ I focus only on five factors that are relatively critical for explaining the dynamics of the intra-household bargaining power in the case of marriage of convenience according to the forced displacement experience of the female Syrian refugees in Egyptian; as follow:

1. Social Norms of the Patriarchal Society:

Social norms are a pivotal determinant of bargaining power in the transnational marriage of convenience in the forced displacement context.¹⁰⁴ Agarwal presents social norms "as limits to

¹⁰³ Agarwal, *Supra* note 97, at 8-9.

¹⁰⁴ Agarwal, *Supra* note 97, at 24.

what can be bargained about."¹⁰⁵ In this respect, a person's bargaining power depends on his/her ability to exercise what society considers of important value and what it perceives and expects from the individual according to his gender is of great importance in the bargaining process. For instance, the capability of a female refugee to perform her conventional social roles according to her gender identity entitles her to obtain a better fall-back position in the conventional marriage. Therefore, one of the strategic methods used is "adaptation" to patriarchal social norms to obtain basic rights.

This is in light of the fact that the patriarchal society does not recognize the role of women except in socially acceptable positions and within certain gender rules that women have to practice, top of which is to be a wife/mother. Accordingly, a woman can only be freed when this patriarchal transfer from her father to her husband, who controls the production resources and is located in a better fall-back position. Thus, one way to successfully retain their bargaining power is that female refugees use formal networks as entering into reciprocal family relationships to benefit from all social and religious aspects that support the family foundation to promote and develop their economic interests.

Due to the different expenditure pattern of the family based on a marriage of convenience, especially in light of the dire economic situation, it became difficult to rely on the husband as the family's breadwinner, even in traditional marriage arrangement. Therefore, women's exit to the labor market, even if informally, guarantees them the ability to choose to cease their cooperation and find an alternative or not.

2. Patriarchal Household's Position:

Power relations within the family are considerably influenced by the patriarchal form of the family, which in turn affects the bargaining power between the spouses. Although the marriage of convenience is not necessarily abided by the traditional patriarchal distribution of gender roles, where the husband is the family's breadwinner while the wife carries the burden of the spousal labor, women still commit to the stereotypical division of gender roles in the family. They accept the traditional roles of taking care of the home and carrying out all the traditional household chores, such as bearing children and having sexual intercourse, in order to strengthen

¹⁰⁵ Agarwal, *Supra* note 97, at 22.

their position in the family.

By applying this approach to the situation of Syrian refugee women involved in marriages of convenience, I witnessed in many cases¹⁰⁶ that these wives are responsible for paying their rent, paying their food, and carrying on the responsibility of any other expenditures. They mainly rely on their savings, if any, the system assistance they receive, or the earned income of the homemade food they prepare. At the same time, they perform all the traditional household chores. The reason why they accept such a low fall-back position is that sustaining this marital relationship would help them to obtain the citizenship. Therefore, they will be able to officially access the labor market. Hence, their fall-back positions will significantly improve. Accordingly, they will be able to cease this cooperation if they wish to do so.

Therefore, I believe that unlike Sen's concept of the perceived interest response,¹⁰⁷ the position of Syrian female refugees in Egypt represents an opposite view to the traditional view of women's altruistic capacity as it may seem so. Maximizing her bargaining power is the main and pivotal engine of her activity within the transnational family setting in order to achieve economic resilience to re-adapt the conditions in a suitable and accepted way according to the surrounding legal framework. Consequently, women are reshaping the course of the displacement events by circumventing the source of strength represented by the law, even though they remain subject to it. Hence, women draw their bargaining power from the same curbing sources using law dynamics.¹⁰⁸

3. *Support From NGOs:*

Livelihoods programs are viewed as employment-centered development programs that include a set of mechanisms to reach the maximum number of jobs available for refugees. These programs aim to support the ability to employ refugees or facilitate access to entrepreneurship opportunities, including life-skills programs such as professional skills training, vocational training (TVET), or funding programs providing refugees with the funding required to do their

¹⁰⁶ In 2016, I used to work as a caseworker in a project that addresses SGBV practices among female Syrian refugees in Egypt who got involved in transnational marriages of convenience with Egyptian men.

¹⁰⁷ While women respond to their own benefit and interests, especially in conservative societies in which the traditional division of gender roles are still pivotal in the social structure, they do not think about their personal interest, but rather the interest of the family and other individuals since this is their way to express their love and compassion. See, Sen, *Supra* note 96, at 24.

¹⁰⁸ Michel De Certeau, *THE PRACTICE OF EVERYDAY LIFE*, (Uni. of California Press, 1984).

small businesses. On the other hand, some livelihood programs seek to create employment opportunities or connect refugees with employers by alleviating the obstacles associated with the difficulty in accessing the market and the communication gap between the refugees on the one hand and the host community and the employers on the other hand.¹⁰⁹

In Egypt, non-governmental organizations (NGOs) carry out the responsibility of sustainable refugee livelihoods and professional skills training, such as the United Nations High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM), International Labor Organization (ILO), and other organizations working in the field of humanitarian assistance to refugees instead of the government, which do not put refugees' training and rehabilitation on its agenda. This exclusion often occurs when the host country is a developing country whose nationals suffer from illiteracy, low educational standards, and widespread unemployment.¹¹⁰

While these organizations, whether local or international, seek to serve all refugees fairly and equally, they usually face the obstacle of obtaining sufficient funding to provide and maintain the necessary rehabilitation and training programs. Most of these obstacles amount to the fact that funding agencies prefer that their contributions go to finance programs related to food, health, or educational aid, considering the decline in funding targeting refugees residing in urban areas compared to aids directed to refugees living in camps. Thus, the livelihoods component has received the least attention than all the other issues mentioned in the regional response plan (3RP). The reason for this lack of interest is twofold: the limited amount of financial support secured for employment and livelihood programs and the constricting nature of the refugee labor regulations that impede these organizations from achieving the fundamental objectives of livelihood projects resulting in fund interruption.

Besides, many livelihood programs¹¹¹ are developed with a focus on the abstract formal

¹⁰⁹ Machtelt De Vriese, *Refugee livelihoods A review of the evidence*, UNHCR.ORG, 36 (2006), available at <https://www.unhcr.org/4423fe5d2.pdf>

¹¹⁰ *Id.* at 61.

¹¹¹ There is no clear definition of what is meant by refugee livelihood, but it can be understood in terms of the comprehensive definition of livelihoods adopted by many international developmental agencies, which define livelihoods as: "The capabilities, assets, and activities necessary to generate income and secure the means necessary to earn a living whereas sustainable livelihoods are based on the ability of people to manage and preserve their day-to-day lives, and to enhance their well-being for themselves and for future generations.

conditions of development without sufficient understanding of the sensitivity of female refugees' status in terms of their capabilities, living conditions, and the strategies they follow to be present in the labor market. Accordingly, it is hard to consider these programs as an alternative in women's hands. On the other hand, several local and international NGOs and concerned UN agencies have conducted studies and assessments that reflect the reality of refugee employment,¹¹² especially Syrian refugees, to develop sustainable solutions to the problematic situation of the Egyptian labor market. They seek to develop livelihood programs to maintain the minimum standard of refugees' economic and social rights. However, Egypt's reservation on refugees' right to work remains a thorn in the way of the success of these attempts.

In light of the limited scope of livelihoods interventions, the growing phenomenon of Syrian girls marrying Egyptians to secure their livelihoods due to the deteriorating conditions has been crystallized, considering marriage to be a step forward for both the young man who could not meet the exorbitant marriage requirements required by the Egyptian families and the Syrian girl who wants to secure a decent life in light of the tragedy of asylum is represented in the marriage of convenience.¹¹³ Accordingly, relying on the system's livelihoods assistance cannot be solely an alternative to the cooperation between the refugee wife and citizen husband in the transnational marriage of convenience relationship.

4. *State Support:*

Egypt is one of the parties that have participated in drafting the "Universal Declaration of Human Rights," which stipulated the right to asylum in article 14 and the right to work in article 23.¹¹⁴ Egypt is also one of the signatories to the 1951 United Nations Convention, which is the cornerstone of refugee-related treaties and conventions according to presidential decree No. 331 of the year 1980. It ratified its 1967 additional protocol issued according to presidential decree No. 333 of 1980.¹¹⁵ Also, Egypt ratified the convention against racial discrimination, the

International Federation of Red Cross and Red Crescent Societies, *IFRC Guidance on Livelihood Programming*, 51(2010).

¹¹² The office of the United Nations High Commissioner for Refugees (UNHCR), *Global Strategy for Livelihoods*, Geneva (2014).

¹¹³ *Syrian refugee women exploited in Egypt*, THE NEW HUMANITARIAN, (Jan. 31, 2013), available at <https://www.thenewhumanitarian.org/news/2013/01/31/syrian-refugee-women-exploited-egypt>

¹¹⁴ *Supra* note 110.

¹¹⁵ Egypt Profile, UNHCR.ORG available at <https://www.unhcr.org/en-ie/4cd96bae2c.pdf> (last Visited Aug. 2, 2021).

convention against discrimination against women, the International Covenant on Civil and Political Rights, and the International Covenant on Social, Economic, and Cultural Rights, the African Charter on Human and Peoples' Rights, the Convention against Torture as a mechanism for promoting and supporting civil, economic, social, cultural, and political rights for human beings without discrimination, including the right to work.¹¹⁶

According to the Egyptian legal system, international agreements are generally subject to the text of the first paragraph of the article (151) of the Egyptian constitution issued in 2014, according to which “The President of the Republic represents the state in foreign relations and concludes treaties and ratifies them after the approval of the House of Representatives. They shall acquire the force of law upon promulgation per the provisions of the Constitution.”¹¹⁷ Thus, Egypt's universal commitments come in the same rank as laws that immediately follow the constitution. The article states that the president is responsible for concluding international agreements and reporting them to the Parliament. The agreement shall have the force of law after its conclusion, ratification, and publication under the established conditions.¹¹⁸ Accordingly, international conventions on human rights in general and the right to work in particular are considered one of the laws issued by the legislative authority after being ratified and published in the Egyptian gazette.

However, no legislation in Egypt legalizes refugees' status, except for the overbroad article (91) in the 2014 constitution, which permits - but does not oblige – accepting a refugee and does not refer to international treaties.¹¹⁹ This legal vacuum subjugates refugees' fundamental rights such as health, education, food, housing, and the right to work to the authority of the Egyptian state, especially in light of Egypt's reservation on some of these rights granted to refugees under the 1951 Refugee Convention.¹²⁰ Additionally, the labor restrictions imposed by the Egyptian government on the mobility of refugees in the labor market, as

¹¹⁶ For more information, please visit the UN Treaty Body Database: https://tbineternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=54&Lang=EN (last Visited Aug. 2, 2021)

¹¹⁷ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, *available at* https://www.constituteproject.org/constitution/Egypt_2014.pdf

¹¹⁸ *Id.* at 39.

¹¹⁹ *Id.* at 28.

¹²⁰ Egypt ratified the 1951 convention of refugee and its 1967 additional protocol in May 1981, but it has reservations on five articles, including article 24 concerning social security provisions. See, Refugee Law & Policy: Egypt, *available at* <https://www.loc.gov/law/help/refugee-law/egypt.php> (last visited at Aug. 2, 2021)

discussed in the next section, cause harm to the fall-back position of the refugee wives in the intra-household bargaining process while maximizes the husbands' bargaining powers.

In respect to the intra-household bargaining power analysis in the context of Syrian forced displacement, I believe that the factors that affect refugee women's intra-household bargaining power are considerably constructed by their extra-household bargaining position in the different legal regimes. Thus, the ability of female refugees to access the labor market improves her extra-household bargaining position, and correspondingly enhances their intra-household position.¹²¹ In this respect, four main refugee-related legal systems in Egypt play a decisive role in defining the conversation of female refugees' transnational marriage in Egypt. The intersection between the Egyptian labor laws and International refugee law on the one hand and the Egyptian family law and nationality law on the other hand between these legal systems reveals the transactional relationship between law, labor, and marriage.

In the next section, I discuss the legal dynamics of female refugee extra-household bargaining power dynamics that help in determining her intra-household bargaining power,¹²² and how it shapes other alternatives if any. I focus only on analyzing the dynamics of the intersection between Egyptian labor law and Egypt's obligation towards international refugee law while dedicating chapter V to analyzing the intersection between the other two legal regimes which are Egyptian nationality law and Egyptian family law.

B. Extra-household Bargaining Mechanisms in Refugee Host Market

Refugee status shows that individuals are not equal in entering into the bargaining power process. Thus, they do not have the same access to other alternatives for cooperation in the transnational marriage of convenience. Hence, female refugees are, supposedly, unable to bear the consequences of the breakdown position within the family. These dynamics affect the intra-household and extra-household bargaining powers of both male citizen husband and female refugee wife. Hence, there are many other factors related to extra-household bargaining power that determine the ability of individuals to access alternatives that support their ability to bargain. The most important of which is "access to employment and other income-earning means," as

¹²¹ *Supra* note 86, at 123.

¹²² Agarwal, *Supra* note 97, at 7.

explained by Agarwal.¹²³ Consequently, I intend to analyze the dynamics of the right to work for refugees in Egypt as the main factor that shapes extra-household and intra-household bargaining powers.

5. *Access to Employment and other Income-earning Means:*

Although Egypt has no reservation to Article 17 of the 1951 Refugee convention concerned with wage-earned employment, refugees in Egypt different legal restrictions in order to formally access the Egyptian labor market due to two main restrictive legal frameworks, as follow:

i. Labor Law No.12 of 2003 and Regulative Decree No.305 of 2015:

Refugees have no specificity in the Egyptian labor law as it treats all align similarly, despite their refugee status. Therefore, refugees, except the Sudanese as per article 1 of the decree no.305 of 2015,¹²⁴ are subject to all the provisions of labor law and decree no.305 of 2015 that constitute very restrictive measures when it comes to foreigners' employment, such as: "The foreigner's qualifications and expertise must be adequate for the prospective position; the foreigner may not compete with local manpower; the real need of establishment for the foreigner's expertise; The commitment of the establishment hiring the foreign experts or technical personnel must hire at least two local assistants with qualifications similar to those of the experts or technical personnel and prepare annual reports of their progress; and foreigner who is born and residing in Egypt shall be given preference."¹²⁵ In case of fulfilling all of the above conditions, refugees have to obtain a work permit.¹²⁶ However, obtaining a work permit in Egypt is a very challenging process for different reasons:

¹²³ Agarwal, *Supra* note 97, at 8

¹²⁴ Ministry of Manpower and Migration Decree No. 305 of 2015, *Al-Jarida Al-Rasmiyya*, Sep.14, 2015 (Egypt). [Hereinafter, Decree No. 305 of 2015].

¹²⁵ Doing Business in Egypt, BACKER & MCKENZIE.COM, (2016), available at https://www.bakermckenzie.com//media/files/insight/publications/2016/03/bk_egypt_dbi_2016.pdf?la=en; See, *Supra* note 126, at Articles 1, 4 &5.

¹²⁶ *Supra* note 126, at Article 5.

a. Exorbitant Costs:

The fees of obtaining and renewing a work permit for three consecutive years from the date of issuance are considerably high.¹²⁷ These conditions extend to any foreign woman, either a refugee or not, married to an Egyptian national, providing that the marital relationship continues.¹²⁸ Accordingly, Egyptian business owners are reluctant to officially employ non-Egyptians as they do not want to bear this financial burden. Even in case of employing refugees as part of the 10% foreign employee policy, employers usually prefer to employ men over employing women. Hence, male Syrian refugees have better chances to obtain formal employment opportunities in Egypt compared to female Syrian refugees. This discriminatory practice is a result of twofold intertwined factors: First, Syrian women suffered from decades of systematic discrimination and patriarchal legacy that negatively influenced their chances in education. This resulted in significant skills variances between males and females. These variances have cast a shadow over the disprivilege fall-back position of female Syrian refugees in a very fierce and competitive host labor market like the Egyptian one, which in turn affects her intra-household bargaining power. Second, many business owners confine Syrian females in home-based labor, especially in the food sector as this confinement helps business owners to take advantage of women's need to work and give them a little pay in return of their *Makdos*.¹²⁹

b. The Difficulty of Work Residence Issuance:

Law No. 77 of 2016¹³⁰ amending law No. 89 of 1960¹³¹ is the legislative umbrella to regulate the residence of foreigners in Egypt, with no specificity to the status of refugees in this regard.¹³²

¹²⁷ In case of permit approval, the fees due are 5,000 EGP in the first year of issuance while paying 1000 EGP for three consecutive years from the date of permit issuance. The Egyptian Ministry of Manpower, *dalil al'ijra'at - tarakhis eamal al'ajanib (Guidelines for Obtaining Foreigners Work Permit)*, available at <http://www.manpower.gov.eg/Foreignworkpermits.html> (last visited April 15, 2021).

¹²⁸ *Id.*

¹²⁹ *Makdos* is a well-known Syrian cuisine that many female Syrian refugees have taken up to prepare it at home and sell it for food business owners in return of earning a living.

¹³⁰ Law No. 77 of 2016 (Amending Law No. 89 of 1960 Concerning Entry, Residence, and Exit of Foreigners), *Al-Waqā'i' Al-Rīsmiyah*, Vol 38, Sep. 26, 2016, (Egypt), available at <https://manshurat.org/node/47>

¹³¹ Law No. 89 of 1960 (Regarding Entry, Residence, and Exist of Foreigners), *Al-Waqā'i' Al- Rīsmiyah*, Vol. 71, Mar.24 1960 (Egypt), available at <https://manshurat.org/node/7355>

¹³² See, Information For Asylum-Seekers and Refugees in Egypt, UNHCR.ORG, (April,2013), available at <https://www.refworld.org/pdfid/5267a1d9b.pdf>

Besides all the increasing hardships refugees face for obtaining legal residence in Egypt as articulated in different reports and studies,¹³³ the Egyptian law does not clearly specify if a refugee can obtain a work residence or not since the law does not state the procedures required for the conversion from one kind of residence to work-based one, if possible. However, decree no.485 of 2010 states that in the case of a foreign woman marrying an Egyptian, she is entitled to issue a work permit as long as she has been married for five year. In case not, she shall submit a copy of the marriage document, a declaration written by the husband before the competent authority stating the continuation of the marital relationship, copies of the children's birth certificates, if any.¹³⁴ In this respect, female refugees depend on their Egyptian spouses to recognize their extra-household bargaining power in front of the law as long as they are non-nationals. Accordingly, a refugee wife would not bear the consequence of the threat-point in case her husband refused to sign the declaration letter, which results in a deteriorating intra-household fall-back position for female partner while enhance the husband's intra-household and extra-household bargaining power and authority.

ii. law No.79 of 1975 Regarding Labor Social Insurance:

Article 24 of the 1951 Refugee Convention refers to the right of refugees to benefit from labor legislation and social security, including wages, family benefits, working hours, overtime, paid holidays, minimum working age, and the privileges of the apprenticeship/training contracts.¹³⁵ Additionally, this article enables refugees to benefit from social security provisions, such as work injuries compensation insurance, occupational diseases, maternity leave, benefits for the worker's family in the event of death, and any other compensation included in the host state's social security system. However, it is worth noting that Egypt has perpetuated a reservation

¹³³ See, Egyptian Commission for Rights and Freedoms, *Barriers to refugees, immigrants, and foreigners in obtaining residency in Egypt*, 14(2019), available at <https://www.ec-rf.net/wp-content/uploads/2019/12/%D9%87%D8%AC%D8%B1%D8%A9-22.pdf>

¹³⁴ Ministry of Manpower and Migration Decree No. 485 of 2010, *Al-Jarida Al-Rasmiyya*, Vol. 277, Dec.5, 2010 (Egypt). [Hereinafter, Decree No. 485 of 2010].

¹³⁵ *Supra* note 117.

regarding this article.¹³⁶ At the same time, Article 4 of law no.79 of 1975 refers to employee insurance as a mandatory act for employers.¹³⁷ However, according to article 2(2), the provisions of the aforementioned law shall not apply to foreign workers unless there is a reciprocity agreement for foreigners subject to the labor law.¹³⁸ By applying this article to the situation of Syrian refugees, I find that the last reciprocity labor agreement concluded between Egypt and Syria is the agreement to extend labor agreements between Syria and Egypt before joining the Arab League in 1960.¹³⁹ Currently, there is no active agreement in this respect. Accordingly, because of the fear of many business owners to employ people who are not subject to the social insurance law, refugees' opportunities in attaining formal job opportunities, even after issuing work permits, are hindered as long as they are not included in the social insurance law.

C. Transnational Marriage of Convenience is the Lifeline?

With the prolonged Syrian crisis, dwindling hopes for a return to the homeland, failing alternatives, and diminishing financial support provided by international donors, female Syrian refugees find themselves today amid many challenges in Egypt that impose on them the responsibility to secure their livelihood and strengthen their economic resilience. Additionally, the legal status of refugee workers sets itself as one of the most critical challenges. It is considered the foremost challenge that refutes all the resources available in female refugees' hands to sustain their presence in the labor market. Ironically, Syrian female refugees adopt an opportunistic behavior where they take advantage of the fruits of intersection between two different legal regimes, which are the Egyptian nationality law and family law, to overcome the negative implications of the intersection between the Egyptian labor laws and the international

¹³⁶ Egypt ratified the 1951 convention of refugees and its 1967 additional protocol in May 1981. However, it has reservations on five articles, including Article 24 concerning labor legislation and social security. *See*, World Refugee Survey 2008 -Egypt, UNHCR.ORG, *available at* <https://www.refworld.org/docid/485f50d06c.html> (Last visited July 18, 2021).

¹³⁷ Law No.79 of 1975 (The Egyptian Social Insurance Law), *Al-Waqā'ī'Al-Mis. Rīyah*, Vol. 35, Aug 28, 1975 (Egypt), *available at* <https://mansurat.org/node/30710> [Hereinafter, Social Insurance Law].

¹³⁸ *Id.* at Article 2(2).

¹³⁹ Agreement to extend labor agreements between Syria and Egypt before joining the Arab League, *Al-Waqā'ī'Al-Mis. Rīyah*, June 19,1960 (Former United Arab Republic), *available at* <https://www4.aucegypt.edu/CMRS/Files/Egypt%20and%20Syria.pdf>

refugee law and to retain their right to work. The operational way to achieve this gain is to progressively get involved in transnational legal marriages of convenience through collecting the fruits of intersection between the Egyptian family law and nationality law as I explain in the next chapter.

V. Transnational Marriage of Convenience under the Spot: The Intersection Between the Egyptian Family Law and Nationality Law

Nationality is the legal and political aspect of a person's existence, which indicates a person's affiliation to a particular nation. From a legal stand, nationality describes the legal relationship between a person and a specific country. Thus, nationality is necessary to express a person's belonging to a country that enhances his/her sense of affiliation. On the other hand, nationality plays a fundamental role in crystallizing the individual's legal existence at the international level since it is the primary means of determining the type of legal treatment a person can have in the international sphere. Based on this view, we can comprehensively define nationality as "a characteristic of a political and legal nature that attaches to the individual and links him to a specific country. According to which the legal distribution of individuals in the international community takes place."¹⁴⁰

Subsequently, the Egyptian administrative judiciary defined nationality in a ruling of the Supreme Administrative Court as "a political and legal bond between the individual and the state that obliges him/her to be loyal to it, and it must protect and grant him/her the benefits arising from this association."¹⁴¹ Consequently, nationality is the basis on which the laws provide legal protection for their citizens. It is the main requirement and the primary condition for exercising human rights and freedoms, especially economic and social rights such as the right to education, health, and work, especially while talking about the refugees and asylum seekers' status. Thus, nationality can be viewed as the right to obtain rights for refugees and non-refugees.¹⁴²

¹⁴⁰ Okasha Mohamed Abdel-Al, *alnzam alqanunaa li'ahkam aljinsiat almisria (THE LEGAL SYSTEM OF THE EGYPTIAN NATIONALITY)*, 26 (2006).

¹⁴¹ Al-Mah. kamah Al-Id. ārīyah Al-'Ulyā [Supreme Administrative Court], Appeal No. 1046, year 26 (Egypt) ; al-Mah. kamah al-Id. ārīyah al-'Ulyā [Supreme Administrative Court], Appeal No. 1960, session of 6 Nov. 2000, year 47 (Egypt).

¹⁴² T. Alexander Aleinikoff, *Theories of Loss of Citizenship*, 84 MICH.L.Rev 1471,1480 (1986).

A. Nationality as a Determinant of the Bargaining Power in the Egyptian System

The idea of naturalization has been linked to refugees and asylum seekers in many international conventions, such as Article 34 of the Geneva Convention of 1958,¹⁴³ and Article VI of the statute of the office of High Commissioner for Refugees, which the General Assembly approved in its Resolution No. 428.¹⁴⁴ Through these legal texts, naturalization is not imposed on the countries of asylum. Hence, the 1951 Convention relating to the Status of Refugees and its additional 1967 protocol call the state parties to help refugees acquire their nationalities in case of seeking asylum.¹⁴⁵ While the Refugee Convention is keen to define refugees' rights, it grants the refugee the right to seek asylum without contradicting the authority and sovereignty of the receiving states. However, it allows the hosting state to accept or reject this request, based on the signed treaties and charters and its own definition of asylum, considering the safety of the refugee and not to be subject to persecution or forced deportation. As a result, the concept of *status* or *refugee status* emerged. It means providing temporary protection for a refugee in the host country, without affecting the host country's obligation of granting him/her citizenship or integrating him/her among its citizens to meet the needs of both parties, the refugee, and the state, in a flexible and appropriate manner.¹⁴⁶

Accordingly, it is worth noting that states have an absolute power to exercise the right to nationality. Nationality jurisdiction includes two fundamental cases. First, based on the possibility of granting citizenship to foreigners, the state is free to determine this through its internal laws that are supposed to take into account human rights dynamics. The second case is the possibility of withdrawing citizenship from citizens. In this case, the will of the state is restricted by the agreements signed to it.

¹⁴³ Additional Protocol to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3, *available at*

https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.33_GC-IV-EN.pdf

¹⁴⁴ Statute of the office of High Commissioner for Refugees, GA 428(v) (1950) *available at*

<https://www.unhcr.org/4d944e589.pdf>

¹⁴⁵ International Covenant on Social and Economic Rights, S. Exec. Doc. 95-20, 999 U.N.T.S 3, (Dec 16, 1966).

¹⁴⁶ An asylum seeker is not considered a refugee until the host country grants him/her this status. Rather, until the moment of approval for his/her asylum, he/she is a person who seek initial protection until his/her legal status within the state's borders is determined according to its internal standards, and for the content that it has ratified or reserved from the Refugee Convention.

Based on the foregoing, we can understand the nature of the relationship between asylum-seeking and the naturalization process in case an individual crosses the international borders of his/her country into the borders of another country and based on international law principles and the 1951 Refugee Convention. Based on Article 1(3) of the 1951 Refugee Convention, the refugee loses his/her refugee status and is excluded from the refugee status in case he/she acquires a new nationality or even has another nationality other than the nationality of the country from which he/she has left.¹⁴⁷ This can also be viewed through the status of the Office of the High Commissioner for Refugees, which exempts the UNHCR apparatus from providing international protection or refugee status for anyone who has more than one nationality or has acquired the nationality of the receiving country.¹⁴⁸

B. Naturalization as a Source of Bargaining Power for Female Refugees in Egypt

According to the Egyptian Nationality Law No. 26 of 1975, amended by law No. 154 of 2004,¹⁴⁹ naturalization is a direct means of acquiring nationality; whereby the foreigner is accepted upon his/her request to join the nationals of the country with which he/she has no previous legal relationship. Thus, the process of naturalization is a means of acquiring the Egyptian nationality to a non-Egyptian, according to the Egyptian state's absolute discretion, whenever he/she fulfills certain conditions required by law. It is a legal system that the state legislator establishes by legislation and by will.¹⁵⁰ Consequently, naturalization is the foreigner's acquisition of the nationality that he/she *explicitly* requests if the required Egyptian state agrees to grant him/her the Egyptian nationality since he/she meets the conditions stipulated in the law. Accordingly, the Egyptian naturalization process consists of two main pillars. First, whoever wants to acquire the Egyptian nationality shall have the will and the power to express his/her desire to be naturalized by submitting a request to the competent authority to obtain its approval for being naturalized. Second, the existence of a legal system established by the state's legislator represents the state's absolute discretion to accept or reject this request of naturalization.

¹⁴⁷ Convention Relating to the Status of Refugees, 189 U.N.T.S 150, 6(April 22, 1956), available at <https://www.unhcr.org/5d9ed32b4>.

¹⁴⁸ *Id*, at 5.

¹⁴⁹ *Supra* note 4.

¹⁵⁰ See, Mohamed Kamal Fahmy, 'usul alqanun alduwalaa alhasu " aljinsiatu, almutin, markaz al'ajanib (THE ORIGINS OF PRIVATE INTERNATIONAL LAW, "NATIONALITY, CITIZENSHIP, STATUS OF FOREIGNERS) 89 (1992).

The law defines the conditions for acquiring nationality.¹⁵¹ It regulates all nationality matters, whether related to its acquisition, loss, or restitution. Law No. 26 of the year 1975, amended by Law No. 154 of the year 2004, which constitutes the Egyptian Nationality Law, is concerned with implementing procedures related to the acquisition and loss of nationality and deals with granting Egyptian nationality to foreigners. According to the nationality law, there are many ways to acquire Egyptian nationality.¹⁵² Still, I only focus on the available legal outlets for refugees' naturalization per the Egyptian nationality law in a group of cases.¹⁵³ On top of that is granting nationality in case of a transnational marriage relationship between a female non-Egyptian refugee and a Male Egyptian citizen. However, although this model for acquiring the Egyptian nationality among female refugees is the most common and used technique to cope with the system limitations, the position of the Egyptian legislation in this regard is of great complexity in a way that may hinder the position of female refugees in the bargaining power model.

¹⁵¹ *Supra* note 4.

¹⁵² The Egyptian nationality cannot be granted to a foreigner, except when one of these cases is fulfilled coupled with the conditions specified for each case separately, from extrapolating the provisions of Articles (4,5,6,7,8) of the aforementioned law after the amendment. We find in Article 4, it is permissible by a decision of the Minister of the Interior to grant Egyptian nationality to everyone born in Egypt to a father of Egyptian origin, whenever he applies for Egyptian nationality, after his regular residence in Egypt, and he has reached the age of eighteen when submitting the application, as well as to everyone who is of Egyptian origin, Whenever he applied for naturalization by the Egyptian nationality, after five years of his regular residence in Egypt, and he was at the age of eighteen when submitting the application, and also for every foreigner born in Egypt to a foreign father, if this foreigner belongs to the majority of the population in a country whose language is Arabic or whose religion is Islam, when requested naturalization within one year from the date of reaching the age of eighteen, as well as for every foreigner who was born in Egypt, and his normal residence there was upon reaching the age of eighteen, when, within a year of reaching the age of eighteen, he requested naturalization with the Egyptian nationality, and the conditions were met. Likewise, it is permissible, by decree of the President of the Republic, to grant Egyptian nationality, without being bound by the conditions in this law, to every foreigner who renders great services to Egypt, as well as to the heads of the Egyptian religious sects. A foreigner's acquisition of Egyptian nationality does not result in his wife's obtaining it unless the Ministry of Interior declares her desire to do so. *See, Supra* note 4.

¹⁵³ Citizenship by birth from the Egyptian mother requires that the birth occurred before the issuance of Law 154 of 2004, i.e., before 2004. After 2004, the Egyptian nationality is granted upon birth to the Egyptian mother automatically and by the force of law. The citizenship applicant must submit an application to the Ministry of the Interior (Nationality Department) attached to the identification documents. In addition to naturalization based on long residency (for a period of ten consecutive uninterrupted years) and to be of the age of eighteen, familiar with the Arabic language, and to have a legitimate means of earning a living with good behavior, and after a full calendar year has passed on the application for citizenship. In the absence of the Ministry of Interior's response on the naturalization request during that period, Citizenship is acquired by the force of law. *See, Id.*

C. Conditions for Acquiring Nationality set the rules for the Bargaining Power Model in Transnational Marriages

Transnational marriage is the marriage between a man and a woman of two different nationalities upon the conclusion of the marriage contract. This marriage constitutes a critical entry point for obtaining nationality,¹⁵⁴ as this marriage leads to an effect on the woman's nationality, with no explicit effect on man's nationality, as in Egyptian law. The Egyptian family adopts a conciliatory principle to govern the case of transnational marriage, only in the case of an Egyptian marriage to a foreigner, and not the other way around. On the one hand, Egyptian law adopts the principle of dependent nationality of spouses to ensure that family ties are subject to one law, namely, the law of the nationality of the husband, that is, the Egyptian personal status law. On the other hand, the foreign wife does not obtain Egyptian nationality by virtue of the law as a direct effect of her marriage to an Egyptian, as is the principle of independent nationality of spouses.¹⁵⁵ Consequently, this hybrid legal system gives the enforcer absolute discretion in exercising the right to grant foreign women the acquisition of Egyptian nationality on the impact of marrying an Egyptian citizen. Thus, the Egyptian nationality law set the rules of the bargaining power in transnational marriages, as follow:

1. Article 20: Women caught in the middle of the conflict between the judiciary and the executive powers

In Article 20 of Law No. 26 of the year 1975, the Egyptian legislator has specified the competent authority issue the naturalization decisions, which stipulates that “the declarations and required papers and requests specified in this law shall be directed to the Minister of Interior or his representative.”¹⁵⁶ Accordingly, the applicant for Egyptian nationality must deal with the

¹⁵⁴ Saeed Yousef Al-Bustani, *aljamie fi alqanun alduwalii alkhas, aljinsiat w alqawmia* (Collection of Private International Law, Nationality, and Nationalism), 269 (2009).

¹⁵⁵ Fouad Abdel Moneim Reiad, *aljinsiat fi altashriat alearabiat almuqarana* (Nationality in comparative Arab Legislations), 51 (1975).

¹⁵⁶ It is worth noting that there is comparative legislations that have assigned jurisdiction to decide on naturalization applications and all nationality issues to the judicial authority, whether in terms of receiving requests, conducting inquiries and adjudicating requests, issuing decisions such as the Dutch nationality law of 1985, the Belgian nationality law of 1983 in articles 48, 49, the Algerian nationality law of 1970 in articles 25 and 26 thereof, the Moroccan nationality law of 1958 in chapter 25 and after, and the Tunisian nationality law of 1963

Ministry of the Interior per the procedures organized by the law represented by the Minister of Interior on whose side the decision is issued. Accordingly, the executive authority, represented by the Ministry of Interior, verifies, examines, and ensures the fulfillment of the legally specified conditions according to the applicant's situation. The legislator has granted the Minister of Interior an absolute discretionary power to grant or prevent citizenship for the applicant.¹⁵⁷ Besides, it also has the right to suspend issuing the decision for a matter that is entirely up to the Minister of Interior (MoI), such as requiring some time to ensure the integrity of the investigations and the legality of the submitted without obligating the reasoning of this suspension.

On the other hand, the judiciary is the competent authority to which the individual resort to settle his dispute in which he/she challenges the validity of an administrative decision issued related to his/her nationality, such as the issued decision to deny a foreign wife the Egyptian nationality of her Egyptian husband. However, refugees in general, and female refugees in specific, get afraid of resorting to the court in the receiving country, especially if they became a party to the litigation along with the receiving state itself, in which female refugee stands as a plaintiff. The state becomes a claimant against her, which no doubt, weakens her position in the bargaining equation.

2. *Article 7: Two years of marriage and then?*

According to article 7 of the Egyptian nationality law No. 26 of the year 1975, the marital relationship must remain in place for two years after the wife announces to the Minister of Interior her desire to acquire the Egyptian nationality.¹⁵⁸ By this condition, the legislator claims that he intends to ascertain the seriousness of marriage and exclude foreign women who may use marriage to an Egyptian as a mere means to acquire the Egyptian nationality. Accordingly, if the

in chapter 39 and after. Other legislations assign the nationality jurisdiction to the Minister of Population and Nationality Affairs, such as the English Nationality Law of 1981 and the French Nationality Law of 1973.

¹⁵⁷ Except for the decision issued to grant exceptional nationality to foreigners who have rendered great services to Egypt or the heads of the Egyptian non-Islamic religious sects, it is issued for its particular nature by a decision by the President of the Republic, under the provisions of Article 5 of the Nationality Law. See, Law No. 26 of the year 1975 (The Egyptian Nationality Law), *Al-Waqā'ī'Al-Rīsmiyah*, Vol.22, May 29, 1975, (Egypt), available at <https://manshurat.org/node/7358>

¹⁵⁸ *Id.*

marital bond is broken before the expiration of this period, there will be no effect for the transnational marriage on the wife's nationality. Ironically, the legislator did not require the wife to reside in the Egyptian territory during the two-year period, which gives the foreign wife who is stable with her Egyptian husband abroad the possibility to enter the Egyptian nationality. However, focusing on the temporal aspect of the marriage while dismissing the spatial one refutes the objective behind the two-year condition since the marriage relationship may conveniently last for the two-year period. However, there is no single proof of non-conventionality, especially if the female partner is not residing in Egypt. Also, the wife has no right to justify the period of marriage that may be prior to declaring her desire to obtain the Egyptian nationality to the Minister of Interior, as the legislator has stipulated the necessity of continuing the marriage for two years from the date of this request with no regard to the period preceding it.

Consequently, the legislator's stipulation that the marital relationship should continue for a period of two years after submitting the request to the Minister of Interior did not result in anything that may achieve the objective behind the two-year conditionality. Accordingly, this article forces women to remain being in either convenient or non-convenient marriages for two consecutive years to acquire Egyptian nationality. Thus, female refugees involved in transnational marriages of convenience with Egyptian nationals have no other option except to keep exchanging unpaid sex, food, and sometimes housing with their spouses for two consecutive years in return for non-guaranteed nationality.

3. Article 15: State Absolute Authority

The law stipulates that for a non-Egyptian wife of a male Egyptian national to enter the Egyptian nationality, the Minister of Interior must not reject her request by a written reasoned decision during the two-year period from applying the request. Thus, the Egyptian state represented by its executive authority, which is the Minister of Interior, retains its discretionary power to accept or not the wife's naturalization. From the Egyptian legislator's point of view, this condition aims to exclude unwanted elements that may pose a danger to society.

The act expected of the Minister of Interior in this regard does not deviate from three Scenarios: first, the Minister of Interior issues a decision during the two-year period to deny the

wife the entry into the Egyptian nationality, and here her right to acquire nationality expires as long as the minister's decision is reasoned and based on fundamental and serious reasons that justify the refusal of the wife's entry into the Egyptian nationality, to achieve the public interest. Second, the two-year period expires without a decision by the Minister of Interior to reject the wife's entry into the nationality. Here, the wife acquires the Egyptian nationality by force of law from the day following the two-year period's expiration. The last scenario is that the minister issues a decision approving the wife's entry into the Egyptian nationality at the end of the two-year period.

It is worth noting that the termination of the marital bond does not affect the wife's retention of the Egyptian nationality, so if a woman obtains Egyptian nationality as a result of marrying an Egyptian male according to the previous conditions, the termination of the marriage for any reason does not affect the continuation of her retention of this, even if divorce occurs. In this regard, the nationality law states that "if a female foreigner acquires Egyptian nationality per the provisions of article 7, she does not lose it upon the termination of marriage unless she regains her foreign nationality or marries a foreigner and enters his nationality."

Accordingly, the absolute authority of the executive power, which is represented in the Minister of Interior, to refuse or grant the Egyptian nationality to those who meet the Egyptian nationality thresholds represents a serious obstacle for the latter if her case is brought before the competent judiciary. Whereas, the executive body will undoubtedly invoke and adhere to the element of convenience to defend its decision and its discretionary power in refusing to grant citizenship despite the availability of its conditions, which contradicts with the 1993 set of ruling constituted by the Supreme Constitutional Court, in which it ruled that "the right to litigation is the entry point to protecting the rights and freedoms stipulated in the constitution, and that mere access to the judiciary is not considered sufficient to safeguard the rights that derive their existence from legal texts. Rather, this enforcement must always be accompanied by the removal of obstacles that prevent the settlement of situations arising from aggression against it."¹⁵⁹

¹⁵⁹ Al-Mah. kamah Al-Dustūriyah Al-'Ulyā [Supreme Constitutional Court], case no. 57, session of 2 June 1993, year 14.; Al-Mah. kamah al-Dustūriyah al-'Ulyā [Supreme Constitutional Court], case no. 2, session of 3 April 1993, year 14; and Al-Mah. kamah al-Dustūriyah al-'Ulyā [Supreme Constitutional Court], case no. 15, session of 15 May 1993, year 14. See, Ahmed Gad Mansour, *The Human Rights Department: Judicial protection of human rights, freedom of movement, and residence in the Egyptian administrative judiciary in accordance with the most recent rulings of the*

VI. Conclusion

The bargaining power model reflects how different intersections between legal regimes can result in a mere socio-economic phenomenon as the transnational marriage of convenience. This unique form of marriage transforms the traditional concept of *sutra* that endows the marriage with a social and religious dimension, into what I call economic *sutra*. The emergence of *economic sutra* derives female refugees to look for other coping mechanisms to coexist with their reality in the host country. one mechanism to successfully achieve *economic sutra*, female refugees use formal networks represented in entering reciprocal family relationships based on the concept of the corporative functional household, taking advantage of all social and religious aspects that support the family foundation to promote their economic interests. In this respect, the transnational marriage of convenience emerges as a means to achieve *economic sutra* along with the traditional conception of *sutra*. Thus, the real question the transnational marriage of convenience answers is *how* family in this respect can be a market dynamic that mirror the intra-household and extra-household bargaining power structures, which is affected by the intersection between different legal systems. Accordingly, the law creates spaces for individuals in which they compete over maximizing their bargaining powers. This legal entanglement always weakens the position of refugee women in the bargaining power equation compared to the Egyptian male partner. However, Syrian female refugees adopt an opportunistic behavior to maximize their bargaining power through retaining the denied right to labor. They take advantage of the gaps opened by the intersection between two different legal regimes, which are the Egyptian nationality law and family law, to overcome the negative implications of the intersection between the Egyptian labor laws and the international refugee law. The operational way to achieve this gain is to progressively get involved in transnational legal marriages of convenience with Egyptian nationals.

The findings of this thesis leave us with several thoughts. First, while international refugee law is designed to respond, in the general sense, to refugees' needs for protection and integration in the host country, it hardly survive within a constricted legal environment, such as the case of refugee labor in Egypt, which leaves female refugees with no other option except

Administrative Court, the Supreme Administrative Court, and the Supreme Constitutional Court until 1997), 337(1997).

adopting different coping mechanisms, that are socially accepted and encouraged, to adapt with the legal and social restrictions that hinder their day-to-day lives in the host community. Second, marriage has been shifted from being an absolute medium to the central notions forming the concept of *sutra* into a progressive way towards re-maintaining female refugees' distorted economic, and thus, social agency in the host country. Thus, it can be said that refugee women employ marriage as a strategic method to adapt their livelihoods circumstances while the Egyptian government has a stranglehold on NGOs serving refugees. Thus, transnational marriage becomes a form of resistance to the unfair power bargaining dynamics constituted by the law, system controls, and patriarchal hegemony. Finally, it is necessary to question whether the success of such method, in practice, is yet to be determined by the position of the female refugee in the different legal systems. Accordingly, the factors that affect refugee women's bargaining power are affected not only by her position in the different legal systems but also her economic role in the market through the division of labor, distribution of resources, and market social arrangements.

At the end of the day, female refugee's intra-household bargaining power instrumentally outlines her extra-household bargaining power, specifically in the labor market. Thus, transnational marriage of convenience will only achieve its desired impact in the forced displacement context as female refugee intra-household bargaining power maximizes especially particular dimensions of bargaining power, including female acceptability to law and capability to compete in the labor market. Accordingly, female refugee's intra-household bargaining power instrumentally outlines her extra-household bargaining power, specifically in the labor market.