

GENDER AND SOCIAL POLICY IN TURKEY:  
POSITIVE DISCRIMINATION OR A SECOND-CLASS FEMALE  
CITIZENSHIP?

by

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Title: Gender and Social Policy in Turkey:  
Positive Discrimination or a Second-Class Female Citizenship?

This thesis examines the gender-specific provisions of social security and labor legislations in Turkey. The development of the gendered policies in question is traced back through the modern history of Turkey, focusing on normative amendments in the legislation and the related discourses of the policy-making elites on the base of parliamentary discussions. The thesis aims to explore the gender norms and relations which are embedded in the policies pointing at the conceptualizations and assumptions on gender roles, family structure, parental responsibility, sexual division of labor, etc. signified by the policies and discourses. This analysis revolves around the main question of the thesis, that is, whether the specific benefits and “protections” provided to women mean a positive discrimination to satisfy specific needs and to compensate disadvantages and so, to facilitate women’s equal participation in society, or they reinforce the underlying gender norms and relations which define needs in gendered terms and create gender injustice, leading to a second-class citizenship for women. Despite the variety of discourses and policy-areas, the thesis argues that the underlying common assumptions and principles represent women as a weaker, vulnerable group in need of special protection and largesse, stigmatizing them as “the destitute.” The regulations reinforce the conditions of familial dependency and the gendered division of labor both in the domestic sphere and paid employment, confining women to traditional gender roles. However, recently some normative changes also have been observed in the policies, which can be interpreted as promising for the transformation of existing gender relations.

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Başlık: Türkiye'de Toplumsal Cinsiyet ve Sosyal Politika:  
Pozitif Ayrımcılık mı, yoksa Kadınlar için İkinci Sınıf Vatandaşlık mı?

Bu tez, Türkiye'de sosyal güvenlik ve çalışma hayatına ilişkin düzenlemelerin toplumsal cinsiyet temelindeki uygulamalarını incelemektedir. Mevzuatta görülen normatif değişikliklere ve siyasi seçkinlerin yasama sürecindeki ilgili söylemlerine odaklanarak söz konusu cinsiyetlendirilmiş politikaların modern Türkiye tarihi boyunca gelişiminin izi sürülmektedir. Tez, bu politika ve söylemlerin işaret ettiği toplumsal cinsiyet rolleri, aile yapısı, ebeveyn sorumluluğu, cinsiyete dayalı iş bölümü vb. üzerine kavramlara ve varsayımlara bakarak söz konusu politikaların temelindeki toplumsal cinsiyet norm ve ilişkilerini incelemeyi amaçlamaktadır. Bu tahlil tezin temel sorusu etrafında şekillenmektedir: kadınlara sağlanan söz konusu özel haklar ve “korumalar” belirli ihtiyaçları karşılamaya ve dezavantajları telafi etmeye yönelik ve dolayısıyla kadınların topluma eşit katılımını kolaylaştıracak bir pozitif ayrımcılık örneği midir; yoksa, ihtiyaçları cinsiyetlendirerek tanımlayan ve toplumsal cinsiyet adaletsizliklerini yaratan temeldeki toplumsal cinsiyet norm ve ilişkilerini güçlendirmekte ve kadınlar için ikinci sınıf bir vatandaşlığa mı yol açmaktadır? Sonuç itibarıyla, söylemlerin çeşitliliğine ve politika alanının genişliğine rağmen, bunların temelindeki hakim varsayım ve ilkelerin kadınları özel korumaya ve ihsana ihtiyaç duyan, nispeten zayıf ve savunmasız bir grup olarak temsil ettiği ve onları “muhtaç” olarak damgaladığı görülmektedir. Düzenlemeler kadınları geleneksel toplumsal cinsiyet rollerine hapsedip, aileye bağımlılığı ve gerek ev içinde gerekse emek piyasasında cinsiyete dayalı iş bölümünü güçlendirmeye yöneliktir. Öte yandan, son dönemde mevcut toplumsal cinsiyet ilişkilerinin dönüştürülmesi açısından umut verici olarak değerlendirilebilecek bir takım normatif değişiklikler de gözlemlenmektedir.

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## CHAPTER 1

### INTRODUCTION

What is thinkable is possible too.

Ludwig Wittgenstein<sup>1</sup>

This thesis is based on the premise that social policies can have both “positive” and “negative” effects. In terms of social security and labor arrangements, policies might provide securities against risks, satisfy needs, and compensate disadvantages, promoting equal participation of individuals and personal autonomy. Policies, however, also might impose particular lifestyles on persons, pushing them either “integration” into certain forms of “family, work place, or geographical area” or marginalizing them in case of the rejection or failure of those lifestyles.<sup>2</sup> This study is conducted with such a double-faced understanding of social policy, aiming

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<sup>1</sup> “Düşünülebilir olan, olanaklıdır da,” Ludwig Wittgenstein, *Tractatus Logico-Philosophicus*, trans. Oruç Aruoba, (İstanbul: YKY, 2001), 25. I do not embrace this motto with a logical positivistic reading of the *Tractatus* but in relation with the “language games” of the later Wittgenstein.

<sup>2</sup> Michel Foucault, “Social Security,” in *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984*, ed. Lawrence Kritzman. (New York: Routledge, 1988), 162-65.

to explore the possible gendered effects of certain social security and labor regulations in Turkey within a normative framework. So, social citizenship will provide a normative ground to promote equal participation of persons as full members of society while Amartya Sen's capabilities approach and Nancy Fraser's transformative approach will serve conceptual categories and tools to examine the gendered policies in question and to discuss alternatives.

Sen's capabilities approach shows the need for a social policy approach which aims at capability improvement, taking into account human diversity and the conditions under which people live and over which they have no, or limited, control. This way it also points at the need for a gender-sensitive approach which takes into account gender differences and inequalities; therefore, formulating specific measures to compensate gender-specific disadvantages and to satisfy divergent needs. However, differential treatments also bear the risks of stigmatizing recipients as inferior and promoting essentialism and unfair gender relations if the given differences, needs, and roles are not problematized.

At this point, Fraser's transformative approach emphasizes the need to transform the underlying framework in both the culture and political economy which generate these disadvantages and inequalities whereas surface remedies for inequitable outcomes of certain social arrangements can also reproduce the underlying norms and relations. These two approaches bring us to the question of the thesis, whether the specific benefits and "protections" provided to women by social security and labor legislations in Turkey mean a positive discrimination to satisfy specific needs and to compensate disadvantages and so, to promote women's autonomy and equal participation in society, or they reinforce the underlying gender norms which define needs in gendered terms, impose particular lifestyles, and create

gender injustice, leading to a second-class citizenship for women. Through such a questioning this thesis aims not only to describe and analyze the gendered aspects of the policies in question but also to provide a theoretical discussion for a gender-sensitive social citizenship approach in Turkey, contributing to the limited literature on social security and gender from both historical and theoretical perspectives.<sup>3</sup>

The English literature on social policy and gender, on the other hand, appears enormous, being an increasing focus of interest. Various studies have been carried out to investigate how certain welfare state policies reflect and regulate gender relations in society from historical, theoretical, and comparative perspectives.<sup>4</sup> While historical studies shed light on the development of the policies in their gendered historical context, comparative studies provide information about the diversity of policy measures, outcomes, and principles across countries. This study, too, aims to carry out a historical study of the gendered social security system in Turkey with the stated questions. As for a comparative view of the diversity of social policies from a

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<sup>3</sup> For similar but relatively limited studies on the gender aspects of the policies in question, see Tülay Arın and Berin Ergin, “Türkiye’de Sosyal Güvence ve Kadınlar: Yasal Çerçeve ve Uygulama,” in *Aydınlanmanın Kadınları*, ed. Necla Arat (İstanbul: Cumhuriyet Kitapları, 1998) and Işık Urla Zeytinoğlu, “Constructed Images as Employment Restrictions: Determinants of Labor in Turkey,” in *Deconstructing Images of the Turkish Woman*, ed. Zehra F. Arat (New York: St. Martin's Press, 1998). As for a thesis which aims to approach the social security of women from a theoretical and historical viewpoint, see Fatma Şenden Zırhlı, “Sosyal Güvenlik ve Kadın,” (MA thesis, İstanbul University, 1998). While Arın and Ergin’s article and Zeytinoğlu’s article arrive at some common points with this study (from the ideal of male breadwinner family to the stigmatization of women with the discourses of special protection in working life, respectively), Zırhlı’s thesis is far away from laying out the development of the social security system for women, let alone problematizing enough the gendered logic of the system with its variables.

<sup>4</sup> Examples include Seth Koven and Sonya Michel, eds., *Mothers of a New World: Maternalist Politics and the Origins of Welfare States* (New York and London: Routledge, 1993); Gisela Bock and Pat Thane, eds., *Maternity and Gender Policies: Women and the Rise of the European Welfare States 1880s-1950s* (New York and London: Routledge, 1991); Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1992); Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare, 1890-1935* (Cambridge, Mass.: Harvard University Press, 1994); and Susan Pedersen, *Family, Dependence, and the Origins of the Welfare State: Britain and France 1914-1945* (Cambridge, New York: Cambridge University Press, 1995). For studies focusing more on the contemporary arrangements, see Diane Sainsbury, *Gender, Equality, and Welfare States* (Cambridge, New York: Cambridge University Press, 1996); Diane Sainsbury, ed., *Gender and Welfare State Regimes* (New York: Oxford University Press, 1999); and Mary Daly and Katherine Rake, *Gender and the Welfare State* (UK: Polity, 2003).

gender perspective, below I aim to give a general idea of some comparative studies on the gendered logic of welfare state policies.

As said before, certain policy formulations might foster gender equality, diversity, and personal autonomy through gender-sensitive policies, and they also might reinforce existing gender inequalities and norms while imposing certain lifestyles and providing surface allocations. Focusing on policy variations, comparative studies on the area arrive at kinds of policy regimes and typologies of such regimes across countries.<sup>5</sup> Analyses and categorizations of the policies are based on the aspects of variations such as the type of familial ideology in terms of the (non)supported family type, division of labor between spouses, and hence their subject-positions; bases of entitlements and recipients of benefits; and policies regarding care, employment, wage, and taxation.<sup>6</sup> Accordingly, the models of “male-breadwinner,” “dual-breadwinner,” and “carer-breadwinner” are defined, focusing on the nature of the preferred relations between women and men in both domestic and public spheres.

Here, it must be noted that a general look on these gender-focused models of welfare state policies gives a portrayal of an analytical engagement primarily with *adult* women and men, benefits for children being a focus of interest in terms of parental responsibility, reconciliation of work and family life, pro-natalism, and such. This might be related with the common presence of gender-neutral policies for children in contemporary Europe.<sup>7</sup> On the other hand, gender-differentiated

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<sup>5</sup> For an overview of the literature, see Sainsbury, *Gender, Equality, and Welfare States*, 33-47 and Sainsbury, “Introduction” and “Gender, Policy Regimes, and Politics,” in *Gender and Welfare State Regimes*.

<sup>6</sup> Sainsbury, *Gender, Equality, and Welfare States*, 41-42.

<sup>7</sup> See *Social Security Programs Throughout the World: Europe, 2004*, (USA Social Security Administration, September 2004). Available (online) at:

<<http://www.ssa.gov/policy/docs/progdesc/ssptw/2004-2005/europe/index.html>>

treatment of children in the policies of survivor benefits and healthcare is a significant characteristic of the gendered social security system in Turkey, as will be seen below, making the question not just a matter of relations among adult persons of different sexes, but also a matter of gendered children-parent relations and age hierarchies. According to the reports of the USA Social Security Administration on contemporary social security programs throughout the world, the policy that female orphans are entitled to survivor benefits as long as they are not married or not working appear peculiar to the region of the Middle East and the North Africa (specifically the countries of Iran, Jordan, Kuwait, Oman, Saudi Arabia, Sudan, Egypt, Libya, Tunisia, Bahrain, and Turkey), with the exception of Sri Lanka, over the world in the years 2004 and 2005,<sup>8</sup> a fact which rises the question whether the MENA itself forms another policy regime and which shows the need for comparative historical studies among and within the regional countries to understand the development of such a particular policy in their specific historical and cultural context instead of embracing hasty and ideologically-biased explanations with the norms of tradition and modernization.

On the other hand, Turkey's welfare state policies are also likened to those of the so-called South European welfare regime.<sup>9</sup> Here, the model of South European welfare regime is a later addition to Gøsta Esping-Andersen's study on "welfare-state regimes" which originally proposed three different types of regimes. The conception

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<sup>8</sup> I checked the eligibility conditions for survivor benefits for all the countries that are covered by the reports. In addition to the above cited report on Europe, see *Social Security Programs Throughout the World: Asia and the Pacific, 2004*, (USA Social Security Administration, March 2005) and *Social Security Programs Throughout the World: Africa, 2005*, (USA Social Security Administration, September 2005). The reports are available (online), respectively, at:

<<http://www.ssa.gov/policy/docs/progdesc/ssptw/2004-2005/asia/index.html>>

<<http://www.ssa.gov/policy/docs/progdesc/ssptw/2004-2005/africa/index.html>>

<sup>9</sup> Ayşe Buğra and Çağlar Keyder, "Önsöz," and Ian Gough, "Güney Avrupa'da Sosyal Yardım," in *Sosyal Politika Yazıları*, ed. Ayşe Buğra and Çağlar Keyder (İstanbul: İletişim, 2006).

of welfare regime is employed to categorize “variations in social rights and welfare-state stratification . . . (with) different arrangements between state, market, and the family”<sup>10</sup> and Esping-Andersen formulates three types of welfare regime: liberal (market-oriented regimes such as the USA, the UK, and Canada), conservative (corporatist and family-centered regimes such as Germany, France, Austria), and social-democratic (universalist and employment-encouraging regimes such as Sweden, Norway, and Denmark). Some feminist scholars use this typology in their comparative studies incorporating gender into the analysis while others prefer different theoretical categorizations and focus on alternative variations to study “gender regimes” of welfare states, some arguing that the typology of welfare-state regimes can be misleading when gender is in question.<sup>11</sup> As expected, different theoretical frameworks result in different clusters of countries coming together with their particular features. Instead of taking one of these approaches as the ideal standard, some tendencies and particular policies can be mentioned; especially some cases from Southern and Northern European countries appear to provide good examples for the two axes of the question of the thesis.

The welfare regime of Southern European countries is likened to Turkey especially in two aspects: the presence of a fragmented and corporatist social security system coupled with a large self-employed and informal sector and the centrality of family and kin solidarity in the welfare system.<sup>12</sup> Here, the family as an institution of welfare production relied on a model of maintenance role for men and care and

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<sup>10</sup> Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Cambridge, UK: Polity Press, 1990), 26.

<sup>11</sup> Sainsbury, “Introduction” and “Gender, Policy Regimes, and Politics,” in *Gender and Welfare State Regimes*. In the next chapter, I will mention about some aspects of Esping-Andersen’s approach with their feminist critiques.

<sup>12</sup> Buğra and Keyder, 15-16.

reproduction roles for women.<sup>13</sup> During the authoritarian regimes, working women were encouraged to “return” to the home and mostly not provided with sufficient social protection and rights.<sup>14</sup> With the processes of the transition to democracy and the integration with the European Union in the region, this model has been changing, especially following the increasing participation of women in the labor force. According to Luis Moreno, working women, on the other hand, mostly maintained their traditional roles in the family along with work life (“superwomen”) during the 1980s and 1990s as a result of the lack of sufficient women-friendly social services and rights (like parental leaves) for the problem of care and the unequal sharing of familial responsibilities between women and men. Here, an important strategy used by these working women, which is also an also important phenomenon in Turkey (as will be referred in the fourth chapter), is to “substitute” the care responsibilities with relatives, who are mostly their mothers. So, such a network helps to sustain female employment and the welfare system without disrupting the existing gender relations and with a limited state intervention.

However, Monero argues that this structure is also changing both with the improving welfare arrangements during the last decade to reconcile work and family life and with the changing mentalities especially on the side of women focusing on Spain in one of his works.<sup>15</sup> To give concrete examples, one can also refer to recent reform proposals by the current Spanish government which include policies of equal treatment and positive discrimination such as measures to guarantee equal pay; minimum 40 percent quota for women for managerial positions in corporations and

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<sup>13</sup> Luis Moreno, “‘Süper Kadınlar’ ve Akdeniz Refahı,” in *Sosyal Politika Yazıları*.

<sup>14</sup> Manuela Naldini, *The Family in the Mediterranean Welfare States* (London: Frank Cass, 2003).

<sup>15</sup> Moreno, “‘Süper Kadınlar’ ve Akdeniz Refahı” in *Sosyal Politika Yazıları* and “Spain’s Transition to New Risks: a Farewell to ‘Superwomen,’ in *New Risks, New Welfare: The Transformation of the European Welfare State*, ed. Peter Taylor-Gooby (Oxford: Oxford University Press).

candidacy by political parties; equal sharing of household work between spouses as a provision of marriage agreement; and flexible working hours for women.<sup>16</sup>

As for the Northern European countries (specifically Sweden, Norway, and Denmark), they are mostly identified with programs of social services and rights with a wide coverage of the population and high levels of benefits. The bases for entitlements are mostly citizenship or residence and care instead of labor market status or familial dependency.<sup>17</sup> There seems no strictly imposed family form, breadwinner and carer roles being supported for both women and men. Accordingly, the general portrait is that entitlements are not differentiated between the spouses, single-mothers are also supported either as mothers or breadwinners; children are granted entitlements independently of family relationships;<sup>18</sup> and cohabitation can be recognized in granting certain entitlements to the partners (Denmark).<sup>19</sup> Also, the entitlements such as parental leave (instead of maternal leave) encourage the equal sharing of familial responsibilities between women and men (for instance, Sweden offers “the longest parental leave –the equivalent of 43 weeks of paid leave in comparison with Germany where it is 32 weeks”<sup>20</sup>).

Women are encouraged to work through specific policies which aim to reconcile work and family life and to ensure equal opportunities: socialization of the costs of care;<sup>21</sup> reducing daily working hours of parents; interim part-time work with the option to return to full-time hours; bringing work to home; and changing tax and social security incentives (for instance, “Sweden has separate taxation for part-time

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<sup>16</sup> *Radikal*, 27 June 2006.

<sup>17</sup> Sainsbury, *Gender, Equality, and Welfare States*.

<sup>18</sup> Sainsbury, “Gender, Policy Regimes, and Politics,” in *Gender and Welfare State Regimes*.

<sup>19</sup> *Social Security Programs Throughout the World: Europe, 2004*.

<sup>20</sup> Daly and Rake, 51.

<sup>21</sup> Esping-Andersen, 28.

and full-time work to increase after-tax earnings for part-time work”).<sup>22</sup> So, policies generally appear to encourage gender equality, personal autonomy, and alternative lifestyles through either policies of equal treatment or positive discrimination depending on the issue in question.

Having given a brief comparative view of the variety of social policies from a gender perspective, I will go on with an outline of the thesis before starting the next chapter. So, in the second chapter, I will elaborate on the perspective of this study to examine the gender dimensions of the social policy in Turkey with a discussion of the main conceptions and theoretical frameworks. First, T. H. Marshall’s account of *social citizenship* and its feminist critiques will be evaluated. Following the discussion on “gendered citizenship,” Amartya Sen’s *capabilities approach* and Nancy Fraser’s approach of *transformative redistribution and recognition* will be outlined to lay the question and framework of the thesis. Thus, this chapter emphasizes the importance of social citizenship as a normative framework for social rights to promote equal participation of persons as full members of society, also pointing at the need for a gender-sensitive approach which takes into account gender differences and inequality; hence, formulating particular social policy measures to compensate gender-specific disadvantages and to satisfy divergent needs and also the need of transforming the underlying framework in both the culture and political economy which generate these gender disadvantages and inequalities.

The third chapter examines the gender-specific provisions of the social security and “protective” labor legislations in Turkey from a historical perspective. First, a broad outline of the development of the social security system is given. Then, the contemporary regulations in the area are examined from a gender viewpoint

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<sup>22</sup> UNDP, *Human Development Report 1995: Gender and Human Development* (New York: Oxford University Press, 1995), 8.

tracing back the development of the gendered policies in concern through the modern history of Turkey, focusing on the normative amendments in the legislation (also with references to the Civil Laws and the Constitutions of the periods) and the related discourses of the policy-making elites on the base of parliamentary discussions. Here, the gendered policies in question are grouped broadly into two categories considering the gendered subject-position and the presumed basis for entitlements: the policies taking dependency as the basis for entitlements (survivor insurance and sickness insurance for dependents) and the policies taking labor as the basis for entitlements (old-age insurance, maternity insurance, and “protective” labor legislation). The chapter aims to explore the gender regime of social security system –the gender norms and relations which are embedded in the policies pointing at the conceptualizations and assumptions on gender roles, family structure, parental responsibility, sexual division of labor in the domestic place and paid employment, etc. signified by the policies and the discourses. This analysis revolves around the main question of the thesis, that is, whether these gendered-policies can be seen as positive discrimination for women, or as a reinforcement of a female second-class status.

Accordingly, the fourth chapter aims to shed light on the capabilities of women from labor market to education to politics in order to evaluate the arguments and objectives given by policy-making elites as justifications for differential treatment and to place the gendered-policies in their actual (and maybe resultant) social context. The focus will be on contemporary Turkey, also coupled with some indications of historical trends. I will present an overview of women’s position in general and some portrayals of the gender-specific forms of marginalization, exploitation, and deprivation in particular, supported by statistical data, surveys, and

a few international comparisons, which will also give an idea of the level of development of Turkey on the world scale in terms of gender. This chapter aims to give a general idea of the actual achievements of women and popular mentality on some of the issues whereas the third chapter examines the policies, which mostly set what are feasible for women to achieve, and the official mentality. A full investigation of these achievements and popular mentality extends far beyond what can be covered in this chapter; instead, a complementary view will be provided.

Finally, an overview of the thesis will be given, bringing together the findings and reflections of the chapters as concluding remarks.

## CHAPTER 2

### GENDER, SOCIAL POLICY, AND CITIZENSHIP

Social policy issues can be grouped broadly into four categories: poverty and social exclusion; education; social security measures to support persons in case of illness, old age, and unemployment; and regulation of working conditions.<sup>23</sup> The aims and functions of these policy issues can be defined ideally as promoting equal participation of persons as full members of society. To realize this ideal, various benefits and measures can be formulated to compensate disadvantages and to satisfy divergent needs via specific policies aimed at capability improvement. However, social policy practices also have been criticized for various reasons some of which can be grouped under the heading of social control. These critiques broadly address the dangers of imposing various norms and behaviors via (self)regulation, disciplining, subjectification and normalization, or the exclusion and stigmatization of the “deviant.”<sup>24</sup>

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<sup>23</sup> Ayşe Buğra and Çağlar Keyder, “Önsöz,” 9.

<sup>24</sup> For an overview of social policy from different ideologies and paradigms, see George Steinmetz, *Regulating the Social. The Welfare State and Local Politics in Imperial Germany* (Princeton, New Jersey: Princeton University Press, 1993), 15-40, and Fiona Williams, *Social Policy: A Critical*

This thesis examines a subject which is at the centre of such a dilemma: while certain social policy measures undoubtedly provide remedies for the immediate needs of persons, they also can impose particular lifestyles, reproduce certain inequalities, and leave intact the underlying frameworks that generate such problems. In the case of Turkish social policy and this thesis, the issue raises the question of whether the specific benefits and “protections” provided to women in the social security system and labor legislation provide positive discrimination for them to facilitate equal participation or they reinforce the underlying gender norms and relations which define needs in gendered terms and create gender injustice, leading to a second-class citizenship for women, or something inbetween.

As this thesis in its broadest sense aims at exploring the gender relations and norms which are embedded in the social security system in contemporary Turkey from a historical perspective, certain theoretical frameworks and conceptions from the gender studies and the literature on welfare form the ground on which to evaluate the policies and discourses in question. In this chapter, I will elaborate on the perspective of this study with a discussion of the main theoretical frameworks alongside the definition of certain concepts. First, conceptions like *gender* and *gender regime* will be clarified in parallel to their use in the study. Then, as citizenship and social rights provide an important part of the normative framework, principally T. H. Marshall’s account of *social citizenship* and its feminist critiques will be evaluated. Following the discussion on “gendered citizenship” and social rights, Amartya Sen’s *capabilities approach* and Nancy Fraser’s approach of

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*Introduction* (GB: Polity Press, 2001). For social control approaches from a Foucauldian perspective, see Michel Foucault, “Social Security;” Martin Hewitt, “Bio-Politics and Social Policy: Foucault's Account of Welfare,” *Theory, Culture & Society* 2, no. 1 (1983).

*transformative redistribution and recognition* will be outlined to lay the question of the thesis.

### Gender as an Analytical Category and a Power Relationship

Gender refers to the social construction of sexual identities, “a construction that assigns roles, rights and opportunities to persons based on their sex.”<sup>25</sup> The word signifies a rejection of the biological determinism prevalent in the use of such terms like “sex,” “sexual difference” or “natural difference between sexes.” It is a relational term that has its meaning and functionality on the base of interactions and cross-references between men/masculinity and women/femininity, therefore, rejecting the idea of separate spheres. Hence, considering gender as socially constructed subjective identities for women and men instead of fixed, inherent qualities points out the need for a historicization of these terms.<sup>26</sup>

In parallel to such an understanding of the term, Joan W. Scott gives her definition of gender in two interrelated parts: gender as “a constitutive element of social relationships based on perceived differences between the sexes,” and as “a primary way of signifying relationships of power.” For the former, Scott refers to certain elements which play determining roles in the construction of gender relations such as cultural representations, normative conceptions that determine how these representations work in certain contexts, subjective identities as well as social institutions and organizations from kinship to education to labor markets which are all parts of the process of gender construction. While these refer to the construction and organization of gender relationships, Scott develops her theory of gender with

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<sup>25</sup> Duricilla K. Barker, “Gender.” In *Feminist Economics*, ed. Janice Peterson and Margaret Lewis, (Cheltenham, UK: Edward Elgar, 1999), 391.

<sup>26</sup> Joan W. Scott, "Gender: A Useful Category of Historical Analysis." In *Gender and the Politics of History* (New York: Columbia University Press, 1988), 28-50.

the second proposition: “gender is a primary field within which or by means of which power is articulated.” Scott exemplifies: to the extent that references to biological differences and sexual division of labor<sup>27</sup> determine and legitimize “distributions of power (differential control over or access to material and symbolic resources), gender becomes implicated in the conception and construction of power itself.” In other words, “politics constructs gender and gender constructs politics.”<sup>28</sup>

As R. W. Connell also states “gender relations are present in all types of institutions.”<sup>29</sup> As for the place of the state in these power relations of gender, Connell affirms that as “an institutionalization of power relations,” the state is shaped historically by gender dynamics and has a considerable, though not limitless, capacity to regulate gender relations in society through laws and administrative arrangements.<sup>30</sup> Here, Connell and other writers employ concepts such as “gender order” and “gender regime” to systematize the gendered-logics of the operations of social institutions and society in general: “The term *gender order* is used to define the totality of all patterns of ‘power relations between men and women and definitions of femininity and masculinity’ in an entire society; a *gender regime* refers to the set of gender relations and definitions operative in a particular institution.”<sup>31</sup>

Hence, the gender regime of a welfare state refers to such a web of relations and

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<sup>27</sup> “Sexual division of labor” simply means that certain types of works are distributed to certain categories of human beings. See R. W. Connell, *Toplumsal Cinsiyet ve İktidar* (İstanbul: Ayrıntı, 1998), 141.

<sup>28</sup> Scott, *ibid.*, 45-46.

<sup>29</sup> Connell, *ibid.*, 178.

<sup>30</sup> R. W. Connell, “The State, Gender and Sexual Politics: Theory and Appraisal” *Theory and Society*, 19, no. 5, (October 1990), 507-544.

<sup>31</sup> Steinmetz, *Regulating the Social...*, 34. Preferring the term *gender regime* to *patriarchy* in their study, Bora and Üstün explains the use of the former term in that the regime they try to analyze is not just composed of some “remnants” of the pre-modern period but something which can reproduce itself with a relative ease throughout the different periods of modernity while the term patriarchy has strong connotations of belonging to pre-modern, traditional societies. See Aksu Bora and İlknur Üstün, “*Sıcak Aile Ortamı.*” *Demokratikleşme Sürecinde Kadın ve Erkekler* (İstanbul: TESEV yayınları, 2005), 13. I find this preference useful and meaningful to explain the gendered-logic of the Turkish welfare state as well.

value systems, giving “state sanction to norms about sexuality, marriage and family structure, parental responsibility and the sexual division of labor in domestic and paid employment,”<sup>32</sup> thereby, pointing out the different genders’ citizenship status before and relation to the state. It is in this context this thesis aims to explore the gender regime of Turkish welfare state.

### T. H. Marshall’s *Social Citizenship* and Its Feminist Critiques

The conception of “social citizenship” provides a normative ground for “relations among members of society that are neither contractual nor charitable” but based on rights.<sup>33</sup> Here, T. H. Marshall is the first to conceptualize social citizenship with an evaluation of the development of citizenship and its rights in parallel to capitalist modernization.

In his famous essay, *Citizenship and Social Class* (1950),<sup>34</sup> Marshall presents an evolutionary development of citizenship – “full membership of a community” with a sort of “basic human equality” – in three stages, or elements, taking England as the example: civil, political, and social. The civil element is composed of the rights such as “liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice,” related institutions being the courts of justice.<sup>35</sup> By the political element, he means the right to participate in political processes as a member of a political body or as an elector of

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<sup>32</sup> Quoted in Steinmetz, *ibid.*, 35.

<sup>33</sup> Nancy Fraser and Linda Gordon, “Contract versus Charity: Why is There No Social Citizenship in The Unites States?” *Socialist Review*, 22, (July-September 1992).

<sup>34</sup> In T. H. Marshall, *Class, Citizenship, and Social Development* (New York: Doubleday and Company, 1964), 65-122.

<sup>35</sup> *Ibid.*, 71

the members of such a body; hence, corresponding institutions are parliaments and local councils. And for the social element, he refers to “the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society.”<sup>36</sup> The institutions which he regards as the most related are the educational system and the social services. Marshall assigns the formation of each element to roughly three different centuries, adding that these periods are not rigid and can overlap to some degree.

Marshall attributes the formation of civil rights to the eighteenth century, roughly the period between the Revolution and the first Reform Act (1832) in England. Pointing out the parallelism between the growth of citizenship and the rise of capitalism during this period, Marshall emphasizes the centrality of civil rights to a free market economy. He refers to “the right to work” as the basic civil right in the economic sphere, which guarantees “free labour” with a recognition of the right to conclude contracts. While Marshall assumes that civil rights provided all men with the equal status in contrast to the medieval feudal communities with hereditary privileges, he mentions the exception that the status of (married) women are “peculiar” during this period in a few words.

As for the formation of political rights, it started in the nineteenth century. Political rights in this period were a by-product of civil rights in that political franchise was a privilege enjoyed by a limited economic class instead of a right of citizenship. So, for instance, after The Act of 1832 was accepted “the voters amounted to less than one-fifth of the adult male population.”<sup>37</sup> This monopoly on political rights was broken in the twentieth century “when the Act of 1918, by

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<sup>36</sup> Ibid., 72.

<sup>37</sup> Ibid., 77.

adopting manhood suffrage, shifted the basis of political rights from economic substance to personal status,” that is, rights being attached to citizenship.<sup>38</sup> Marshall does not forget to mention the enfranchisement of women with a later reform, but the decisive period for the evolution of political citizenship remains the same for him.

Finally, social citizenship is presented as the outcome of mainly the twentieth century in the middle of which Marshall wrote his article. Tracing back the origins of social rights, Marshall first focuses on the Poor Laws. He claims that the Elizabethan Poor Law (1601) aimed, first of all, to preserve the existing socio-economic order with a minimum change than to relieve poverty: “it was an aid, not a menace, to capitalism, because it relieved industry of all social responsibility outside contract of employment, while sharpening the edge of competition in the labour market.”<sup>39</sup> As the new economic order developed during the following centuries these regulations became to be more problematic in terms of social rights. The late eighteenth century, as Marshall claims, was the final battleground between civil rights and social rights. The Speenhamland system (1795) aimed to guarantee a minimum wage and family allowances with the right to work preserved; however, it did not succeed, and with the Act of 1834, the Poor Law ceased to interfere with the wages system and the other forces of the market economy. “It offered relief only to those who, through age or sickness, were incapable of continuing the battle, and to those other weaklings who gave up the struggle, admitted defeat, and cried for mercy.”<sup>40</sup>

Marshall interprets this case not only as a step backwards for the development of a social security understanding, but also, and more importantly, the disconnection of social rights from the status of citizenship. “The Poor Law treated the claims of

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<sup>38</sup> Ibid., 78.

<sup>39</sup> Ibid., 88.

<sup>40</sup> Ibid., 80.

the poor not as an integral part of the rights of the citizen, but as an alternative to them.”<sup>41</sup> The poor actually lost the right to personal liberty, being kept in the workhouse, and were rejected political rights, as well. On the other hand, most of the task was up to private charity while those people who received their help had “no personal right to claim it.”<sup>42</sup> Hence, the poor relief implied a community of citizens on the one hand and a stigmatized outcast group of “the destitute” on the other. In addition to this, Marshall shows that the early Factory Acts also followed the same tendency, divorcing social rights from the status of citizenship: although regulations provided an improvement of working conditions and a decrease in working hours in certain industries, they were applied only to women and children, not to adult males. “Women were protected because they were not citizens,” unlike male citizens, who were “equipped with the means to protect” themselves.<sup>43</sup>

The revival of social rights, according to Marshall, started with the development of public education, and by the twentieth century, social rights in the fields of health care and social security as well as education developed as a part of the status of citizenship accompanying the other two elements, and they were “no longer merely an attempt to abate the obvious nuisance of destitution in the lowest ranks of society,” but also “assumed the guise of action modifying the whole pattern of social inequality.”<sup>44</sup> However, the development of social rights was not in perfect

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<sup>41</sup> Ibid., 80.

<sup>42</sup> Ibid., 87.

<sup>43</sup> Ibid., 81, 87. Ten Hours Movement which paved the way for the English laws referred as Factory Laws originally aimed a gender-neutral reduction in working hours. However, Ellen Mutari asserts that “in order to reconcile state intervention with dominant *laissez-faire* principles, protective legislation was limited to parties that defined as ‘unfree agents,’ that is, women and children.” And considering the further legislations, “protective legislation was integral to the institutionalization of the doctrine of separate spheres, that is, a male sphere of the polis and the market and a female sphere of domesticity.” See Ellen Mutari, “Protective Legislation.” In *Feminist Economics*, ed. Janice Peterson and Margaret Lewis (Cheltenham, UK: Edward Elgar, 1999), 639-43.

<sup>44</sup> Ibid., 96.

harmony with civil rights, neither with the capitalist class system. Marshall asserts that citizenship was a principle of equality, and even in its early forms, civil rights did not clash with the inequalities of capitalist society; “they were, on the contrary, necessary for the maintenance of that particular form of inequality.”<sup>45</sup> The following passage summarizes the relation between civil citizenship and (in)equality:

(M)odern contract is essentially an agreement between men who are free and equal in status, though not necessarily in power. Status was not eliminated from the social system. Differential status, associated with class, function and family, was replaced by the single uniform status of citizenship, which provided the foundation of equality on which the structure of inequality could be built.<sup>46</sup>

However, while civil rights provided the commodification of labor and land which were essential for a competitive market economy, social rights aimed at decommodification of labor<sup>47</sup> (albeit not stated in these terms by Marshall) and the reduction of the inequalities of the capitalist system by “an invasion of contract by status, the subordination of market price to social justice, the replacement of the free

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<sup>45</sup> Ibid., 87.

<sup>46</sup> Ibid., 88.

<sup>47</sup> Decommodification can be defined as the ability to maintain a livelihood without an absolute dependency on the market. See Gøsta Esping-Andersen, *The Three Worlds of Welfare Capitalism*, 21-23. Decommodification of labor is not directly stated by T. H. Marshall. However, Esping-Andersen’s work (1990) which centers around decommodification as the main criterion for the quality of social rights is criticized by feminists in that it overlooks the domestic labor of women and is too employment-centric, that is, it concerns mainly the commodified labor. See Pedersen, *Family, Dependence, and the Origins of the Welfare State: Britain and France 1914-1945*, 7, and Sainsbury, *Gender, Equality, and Welfare States*, 36. Pedersen points that even the results of decommodification for the commodified labor change according to sex in that women often undertake another sphere of labor, domestic labor, when decommodified, see *ibid.*, 7. Accordingly, feminists emphasize the need for a focus on the broader life chances, moving beyond the employment variable. See Daly and Rake, *Gender and the Welfare State*, 72-73. On the other hand, taking these feminist critiques into account in terms of his welfare state typology in one of his later articles, Esping-Andersen favors another (de)commodification-oriented approach for a gender perspective: he asserts that decommodification strengthens the patriarchy and traditional family bonds through benefits to the male-breadwinner in “conservative” welfare regimes, while the “social democrat welfare state” first enables commodification for female labor, then provides decommodification as it reduces the familial responsibilities (“de-familiazation”). See “Toplumsal Riskler ve Refah Devletleri.” In *Sosyal Politika Yazıları*, ed. Ayşe Buğra and Çağlar Keyder (İstanbul: İletişim, 2006), 49-53. Hence, if one confines herself to these three paradigms by Esping-Andersen, commodification appears to be the only road for a female autonomy in a way.

bargain by the declaration of rights.”<sup>48</sup> So Marshall claims that the maintenance of economic inequalities was made more difficult with the enhancement of social citizenship. However, he also states that the aim is not an absolute equality, but “to remove the inequalities which cannot be regarded as legitimate.”<sup>49</sup> For a standard of legitimacy, he names social justice, also emphasizing dynamism as a condition for inequalities to be acceptable in contrast to hereditary privilege. Hence, we can conclude that Marshall’s understanding of equality is more a matter of equality of status and opportunity than a pure economic equality. Marshall takes the example of social services and equality: social services which require means-test and limited income have an obvious equalizing affect. However, this economic equalization also can be accompanied by stigmatization, which would create another problem of equal status and dignity in fact. Here, he refers to the stigmatization of the Poor Law, which made “pauper” a derogatory term and to the term “Old Age Pensioner” which is different but not without “the taint of shame.”<sup>50</sup> On the other hand, in case of a universal scheme like free health care, the direct effect is an increase of disposable incomes, though subject to alteration by tax policies. With this example, Marshall comes to his basic idea: the extension of social services may not be the major means of equalization, but this does not matter,

what matters is that there is a general enrichment of the concrete substance of civilized life, a general reduction of risk and insecurity, an equalization between the more and the less fortunate at all levels – between the healthy and the sick, the employed and the unemployed, the old and the active, the bachelor and the father of a large family . . . Equality of status is more important than equality of income.<sup>51</sup>

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<sup>48</sup> Marshall, 111.

<sup>49</sup> Ibid., 117.

<sup>50</sup> Ibid., 101.

<sup>51</sup> Ibid., 103.

Hence, according to Marshall, there is a tension between the civil and social elements of citizenship which works to counterbalance the social inequalities in capitalist society. Today the effectiveness of this function of social policy might be questionable considering the ongoing neo-liberal challenge against the social state policies starting from the late 1970s. However, it might provide a normative framework for the reclaim of social rights in an age of capitalist globalization.

Marshall's view of the development of citizenship has been criticized in many respects, for its historical accuracy, its ideological implications like the modernization paradigm, its flaws from gender and race perspectives. The fact that it still provides the starting point, though maybe critically, for many discussions on social rights and citizenship might be explained more by its analytical value than its historical explanatory strength, and it is also the trajectory of this study to take Marshall's framework in terms of mainly its normative quality rather than a description of a historical development<sup>52</sup> with a further problematization from a gender perspective.

One of the main criticisms of the Marshall's theory of citizenship is that it takes the male worker standard as the ideal typical citizen, ignoring the female perspective, which is most explicit in his conscious acceptance of the universal male suffrage as the turn point for universal citizenship. Regarding class divisions as the main source of social inequalities in society, Marshall overlooked the ways other social relations of gender and family "produced inequalities and insecurities, as well as the myriad ways in which the institutions of the welfare state either redressed or compounded these problems."<sup>53</sup> While Marshall himself emphasized that before the

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<sup>52</sup> Ayşe Buğra, "Yoksulluk ve Sosyal Haklar." Available (online) at:  
<[http://www.spf.boun.edu.tr/docs/STGP\\_Bugra.pdf](http://www.spf.boun.edu.tr/docs/STGP_Bugra.pdf)>

<sup>53</sup> Pedersen, *Family, Dependence, and the Origins of the Welfare State*, 5.

twentieth century “women were protected because they were not citizens,”<sup>54</sup> as Pedersen claims, Marshall’s own definitions of citizenship and social rights “extended this exclusion into the twentieth century.”<sup>55</sup>

Against the gendered citizenship which is based on the exclusion of women and/or an inferior, second-class female citizenship, feminist scholars elaborated on alternative theorizations of citizenship from a gender perspective. Lister sums up these approaches into three categories: “gender-neutral,” “gender-differentiated,” and “gender-pluralist.”<sup>56</sup> Roughly, gender-neutral citizenship refers to equal rights and obligations for both sexes. This approach aims to enable women to live under equal terms with men in the social field. As for the gender-differentiated citizenship approach, it bases its claims on the difference of women, rather than an equality ideal, such as maternity. Gender-pluralist approach emphasizes that gender is only one element of the subject position and identity of individuals, others being ethnic, racial, sexual, and so forth. There have also been various critiques of these constructions of citizenship, the question of “equality or difference” being a fundamental discussion in feminist theory and politics. Broadly speaking, the equality approaches have been criticized for the risk of taking the male standard as the norm, pushing women into assimilation and overlooking the specific needs and diversity of them. On the other hand, difference approaches have been condemned as essentialist,<sup>57</sup> naturalizing and reproducing gender stereotypes. This approach also is

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<sup>54</sup> Marshall, 81.

<sup>55</sup> Pedersen, 6.

<sup>56</sup> Ruth Lister, “Citizenship and Changing Welfare States.” In *Changing Labour Markets, Welfare Policies and Citizenship*, ed. Jorgen Goul Andersen and Per H. Jensen (GB: Polity Press, 2004), 39-57.

<sup>57</sup> The term essentialism in philosophy “implies the belief that an object has a certain quality by virtue of which it is what it is.” In case of gender and identity politics, essentialism mostly refers to “generalizations made about particular social groups . . . [which] may come to have a disciplinary function within the group, not just describing but also dictating the self-understanding that its

criticized for making women sound inferior and unequal with a discourse of difference.<sup>58</sup>

However, it is also frequently stated that one has to go beyond the dichotomy of “equality versus difference” as the complex social reality does not correspond to such a simple binary opposition. “Equality is not the elimination of difference, and difference does not preclude equality . . . Equality requires the recognition and inclusion of differences.”<sup>59</sup> In the next part, the reasons and the need for such a differentiated social policy approach, which also needs to take into account the problems of essentialism and stigmatization, will be discussed. This will underline both the question of the thesis and an approach for a gender-sensitive social citizenship.

From Sen’s Capabilities Approach to  
Fraser’s Transformative Redistribution and Recognition

Capabilities Approach

The capabilities approach has been developed most extensively by Amartya Sen and been highly influential through the *Human Development Reports* published by the United Nations Development Programme (UNDP) since 1990. The capabilities approach takes a stance against the utilitarian approach in economics and

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members should have.” See Cressida Heyes, "Identity Politics," *The Stanford Encyclopedia of Philosophy (Fall 2002 Edition)*, ed. Edward N. Zalta . Available (online) at:

<<http://plato.stanford.edu/archives/fall2002/entries/identity-politics/>>.

<sup>58</sup> Lister, 43.

<sup>59</sup> Joan W. Scott, "Deconstructing Equality-Versus-Difference: Or, the Uses of Post-Structuralist Theory for Feminism," *Feminist Studies* 14, no. 1 (Spring 1988): 38, 48.

is a part of an attempt at building a theory of “development as freedom.” Instead of the standard approaches which identify development simply with economic growth, the rises in per capita income, or industrialization, and poverty with the lowness of real income, Amartya Sen views development “as a process of expanding the real freedoms that people enjoy”<sup>60</sup> and poverty as the deprivation of basic capabilities. The capabilities approach builds up this understanding of freedom “in the form of individual capabilities to do things that a person has reason to value.”<sup>61</sup>

“Capability” and “functioning” are the basic concepts Amartya Sen employs in his approach. The concept of “functionings” means “the various things a person may value doing or being.” These may vary from “being adequately nourished” to “being able to take part in the life of the community and having self-respect.” And “a person’s “capability” refers to the alternative combinations of functionings that are feasible for her to achieve. Capability is thus a kind of freedom: the substantive freedom to achieve functioning combinations (or less formally put, *the freedom to achieve various lifestyles*).”<sup>62</sup> (emphasis added) While the functioning combination refers to a person’s “actual achievements,” the capability stands for the “freedom to achieve” these alternative combinations from which the person can choose. Here, capabilities can be influenced remarkably by a number of contingent factors, both personal and social.

Sen gives five distinct sources of variation in capabilities: (1) personal heterogeneities, (2) environmental diversities, (3) variations in social climate, (4) differences in relational perspectives (inter-societal variation), and (5) distribution within the family. While some of the above are inter-societal sources of variation, the

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<sup>60</sup> Amartya Sen, *Development as Freedom* (Oxford, New York: Oxford University Press, 2001), 3.

<sup>61</sup> *Ibid.*, 56.

<sup>62</sup> *Ibid.*, 75.

following personal and social factors are some of the intra-societal sources of variation: differences in age (e.g. “specific needs of the old and the very young”), gender and social roles (e.g. the needs of maternity and “custom-determined” familial responsibilities), disability etc. can result in quite different opportunities and qualities of life for people even when they have the same level of income and/or “commodity bundle.”<sup>63</sup> Hence, this points at the fact that equal rights do not necessarily mean enjoying the same quality of life due to the problem of conversion of formal rights into capabilities under certain conditions.<sup>64</sup>

From biology-originated differences (like pregnancy) to social factors (gendered norms and power relations) gender-related factors influence differently the capabilities of women and men to choose the lives they have reason to value in Sen’s words. Sen focuses on gender inequality and the capability deprivation of women in some of his works and formulates the problem of gender inequality as “one of disparate freedoms.”<sup>65</sup> Here, Sen again emphasizes that the different freedoms women and men enjoy cannot only be reduced to disparate incomes albeit unequal wages play an important role in gender inequality. The writer draws attention to the fact that “there are many other spheres of differential benefits, e.g. in the division of labor within the household, in the extent of care or education received, in liberties that different members are permitted to enjoy.”<sup>66</sup> In some cases laws and institutions produce and reproduce these inequalities. In other cases these are perpetuated thanks to (imposing and/or internalization of) the established values about appropriate gender roles and behaviors. There is no doubt that both dynamics can influence and

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<sup>63</sup> Ibid., 69-71, 88.

<sup>64</sup> Buğra, *ibid.*

<sup>65</sup> Amartya Sen, *Inequality Reexamined* (New York: Oxford University Press, 1992), 125.

<sup>66</sup> Ibid., 122.

strengthen each other. This thesis explores the interactions of these political and socio-cultural dynamics in terms of the Turkish case.

The capabilities approach reveals the need for a social policy which aims at capability improvement taking into account human diversity and the conditions under which people live and over which they have no, or limited, control. This points at the likely insufficiency of an equal treatment policy for capability deprivations of diverse persons or groups and, instead, favors specific measures to compensate *disadvantages* and to satisfy *divergent needs* resulting from human diversity and non-choice factors. In terms of our topic, this points at the need for a gender-sensitive social policy which takes into account gender differences and the inequality in society and takes specific measures to overcome inequalities and to satisfy different needs. This approach of differential treatment to promote equality mostly is presented by policies and debates about *positive discrimination* or *affirmative action*, which also relate to the question of the thesis. Two terms mostly can be used interchangeably referring to “positive steps taken to increase the representation of women and minorities in areas of employment, education, and business from which they have been historically excluded.”<sup>67</sup> One should emphasize that this policy line is not just about compensatory actions for the promotion of equal participation as “affirmative action” mainly implies, but also the recognition and satisfaction of divergent needs, so the term positive discrimination would be more inclusive.<sup>68</sup> Here, the policies taken may vary from quotas to differential benefits.

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<sup>67</sup> Robert Fullinwider, "Affirmative Action", *The Stanford Encyclopedia of Philosophy (Spring 2005 Edition)*, ed. Edward N. Zalta. Available (online) at:

<http://plato.stanford.edu/archives/spr2005/entries/affirmative-action/>.

<sup>68</sup> The terms “affirmative action” and “positive discrimination” that I refer here in relation with capabilities approach should not be supposed to be totally equivalent to the “affirmative remedies” Fraser talks about as will be seen below; but as relatively wider conceptions, as capabilities approach, which could cover both “affirmative and transformative remedies.” For a work which discusses how Sen’s capabilities approach can be used for both issues of redistribution and recognition that Fraser

However, such a social policy of differential treatment might bring some problems with itself. The most visible problem which also is mentioned by both Marshall and Sen, is the danger of stigmatization of people who receive these specific benefits mostly on the base of needs and means-testing.<sup>69</sup> Categorizing certain people as poor and in need of the compassion of others, therefore as inferior, confines them to a second-class status in society.<sup>70</sup> In addition, the definitions of needs and differences can be pretty problematical as well. For gender, social norms and gendered power relations mostly determine these definitions of gender differences on the base of the attributed needs, roles, responsibilities, and abilities. This issue relates to the critique of difference approach for a danger of essentialism as mentioned above. In the next part, the dangers of “affirmative policies” to reproduce the underlying gender norms will be elaborated with a discussion of Nancy Fraser’s transformative approach.

Before going into the next part, it should be underlined that agency in Sen’s approach has an important place. Like Marshall who emphasizes the interrelations among political, civil and social rights, Sen highlights the mutual relationship among social policy formulations, capabilities and agency. “In a freedom-oriented approach, the participatory freedoms cannot be but central to public policy analysis.”<sup>71</sup> Capabilities can be enhanced or undermined by certain social policy formulations and this fact affects the agency of persons in turn; on the other hand, the agency of persons, that is, the lack or the use of “participatory capabilities,” can influence the path of social policy as well as the social norms underlying these policies and

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theorizes, see Ingrid Robeyns, "Is Nancy Fraser's Critique of Theories of Distributive Justice Justified?," *Constellations* 10, no. 4 (2003).

<sup>69</sup> See Marshall, 101 and Sen, *Development As Freedom*, 136.

<sup>70</sup> Buğra, *ibid.*

<sup>71</sup> Sen, *ibid.*, 110.

gendered power relations. For the agency of women, Sen emphasizes different aspects like “women’s ability to earn an independent income, to find employment outside the home, to have ownership rights and to have literacy and be educated participants in decisions within and outside family,” all of which contributes “force to women’s voice and agency –through independence and empowerment.”<sup>72</sup> The emphasis on agency is significant against a portrayal of women as merely passive victims of governmental policies or the reduction of their citizenship to “the interests of a client.”<sup>73</sup> It is important not only for evaluating the outcomes of certain social policy practices, but also for prospects of further empowerment for women and gender equity.

In this thesis, certain capabilities of women (in terms of participation in labor market and socio-political life and such) in Turkey will be evaluated to interpret the functions of and the need for the gendered policies in question. The degree of the development of women’s status and capabilities during the processes of policy-making and implementation can shed light not only on the aims of the policy-making elites with their (lacking) interventions and their (mis)recognition of women, but also on the power of women to influence the policy-making process; albeit, the direct influence of women in the making of the policies in concern will not be discussed thoroughly due to the limited scope of this thesis.

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<sup>72</sup> Ibid., 191.

<sup>73</sup> Jürgen Habermas, “Citizenship and National Identity,” in *The Condition of Citizenship*, ed. Bart van Steenbergen (London: Sage, 1994).

## Transformative Redistribution and Recognition

Identity politics, including gender and sexuality-oriented politics, have been criticized as drawing attention away from the systemic problems of political economy, that is, of late capitalism, toward superstructural issues, and thus leaving economic structures untouched.<sup>74</sup> Focusing on redistribution against this problem of “displacement” and on recognition against the “reification of group identities,” which is seen with identity politics and mainstream multiculturalism, within the same framework, Nancy Fraser argues a socialist economics combined with deconstructive cultural politics in order to struggle against multiple, overlapping and mostly mutually reinforcing economic and cultural injustices.<sup>75</sup> Fraser’s approach is illuminative on the risks of the affirmative action remedies mentioned above and proposes a framework for transforming the underlying structures of both political economy and culture.

In the face of cultural and economic injustices, Fraser assumes that “justice today requires *both* recognition *and* redistribution.”<sup>76</sup> (emphasis in original) Socio-economic injustices are rooted in the political-economic structure of society in the form of the exploitation of labor, economic marginalization, deprivation, and so forth. As for cultural injustices, they are embedded in “social patterns of representation, interpretation, and communication” and can be seen in the shape of cultural domination, disrespect, and non-recognition (“being rendered invisible”).

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<sup>74</sup> Heyes, *ibid.*

<sup>75</sup> Nancy Fraser, “Rethinking Recognition: Overcoming Displacement and Reification in Cultural Politics,” *New Left Review*, no. 3, (May-June 2000), 107-120 and Nancy Fraser, “From Redistribution to Recognition? Dilemmas of Justice in a ‘Post-Socialist’ Age.” In *Theorizing Multiculturalism*, ed. C. Willett (Oxford: Blackwell Publishing, 1998), 19-49.

<sup>76</sup> Fraser, “From Redistribution to Recognition? . . .” 20.

The distinction between these injustices is just an analytical one, as Fraser emphasizes that they are intertwined and mostly mutually reinforcing. While cultural norms which are prejudiced against some are institutionalized in the state and economy, economic disadvantages hinder “equal participation in the making of culture, in public sphere and in everyday life.”<sup>77</sup>

The remedy for economic injustice relates to the restructuring of the political economy which might include the redistribution of income, the reorganization of division of labor, and the transformation of other basic economic structures like property regimes, all of which Fraser prefers to call as “redistribution” dimension. As for cultural injustices, remedies relate to cultural or symbolic change varying from revaluing the disrespected and recognizing diversity to more radical ones like “transformation of societal patterns of representation, interpretation and communication in ways that would change *everybody’s* sense of self.”<sup>78</sup> (emphasis in original) These remedies belong to the “recognition” dimension. Here, Fraser treats recognition as a question of “social status,” hence, what is to be recognized is “not group-specific identity but the status of individual group members as full partners in social interaction.”<sup>79</sup>

The recognition dimension corresponds to the status order of society, hence to the constitution, by socially entrenched patterns of cultural value, of culturally defined categories of social actors –status groups–each distinguished by the relative honour, prestige and esteem it enjoys vis-à-vis the others.<sup>80</sup>

Gender has both “political-economic” and “cultural-valuational” dimensions; therefore, gender justice is a matter of both redistribution and recognition. In terms of

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<sup>77</sup> Ibid., 22-3.

<sup>78</sup> Ibid., 23.

<sup>79</sup> Fraser, “Rethinking Recognition. . .” 113.

<sup>80</sup> Ibid., 117.

the political-economic dimension, gender both “structures the fundamental division between paid, ‘productive’ labor and unpaid, ‘reproductive’ and domestic labor, assigning women primary responsibility for the latter” and “the division within paid labor between higher paid, male-dominated, manufacturing and professional occupations and lower-paid, female-dominated ‘pink-collar’ and domestic-service occupations.”<sup>81</sup> What appears in this portrait is the gender-specific forms of exploitation, marginalization, and deprivation and thus the remedy is to transform the gendered-structuring of the political economy.

For the cultural dimension of gender, Fraser points at “androcentrism” and “cultural sexism” as the major features of gender injustice. While androcentrism refers to the “authoritative construction of norms that privilege traits associated with masculinity,” cultural sexism relates to “the pervasive devaluation and disparagement of things coded as ‘feminine,’ paradigmatically –but not only– women.”<sup>82</sup> This devaluation is embodied in a range of difficulties experienced by women in everyday life: sexual exploitation, harassment, domestic violence, subjection to androcentric norms which disadvantage them, discrimination, “exclusion or marginalization in public spheres and deliberative bodies, and denial of full legal rights.” These are the problems of recognition and cannot be remedied by redistribution alone. Overcoming these problems necessitates the alteration of cultural variations and their legal-practical expressions that favor masculinity and refuse equal respect to women. “It requires decentering androcentric norms and revaluing a despised gender.”<sup>83</sup>

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<sup>81</sup> Fraser, “From Redistribution to Recognition? . . .” 27-8.

<sup>82</sup> *Ibid.*, 28.

<sup>83</sup> *Ibid.*, 28.

Fraser distinguishes between two approaches to remedy injustice via redistribution and recognition: “affirmation” and “transformation.” By affirmative remedies to injustice she refers to “remedies aimed at correcting inequitable outcomes of social arrangements without disturbing the underlying framework that generates them,” whereas by transformative remedies she refers to “remedies aimed at correcting inequitable outcomes precisely by restructuring the underlying generative framework.”<sup>84</sup> So, the intervention is against either the outcomes or the processes that produce them.

Fraser points at mainstream multiculturalism as an example of affirmative remedies for recognition, and deconstruction approaches as transformative remedies on the basis of their (non)intervention to the underlying cultural-valuational structure. While the former suggests to revalue unfairly devalued group identities, but to leave the content of these identities and group differentiation untouched, the latter aims at destabilizing fixed identities and differentiations leading to a sphere of fluid, floating, debinarized multiplities.<sup>85</sup>

As for redistribution, affirmative remedies for economic injustices are associated with the “liberal welfare state,” which aims to remedy “end-state maldistribution” without a radical intervention to underlying political-economic structure. These “surface reallocations” provide the needed material support, but also can maintain class and/or group differentiations. For instance, transfers of social-insurance and public-assistance respectively on the base of contribution and means-test not only promote class differentiation, but also stigmatize the disadvantaged groups as “beneficiaries of largesse,” creating misrecognition, a phenomenon which is also emphasized by Marshall and Sen above. Transformative remedies, on the

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<sup>84</sup> Ibid., 31-2.

<sup>85</sup> Ibid., 31-2.

other hand, are historically associated with socialism with an aim of correcting unjust distribution by transforming the underlying political-economic structure, that is, restructuring the relations of production which would change the social division of labor and thus conditions of existence for everyone. These remedies would involve universalist social-welfare programs, steeply progressive taxation, a large non-market public sector, democratic decision-making about fundamental socio-economic priorities, and so forth.<sup>86</sup>

So, back to gender, affirmative redistribution to correct gender injustice in the economy relates to affirmative action to guarantee women a fair share of jobs, representational places and such without transforming the nature of these institutions, like the gendered division of labor. Affirmative recognition to remedy gender injustice in the culture relates “cultural feminism . . . to assure women respect by revaluing femininity” without deconstructing binary gender codes that give its sense to “femininity.” Leaving intact the underlying structures which create gender disadvantage and confining remedies to surface reallocations this approach highlights gender differentiation and stigmatizes women as deficient recipients of “special treatment and undeserved largesse.”<sup>87</sup> Whereas transformative redistribution would relate to, Fraser asserts, some form of socialist feminism or feminist social-democracy, and transformative recognition would refer to “feminist deconstruction aimed at dismantling androcentrism by destabilizing gender dichotomies.”

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<sup>86</sup> Ibid., 32-4.

<sup>87</sup> Ibid., 37.

Capabilities approach points at the need for a gender-sensitive social policy which takes into account gender differences and inequality; therefore, formulating specific measures to compensate gender-specific disadvantages and to satisfy divergent needs. However, differential treatments bear the risks of stigmatizing recipients as inferior and confining them to a second-class status in society as well as the dangers of promoting essentialism and unfair gender relations if the given differences, needs, and roles are not problematized.. Here, Fraser's approach emphasizes the need to transform the underlying framework in both the culture and political economy which generate these gender disadvantages and inequalities whereas surface remedies for inequitable outcomes of certain social arrangements can also reproduce the underlying gender norms and relations. Indeed, Fraser's deconstructive approach provides a framework to enable what Sen calls "freedoms to achieve various lifestyles." These two approaches bring us to the question of the thesis: do the gender-specific provisions of the social security and labor legislations in Turkey provide a positive discrimination for women to improve their capabilities and thus their equal participation in society or do they reinforce gender norms and relations, which are unfair to women, thanks to certain conceptualizations and assumptions about gender embodied in the policies, leading to a second-class female status?

## CHAPTER 3

### GENDERED SOCIAL SECURITY IN TURKEY

This chapter examines the gender-specific provisions of the social security and “protective” labor legislations in Turkey from a historical perspective. First, a broad outline of the development of social security system is given. Then, the contemporary regulations in the area are examined from a gender viewpoint tracing back the development of the gendered policies in concern through the modern history of Turkey, focusing on the normative amendments in the legislation and the related discourses of the policy-making elites on the base of parliamentary discussions. Here, the gendered policies in question are grouped broadly into two categories considering the gendered subject-position and the presumed basis for entitlements: the policies taking dependency as the basis for entitlements and the policies taking labor as the basis for entitlements. The chapter aims to explore the gender regime of social security system –gender norms and relations which are embedded in the policies pointing at the conceptualizations and assumptions on gender roles, family

structure, sexual division of labor in domestic sphere and paid employment, etc. signified by the policies and the discourses. This analysis revolves around the main question of the thesis, that is, whether these gendered-policies can be seen as positive discrimination for women to satisfy specific needs and to compensate the disadvantaged position or as a reinforcement of a female second-class status through the strengthening of unfair gender norms and relations.

### The Development of the Social Security System in Turkey

The development of the social security system in Turkey has taken place within the context of a long period of political and socio-economic transformation along with the shifting international conjecture. To account for this long-term development thoroughly taking into consideration all the related factors is beyond the limits of this thesis. Yet below, the development of the social security system will be outlined briefly according to the primary arrangements in order to place the policies and the discourses, which are examined in thematic categories, in their historical and institutional context.

The development of social security mechanisms can be traced back to the late Ottoman era.<sup>88</sup> From the middle of the nineteenth century, various retirement funds (*tekaüd sandıkları*) were established for the military and civil state officials as well

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<sup>88</sup> For the development of social security measures in the Ottoman society, see Eyüp Sabri Kala, "Osmanlılarda Sosyal Güvenlik - Sosyal Sigortalar: (1865-1923)" (MA Thesis, İstanbul University, 1994), Tahsin Özcan, "Osmanlı Toplumunda Sosyal Güvenlik Üzerine Bazı Gözlemler," in *Osmanlı* (Ankara: Yeni Türkiye Yayınları, 1999). For a wider perspective on the social state in the Ottoman Empire, see Nadir Özbek, *Osmanlı İmparatorluğu'nda Sosyal Devlet: Siyaset, İktidar Ve Meşruiyet, 1876-1914* (İstanbul: İletişim Yayınları, 2004). As to a social historical approach on the topic from the Ottoman to the contemporary times, see Nadir Özbek, *Cumhuriyet Türkiye'sinde Sosyal Güvenlik Ve Sosyal Politikalar* (İstanbul: Tarih Vakfı, 2006).

as workers in public sectors.<sup>89</sup> In addition to retirement, from the Young Turk era towards the first years of the Republic, special funds (*teaviin sandıkları*) were founded to provide assistance to the civil servants, employees and their families in case of illness, invalidity, and death. In parallel to the conditions of ongoing wars and social problems, specific policies and institutions were also developed for widows and orphans: from the Ministry of the Orphans (*Eytam Nezareti*, 1851) and the following establishment of orphan funds (*eytam sandıkları*) which concerned not only the orphans, but also widows, the insane, and the senile towards the founding of orphanages (*Darüleytam*) in 1914 for the protection of the rising numbers of war orphans which was accompanied with nationalist and militarist discourses to ensure social solidarity and mobilization.<sup>90</sup>

A few legislations, however limited in content, were also carried out to regulate the working conditions like the Dilaver Pasha Regulation (*Dilaverpaşa Nizamnamesi*, 1865) and the Regulation on Mines (*Maadin Nizamnamesi*, 1869). In terms of gender, a legislative proposal to regulate the working conditions of women and children in industry through protective measures was seen in 1910, albeit not concluded.<sup>91</sup> Yet the recruitment of women were organized systematically by societies and the state due to the shortage of manpower especially during the World War I. Hence, large numbers of women had been included in economy by the end of the Great War.<sup>92</sup>

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<sup>89</sup> For a collection of the retirement regulations concerning civil servants in the Ottoman Empire, see *Kamu Personeli Emeklilik Mevzuatı 1 (1876-1930)* (Ankara, Maliye Bakanlığı Bütçe ve Mali Kontrol Genel Müdürlüğü, 1994)

<sup>90</sup> Özbek, *Cumhuriyet Türkiyesi'nde Sosyal Güvenlik Ve Sosyal Politikalar*.

<sup>91</sup> Zafer Toprak, "Sosyal Politika Tarihimizin İlk Önlemler Paketi: Müessesat-ı Snaiyyede Çocukların Ve Kadınların Çalıştırılması (1910)," *Toplum ve Bilim* 27 (Fall 1984).

<sup>92</sup> Zafer Toprak, "The Family, Feminism, and the State During the Young Turk Period, 1908-1918," in *Première Rencontre Internationale Sur L'empire Ottoman Et La Turquie Moderne* (İstanbul-Paris: Éditions ISIS, 1991), Zafer Toprak, "Osmanlı Kadınları Çalıştırma Cemiyeti: Kadın Askerler Ve Milli Aile," *Tarih ve Toplum* 51 (March 1988).

As for the Republican era, the state did not initiate any centralized social security mechanism during the interwar period; however, there were initially two regulations arranged for the Ereğli district in 1921 with provisions to regulate working conditions and to establish funds for assistance while the Law of Obligations of 1926 applied to the remaining places of the country for the regulation of working conditions with a few provisions forcing employers to provide some social security measures as regards work accidents, occupational health, and the like.<sup>93</sup> The Law on Public Hygiene (*Umumi Hıfzısıhha Kanunu*) of 1930, which was in parallel with the pronatalist policies of the period,<sup>94</sup> arranged protective measures for women and children for the first time, bringing some restrictions and prohibitions on working conditions as well as maternity benefits. However, due to the absence of supervision in the work place, the provisions of the Law were not put into practice.<sup>95</sup> In the same year, the Law of Military and Civil Retirement Fund (*Askeri ve Mülki Tekaiit Kanunu*) brought together the earlier retirement funds founded for the military and civil servants with their widows and orphans during the late Ottoman period (see Table 1 for the coverage of the Fund). Alongside this fund, various funds were established for civil servants and workers in the public sector, and some occupational groups who were not employed in the public sector<sup>96</sup> until the Law of Pension Fund (*Emekli Sandığı Kanunu*, ES) of 1949 brought them together under a

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<sup>93</sup> Alpaslan Işıklı, "Sosyal Güvenlik," in *Cumhuriyet Dönemi Türkiye Ansiklopedisi* (İstanbul: İletişim Yayınları, 1983).

<sup>94</sup> Laden Yurttagüler, "Social Policies on Female Body in Turkey in the 1930s" (MA thesis, Boğaziçi University, 2004). The pro-natalist policy of the period needs to be emphasized as it shows itself also in the discourses on maternity insurance in 1945 as will be seen below. Pro-natalism was abandoned in the 1960s with the reverse policies of family-planning as the population grew two and a half times between 1927 and 1965. See Selen Göbelez, "The History of Social Services in Republican Turkey: Social Change, Professionalism, and Politics" (MA thesis, Boğaziçi University, 2003).

<sup>95</sup> Özbek, *Cumhuriyet Türkiye'sinde Sosyal Güvenlik Ve Sosyal Politikalar*, 130.

<sup>96</sup> For a collection of these legal arrangements, see *Kamu Personeli Emeklilik Mevzuatı II (1930-1950)*. (Ankara, Maliye Bakanlığı Bütçe ve Mali Kontrol Genel Müdürlüğü, 1995).

single law; the civil servants and the military personnel being under a single scheme, again.<sup>97</sup>

Table 1: Number of Orphans and the Retired under the Cover of the Military and Civil Retirement Fund (1935-1945)

Years	Military		Civil		Total	
	Orphan	Retired	Orphan	Retired	Orphan	Retired
1935	31,000	25,000	15,000	10,000	46,000	35,000
1936	26,000	25,000	14,000	10,000	40,000	35,000
1937	21,000	24,000	14,000	10,000	35,000	34,000
1938	21,000	23,000	14,000	10,000	35,000	33,000
1939	21,000	23,000	14,000	10,000	35,000	33,000
1940	20,000	22,000	15,000	10,000	35,000	32,000
1941	20,000	21,000	16,000	10,000	36,000	31,000
1942	20,000	20,000	16,000	10,000	36,000	30,000
1943	20,000	20,000	16,000	10,000	37,000	29,000
1944	20,000	19,000	17,000	9,000	37,000	28,000
1945	21,000	19,000	17,000	9,000	38,000	28,000

Source: Ahmet Makal, *Türkiye’de Tek Partili Dönemde Çalışma İlişkileri: 1920-1946*, 426 (Ankara: İmge, 1999).

In 1936, the first Labor Law of the Republic was legislated, it would be in force until 1967. The Law covered a range of issues from individual contracts to strikes to protective measures while its scope was limited to work places with at least ten workers. There were provisions regarding the working conditions of women and children as well as rights such as half paid maternity leaves and healthcare in case of occupational diseases; however, these rights mostly were not enjoyed by the workers as the necessary by-laws were not arranged later.<sup>98</sup> The Law announced a plan for the gradual establishment of social insurances which was realized only after 1945.

<sup>97</sup> It must be noted that OYAK also provides a kind of additional social security for the members of the Turkish Armed Forces, who are also included within the coverage of the ES.

<sup>98</sup> Ahmet Makal, *Türkiye’de Tek Partili Dönemde Çalışma İlişkileri: 1920-1946* (Ankara: İmge, 1999), 425.

Table 2. Women and Child Paid Workers (1937-43)

Years	1937	1943	1937 %	1943 %
<b>Children (ages 12-18)</b>	23,347	51,871	% 8.80	% 18.86
<b>Women</b>	50,131	56,937	% 18.89	% 20.76
<b>Men</b>	191,863	166,275	% 72.11	% 60.45

Source: Ahmet Makal, *Türkiye'de Tek Partili Dönemde Çalışma İlişkileri: 1920-1946*, s. 310 (Ankara: İmge, 1999).

Parallel to the post-WWII developments, the welfare state policies gained speed in Turkey as well: the founding of the Ministry of Labor (*Çalışma Bakanlığı*) and the Workers' Insurance Agency (*İşçi Sigortaları Kurumu*) in 1945, and of the Employment Agency (*İş ve İşçi Bulma Kurumu*) in 1946; the gradual institutionalization and extension of social insurances; the development of social services; and the adoption of social state principle by Constitution of 1961. So, as the first insurance branches for the workers whom the Labor Law covers, the Law of Work Accidents, Occupational Diseases, and Maternity Insurance (*İş Kazaları, Meslek Hastalıkları ve Analık Sigortası*), was legislated in 1945. This was followed with the establishment of the Old-age Insurance (*İhtiyarlık Sigortası Kanunu*) in 1949 which was rearranged by the Law of Invalidity, Old-Age, and Death Insurances (*Maluliyet, İhtiyarlık ve Ölüm Sigortaları Kanunu*) later in 1957 with the development of survivor and invalidity insurances. In 1950, the healthcare insurance was founded by the Law of Sickness and Maternity (*Hastalık ve Analık Sigortası*) which was gradually put into practice throughout the country.<sup>99</sup>

<sup>99</sup> Işıklı, "Sosyal Güvenlik."

Table 3. The Ratios of Women and Children Workers to the Total of Workers within the Coverage of the Labor Law, 1947-1965.

Years	Women %	Children%
1947	17.58	7.21
1948	18.42	7.41
1949	18.15	7.37
1950	17.41	6.98
1951	16.52	6.26
1952	15.16	6.30
1953	12.63	5.96
1954	12.47	5.03
1955	13.00	5.28
1956	13.95	3.49
1957	12.88	3.32
1958	13.79	3.52
1959	12.73	3.20
1960	11.23	3.03
1961	11.38	2.78
1962	10.59	2.66
1963	10.24	2.52
1964	10.17	2.42
1965	10.15	2.35

Source: Adapted from Ahmet Makal, *Türkiye'de Çok Partili Dönemde Çalışma İlişkileri: 1946-1963*, (Ankara: İmge, 2002).

The Law of Social Insurances (*Sosyal Sigortalar Kanunu*, SSK) of 1964 brought together these earlier insurance schemes for the workers under one single law, replacing the Workers' Insurance Agency and extending the coverage with the enabling of occupational security schemes like the one for the lawyers. In 1984, "agricultural laborers who work on a temporary employment contract have been allowed to participate in the SSK scheme if they choose to do so."<sup>100</sup> Meanwhile, new Labor Laws were legislated in 1967 and then 1971, which was in force until 2003.

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<sup>100</sup> Tülay Arın, "The Poverty of Social Security: The Welfare Regime in Turkey," in *The Ravages of Neo-Liberalism: Economy, Society and Gender in Turkey*, ed. Neşecan Balkan and Sungur Savran (New York: Nova Science Publishers, Inc, 2002), 80.

In addition to these two major insurance schemes for the civil servants and workers, the Social Security Organisation of Craftsmen, Tradesmen and Other Self-Employed (*Esnaf ve Sanatkarlar ve Diğer Bağımsız Çalışanlar Sosyal Sigortalar Kurumu*, Bağ-Kur) was founded in 1971. With the Law of Social Insurances for the Self-Employed in Agriculture (*Tarımda Kendi Adına ve Hesabına Çalışanlar Sosyal Sigortalar Kanunu*) in 1983, self-employed farmers were allowed to participate in the scheme. Recently, the unemployment insurance also was established with a law in 1999 and started to actually function by 2002.<sup>101</sup> Hence, the social insurance system which has lasted till today has been completed (see the Tables 4 and 5 for the population covered by these schemes throughout the history). Since then, there have been innumerable amendments in each of the insurance laws, either individual autonomous amendments or successive cross-amendments so as to provide a unity of norms and standards among the insurance laws. Of these amendments, only those which brought about normative changes in terms of gender will be examined in this study.<sup>102</sup> Last, the recent Law of Social Insurances and General Health Insurance (*Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*, 2006) aims to bring together these insurance schemes under a single structure, so, also equalizing the norms and standards between.

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<sup>101</sup> Özbek, *Cumhuriyet Türkiye'sinde Sosyal Güvenlik Ve Sosyal Politikalar*.

<sup>102</sup> For the period during which the three major insurance schemes have been in force, I will not investigate the other regulations such as those concerning the agricultural sector in terms of gendered politics.

Table 4: The Population Covered By Social Insurance Programs, 1950-2002

<b>INSTITUTIONS</b>	<b>1950</b>	<b>1955</b>	<b>1960</b>	<b>1965</b>	<b>1970</b>	<b>1975</b>	<b>1980</b>	<b>1985</b>	<b>1990</b>	<b>1995</b>	<b>2000</b>	<b>2002</b>
<b>I. THE PENSION FUND IN TOTAL</b>	841,342	1,230,808	1,612,385	2,485,488	3,300,481	4,413,901	5,384,620	5,795,647	6,445,900	8,123,887	9,765,851	10,698,540
1. Active Insured	199,825	281,426	359,303	548,383	823,829	1,092,000	1,325,000	1,400,000	1,560,000	1,880,437	2,163,698	2,372,777
2. Pensioners (retired, invalid, widow,widower,orphan)	9,302	34,375	61,862	96,286	180,895	340,699	454,016	597,207	706,202	952,360	1,296,935	1,408,941
3. Dependants (1)	632,215	915,007	1,191,220	1,840,819	2,295,757	2,981,202	3,605,604	3,798,440	4,179,698	5,291,090	6,305,218	6,916,822
<b>II. THE SOCIAL INSURANCE INSTITUTION IN TOTAL</b>	-	-	-	3,835,055	5,783,854	8,236,422	10,674,172	13,576,258	19,487,970	28,523,960	34,139,311	35,261,104
1. Active Insured	-	-	-	895,802	1,313,500	1,823,338	2,204,807	2,607,865	3,286,929	4,208,761	5,283,234	5,256,741
2. Voluntary Active Insured (2)	-	-	-	-	-	-	-	-	300,000	980,841	843,957	942,024
3. Active Insured in Agriculture	-	-	-	-	-	-	-	18,300	74,407	253,463	184,675	149,163
4.Pensioners (retired, invalid, widow,widower,orphan)	-	-	-	54,590	145,446	289,870	635,815	1,070,681	1,596,634	2,337,755	3,339,327	3,747,573
5. Dependants (1)	-	-	-	2,884,663	4,324,908	6,123,214	7,833,550	9,879,412	14,230,000	20,743,140	24,488,118	25,165,603
<b>III. THE SOCIAL SECURITY INSTITUTION OF CRAFTSMEN, TRADESMEN AND OTHER SELF-EMPLOYED IN TOTAL (3)</b>	-	-	-	-	-	3,270,570	4,540,317	8,000,756	11,332,686	11,832,714	15,036,318	15,547,991
1. Active Insured	-	-	-	-	-	816,555	1,100,500	1,681,747	1,967,379	1,791,246	2,181,586	2,192,555
2. Voluntary Active Insured	-	-	-	-	-	-	-	-	106,019	78,973	254,960	237,801
3. Active Insured in Agriculture	-	-	-	-	-	-	-	244,818	752,075	799,132	876,148	890,976
4.Pensioners (retired, invalid, widow,widower,orphan)	-	-	-	-	-	4,350	138,317	294,496	595,889	880,820	1,277,444	1,393,670
5. Dependants (1)	-	-	-	-	-	2,449,665	3,301,500	5,779,695	7,911,324	8,282,543	10,446,180	10,832,989
<b>IV. THE PRIVATE FUNDS IN TOTAL</b>	-	-	-	48,280	84,490	115,872	196,130	288,977	312,186	291,247	323,569	324,302
1. Active Insured	-	-	-	20,000	35,000	48,000	77,737	76,778	84,072	70,854	78,495	71,641
2. Pensioners (retired, invalid, widow, widower, orphan)	-	-	-	-	-	-	11,943	21,230	32,409	51,948	71,266	77,738
3. Dependants(1)	-	-	-	28,280	49,490	67,872	106,450	190,969	195,705	168,445	173,808	174,923
<b>V. GENERAL TOTAL</b>	841,342	1,230,808	1,612,385	6,368,822	9,168,825	16,036,765	20,795,239	27,661,638	37,578,742	48,771,808	59,265,049	61,831,936
1. Active Insured	199,825	281,426	359,303	1,464,185	2,172,329	3,779,893	4,708,044	5,766,390	6,898,380	7,951,298	9,707,013	9,893,714

2. Voluntary Active Insured	-	-	-	-	-	-	-	-	406,019	1,059,814	1,098,917	1,179,825
3. Active Insured in Agriculture	-	-	-	-	-	-	-	263.118	826.482	1.052.595	1.060.823	1.040.139
4. Total Active Insured	199,825	281,426	359,303	1,464,185	2,172,329	3,779,893	4,708,044	6,029,508	8,130,881	10,063,707	11,866,753	12,113,678
5. Pensioners (retired, invalid, widow, widower, orphan)	9,302	34,375	61,862	150,876	326,341	634,919	1,240,091	1,983,614	2,931,134	4,222,883	5,984,972	6,627,922
6. Dependants (1)	632,215	915,007	1,191,220	4,753,761	6,670,155	11,621,953	14,847,104	19,648,516	26,516,727	34,485,218	41,413,324	43,090,336
<b>VI. SOCIAL INSURANCE COVERAGE WITH RESPECT TO HEALTH SERVICES (4)</b>	841,342	1,230,808	1,612,385	6,368,822	9,168,825	12,766,195	16,254,922	19,660,882	34,337,949	35,632,008	38,087,565	58,789.199
<b>VII. RATIO OF INSURED POPULATION (%)</b>	4.0	5.1	5.8	20.3	25.8	39.7	46.5	54.6	66.3	67.2	70.5	88.1
<b>VIII. RATIO OF INSURED POPULATION COVERED BY HEALTH SERVICES (%)</b>	4.0	5.1	5.8	20.3	25.8	31.6	36.3	38.8	60.6	61.6	64.6	83.8
<b>IX. TOTAL POPULATION</b>	20,947,188	24,064,763	27,754,820	31,391,421	35,605,176	40,347,719	44,736,957	50,664,458	56,709,000	57,818,000	58,932,000	70,171,000

(1) Estimate.

(2) The dependants of voluntarily insured person are assumed under the coverage of social insurance schemes.

(3) Law 1479 concerning Bağ-Kur was put into effect in 1972 and the members have been benefiting from health insurance since 1986, and the members covered by the 2926 law have been benefiting from health insurance since 1999.

(4) It is assumed that contributors and beneficiaries of Bağ-Kur and their dependants are under the coverage of health insurance. It is assumed that contributors and beneficiaries of voluntary active insured in SSK and their dependants are not under the coverage of health insurance.

Source: Arranged from DPT, "Ekonomik ve Sosyal Göstergeler, (1950-2001)." Available (online) at <<http://ekutup.dpt.gov.tr/ekonomi/gosterge/tr/1950-01/8.zip>>

Table 5: Employed Population and Social Insurance Coverage by Institution and Gender, 1992-1997 (numbers in thousands)

<b>Employment and Social Insurance Institution</b>	<b>1992 Thousand people</b>	<b>1994 Thousand people</b>	<b>1995 Thousand people</b>	<b>1996 Thousand people</b>	<b>1997 Thousand people</b>	<b>1992 Distribution %</b>	<b>1994 Distribution %</b>	<b>1995 Distribution %</b>	<b>1996 Distribution %</b>	<b>1997 Distribution %</b>
<b>Total</b>	19,528	20,315	20,836	21,697	20,414	100.0	100.0	100.0	100.0	100.0
Bağ-Kur	4,309	4,959	5,243	3,296	2,887	22.1	24.4	25.2	15.2	13.9
SSK	3,907	3,864	3,937	4,652	5,304	20.0	19.0	18.9	21.4	25.5
ES	1,634	1,804	1,879	2,052	2,039	8.4	8.9	9.1	9.5	9.8
Unknown	2	20	33	30	92	-	-	-	0.1	-
Unregistered	9,777	9,668	9,720	11,650	10,427	49.6	47.6	46.7	53.7	50.1
Other	0	0	24	17	65	-	-	-	0.8	-
<b>Male</b>	13,461	13,962	14,451	15,252	15,366	100.0	100.0	100.0	100.0	100.0
Bağ-Kur	4,018	4,517	4,866	3,182	2,783	29.8	33.7	33.7	20.9	18.1
SSK	3,360	3,319	3,350	3,965	4,529	25.0	23.2	23.2	26.0	29.5
ES	1,249	1,332	1,427	1,547	1,505	9.3	9.9	9.9	10.1	9.8
Unknown	2	15	23	24	80	-	-	-	0.2	-
Unregistered	4,832	4,779	4,764	6,520	6,408	35.9	33.0	33.0	42.7	41.7
Other	-	0	21	14	61	-	-	-	0.1	-
<b>Female</b>	6,067	6,353	6,385	6,445	5,448	100.0	100.0	100.0	100.0	100.0
Bağ-Kur	290	442	377	114	104	4.8	16.8	5.9	1.8	1.9
SSK	547	545	587	867	775	9.0	8.6	9.2	10.6	14.2
ES	385	472	452	505	534	6.3	7.4	7.1	7.8	9.8
Unknown	-	5	10	6	12	-	-	-	0.1	-
Unregistered	4,844	4,889	4,956	5,130	4,019	79.8	77.0	77.6	79.6	73.8
Other	-	0	3	3	4	-	-	-	0.1	-
<b>Female/Total Insured %</b>						12.4	13.7	12.8	13.1	13.6

Source: Tülay Arın. "The Poverty of Social Security: The Welfare Regime in Turkey." In *The Ravages of Neo-Liberalism: Economy, Society and Gender in Turkey*, ed. Neşecan Balkan and Sungur Savran, 73-91. (New York: Nova Science Publishers, Inc, 2002).

As for the gendered policies these regulations formulated, they will be examined with a grouping into two thematic categories, considering the gendered subject-position and the presumed basis for entitlements: the policies taking dependency as the basis for entitlements and the policies taking labor as the basis for entitlements. The basis for entitlements is “a crucial factor in determining whether social benefits and services contribute to women’s autonomy or reinforce their dependence”<sup>103</sup> and, accordingly, which subject-positions (women as wives, mothers, widows and orphans, workers, or mother/caregiver-workers as well as women as the “destitute and weak,” etc.) are taken for granted and supported, or discouraged.

#### Social Security Policies Taking Dependency As the Basis for Entitlements

Social security benefits like “survivor insurance” rely on dependency as the basis for entitlements. As for “sickness insurance,” it covers both the insured persons and their relatives or their survivors; however, there is gender differentiation in healthcare benefits only for the dependents and the survivors. Therefore, sickness insurance will be taken into account under this sub-heading with its gender-specific provisions for dependents. So, both insurance branches provide benefits which are “derived-rights” attained by the virtue of the recipients’ status as (dependent) spouse, children, and parents of the insured person.<sup>104</sup> The difference of the conditions for

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<sup>103</sup> Sainsbury, *Gender, Equality, and Welfare States*, 44.

<sup>104</sup> Survivor and sickness insurances both rely on the dependency relationship as a basis for entitlements no matter the formal classifications are different. Survivors are mostly called as “right-owners” (*hak sahipleri*) deriving their entitlements from the deceased whereas the dependents of the existing insured persons or the retired are categorized as “dependents.” Dependency basis might be questionable for the survivors with the recent changes for the widowed which ended the requirement of being dependent on the spouse; hence, more of a transfer of the earned rights.

female and male recipients show that these benefits are not simply a matter of the transfer of the rights that are gained by the insured person, as it is mentioned in some discourses as seen below, but a matter of the assumption that women are dependent on male-headed family and marriage for their livelihood. In the following parts, the legislative policies and the accompanying official discourses on the two issue-areas are examined with a retrospective approach to evaluate the underlying gender norms and assumptions.

### Survivor Insurance

Survivor benefits (i.e. death insurance) can involve benefits such as pensions, lump-sum payments, marriage bonus, medical care, and funeral assistance for the surviving spouse, children, and parents<sup>105</sup> of the insured person who dies naturally, or by work accident or occupational disease. The proportion of payments, priority and eligibility mostly depend on various conditions like the relationship of the survivor to the deceased, age, marital, and occupational status. As of 2006, there are 253,899 survivor spouses (9,716 husbands, 244,183 wives) and 253,081 orphans (49,109 sons, 203,972 daughters) in the ES; and as of the year 2004, there are 663,814 survivor spouses (13,661 husbands, 650,153 wives) and 418,344 orphans (98,812 sons, 319,532 daughters) in the SSK and a total number of 529,432 survivors (54,640 men, 474,792 women) in the Bağ-Kur.<sup>106</sup>

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<sup>105</sup> Throughout all the legislations covered in this study, survivor pensions for the parents of the insured are determined according to various changing conditions that are both normative and technical in nature like needs-testing and age-limit, and like being in the secondary order which is subject to the unpredictable sum of the pensions paid to the widowed and the orphans who are the primary recipients of the insurance benefits. Therefore, the details about conditions for the parents' entitlement will not be covered thoroughly, entitlements for the spouses and the children being the main subject of the thesis as they are the main trajectory of the regulations, as well.

<sup>106</sup> Sources are from the ES, SSK and Bağ-Kur. Available (online) at:

Gender differentiation in the conditions for entitlements to the survivor benefits for the widowed and orphans is the most enduring and distinctive gendered practice seen in the process of the development of social security in Turkey. The established policy which has lasted pretty unchanged until today is that daughters who do not work and have no income from social security institutions are entitled to survivor benefits if they are not married (pension is suspended in case of marriage and work, and becomes payable again in case of the end of the reasons for the suspension) regardless of age, while sons are entitled only until 18, 20 or 25 years of age depending on the level of education being pursued. However, in case of invalidity to the extent of being unable to work sons are entitled to the pensions regardless of the age limits and marital status, while invalid girls are not paid pensions when they get married. This differential treatment relates the gender-specific provision more to the assumptions of the dependency of women on family and marriage than a positive discrimination to compensate disadvantages such as the invalidity of girls in this case. This condition on invalidity only has recently been extended to daughters with similar critiques as will be seen below.<sup>107</sup>

In addition, girls have been encouraged to get married via a lump-sum payment of pensions which is called “marriage bonus.” Finally, with the recent legislative reform by the Law of Social Insurances and General Health Insurance (*Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*), the sex-specific treatment for pensions has been maintained in the same manner; however, marriage allowances

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<<http://www.emekli.gov.tr/ISTATISTIK/tahsis2.htm#tm8>>

<[http://www.ssk.gov.tr/sskdownloads/anasayfa/istatistik/istatistik2004/T53\\_73.xls](http://www.ssk.gov.tr/sskdownloads/anasayfa/istatistik/istatistik2004/T53_73.xls)>

<<http://www.bagkur.gov.tr/finansman/zaman.html>>.

<sup>107</sup> Amendments to exempt the invalid daughters from other conditions like the invalid sons have been legislated for the Bağ-Kur by 24.7.2003 – Law no. 4956, and for the SSK by 29.07.2003 – Law no. 4958.

also are provided to sons who get married before their pensions formally end. The reform also preserves the gendered policy including healthcare entitlements for the survivor pensioners, in contrast to the alteration of entitlements of dependent children to healthcare as gender-neutral.

As for the widowed spouse, the prevalent policy has been similar to the differentiation in orphan benefits, albeit, with more amendments in time toward an equalization of benefits and conditions for both spouses. Widows have been entitled to pensions unless they get married and, under the ES scheme, they have also been encouraged to get marry through “marriage bonuses,” while working status has mostly not been a reason for the suspension of the pension unlike in orphan pensions. On the other hand, widowers mostly have been tested for specific conditions like proving dependency on the spouse, invalidity to the extent they could not work, and mostly age limits. However, the conditions for the widowed benefits gradually have been equalized with the widow benefits, including marriage allowances,<sup>108</sup> starting with the amendments in the mid-1980s towards the recent reform of 2006. Below, I will try to trace back the legislative development of these gender-specific benefits, focusing on the normative changes as well as referring the parliamentary discussions and commission reports to the extent they include arguments about the policies in question.

The gendered policy on survivor pensions shows a relative continuity with some practices and policies implemented in the Ottoman Empire. In many cases, we see that differential benefits were provided to orphans according to sex, along with widows. The orphan funds (*eytam sandıkları*) aimed to manage the assets of the orphan, the widow, the insane, and the senile for their good. While the male orphans

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<sup>108</sup> See Art. 37 of *Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*, Law no: 5489, Date of Adoption: 19.4.2006.

were paid pensions until 20 years of age, female orphans were entitled to pensions as long as they did not get married; on the other hand, the pensions for males were more than those for females. The condition about marital status was also binding for the widows who were entitled to pensions. The widows were obliged to prove their marriage status once in every six months to be able to get their payments if they did not get married.<sup>109</sup> The same policy for the survivors was also seen in some regulations on *tekaüd sandıkları*. The same rule of the entitlement of male orphans until 20 years of age and female orphans until marriage (as well as the widows and the mothers of the deceased in case they were entitled to pensions) applied to the survivor benefits of the funds.<sup>110</sup>

The payment period for the pensions for female orphans sound vague in the regulations. The pensions could be for lifetime in case of severe invalidity and insanity and they were (re)payable in case of divorce or becoming widow for female survivors.<sup>111</sup> In another later regulation of public assistance for the orphans and the destitute, the Regulation on the Pensions of the Destitute of 1910 (*Muhtacın Maaşatı Hakkında Nizamname*), the condition of single-status for women was also seen while

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<sup>109</sup> Mehmet Çanlı, "Eytam İdaresi-Sandıkları Ve Osmanlı Devletinde Yetimlerin Ekonomik Haklarının Korunması," in *Savaş Çocukları: Öksüzler Ve Yetimler*, ed. Emine Gürsoy-Naskali and Aylin Koç (İstanbul: [s.n.], 2003), Mehmet Çanlı, "Eytam İdaresi Ve Sandıkları (1851-1926)," in *Türkler* (Ankara: Yeni Türkiye Yayınları, 2002).

<sup>110</sup> See Art. 10 of the 27.09.1874 dated Regulation "İnfak-ı Muhtacın-i Eytam ve Eramil-i İlmiyye Nizamnamesi," in *Kamu Personeli Emeklilik Mevzuatı 1 (1876-1930)* (Ankara, Maliye Bakanlığı Bütçe ve Mali Kontrol Genel Müdürlüğü, 1994), 7; and Art. 19 of the 26.9.1880 dated Regulation "Memurin-i Mülkiye Terakki ve Tekaüd Kararnamesi," in *Kamu Personeli Emeklilik Mevzuatı 1*, 53.

<sup>111</sup> See Art. 21 of the 13.04.1889 dated amendment regulation "No: 77 – 2 zilkade 1305 tarihli devairi askeriyede müstahdem memurin ve ketebei tekaüd nizamnamesinin 19 ve 21 inci maddesi musahhası" and 10.10.1889 dated amendmend regulation "No: 119 – Erkan, ümera ve zabitanı askeriyeden vefat edenlerin eytam ve eramiline tahsis olunacak maaşlara mütedair 12 şaban 1306 tarihli 5 inci maddei musahhasına müzeyyel fikrai nizamiye." In *Kamu Personeli Emeklilik Mevzuatı 1*, 202-03.

the orphans of both sexes appear to be obliged by the same limit of 20 years of age with the exception of extension for male orphans in case of education.<sup>112</sup>

The Law of Military and Civil Retirement Fund (*Askeri ve Mülki Tekaiüd Kanunu*) of 1930 brought together those retirement funds founded in the Ottoman era under a single law. The law gave the entitlements of survivor benefits primarily to wife and children, and if they did not exist, then the widowed mother and the destitute, or invalid husband and father, all of which were called orphan (*yetim*). Widows were entitled to the pensions until they were married, and the invalid who could not work were entitled to lifetime pensions (regardless of sex according to the law). However, orphans were subject to the conditions of age and marital status according to their sex. Sons were entitled to pensions until 20 years of age (or till 25 in case of ongoing education) and daughters were entitled until 25 years of age or an earlier marriage.<sup>113</sup> The transitory Article 2 entitled female orphans and widows over 45 year of age to the pensions, also providing the option of a lump-sum payment with the termination of pensions. The law was said to be aiming “to encourage girls to get married and to work in order to earn their livelihood,” however, the transitory Article 2 mentioned above was formulated since this aim was difficult to be realized for those older women.<sup>114</sup> In addition, according to the Article 12, those who got married to foreign (*ecnebi*) women were regarded as resigning and exempted from the fund benefits.

Similar principles on survivor benefits in terms of gender applied to the Law of Work Accidents, Occupational Diseases and Maternity Insurances (*İş Kazaları,*

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<sup>112</sup> See Art. 8 of the 27.6.1910 dated regulation “Muhtacın Maaşatı Hakkında Nizamname.” In Republic of Turkey, *Düstur*, 2<sup>nd</sup> Tertib, vol. 2, 400-03.

<sup>113</sup> See Articles 47, 48, and 54 of *Askeri ve Mülki Tekaiüd Kanunu*, Law no: 1683, Date of Adoption: 03.06.1930.

<sup>114</sup> See “1/625 numaralı askeri ve mülki tekaüt ve askeri istila kanunu layihası ve Muhtelit ve Bütçe Encümenleri mazbataları,” in TBMM, *Zabıt Ceridesi*, Term 3, Session 3, vol. 20, no. 223, 1930, 7.

*Meslek Hastalıkları ve Analık Sigortaları Hakkında Kanun*) of 1945 for workers subjected to the Labor Law of 1936. Again, the widow of the insured man was entitled to the pension until she got married and the widower of the insured woman was entitled only if the wife was the breadwinner of the family and the husband was incapable of work, until the husband would “get relief from poverty in some way.” Meanwhile, the support for the widower pensions in case of partial invalidity was told to be appropriate to the justice and community solidarity in the parliamentary discussions.<sup>115</sup> As for the orphans, the age limits for orphans were lower, that is, 16 and 18 years of age depending on the education level, regardless of gender.<sup>116</sup> While the concerned provisions of the law proposal were influenced by Swiss law, hence, also suiting the Turkish Civil law,<sup>117</sup> the age limit for the daughters was proposed to be higher considering the “special conditions of the country” during the parliamentary discussions, although it was not concluded so. The condition of marital status for the widow also was criticized for the fact that it might hold back women from getting married and, hence, encourage illegal relationships. An age limit for the widow was proposed instead, but this also was criticized because of the fact that marriage was not something to occur whenever women wanted it to. In addition, the marriage bonus of lump-sum payments was shown as a precaution to the alleged risk of the discouragement of marriage.<sup>118</sup>

The Old-Age Insurance Law (*İhtiyarlık Sigortası Kanunu*) of 1949 for workers relied on almost the same normative principles with the former law of 1945

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<sup>115</sup> “hakka, adle ve cemiyet dayanışmasına uygun.” TBMM, *Zabıt Ceridesi*, Term 7, Session 2, vol. 18, 18 June 1945, 311.

<sup>116</sup> See Articles 20 and 24, *İş Kazaları, Meslek Hastalıkları ve Analık Sigortaları Hakkında Kanun*, Law no: 4772, Date of Adoption: 27.06.1945.

<sup>117</sup> “İş kazaları ile mesleki hastalıklar ve analık sigortaları hakkında kanun tasarısı ve Geçici Komisyon raporu (1/316),” in TBMM, *Zabıt Ceridesi*, Term 7, Session 2, vol. 18, Order no. 120, 1945, 4.

<sup>118</sup> TBMM, *Zabıt Ceridesi*, Term 7, Session 2, vol. 18, 18 June 1945, 311-314.

on survivor benefits. The law was legislated within the same period as the Law of Pension Fund (*Emekli Sandığı Kanunu*) for civil servants and, hence, the parliamentary discussions referred to the ES, as well. Similar conditions were arranged for the widowed (the widow with the conditions of marital status and work, and the widowed with the conditions of being too disabled to work and his wife being the breadwinner), though, with a weaker provision of the widow pensions (widows were required not to have any wage and were entitled to pensions for a period of three years before the 50 years of age and then they were again eligible for the pensions<sup>119</sup>). The age-limit for the orphan pensions were 18 regardless of sex. In the parliamentary discussions (where a corporatist discourse of “solidarity of the employer, the worker and the state” against “social conflicts” was uttered by Sadi İrmak, amongst others<sup>120</sup>) the similar conditions and rights with the civil servants were supported for the workers by some MPs, arguing that the proposed lower age for worker children would mean that they would not have further education. So, the same age limit of 25 was supported along with an emphasis on the daughters’ rights for lifetime pensions in the ES as outlined below, but a motion in this parallel was rejected –which was going to be arranged later in 1973. This shows the uneven development of social insurance benefits for workers and civil servants from a gender perspective.

According to the Pension Fund, a girl gets married and ceases to be eligible for pensions, she gets divorced and her pension becomes payable again . . . Of course a girl, too, ought to work in this century we are living in. However, just due to the respect for her womanhood, there is easiness to the maximum and she gets the benefits of the retirement right for lifetime as long as she is a widow and destitute; as for the boys, they get paid until they graduate from

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<sup>119</sup> See Articles 14 and 15 of *İhtiyarlık Sigortası Kanunu*, Law no: 5417, Date of Adoption: 02.06.1949.

<sup>120</sup> TBMM, *Zabıt Ceridesi*, Term 8, Session 3, vol. 20, 2 June 1949, 59.

higher education, that is, 25 years of age. It will be fair to accept the same limit for the kids of the workers as well.<sup>121</sup>

Within the same year, the Law of Pension Fund (*Emekli Sandığı Kanunu*) for civil servants was legislated, bringing together the various funds formerly founded under a single scheme. According to the law, the survivor pensions were payable to the widow and the destitute mother, again, with the conditions of the marital status. As for the widower and the father of the insured, they were required to be non-insured, destitute, and at least 65 year-old in the time of the death of the insured person.<sup>122</sup> According to the law, the definition of the “destitute” (*muhtaç*) was:

For the implementation of the provisions of this law, the (Destitute) is the one who does not have income, property (including Money or the similar kind of wealth) or earnings enough to provide the means of living for oneself and for the family members whom one is obliged to maintain according to the provisions of Turkish Civil Law.<sup>123</sup>

In addition, Article 71 reduced the amount of pension by half in case there was more than 30 years of age between the spouses and the marriage was less than 10 years old and without children. This provision was said to be against arranged marriages in order to get the survivor benefits of the insured persons who were old. However, there was some opposition to this condition in the parliament with the anxiety that it could discourage women from marrying as the case was only relevant for marriages between young women and old men, not vice versa (the young

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<sup>121</sup> “*Emekli kanununda bir kız çocuğu evleniyor tekaütlüğü kesiliyor, boşanıyor tekrar veriliyor . . . Bir kız çocuğu da pekala içinde bulunduğumuz asırda çalışmak zorundadır. Fakat sırf kadınlığına hürmeten azami şekilde kolaylık gösterilmiş ve ömrünün sonuna kadar dul ve muhtaç kaldığı müddetçe emeklilik hakkından istifade ettirilmiştir, erkek çocuklar için ise yüksek okulu bitirinceye kadar yani 25 yaş haddi kabul edilmiştir. Aynı haddi işçi çocukları için de kabul etmek adilane olacaktır.*” See TBMM, *Zabıt Ceridesi*, Term 8, Session 3, vol. 20, 2 June 1949, 83.

<sup>122</sup> See Art. 72, *Emekli Sandığı Kanunu*, Law no: 5434, Date of Adoption: 8.6.1949.

<sup>123</sup> “*Kendisini ve Türk Medeni Kanunun hükümlerine göre bakmağa mecbur olduğu aile fertlerini geçindirmeğe yetecek geliri, malı (Para veya o mahiyetteki kıymetler dahil) veya kazancı bulunmayanlara, bu kanun hükümlerinin uygulanmasında (Muhtaç) denir.*” The Law also required the certification of the need by the local administrative authorities. See Art. 108.

husband of a deceased wife would be already disqualified because of the age limit in Article 72):

We all are growing old. When we become 60, or 65 years old, and by chance, look for a woman who will take care of us and marry her, if the woman is 30 years younger than us and knows that she would get half pension, she will not marry us.<sup>124</sup>

There were no condition of age for those who were invalid to the degree they could not support themselves. The same rule applied to the invalid sons of the insured person as well; otherwise, surviving sons were eligible for pensions until 18, 20, and 25 years of age depending on the level of education they were pursuing and unless they were married. On the other hand, the main condition for the daughters was marital status. Daughters were entitled to survivor pensions unless they got married, and in case of divorce their pensions were re-payable. Also, pensions would cease for both in the case of working under insurance from the Fund.<sup>125</sup> In addition, Article 90 arranged lump-sum payments for the widow and the daughters, but not for the sons, in case of the termination of the pensions due to marriage.<sup>126</sup>

Another reason for the exclusion from survivor benefits was criminal status which founded another dimension of moral sanctioning: those who had committed premeditated murder, attempted murder, or caused disability were not eligible for benefits.<sup>127</sup> Also, imprisonment for more than six months for crimes of theft, bribery, fraud, etc. and the ending of citizenship were acknowledged as reasons for the termination of retirement right and pensions for insured persons. There was an

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<sup>124</sup> “Hepimiz ihtiyarlıyoruz. Yarın 60 yaşına, 65 yaşına girersek tesadüfi olarak kendimizi baktıracak bir kadın arasak ve alsak kadın bizden otuz yaş küçük olursa, yarı maaş alacağımı bilse kadın bize varmaz.” See TBMM, *Zabıt Ceridesi*, Term 8, Session 3, vol. 19, 25 May 1949, 809.

<sup>125</sup> For the provisions about the sons, see Art. 74, about the daughters, see Art. 75, and about working status, see Art. 96.

<sup>126</sup> A total amount of pensions paid in a year.

<sup>127</sup> Art. 77.

opposition to the termination of the pension in parliament arguing that the criminal already was punished with imprisonment and should be entitled to the pensions later again not only for his own sake, but also for the sake of his children. In case of such imprisonment, only the destitute “widows and orphans” of the insured, however, were entitled to survivor benefits during the process of imprisonment according to the final legislation.<sup>128</sup> In addition, survivors of those persons who died or got lost during the military service were covered by the scheme, too.

The Fund also claimed to be authorized to sue the responsible relatives of the pension-receiving survivors who were “destitute” because they were not supported or not given enough alimony by those who were responsible for their livelihood according to the Civil Law (which basically meant the male head of the family according to the Law of 1926<sup>129</sup>), with the aim of getting alimony or increasing the amount of alimony already being paid.<sup>130</sup> Thereby, the Fund undertook a legal authority to reinforce the familial responsibilities which were regulated by the Civil Law. In parallel to this, the Fund also was arranged as authorized to sue those who caused the invalidity or the decease of its members in the name of the survivors. In case of a gain of compensation for the damages, the Fund has the right to get its share of the expenses as well.<sup>131</sup>

The parliamentary discussions during the legislation of the law present a rich variety of reasons for the provisions about survivor benefits, especially for female orphans. First of all, the insurance for the future probable survivors was related to the

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<sup>128</sup> Hence, the wife and children of the imprisoned insured also were called widows and orphans. See, Art. 92 of the law and parliamentary discussions, TBMM, *Zabit Ceridesi*, Term 8, Session 3, vol. 19, 25 May 1949, 819ff.

<sup>129</sup> See Articles 152, 153 and 154, *Türk Medeni Kanunu*, Law no: 743, Date of Adoption: 17.02.1926.

<sup>130</sup> Art. 111.

<sup>131</sup> Art. 129.

work (in)efficiency of the living insured persons in relation with the (un)certainly about the future of their dependants; hence, the state's responsibility to take measures against these risks to ensure the provision of governmental services. In addition to efficiency, a discourse of reciprocity and desert between the "dedication" of the civil servants and the responsibility of the state to take care of their survivors in return follows: "after they dedicated the most efficient times of their life to the services of the state . . . to leave their widows and orphans to the chance of destiny in case of their death could not be explained with an understanding of modern state with a rule of law."<sup>132</sup> In addition, a rhetoric which glorified the retired and the deceased in a patriotic framework accompanied some of the talks, for instance, describing the retired as persons who "stood so many deprivations, took part in various wars, made sacrifices, and got injured,"<sup>133</sup> hence, a rhetoric of self-sacrificing citizens.

The discussion about the gendered survivor benefits developed around the drafts of the law. At first, the proposal formulated the survivor benefits for the female orphans as subject to age-limit (25) and/or need-test. The first objection was raised against the condition of "need," arguing that the certification of the need would subject the daughters to dependency on the others.<sup>134</sup> Besides, the age-limit was also opposed: "a man can get married whenever he wants, but a girl is not so . . . let girls get paid pensions until they get married."<sup>135</sup> In response to the opposition,

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<sup>132</sup> "Ömürlerinin en verimli çağlarını devlet hizmetlerine adadıktan sonra . . . ölümleri halinde dul ve yetimlerini kadere bırakmak modern bir hukuk devleti telakkisiyle kabili izah olmazdı." TBMM, Zabıt Ceridesi, Term 8, Session 3, vol. 19, 18 May 1949, 500-01.

<sup>133</sup> "En çok mahrumiyetlere katlanmış, muhtelif harblere girmiş, fedakarlıklar etmiş, yaralar almış emeklilere." TBMM, Zabıt Ceridesi, Term 8, Session 3, vol. 19, 18 May 1949, 507.

<sup>134</sup> "Böyle öteye beriye el açarak muhtaç olduğuna dair bir kağıt getirmeye muhtaç etmeyelim." TBMM, Zabıt Ceridesi, Term 8, Session 3, vol. 19, 25 May 1949, 811.

<sup>135</sup> "Bir erkek istediği zaman evlenebilir ama bir kız çocuğu öyle değildir . . . kız çocukları evleninceye kadar maaş alsınlar." TBMM, Zabıt Ceridesi, Term 8, Session 3, vol. 19, 25 May 1949, 811. The unparallel couple of words "erkek" (man) and "kız çocuğu" (girl) might point at the assumed (im)maturity of the sexes in a way no matter if they are of the same age.

the spokesman for the commission mentioned about the “equality of the sexes before the law” and explained the “privilege” of 25-year age limit for girls (instead of 18, which was said to be the case in some of the Western cases) as a result of the “sensitive” dimension of the issue of girlhood.<sup>136</sup> Further reasons for the age-limit were given as the financial burden and the possible discouragement of girls about marriage so as not to lose their right to pensions, a situation which was represented as socially harmful. On the other hand, another talk by a member of parliament, Tahsin Tüzün, who proposed a motion to change the article on the survivor pensions for daughters to be payable regardless of age, states a mixture of reasons and anxieties for the gendered policy which was finally legislated and has lasted until today.

Tüzün first referred to the lack of employment opportunities for girls, emphasizing the regional differences between the western big cities and the eastern cities, hence the need to create employment opportunities. In addition to this lack of economic development, he also mentioned the family structure arguing that not all fathers let their daughters work and, thus, forcing girls to work would disrupt the social order. In addition to these capability deprivations of women and the anxieties about the maintenance of the gendered social order, Tüzün points at the inevitable future of girls to become destitute if they could not get married (he saw the marriage as the ultimate aim of every girl) and, hence, the danger of a misfortunate life dependent on the relatives. Thereby, Tüzün also opposes the criterion of need (he also criticized the needs-test, referring to the distress of the bureaucratic processes)

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<sup>136</sup> “Kadınlık ve kızlık hususiyeti biraz da hisleri tahrik ettiğinden madde bugünkü şeklini almıştır.” TBMM, *Zabıt Ceridesi*, Term 8, Session 3, vol. 19, 25 May 1949, 812.

and stressed the right, a right deriving from the father to his daughter.<sup>137</sup> All in all, this discourse was not about some rights based on universal personhood, but entitlements formulated within a framework of the male-headed family deriving from the father until the husband undertook the mission of maintenance (although these benefits equally could be derived from the insured mother, the father figure as a sign of protective paternalism –if it is not just generalizing the relatively more frequent case due to the male-dominant ratios of employment and insurance– prevailed in the discourses from this example to the contemporary ones as will be seen in the case of the healthcare reform below). So, anxieties not to disturb the dominant gender and familial relations were stated, reaffirming the gender hierarchies. However, concerns about the issues of dependency and vulnerability issues also were discussed to some degree, considering the relationships with the relatives and bureaucrats. In addition, the capabilities of women were taken into account with an understanding of positive discrimination against the disadvantaged position of women in terms of working opportunities. The grounds of this reason –which were repeated also for other insurances as will be seen below– for the differential treatment will be further elaborated in the fourth chapter, focusing on the capabilities of women from the labor market to social and political life; hence, clarifying the quality of the gender-specific policies if they compensate(d) the disadvantages women face through

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<sup>137</sup> “Avrupa’daki geçim şeraiti, çalışma vaziyeti mevcut olduğuna göre, oradaki şeyi tamamen bizim hayatımıza intibak ettirmeye gerek yoktur. 25 yaşında maaşı kesilen bir kız nerede çalışabilir, hani? Yalnız İstanbul, İzmir nazarı dikkate alınmasın. Van’daki, Sivas’taki, Bitlis’teki ne yapar? Oralarda çalışma hayatı yoktur. Bir defa çalışma sahasını yaratmak lazımdır. Sonra kızını her adam çalıştırmaz, bunları çalışmaya icbar etmek demek, içtimai kademeleri altüst etmek demektir . . . Kız çocuğu koca buldu mu gider. O bir vitrin eşyası değildir ki, herkes onu görsün alsın. Binaenaleyh bilmelidir ki, babasından 23, 30, yahut 10 lira maaşı var. İnsanlığın gayesi evlenmektir. Hiç bir kız çocuğu talibi çıktı mı bunu ihmal etmez. Elverir ki, münasip bir talip çıksın. Ya çıkmazsa o zaman tabiatıyla muhtaç kalacaktır . . . Maalesef onlar için bir çalışma sahası da yoktur. Dayısına, halasına, teyzesine sığınmak suretiyle perişan ve sıkıntılı halde yaşayacaklar. Binaenaleyh muhtaçlık kelimesini kaldırıp esasen babadan müntekilen bir haktır, sigorta esasına dayanıyor. Ben mukavelede hakkımı kızıma bıraksaydım ne yapacaktınız?” See TBMM, *Zabıt Ceridesi*, Term 8, Session 3, vol. 19, 25 May 1949, 812.

positive discrimination, or could not prevent, even strengthen(ed), a secondary status in practice.

The gendered norms on survivor benefits as finally developed in the Pension Fund were adapted gradually by the later broader legislations for the workers and the self-employed as well, while some further normative changes in the latter were influential on the amendments for the former, too; hence, the gendered policies which have last until today.

Thereby, another law for the workers in 1957, the Law of Invalidity, Old-Age and Death Insurances (*Maluliyet, İhtiyarlık ve Ölüm Sigortaları Kanunu*),<sup>138</sup> legislated survivor benefits on the same gendered norms like the laws of 1945 and 1949 for the workers: marital status condition for the widow and the needs-test (too invalid to work) for the widower; age limits (18 or 25 years of age depending on the level of education being pursued, an extension which had been supported in 1949 but rejected) for the orphans regardless of sex, and no age limit for invalid children of both sexes; and the condition of marital status also for female orphans.<sup>139</sup>

Likewise, the Law of Social Insurances of 1964 (*Sosyal Sigortalar Kanunu*),<sup>140</sup> which brought together the previous separate laws for different insurance branches under a single law, was formulated initially according to the prevalent gendered trend in the former regulations for the workers: the same condition of marital status for the widow and the needs-testing (invalidity and the certification of maintenance by the wife) along with the condition of being at least 60 year-old for the widower; age limits for the orphans in general (18, 20, or 25 years of age depending on the educational status) and no age limit for invalid orphans, both

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<sup>138</sup> Law no: 6900, Date of Adoption: 04.02.1957.

<sup>139</sup> See Articles 18-22 of the Law.

<sup>140</sup> Law no: 506, Date of Adoption: 17.07.1964.

situation initially arranged regardless of sex; and also marital status condition specific to female orphans (ending of the marriage would re-entitle the daughters and the widow to the pensions).<sup>141</sup> However, there was no provision for a marriage bonus. While the Pension Fund referred to the Civil Law to define the responsible person for the maintenance of the family, the SSK identifies the people, for whom the insured person can be responsible maintaining in parallel to the provisions above: the wife, or the husband who is too invalid to work or more than 60 years old; children of 18, 20, or 25 years of age depending on the level of education and the children who are too invalid to work regardless of age; and the parents who are certificated to be dependent on the insured person.<sup>142</sup>

While the SSK initially maintained the special policy about the female orphans arranged by the former regulations on the workers' insurances, the Law of Social Security Organization of Craftsmen, Tradesmen and Other Self-Employed (*Esnaf ve Sanatkarlar ve Diğer Bağımsız Çalışanlar Sosyal Sigortalar Kurumu*) of 1971 incorporated almost the same gendered policy as the ES regarding the survivor benefits including the lifetime entitlement for the female orphans to the pensions with the conditions of marital and employment status.<sup>143</sup> Later, the SSK was changed with an amendment law in 1973 adapting the same norms with the ES about survivor benefits: hence, female daughters' entitlement to pensions were legislated as lifelong and subjected to suspension in case of marriage and working or having income from the SSK and the ES; and male orphans were entitled for lifetime only in case of

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<sup>141</sup> See Art. 23 for the cases of decease due to work accident or occupational disease and Art. 65-71 for the death insurance in general.

<sup>142</sup> Art. 106.

<sup>143</sup> See Articles 40-47, *Esnaf ve Sanatkarlar ve Diğer Bağımsız Çalışanlar Sosyal Sigortalar Kurumu Kanunu*, Law no: 1479, Date of Adoption: 02.09.1971. Unlike the ES, the Bağ-Kur also required a certification which showed the widower was supported by the insured wife. In addition, there were different age conditions for eligibility of the deceased according to the sex.

severe invalidity which prevents the ability to work regardless of marital status and age (this time daughters were exempted from the invalidity provision that was included in the original legislation, a policy which lasted until the changes in 2003).<sup>144</sup>

About the amendments on survivor benefits, firstly, the aim was stated as the equalization of the rights and services between workers (SSK) and civil servants (ES) as inequality between social classes was both dangerous for the social order and against the Constitution.<sup>145</sup> The importance of the amendment was further explained with paternalistic rhetoric:

This law will *protect* girls who are *destitute* and have nobody to help them *until they get married*. In case they get married and get divorced as a result of disagreement, their pension which were terminated according to the provisions of this law will be invigorated; girls will be *rescued from being dependent on both the trustworthy and the untrustworthy*, boys will be protected in case of invalidity with the new provisions and many entitled people [*hak sahipleri*] who were left without protection as a result of the end of their second marriages will regain their rights.

Today, this law is being looked forward by at least twenty thousand entitled people. If you approve this law, you will help all these people without means and free them from being dependent on both the trustworthy and the untrustworthy.

The approval of this law in the High Parliament will ensure the total *loyalty* of twenty thousand people to the Parliament.<sup>146</sup> (emphases added)

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<sup>144</sup> See Articles 1-4, 506 sayılı sosyal sigortalar kanununun bazı maddelerinin değiştirilmesi ve bu kanuna iki geçici madde eklenmesi hakkında kanun, Law no: 1753, Date of Adoption: 21.06.1973.

<sup>145</sup> “C. Senatosu İstanbul Üyesi Rifat Öztürkçine ve C. Senatosu Malatya Üyesi Hamdi Özer’in, 506 sayılı Sosyal Sigortalar Kurumu Kanununun bazı maddelerinin değiştirilmesi, bazı ek maddeler ilave edilmesi ve bazı geçici maddeler eklenmesi ve 506 sayılı Sosyal Sigortalar Kurumu Kanununun 23, 68, 71 ve 106ncı maddelerinin değiştirilmesi hakkında kanun teklifleri ile Çalışma ve Plan komisyonlarından seçilen 8’er üyeden kurulu 41 numaralı Geçici Komisyon raporu (2/551, 2/680),” TBMM, *Millet Meclisi Tutanak Dergisi*, Term 3, Session 4, vol. 37/1, 1973.

<sup>146</sup> “*Bu kanun, kimsesiz kalmış, elinden tutan kimsesi bulunmayan kız çocuklarını evleninceye kadar himaye edecektir. Evlenmeleri sonucu anlaşmazlık yoluyla vaki olmuş boşanmalarda, yine bu kanun hükümlerine göre kesilmiş olan maaşları ihya edilecek; merde ve namerde muhtaç olmaktan kız çocukları kurtulacak, sakatlık hallerinde de erkek çocuklarını himaye altına alabilecek hususlar getirmiş ve yine hak sahibi olmakla beraber ikinci evliliklerinin sona ermesi halinde yine himayesiz kalan birçok hak sahiplerini hakka kavuşturacaktır.*

*Bu kanunu en az bugün için yirmi bin hak sahibi beklemektedir. Bu kanunu kabul buyurursanız, bütün bu imkansız kimselere elinizi uzatacaksınız merde ve namerde muhtaç olma durumundan kurtaracaksınız.*

*Bu kanunun Yüce Mecliste kabulü ile yirmi bin kişinin tam Meclise bağlılığı sağlanmış olacaktır.”* TBMM, *Millet Meclisi Tutanak Dergisi*, Term 3, Session 4, vol. 37/1, 30 April 1973, 19-20.

Therefore, three main insurance schemes were converged regarding the underlying gender norms. The SSK also adopted the provision of marriage assistance for female orphans, but not for the survivor wife, unlike the ES, in 1978,<sup>147</sup> whereas the Bağ-Kur did not cover marriage assistance at all. Another significant normative change in the survivor benefits from the gender perspective was about widowed pensions, which headed towards equalization between the survivor spouses of both sexes.<sup>148</sup> The provisions of the three schemes about widowed benefits –the Bağ-Kur<sup>149</sup> and the SSK<sup>150</sup> in 1985, and the ES in 1986<sup>151</sup> – were amended to equalize the conditions for the surviving wives and husbands; hence, the needs-test and the age-limit for the widower were over, marital status being the main condition. An explanation for this formal equalization was that this way the law ensured the equality of rights providing the same entitlements to men with the survivor wives and complied with the constitution as well.<sup>152</sup> The recent reform of 2006 maintained this equal treatment of the survivor spouses, extending the marriage bonus to male survivors as well.<sup>153</sup>

Meanwhile, the conditions for the orphans witnessed only a partial trend toward equalization. Firstly, in the year 2003, in parallel to the process of legislative

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<sup>147</sup> This has been a lump-sum payment of two years of pensions. See Additional Art. 12 of the Law, amendment with the Art. 14 of the 29.6.1978 dated law, Law no: 2167.

<sup>148</sup> First, in 1979, the terms the widow [*dul karı*] and the widower [*dul koca*] in some articles (20 and 45) of Bağ-Kur Law were amended with the gender-neutral word, the widowed [*dul eş*]; however, the sex-specific conditions remained in the same line, though the age limit for the widower was decreased. See *1479 sayılı Esnaf ve Sanatkarlar ve diğer bağımsız çalışanlar sosyal sigortalar kanununun bazı maddelerinin değiştirilmesine, bazı maddelerinin kaldırılmasına ve bu kanuna ek ve ek geçici maddeler eklenmesine dair kanun*, Law no: 2229, Date of Adoption: 19.04.1979.

<sup>149</sup> Amended by the Art. 11, Law no: 3165, Date of Adoption: 14.03.1985.

<sup>150</sup> Amended by the Articles 1, 2 and 6, Law no: 3168, Date of Adoption: 20.03.1985.

<sup>151</sup> Amended by the Art. 10 and 14, Law no: 3284, Date of Adoption: 07.05.1986.

<sup>152</sup> TBMM, *Tutanak Dergisi*, Term 17, Legislation Year 2, vol. 14, 1985, 174ff.

<sup>153</sup> See Articles 34 and 37 of *Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*, Law no: 5489, Date of Adoption: 19.04.2006. In addition, the employment status of the widowed influences the amount of the pension; being currently employed decreases the amount of the payment.

adaptation for the EU membership, the provisions about the survivor pensions for the invalid orphans were amended to include the female orphans as well.<sup>154</sup> The earlier trend which provided lifelong entitlement for the sons but not for the girls seemed at odds with the “privileging” of girls at first look; however, this appears to be explainable with the underlying assumptions about the genders which were later stated during the amendments as well. For the amendment law on the Bağ-Kur,<sup>155</sup> which was later followed by another law about the SSK with the same amendments,<sup>156</sup> the following remarks were voiced in the parliament by an MP who proposed the motion which changed the article as the final:

An invalid girl is paid a pension due to her father or mother; she has no other income, nor another social security; when she gets married, this payment is ceased immediately. Why; probably her husband is assumed to be rich and will take care of her. The common thing in the cases I saw is such: her husband is poor, so herself; even her husband becomes unemployed from time to time. So, in this context, we want the amendment of this provision with the omission of the word “male” as *the provision means discrimination of women and men, besides, depends on a reason that woman’s livelihood is supported by her husband, and also assumes that husband is rich . . .* So, why is a boy’s pension not suspended while a girl’s pension is suspended when she gets married? . . . From which provision of the Civil Law or the Constitution do we conclude the obligation of a husband to support the maintenance of a girl – I mean an invalid girl – when she gets married? There is already no such thing. Honestly, if I were a woman I would oppose more – though I already oppose while I am not a woman.<sup>157</sup> (emphases added)

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<sup>154</sup> “Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security” is included in Turkey’s National Programme for the Adoption of *Acquis*. See “Avrupa Birliği Müktesebatının Üstlenilmesine İlişkin Türkiye Ulusal Programı,” *Resmi Gazete*, no: 25178, 24 July 2003. There is no reference to the Directive in the amendment. The Directive also does not apply to the provisions concerning survivors’ benefits, but schemes on sickness, invalidity, old-age, unemployment, work accidents and occupational diseases; although the amendment in question concerns the issues of both invalidity and survivor benefits.

<sup>155</sup> *Esnaf ve Sanatkârlar Ve Diğer Bağımsız Çalışanlar Sosyal Sigortalar Kurumu Kanununun ve Tarımda Kendi Adına ve Hesabına Çalışanlar Sosyal Sigortalar Kanununun Bazı Maddelerinin Değiştirilmesi, Yürürlükten Kaldırılması ve Bu Kanunlara Geçici Maddeler Eklenmesi Hakkında Kanun*, Law no: 4956, Date of Adoption: 24.7.2003.

<sup>156</sup> *Sosyal Sigortalar Kurumu Kanunu*, Law no: 4958, Date of Adoption: 29.07.2003.

<sup>157</sup> “Özürlü bir kız, babasından, annesinden maaş alıyor; herhangi bir geliri yok, herhangi başka bir sosyal güvenliği yok; evlendi, parası pat diye kesiliyor. Neden; herhalde, kocası zengin zannediliyor, kocasının ona bakacağı varsayılıyor. Gördüğüm örneklerde yaygın olan şey şu: Kocası da fakir, kendisi de fakir, hatta, kocası da, zaman zaman, işsiz oluyor. Yani, o bakımdan, biz, bu kadın-erkek ayırıcılığı anlamına da gelen, artı, kadını kocasının geçindireceği gibi bir mantığa da dayanan ve

Last, the social security reform of 2006 maintains this equal treatment of disabled orphans; however, while it also arranges the entitlements of pensioner survivors to healthcare in parallel to the conditions for survivor benefits, the entitlements of the dependent children to healthcare are formulated regardless of sex.<sup>158</sup> Below, there will be a review of healthcare benefits in terms of gender, followed with an overview of the gender implications of the two sub-sections.

### Sickness Insurance for Dependents

Sickness insurance (public health system) covers health care benefits for the insured members and their dependents (spouse, children, and parents), whose livelihood they are responsible to support as well as the survivors in case of the death of the insured person. Currently there are 45,794,830 dependents who benefit from health insurance through their insured relative, while 13,380,656 active insured persons pay their contribution in the system, and 7,510,490 people receive pensions; also with green card holders, 91.2 percent of Turkish citizens have health insurance.<sup>159</sup> The recent reform, the General Health Insurance (*Genel Sağlık Sigortası*), aims to cover the whole population within one health insurance system.

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*yine artı, kocasının zengin olacağını varsayan bu hükmün, sadece "erkek" kelimesinin çıkarılarak düzeltilmesini arzu ediyoruz. . . . Yani, kız çocuk evlenince niye maaşı kesiliyor da, erkek çocuk evlenince kesilmiyor? . . . Peki, kız çocuğu -özürlü kızı kastediyorum- evlenince kocasının geçindirme zorunluluğunu hangi Medenî Yasa veya Anayasa hükmünden alıyoruz? Böyle bir şey de yok zaten. Açıkçası, ben, bayan olsam -olmasam da karşı çıkıyorum da- daha da çok karşı çıkardım."* For the MP Lokman Ayva's talk, see TBMM, *Genel Kurul Tutanağı*, Term 22, Legislation Year 1, Session 111, vol. 24, 24 July 2003, 58-59.

<sup>158</sup> See Art. 34 of *Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*, Law no: 5489, Date of Adoption: 19.04.2006.

<sup>159</sup> See "the Answers from the Turkish Side to the non-exhaustive list of questions by the European Commission for the Screening Process of the EU Accession Negotiations on 'Social Policy and Employment,'" Chapter 19. Available (online) at:

There has been some gender differentiation in the healthcare system in terms of the benefits and the requirements as well. A gendered trend similar to the one seen in the survivor pensions was prevalent in healthcare benefits, especially for the children (as either the existing dependents or the survivors) of the insured person until the changes in recent years. According to this trend, daughters of the insured persons have been entitled to health care insurance regardless of age unless they were married and working. On the other hand, sons have been subjected to age limits in parallel to the education status and been exempted from these conditions only in case of invalidity which hinders the ability to work. Also husbands of the insured women were formerly subjected to needs-testing unlike the wives of the insured men. In addition, since those persons who are entitled to survivor pensions have been also entitled to healthcare as a benefit of survivor insurance, the gender differentiation that applied to the pensions happened to automatically apply to the healthcare entitlements of the survivors as well.

For the ES, the healthcare benefits for the insured persons and their dependents/survivors were arranged by the Law of Civil Servants, certain regulations and by-laws.<sup>160</sup> Gender dimension of these provisions for healthcare has shown parallelism to the trend seen in the survivor pensions: according to the by-law of 1973, there were again different conditions for the spouse of the insured person based on sex, requiring needs-test (disability and destitution) and age-limit (65) for

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<[http://www.abgs.gov.tr/tarama/screening\\_files/19/questions%20and%20answers\\_files/SC19\\_answer\\_s.pdf](http://www.abgs.gov.tr/tarama/screening_files/19/questions%20and%20answers_files/SC19_answer_s.pdf)>.

<sup>160</sup> See Art. 209 of *Devlet Memurları Kanunu*, Law no: 657, Date of Adoption: 14.07.1965; “Devlet Memurlarının Tedavi Yardımı ve Cenaze Giderleri Yönetmeliği,” *Resmi Gazete*, no: 14622, 11.08.1973; and TC Emekli Sandığı Genel Müdürlüğü, *Emekli, Adi Malullük Veya Vazife Malullüğü Aylığı Bağlanmış Olanlarla, Bunların Kanunen Bakmakla Yükümlü Buldukları Aile Fertleri, Dul Ve Yetim Aylığı Alanların Muayene Ve Tedavileri Hakkında Tüzük* (Ankara: Başbakanlık Basımevi, 1973). However, the latter by-law was terminated in 2004, see “Emekli, Adi Malullük veya Vazife Malullüğü Aylığı Bağlanmış Olanlarla, Bunların Kanunen Bakmakla Yükümlü Buldukları Aile Fertleri, Dul ve Yetim Aylığı Alanların Muayene ve Tedavileri Hakkında Tüzüğün Yürürlükten Kaldırılmasına Dair Tüzük,” *Resmi Gazete*, no: 25531, 23.07.2004.

the husband of the insured women. However, this by-law was terminated in 2004, and now there is no different treatment of the spouses based on sex with the end of needs-test and age-limits.<sup>161</sup> As for the children, the gendered policy is maintained: the age-limits (18, 20, or 25 years of age depending on the level of education) and marital status condition apply to both sexes; however, daughters are entitled to healthcare regardless of age if they are not married and “can be destitute if they are not helped” and sons are entitled if they are disabled and destitute.<sup>162</sup>

As to health insurance for the workers, first the Law of Sickness and Maternity Insurance (*Hastalık ve Analık Sigortası Kanunu*) of 1950 legislated the healthcare insurance for insured persons, pensioners, and their dependents, albeit the details about the conditions for the beneficiaries were set later in 1957.<sup>163</sup> According to this, the dependents of the insured were defined as the wife, or the husband whose maintenance was supported by his wife (certification was required); children until 18 or 25 years of age depending on the education level or disable children regardless of age; and parents who are maintained by the insured person.

With the SSK Law in 1964, similar conditions were required for the dependents of the insured person to be eligible for the entitlements: being too disabled to work for the husband and age-limits for children (18, 20, or 25) except in case of disability which hinders the ability to work.<sup>164</sup> Parallel to the changes in the survivor pensions by 1986 and 2003, the conditions for the sexes to healthcare were revised as well: the sex-specific conditions for the spouses were ended, work and

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<sup>161</sup> For the current policy of the ES for healthcare, see, <[http://www.emekli.gov.tr/saglik\\_2.html](http://www.emekli.gov.tr/saglik_2.html)>.

<sup>162</sup> See <[http://www.emekli.gov.tr/saglik\\_2.html](http://www.emekli.gov.tr/saglik_2.html)>.

<sup>163</sup> *Hastalık ve Analık Sigortası*, Law no: 5502, Date of Adoption: 04.01.1950, and *5502 sayılı Hastalık ve Analık Sigortası Kanununun bazı maddelerinin değiştirilmesine, bir maddesinin kaldırılmasına ve muvakkat madde eklenmesine dair Kanun*, Law no: 6901, Date of Adoption: 04.02.1957.

<sup>164</sup> Art. 106.

insurance status being formulated as the only condition; the same conditions were maintained for the sons, however, daughters were entitled to healthcare regardless of age, only subject to marital and work status (the inclusion of married girls for survivor pensions in case of disability by the year 2003 did not apply to the conditions for healthcare).

Though the discrimination of spouses on the base of sex was terminated in the legislation, the practical implementation of the laws tended to interpret the gender-neutral rules like in the past gendered manner. While the law was amended to include a gender neutral term like “spouse” for the healthcare, the SSK interpreted “spouse” only as the uninsured wife of the insured man while excluding the uninsured husband of the insured woman from the healthcare benefits. This practical policy was changed to include the uninsured husbands as well with a public notice in 1999.<sup>165</sup>

The same trend is seen in the Bağ-Kur, too. Healthcare insurance was later added by a law in 1985 and arranged by a regulation which was put into effect in 1986.<sup>166</sup> Sons were entitled to healthcare until 18, 20, or 25 years of age depending on the educational level, and there were no age limit in case of invalidity. As for the daughters, they were again entitled to healthcare regardless of age, subject to the conditions of marital status and income.<sup>167</sup> The new regulation of 2005 extended the entitlement to the invalid girls, as well.<sup>168</sup> Also, the conditions for the spouses are gender-neutral.<sup>169</sup>

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<sup>165</sup> Ali Güzel and Ali Rıza Okur, *Sosyal Güvenlik Hukuku*, 9 ed. (Istanbul: Beta 2003), 271.

<sup>166</sup> Özbek, *Cumhuriyet Türkiye'sinde Sosyal Güvenlik Ve Sosyal Politikalar*, 319.

<sup>167</sup> Güzel and Okur, *Sosyal Güvenlik Hukuku*, 503-04.

<sup>168</sup> See Art. 5 of “Bağ-Kur Sağlık Sigortası Yardımları Yönetmeliği,” *Resmi Gazete*, no: 25895, 03.08.2005.

<sup>169</sup> The 4956 numbered law of 2003 excludes “the voluntary insured and their dependents” from the health insurance, only keeping “the obligatory insured.” See Güzel and Okur, *Sosyal Güvenlik Hukuku*, 503.

As for the Law of Social Insurances and General Health Insurance, the dependents (*bakmakla yükümlü olunanlar*) are defined as the spouse, children (with conditions about age-limit depending on level of the education, marital status and invalidity), and parents, all of which are gender-neutral.<sup>170</sup> Accordingly, the law provides a scheme of General Health Insurance which entitles all persons less than 18 year of age to health care benefits without any condition (it can be extended until 25 years of age in case of education with the condition of being not married) while other persons are subject to contribution requirements (if they are not able to pay, the state will pay the contributions for them); hence, it excludes the former entitlement of daughters to lifelong health insurance.<sup>171</sup> However, this change concerns only the dependent daughters of the insured persons; the survivors are still entitled to the healthcare benefits regardless of age, under the same conditions with survivor pensions mentioned above, without paying contributions in the new system.<sup>172</sup> There is no reference to the Council Directive 79/7/EEC of 19 December 1978 on equal treatment in social security for this change; however, it complies with the Directive<sup>173</sup> which requires no discrimination on grounds of sex in matters of social security including sickness insurance as well, while the Directive does not apply to provisions concerning survivors' benefits and family benefits; so does the healthcare reform.<sup>174</sup>

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<sup>170</sup> Art. 4.

<sup>171</sup> Articles 3 and 61.

<sup>172</sup> See the explanation of the Minister of Labor and Social Security, Murat Başesgioğlu, on the issue, TBMM, *Tutanak Dergisi*, Term 22, Legislation Year 4, vol. 117, 19 April 2006, 26.

<sup>173</sup> “Directives bind the Member States as to the results to be achieved; they have to be transposed into the national legal framework and thus leave margin for manoeuvre as to the form and means of implementation.” See <[http://europa.eu/scadplus/glossary/community\\_legal\\_instruments\\_en.htm](http://europa.eu/scadplus/glossary/community_legal_instruments_en.htm)>. The Directives can be reached at <[http://europa.eu/documents/eur-lex/index\\_en.htm](http://europa.eu/documents/eur-lex/index_en.htm)>.

<sup>174</sup> “Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.”

This formal equalization of rights between sexes has been opposed, first of all, with a “minute of dissent” by a member of the commission on the law draft in that leaving girls out from the maintenance responsibility of parents was incompatible with the socio-cultural structure of Turkish society.<sup>175</sup> During the adoption of the law in parliament, some critiques were stated against the changing line of policy: an MP asserted that most girls of 25 years of age were without economic independence, and that they were religious girls either without education because of the headscarf issue, or with education but without employment chances due to the same issue.<sup>176</sup> The reform was accused of leaving the girls to the chance of fate, depriving them from their earned rights<sup>177</sup> and being incompatible with neither social state and nor conscience. In addition, the former entitlement of girls was represented again as deriving from their “fathers.”<sup>178</sup>

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From the late Ottoman period to the contemporary Turkey of 1990s, the question of widows and orphans also had to do with the wars and the military discourses of the times. These were the times for the need to control the social

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<sup>175</sup> TBMM, *Plan ve Bütçe Komisyonu Raporu*, Esas no.: 1/1008, 1/8,1/14, 1/408, 1/568, 1/571, 1/574, 2/79, 2/151, 2/152, 2/156, 2/196, 2/208, 2/301, 2/313, 2/322, 2/335, 2/423, 2/459, 2/558, 2/593, 2/654, Decision no: 83, 06.04.2006. Available (online) at:

<<http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss1139m.htm>>

<sup>176</sup> “*Şimdi, 25 yaşına gelmiş kız çocuklarının kahir ekseriyeti, ekonomik özgürlüklerini elde etmemiş; yani, başörtüsü nedeniyle okumamış veya okusalar bile başörtüsü nedeniyle iş bulamamış dindar kız çocuklarıdır.*” Talk by İbrahim Özdoğan from ANAP, see TBMM, *Tutanak Dergisi*, Term 22, Legislation Year 4, vol. 117, 19 April 2006, 19.

<sup>177</sup> TBMM, *Tutanak Dergisi*, Term 22, Legislation Year 4, vol. 117, 19 April 2006, 75.

<sup>178</sup> See Kemal Kılıçdaroğlu’s (MP from the CHP, also former general manager of the Bağ-Kur and the SSK) comment on the law, “*Eskiden, evlenmemiş kız çocukları, evleninceye kadar yaşı ne olursa olsun, babasının sağlık hizmetinden faydalanırdı. Siz, bu kanunda bir reform daha yapıyorsunuz ve onlar 18 yaşını doldurdıkları zaman, haklarını elinden alıyorsunuz; çalışmıyor bu kız çocukları. Kim bakacak bunlara? Hangi sosyal devlet, hangi vicdan?! Kendi vicdanlarınızı lütfen sorgulayın.*” TBMM, *Tutanak Dergisi*, Term 22, Legislation Year 4, vol. 121, 30 May 2006, 53.

problems breaking out and to maintain the legitimacy of the state and its acts. So, during the late Ottoman period the initial survivor schemes were developed mainly for the military and civil officials of the state in addition to other mechanisms like the Wage for Families without Breadwinner (*Muinsiz Aile Maaşı*)<sup>179</sup> to help the families of the soldiers who were mobilized. As for the Republican period, the destitute dependents of soldiers<sup>180</sup> as well as the widows and orphans of the martyrs were again covered within the insurance schemes, along with some other benefits.

One can observe that the discourses about widows and orphans sometimes embraced the same sort of patriotic and militarist discourse no matter if the regulations concerned the survivors of the soldiers or of the insured employees, as seen in the talks about the devoted service and sacrifice of the (deceased) insured. Meanwhile, widows and orphans seem to come to the front mainly thanks to their relation with their husbands and fathers, the patriotic service or economic contribution of which provide the basis for deserving the benefits. Once, as Van Os states, the women in the late Ottoman period demanded help from the state via telegraphs to the centre as the wives, sisters and mothers of the men who had fought with arms to protect the motherland.<sup>181</sup> Then, the Republican policy-making elites embraced a similar kind of patriotic, male-centered discourse during, for instance, the legislation of the ES for the civil servants: “after they dedicate(d) the most

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<sup>179</sup> Van Os traces back the development of this policy from the regulations of the late nineteenth century to the more intense war years of 1912-18. *Muinsiz* basically referred to the lack of the breadwinner. The breadwinner was identified in terms of age, gender, kinship and geographical proximity by the related regulations, and by 1915, wealthy mothers were also recognized as breadwinners. In addition to the reproduction of society and the state’s legitimacy, the concerned regulations also took measures to guarantee agricultural production in case of the military service of the head of the family. See Nicole A. N. M. Van Os, "Asker Ailelerine Yardım: Osmanlı Devleti Ve Muinsiz Aile Maaşı," in *Devletin Silâhlanması: Ortadoğu Ve Orta Asya'da Zorunlu Askerlik, 1775-1925*, ed. Erik J. Zürcher (İstanbul: İstanbul Bilgi Üniversitesi Yayınları, 2003).

<sup>180</sup> See *Muhtaç Erbaş ve Er Ailelerinin Ücretsiz Tedavisi Hakkında Kanun*, Law no: 4341, Date of Adoption: 18.02.1998.

<sup>181</sup> Os, "Asker Ailelerine Yardım: Osmanlı Devleti Ve Muinsiz Aile Maaşı," 117.

efficient times of their life to the services of the state . . . to leave their widows and orphans to the chance of destiny in case of their death could not be explained with an understanding of modern state with a rule of law.”<sup>182</sup> The insured person was said to have “stood so many deprivations, taken part in various wars, made sacrifices, and got injured.”<sup>183</sup> And at a relatively near date, in 1995, a similar patriotic and paternalist discourse was voiced in relation with a legislation mainly aimed for the survivors of the martyrs:

It is the most primary, *sacred duty of our state to take under its protection the persons who try to maintain their lives without the patronage and the love of a husband and father*, (that is,) the surviving widows and orphans of the members of our armed and police forces who died while fighting against terror for the indivisible integrity of our country, and the peace and security of our nation. In parallel to the accomplishment of this duty, the pains of these people will somewhat decrease, and the support of our state will enable the winning of these children without fathers as youngsters beneficial to our country and nation.<sup>184</sup> (emphases added)

The entitlements of the widowed and orphans deriving from the insured persons and the war veterans were also represented as the requirement of Turkish familial traditions: “to isolate the spouses and orphans from the problems and needs of the retired, the war veteran and the invalid does not comply with the conception of family in Turkish custom and usage.”<sup>185</sup>

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<sup>182</sup> “Ömürlerinin en verimli çağlarını devlet hizmetlerine adadıktan sonra . . . ölümleri halinde dul ve yetimlerini kadere bırakmak modern bir hukuk devleti telakkisiyle kabili izah olmazdı.” TBMM, *Zabıt Ceridesi*, Term 8, Session 3, vol. 19, 18 May 1949, 500-501.

<sup>183</sup> “*En çok mahrumiyetlere katlanmış, muhtelif harblere girmiş, fedakarlıklar etmiş, yaralar almış emeklilere*” TBMM, *Zabıt Ceridesi*, Term 8, Session 3, vol. 19, 18 May 1949, 507.

<sup>184</sup> Gurhan Çelebican’s independent talk, “*ülkemin bölünmez bütünlüğü, milletimizin huzuru ve güvenliği için terörle mücadele ederken şehit olan silahlı kuvvetlerimizin, emniyet teşkilatımızın mensuplarının geride kalan dul ve yetimlerinin, koca ve baba sevgisinden ve himayesinden yoksun olarak hayatlarını idame ettirmeye çalışanlara devletimizin sahip çıkması, en önde gelen mukaddes bir görevdir. Bu görevin başarısı nispetinde bu insanların acıları bir miktar azalacak; devletimizin desteği, babasız kalan bu evlatların, ülkemize ve milletimize hayırlı gençler olarak kazanılmasını sağlayacaktır.*” TBMM, *Genel Kurul Tutanağı*, Term 19, Legislation Year 5, 13 November 1995.

<sup>185</sup> “*emeklinin, gazinin ve malulün sorunlarında ve ihtiyaçlarında, eş ve yetimlerini soyutlamak, Türk örf ve adetinde aile mefhumuyla bağdaşmamaktadır.*” TBMM, *Tutanak Dergisi*, Term 20, Legislation Year 2, vol. 13, 6 November 1996.

So, paternalism has been one of the dominant themes which appears both explicitly and indirectly in the discourses and the policies. While some of the welfare policies of the Hamidian regime were realized within a paternalist and patriotic discourse,<sup>186</sup> the Republican policies also appear to have had another paternalist discourse and mentality, this time not a monarchical but a *republican paternalism*, an unstably mixed discourse of social rights, special largesses and paternalist protectionism, representing the Republican State as the central actor, the protector, which is not uncommonly depicted as a father figure in Turkish politics and society:

Following the establishment of our Republic, the Great Leader Mustafa Kemal Atatürk emphasized in the most concise way that the republican regime will protect our destitute citizens by saying that “the republic is especially the protector of the desolate.”<sup>187</sup>

In addition to the rhetoric of paternalist protectionism by the State, the principles and the discourses founded the survivor benefits within a familialist<sup>188</sup> framework with the assumption that men are the principal breadwinners of family and women are dependent on such a male-headed family (see the Figure 1 for such a depiction of male-breadwinner family model by a SSK brochure). So, women are regarded having maintained by either their fathers or their husbands as a rule. They get their entitlements like healthcare on the basis of the labor market status of their men. The state<sup>189</sup> interferes at times of risk like the death of the breadwinner husband

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<sup>186</sup> Özbek, *Osmanlı İmparatorluğu'nda Sosyal Devlet: Siyaset, İktidar Ve Meşruiyet, 1876-1914*. However, Özbek states that some policies like the *Muhtacın Maaşı* were based on a bureaucratic and secular relationship between the people and the central state, see page 59.

<sup>187</sup> “Cumhuriyetimizin ilanını takiben Ulu Önder Mustafa Kemal Atatürk ‘cumhuriyet, bilhassa kimsesizlerin koruyucusudur’ diyerek, korunmaya muhtaç vatandaşlarımızı cumhuriyet rejiminin himaye edeceğini, en veciz bir şekilde vurgulamıştır.” TBMM, *Genel Kurul Tutanağı*, Term 22, Legislation Year 1, vol. 24, 24 July 2003.

<sup>188</sup> Familialism refers to the priority given to the ethical principles of family. See Manuela Naldini, *The Family in the Mediterranean Welfare States*.

<sup>189</sup> Though it is more exactly the schemes that provide the benefits, the state is represented as the outstanding protecting figure.

or parents, which have been commonly reduced to the father figure in discourses, through survivor pensions to “protect” girls and women until they start to work or marry again. Here, marriage itself was regarded as another social security mechanism for women, even the most important one.<sup>190</sup>

So, women have been encouraged to get married by marriage bonuses, also fueled with worries about the possible discouragement of women to get married thanks to the pensions. In addition, the ES even has undertaken the right to pursue legal ways of enforcing familial responsibilities of maintenance according to the Civil Law. Here, the Civil Law of 1926, which was in force until the recent Law of 2001, explicitly taken the husband as the head of family who is responsible for the maintenance of household and children, while the wife as the housekeeper.<sup>191</sup> So, the housekeeping role of women is not supposed to change if the wife is also working outside home or not.<sup>192</sup> Accordingly, the law also required women to get permission from their husband in order to work.<sup>193</sup> These provisions were changed by the Civil Law of 2001, ending the provision of head of family as well as changing the attributed roles of maintenance and care by provisions which refer to the shared contributions of spouses in parallel to their strength.

As for the Constitutions, the Constitution of 1961 also stated family as the foundation of Turkish society and the responsibility of the state for the protection of

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<sup>190</sup> Yeşim Arat, "Türkiye'de Kadın Milletvekillerinin Değişen Siyasal Rollerini, 1934-1980," in *75 Yılda Kadınlar Ve Erkekler*, ed. Ayşe Berktaş Hacımırzaoğlu (İstanbul: Tarih Vakfı yayınları, 1998), 256.

<sup>191</sup> Article 152: “Koca, birliğin reisidir. Evin intihabı karı ve çocukların münasip veçhile iâşesi, ona aittir.” Article 153: “Karı, kocasının aile ismini taşır. Kadın müşterek saadeti temin hususunda gücü yettiği kadar kocasının muavin ve muaşiridir. Eve kadın bakar.” *Medeni Kanun*, Law no: 743, Adoption Date: 17.02.1926.

<sup>192</sup> Arın and Ergin, “Türkiye’de Sosyal Güvence and Kadınlar: Yasal Çerçeve ve Uygulama.”

<sup>193</sup> Art. 159. This provision was annulled the by the Constitutional Court in 29.11.1990. *Resmi Gazete*, no: 21272, 02.07.1992.

family, especially the mother and children.<sup>194</sup> The Constitution of 1981 maintained this familialist provision with mothers and children as a specific group to be protected (such a need for the special treatment of women and children is also stated in terms of working conditions as will be seen below), this time also included the concerns about family planning.<sup>195</sup> However, this provision was also amended in parallel to the new Civil Law to include the equality between the spouses as a quality of this foundational family.<sup>196</sup>

As for men, they have been subjected to needs-tests to determine eligibility for entitlements since they are assumed to be the breadwinner as the norm. However, as a result of the assumed role of dependent housekeeper for women and breadwinner for men, survivor sons have been entitled to pensions in case of invalidity regardless of marital status and age whereas the pensions of invalid daughters were terminated when they got married. This proves the assumption of women's dependency on the male-headed family and marriage as the ground of differential treatment rather than a positive discrimination which would compensate for such a gender-independent, objective disadvantage like invalidity.

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<sup>194</sup> Art. 35: "*Aile Türk toplumunun temelidir. Devlet ve diğer kamu tüzel kişileri, ailenin, ananın ve çocuğun korunması için gerekli tedbirleri alır ve teşkilatı kurar.*"

<sup>195</sup> Art. 41: "The family is the foundation of Turkish society. The State shall take the necessary measures and establish the necessary organization to ensure the peace and welfare of the family, especially the protection of the mother and children, and for family planning education and application."

<sup>196</sup> Art. 41 (as amended on 17 October 2001) : "The family is the foundation of the Turkish society and based on the equality between the spouses. The state shall take the necessary measures and establish the necessary organisation to ensure the peace and welfare of the family, especially where the protection of the mother and children is involved, and recognizing the need for education in the practical application of family planning."

Figure 1: SSK brochure for insured workers.  
A worker father figure and a mother knitting with children.



Source: Nadir Özbek, *Cumhuriyet Türkiye'si'nde Sosyal Güvenlik ve Sosyal Politikalar* (İstanbul: Tarih Vakfı, 2006), 289.

For the gender-specific provisions which have provided more benefits for women, various reasons and aims were stated: the lack of employment opportunities for women; the prevention of dependency of women on relatives and untrustworthy persons; and the reluctance to force the prevalent family structure which hinders women's participation in labor force in many cases. These arguments refer to, on the one hand, a positive discrimination approach to compensate certain capability deprivations (lack of employment opportunities) and to prevent dependency of a particular type (on persons outside family and the bureaucratic processes of needs-test), also taking into account the constraints women face due to the dominant gender hierarchies (families which do not let their daughters work); on the other hand, the approach to solve this problematic situation with a declared concern not to upset the prevalent gender-biased family structure which is the part of the problem means the reproduction of unfair gender relations that render women as subordinate members of family and society; hence, the division of affirmative-versus-transformative remedies by Nancy Fraser.

In addition, Fraser stresses that "availability of an alternative source of income enhances the bargaining position of subordinates in unequal relationships."<sup>197</sup> For instance, the non-employed wife with an alternative source of income enough to support herself and her children outside of the marriage has the possibilities of "exit," thereby, she is less prone to an "exploitable dependency" and her "voice" is increased with the bargaining power.<sup>198</sup> So, the re-entitlements of widows and female orphans to survivor pensions in case of a divorce (as well as

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<sup>197</sup> Nancy Fraser, "After the Family Wage: Gender Equity and the Welfare State," *Political Theory* 22, no. 4 (November 1994).

<sup>198</sup> Fraser defines exploitable dependency with these conditions: an asymmetrical relationship; the dependence of one party on the other for the supply of the needed sources; and the discretionary power enjoyed by the provider over these resources. See *Ibid.*: 614.

widowhood) or unemployment also might be interpreted as providing some chance of “exit” from their problemed marriages or works with the guarantee of an alternative future income. However, the suspension of these pensions during marriage makes women liable to exploitable dependency within marriage.

However, the amendments in the policy of survivor pensions and marriage allowances which have equalized the benefits and conditions for both survivor spouses might signal a move from the assumed roles of male breadwinner husband and female dependent wife towards a model of “universal breadwinner.” This change might help to undermine the prevalent image of the dependent spouse with a female face. So, it can lessen the stigmatization for both spouses, with the ending of means-test for men and with the equal coverage of both spouses replacing the depiction of the survivor wives as a vulnerable group in need of protection. Besides, this way benefits also seem more as a transfer of the earned rights. As for the question of why this equalization trend has not occurred in the conditions for orphans’ pensions, factors such as financial costs of an equalization through extension, electoral support risks for an equalization through decrease, and the different kinds of power relationships in paternal/parental affairs and marital affairs<sup>199</sup> might have been influential.

As for the meaning of the equalization of the rights of the dependent children to healthcare through a decrease of the former advantages enjoyed by women to the same level with men, there seem again different features at work. Can this formal equalization of rights be interpreted as a positive step for gender equality ending the differential treatment for women which might mean stigmatization with paternalist protectionism for “the destitute”? Or is it a backward step in a positive discrimination

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<sup>199</sup> There is also the age variable in children-parent/father relationships other than gender. Age hierarchies can mean a relatively more constant asymmetric relationship.

policy which took into account the disadvantaged status of women and tried to compensate this? The answer seems to relate to both the discursive aspect of (mis)recognition and the loss of an actual provision enjoyed formerly by women under certain conditions. On the other hand, the arrangement of universal healthcare for all persons under the age of 18 without condition indicates a move of change of the basis of entitlements from dependency and labor market status of the child's parents to social citizenship. In this case, citizenship as the basis of entitlement, first, prevents the problem of formal-informal labor distinction (which is a major question as will be seen in the next chapter) for the benefits, so, covering the uninsured children as well; second, it gives the rights independently from family, hence, undermining the principle of dependency in favor of personal autonomy.<sup>200</sup>

### Social Security Policies Taking Labor As The Basis for Entitlements

Social security benefits like “old-age insurance,” and “maternity insurance,” and “protective labor legislation” depend on the labor market status of the insured persons as the basis for entitlements. These benefits and “protections” are received

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<sup>200</sup> Sainsbury, *Equality and Welfare States*, 45. Here, Sainsbury refers to both citizenship and residence as ideal bases for entitlements. This reference to non-citizen residents is no doubt vital and requires discussions of “post-national citizenships.” See Yasemin Nuhoğlu Soysal, “Changing Citizenship in Europe: Post-National Membership and the National State.” In *Redefining the Nation State and Citizen*, ed. Günay Göksu Özdoğan and Gül Tokay (İstanbul: Eren, 2000) and Jürgen Habermas, “Citizenship and National Identity.” However, in order not to lose the focus of this study I am not arguing about the definition of citizenship taking into account phenomena such as nationalism, migration, and globalization. Yet such post-national formulations would be compatible with the theoretical framework elaborated in the second chapter and appear to be absolutely necessary to put them on the agenda especially considering Turkey's prospects for regional integration with the EU membership. Accordingly, the reform of 2006 on social insurances also includes provisions for non-citizen residents while the Law of Military and Civil Retirement Fund of 1930 exempted even those persons who got married to foreign women from the fund benefits (Art. 12) and then the Law of Pension Fund of 1949 terminated the rights of those persons whose citizenship ended (Art. 92), a policy which has lasted until today. This is a very important example in terms of the historical development of social citizenship in Turkey from an “inclusion” perspective: this might sign a development towards universal personhood (or post-national social citizenship) as the basis for social rights against exclusive nationalist and corporatist criteria.

by the virtue of the recipients' status as the worker, women-worker, or worker-mother (or worker-parent/caregiver) and on the base of their contributions. Maternity insurance also covers benefits for the dependent wife of the insured men in case of pregnancy and delivery. Below, the development of the regulations in question from the gender perspective and the accompanying discourses are examined in two sub-categories: old-age insurance and maternity insurance with "protective" labor legislation.

### Old-Age Insurance

Old-age insurance provides regular retirement pensions and lump-sum payment to the insured persons who meet certain conditions. "As of 2005, 2,998,054 SSK, 1,061,509 ES and 982,803 Bağ-Kur pensioners withdraw pensions every month in the scope of mandatory pension schemes."<sup>201</sup>

There has been a gender differentiation in the minimum age, the periods of work days and contribution required for retirement as well as a specific lump-sum payment for women in case of the termination of work due to marriage. Currently, the retirement age is 58 for women and 60 for men and the amounts of contribution days are gender-neutral (7,000 days for the SSK and 9,000 days for the ES and the Bağ-Kur) in all of the three insurance schemes. The reform of 2006 maintains this sex-specific retirement age for a process of transition, then gradually increases both age limits towards an equalization of the retirement age, 65, for both sexes by 2048.

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<sup>201</sup> See the Answers from the Turkish Side to the non-exhaustive list of questions by the European Commission for the Screening Process of the EU Accession Negotiations on "Social Policy and Employment," Chapter 19. Available (online) at:

<[http://www.abgs.gov.tr/tarama/screening\\_files/19/questions%20and%20answers\\_files/SC19\\_answers.pdf](http://www.abgs.gov.tr/tarama/screening_files/19/questions%20and%20answers_files/SC19_answers.pdf)>.

The initial legislations for civil servants and workers required the same conditions for women and men.<sup>202</sup> For the ES, in the beginning there was, too, a gender-neutral provision which required 55 years of age and 30 years of service.<sup>203</sup> In 1964, the law of SSK formulated the retirement age for women as 55 while it was 60 in the earlier insurance schemes for workers; yet, the age-limit for men remained as 60 and the minimum of insured working years as 25.<sup>204</sup> However, there is not seen any explanation for this new gender-specific treatment in either the law proposal or the parliamentary discussions. The SSK later also adopted the earlier policy of the 1949 law, that is, the repayment of contributions to woman workers who get married and stop working which had been said to enable working women to go back to family life when they get married.<sup>205</sup>

Later, the law of Bağ-Kur also regulated the retirement insurance on the same gendered differentiation as the SSK.<sup>206</sup> As for the ES, in 1975 the law was amended to enable early retirement for women, decreasing the minimum requirement of working years to 20, whereas it was 25 for men.<sup>207</sup> The parliamentary discussions

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<sup>202</sup> See the Articles 3 and 4 of *Askeri ve Mülki Tekaüt Kanunu* of 1930 (65 years of age and 25 years of work), Art. 17 of *İktisadi Devlet Teşekkülleri Memurları ve Tekaüt Sandığı Hakkında Kanun*, Law No: 4222, Date of Adoption: 20.05.1942 (50 years of age and 25 years of work), Art. 5 of *İhtiyarlık Sigortası Kanunu* of 1949 (60 years of age and 25 years of work), and Art. 11 of *Maluliyet, İhtiyarlık ve Ölüm Sigortaları Kanunu* of 1957 (60 years of age and 25 years of work).

<sup>203</sup> See Articles 39 and 40 of *Emekli Sandığı Kanunu*. According to the ES, there are actually three kinds of retirement –by request, *ex officio* (*re'sen*), and by the age-limit; however, retirement by request is the common way. This required 55 years of age and 30 years of work when the law was first legislated, see Art. 39.

<sup>204</sup> See Art. 60.

<sup>205</sup> See Art. 9 of the law of *İhtiyarlık Sigortası* and “İhtiyarlık Sigortası Kanunu tasarısı ve Ekonomi, Gümrük ve Tekel ve Ulaştırma Komisyonlarının düşünceleri hakkındaki raporlarla Çalışma Komisyonu raporu (1/540)” TBMM, *Zabıt Ceridesi*, Term 8, Session 3, vol. 20, 1949, 2. For the SSK, see Additional Article 1, which was formulated by the 899 numbered law, 13.07.1967.

<sup>206</sup> 55 years of age for women and 60 years of age for men along with payment of contributions for at least 15 years. See Art. 35.

<sup>207</sup> 5434 Sayılı T.C. *Emekli Sandığı Kanununun Bazı Maddelerinin Değiştirilmesi ve Bir Geçici Madde Eklenmesi Hakkında Kanun*, Law no: 1922, Date of Adoption: 03.07.1975. Though the original law required 30 years of age, various laws before this date temporarily formulated the age as 25, see TBMM, *Tutanak Dergisi*, Term 4, Session 2, vol. 13, 27 June 1975, 345.

provide a rich discourse on working women while uttering the reasons for this change. Firstly, the change in question was said to be as an earlier election promise by several parties. Then, the main reason for the right to early retirement was repeatedly explained by the fact that women were vulnerable to more deterioration than men due to the double-work they undertake and to female physical weakness:

Due to their condition, women are supposed to always work more imperfectly in working means and strength than men. This is absolutely so because of both bodily constitution and the work, child-care, and house keeping.<sup>208</sup>

Women's double work consisted of domestic responsibilities and paid employment. Here, women's domestic responsibilities were depicted as an obligation coming from Turkish traditions,<sup>209</sup> a condition which was accompanied by the fact that men did not participate in house keeping much.<sup>210</sup> As for the paid employment, the working conditions for women were said to be tougher than other countries and to result in nothing but fatigue for women due to problems like transportation and distance.<sup>211</sup> A woman Member of Parliament, Fatma Gülhis Mankut, pointed at the fact that this need for change originated from the general lack of improvement of labor conditions for workers of both sexes instead of being a merely woman problem of occupation with housework.<sup>212</sup> Here, Mankut refers especially to the need for day nurseries and adds that if working women were provided with all the opportunities

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<sup>208</sup> “Kadın kondüsyonu itibariyle, çalışma sürecinde, çalışma imkanlarında ve kuvvetinde daima erkekten noksan çalışma zorundadır. Bu, bünye itibariyle de böyledir ve gördüğü iş noktasından, çocuk bakımından, ev işlerinden mütevellit mutlaka böyledir.” TBMM, *Tutanak Dergisi*, Term 4, Session 2, vol. 13, 27 June 1975, 339.

<sup>209</sup> “Türk örf ve adetlerine göre yine ev hizmetlerini yapmaya mecbur olan bayanların yıpranma payları erkekten çok daha fazladır.” TBMM, *Tutanak Dergisi*, Term 4, Session 2, vol. 13, 27 June 1975, 339.

<sup>210</sup> *Ibid.*, 341.

<sup>211</sup> *Ibid.*, 341-43

<sup>212</sup> “Kadınların 20 yılda emekli olmaları’ gibi bir durumun ortaya çıkmış olmasının nedenleri, kadının evde kapalı olması ve kadının ev işleriyle behemahal meşgul olmasının sonucu değil; Türkiye’de kadın olsun, erkek olsun, ayrıcalık tanımadan, çalışanlara gerekli imkanların sağlanmamasının neticesidir.” *Ibid.*, 340.

they would work with “their men” together so that both family and society would develop. She regards the working of both spouses as an absolute necessity under the economic conditions of the time, and the burdens of house-keeping and care as against this necessity. Thereby, Mankut stresses the need for a solution to these burdens on working women and adds that the amendment serves to the objective of social security and economic independence of women.<sup>213</sup>

Accordingly, the results of these tougher conditions of women workers were stated as failure in domestic responsibilities, the lack of rest time for women, and a decrease in women labor force.<sup>214</sup> Consequently, the aims of early retirement for women were stated in a variety of ways: as a matter of women rights and ending the inequalities between women and men; as an encouragement of women to work; and as a guarantee for family functions. The discursive contexts in which these objectives were stated might make the objectives themselves questionable, though. An MP from CHP, Osman Ceran, talked about the importance of women rights and stated that his party had made more progress on recognizing women rights than many other European countries while also showing doubtful the understanding of women rights by the other MPs of MSP in the parliament with innuendos on polygamy. However, Ceran himself continued his talk on the importance of women with a representation of women as subsidiary to men: women gaining their importance from being as “the main helper of her man ... being with him against his enemy, work . . .”<sup>215</sup>

In this parallel, the family was the most emphasized issue among the objectives stated above. The amendment was said to ensure the realization of familial

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<sup>213</sup> Ibid., 340-41.

<sup>214</sup> “5434 Sayılı T.C. Emekli Sandığı Kanununun Değişik 39 ncu Maddesine Bir Fıkra Eklenmesi Hakkında Kanun Tasarısı ve Plan Komisyon Raporu (1/287)” TBMM, *Tutanak Dergisi*, Term 4, Session 2, vol. 13, 1975.

<sup>215</sup> TBMM, *Tutanak Dergisi*, Term 4, Session 2, vol. 13, 27 June 1975, 344.

responsibilities by women; thus, the reproduction of family and of the new generation with national values:

Mother is the main component of the family. We have to give a set of rights to women if we want to be sure of the future of our children, to avoid them being deprived of maternal compassion, and to have them grown up with national traditions, custom and usage, and national morality instead of being anarchists.<sup>216</sup>

Another law which amended the SSK law with the same gendered conditions of the ES in the same year stated the objective of the early retirement as to ensure the housekeeper, wife and mother roles of working women in addition to giving employment opportunities to younger and unemployed people by leaving the labor market early.<sup>217</sup>

This gendered policy has been preserved until today, albeit, the provisions have been amended a lot in technical terms. Last, the standards were equalized between the three insurance schemes in 1999, fixing the retirement age 58 for women and 60 for men, and the period of work as 25 years.<sup>218</sup>

As for the reform of 2006, the current gendered policy is maintained until the year 2035, and then a gradual equalization will be realized in retirement ages until 2048 when the retirement age for both sexes will have risen to 65, and the minimum contribution days as 9000 (25 years).<sup>219</sup> The earlier reform draft mentions about the

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<sup>216</sup> “Ailenin esas unsuru annedir. Eğer çocuklarımızın istikbalinden emin olmak istiyorsak, onların anne şefkatinden mahrum olmamalarını istiyorsak, onların milli örf, adet ananelerimize, milli ahlakımıza göre yetişmesini istiyorsak, onların anarşist olmamalarını istiyorsak, kadınlara kanunla birtakım haklar vermeye mecburuz.” Ibid., 345.

<sup>217</sup> “kadını cemiyetimiz içinde daha uzun süre sağlıklı ve evine, eşine, çocuklarına yardımcı olma yetenekleriniz haiz olarak koruyabilmemiz nedeniyle, erkeğe nazaran daha önce emekli aylığı alarak, yerini genç ve iş bekleyen diğer vatandaşlara bırakabilmesi imkanını da sağlamak maksadıyla (...)” In “506 Sayılı Sosyal Sigortalar Kanununun Değişik 60ıncı Maddesine Bir Fıkra Eklenmesine Dair Kanun Tasarısı ve Adana Milletvekili Alparslan Türkeş ve 2 Arkadaşının Teklifi ve Sağlık ve Sosyal İşler ve Plan Komisyonları Raporları (1/286, 2/133),” TBMM, *Tutanak Dergisi*, Term 4, Session 2, vol. 13, 1975, 1.

<sup>218</sup> Law no: 4447, Date of Adoption: 25.08.1999.

<sup>219</sup> Art. 28.

financing problem for retirement pensions and justifies this increase with a reference to the higher life expectancy rates which also show women having higher ratios of life expectancy than men.<sup>220</sup> Accordingly, the draft law exemplified that a woman retired from the SSK with 19.4 years of work is paid pensions for 35 years while a man is paid for 28 years.<sup>221</sup> During the parliamentary discussions it also was stated that it was fairer if a person receives pensions for a period equal to that of contributions paid.<sup>222</sup> In addition, for the equalization of the ages for women and men, there seems no reference to the Directive 79/7/EEC on the progressive implementation of equal treatment for women and men in matters of social security; however, the Directive includes old-age insurance, as well; so, the regulation will be consistent with it.

The benefits and the discourses examined above establish the entitlement of women to earlier retirement than men largely around the theme of family responsibilities of working women, assuming and reinforcing housekeeping and care as women's obligations. Women have been represented as more vulnerable to physical deterioration because of the double shift of domestic labor and paid labor under difficult conditions along with the assumed biological weakness; hence, this physical deterioration was shown as the main reason for the early retirement. So, a group of broad objectives was stated such as ending the inequality between sexes, encouraging of women to work, and guaranteeing the family responsibilities of women with the most emphasis. However, the solution appeared mainly as an

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<sup>220</sup> Ministry of Labor and Social Security, "Proposal for Reform in the Social Security System" 29 July 2004. Retrieved in 23.10.2005 (online) from <<http://www.calisma.gov.tr>>.

<sup>221</sup> "Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu Tasarısı." 04.04.2005. Available (online) at: <<http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss1139m.htm>>.

<sup>222</sup> TBMM, *Tutanak Dergisi*, Term 22, Legislation Year 4, vol. 116, 13 April 2006, 20.

intervention to the outcome instead of the process of deprivations and the unfair gendered division of labor; hence, supporting an earlier return of working women to family life in order to realize their responsibilities as housekeepers, wives, and mothers. The repayment of contributions when female workers get married and decide to leave the job market also underpins this policy of supporting the return. Here, it must be noted that the return to home life just after marriage might be fueled not only by the woman's own will due to new (expected) domestic responsibilities, but also by the demand of the husband who was entitled to either permit or forbid his wife to work according to the Civil Law until 1990, a fact which has been a widespread reason for women to leave the job market as will be seen in the next chapter.

So, while the need for employment-abling services which would lessen the burden of care on women workers such as day nurseries were stated by a female MP, there was no mention about the need to transform the gendered division of labor, which attributes housekeeping and care responsibilities only to women, in a way to provide equal sharing of responsibilities and so equal chances of lives, nor the need to reorganize the work life in parallel to a fairer gendered division of labor in domestic place; hence, a policy of reconciliation of work and family. So, it again comes down to the division of affirmative versus transformative remedies; here in this case the policy choice reinforces the prevalent gender norms that underlie the difficulties women face, instead of suggesting a transformation in terms of both culture and political economy. However, such an attempt at reorganization of both domestic and labor market life is what parental leave aims to do to some extent as will be seen below.

As for the aim of gradual equalization of the retirement ages by the recent reform, the ground for equal retirement is based on the higher life expectancies for women in general. This fact is a more objective grounding (as will be seen in the next chapter) and sounds better for the equal recognition of women than a discourse of weakness and vulnerability. However, the double burden of domestic and paid labor of women remains as another reality, for which early retirement was shown as a solution, no matter an affirmative one; but the new policy explicitly says nothing about it. Besides, this time the equalization of conditions that apply to women and men comes through a decrease of rights, increasing the ages for both women and men rather than an extension of the same benefit to men which was the case in survivor pensions for the widowed. So, there is a general deterioration of social rights for decommmodification.

### Maternity Insurance and “Protective” Labor Legislation

Maternity insurance provides certain benefits and rights for the process of pregnancy, delivery, and breast-feeding of the insured woman and the uninsured wife of the insured man.<sup>223</sup> Labor legislation and the Law on Civil Servants have also covered maternity leaves and the working conditions of the pregnant and breastfeeding workers as well as establishing restrictions on working hours and

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<sup>223</sup> The basis for entitlements by maternity insurance also is related to motherhood and care. However, these entitlements have been provided mainly on the basis of the labor market status of the women worker or of the insured husbands of the uninsured women (which also relates to dependency factor). Thereby, the maternity insurance in its parallel development with protective labor legislations is taken into account under the sub-category of labor-based entitlements instead of a third sub-category of care/maternity-based entitlements.

banning women from specific occupations, arrangements which commonly are called “protective measures” for health and safety reasons.<sup>224</sup>

Maternity benefits and protective labor regulations have developed basically as women-specific issue-areas besides the conditions regarding children; however, the recent legislative initiatives fueled by the EU-adaptation bills show a change of approach from gender-differentiated towards gender-neutral (like the termination of the ban on night work for women with certain conditions) and care-centered (like the draft of parental leave giving fathers entitlements) as well as a wider coverage (like the extension of breast-feeding allowances and the plan of the incorporation of maternity insurance into the Bağ-Kur).<sup>225</sup>

Maternity insurance first was established for workers in 1945 and developed by later insurance schemes for workers in 1950 and 1964. Before this date, however, the arrangements on labor market and, later, on civil servants had included provisions about maternity as well as establishing gender-specific “protective” measures. Before the Republican period, there had been also seen some initiatives to regulate the working conditions of women and children, albeit not concluded. In 1910, a legislative draft had proposed bans on night-work for women and children, barring them from occupations which were unhealthy, “materially and spiritually dangerous,” and which they would have difficulty to do.<sup>226</sup> As for the

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<sup>224</sup> Unlike the other insurances as documented above, to give a single set of numbers of the contemporary beneficiaries for the both policy areas is hard and can be confusing. As specified, maternity insurance covers the insured women, the retired women, and dependent wives of the male insured and retired persons. As for gender-specific policies of the Labor Law, the coverage depends on the benefit or the protection in question. An idea on each concerned group can be gained by the statistics given in tables.

<sup>225</sup> This arrangement is planned in Turkey’s National program for the adoption of *acquis*, specifically, for the transposition of “Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.”

<sup>226</sup> Toprak, "Sosyal Politika Tarihimizin İlk Önlemler Paketi: Müessesat-ı Sinaiyede Çocukların Ve Kadınların Çalıştırılması (1910)."

early Republican period, The Law on Public Hygiene of 1930 (*Umumi Hıfzısıhha Kanunu*) regulated the working conditions for women including maternity. The law had banned pregnant women from working three weeks before and after the delivery unless a medical report stated that it would not harm the health of mother and child. Women also had been barred for a three-month period before the delivery from being employed in hard works with the same health reasons. Nursing-breaks, up to half an hour twice a day, had been provided for six months following the delivery. Besides, the law announced the regulation of the bans for women and children from unhealthy occupations to be arranged by a labor law in future.<sup>227</sup>

So, the Labor Law of 1936 arranged the major conditions regarding maternity and the working conditions of women which laid the basis for the later labor laws. The maternity leave was arranged as half-paid with the same period of six weeks in total, three weeks before and three weeks after delivery. The law also covered nursing breaks and announced the arrangement of working conditions and occupation-prohibitions for pregnant and breast-feeding women as well as breast-feeding rooms and day nurseries by later by-laws. In addition, it prohibited the employment of men below the age of eighteen and women at any age in underground or underwater positions such as mine galleries, cabling, sewerage, and tunnel construction as well as from night-work in industry with some exceptions which were going to be regulated by a regulation. The provisions on hard and dangerous work with regard to children and women would later be arranged by a by-law, too.<sup>228</sup>

Meanwhile the “ILO Convention concerning the Employment of Women on

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<sup>227</sup> See Articles 155, 177, and 179 of *Umumi Hıfzısıhha Kanunu*, Law no: 1593, Date of Adoption: 24.04.1930.

<sup>228</sup> See Articles 25, 40, 49, 50, 58, and 61 of *İş Kanunu*, Law no: 220, Date of Adoption: 08.06.1930.

Underground Work in Mines of all Kinds” was also ratified by Turkey in 1937.<sup>229</sup> Therefore, working conditions were regulated by these gender-specific provisions until the later labor laws, which followed the same direction, however, with a temporary suspension of the prohibitions on night work by the National Emergency Law of 1940 (*Milli Korunma Kanunu*) under the conditions of war economy of the time.<sup>230</sup>

Maternity benefits as an insurance branch for workers were first established by the the Law on Work Accidents, Occupational Diseases, and Maternity Insurances (*İş Kazaları, Meslek Hastalıkları ve Analık Sigortaları Hakkında Kanun*) in 1945. Maternity leave was arranged as a period of six weeks in total for insured woman in parallel to the Labor Law, however, with a higher temporary incapacity allowance of 70% of her daily wage. Besides, a breast-feeding allowance was provided for the next six weeks after the leave. The two-thirds of the maternity allowances for insured women was also provided in cash to the uninsured wife of the insured man. Besides, the conditions of eligibility for maternity benefits required lesser period of work for the insured women than the insured men with uninsured wives which has been a lasting policy.<sup>231</sup> Meanwhile, the parliamentary discussions provided a variety of discourses. First, the importance of the law was stated in that it was not just an outcome of philanthropic sentiments to help the workers, but also meant to ensure security for workers and a more efficient production; a condition manifested as beneficial for both workers and employers. Specific to the maternity benefits, the aims of the insurance were explained in different ways by different members of

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<sup>229</sup> 45 numbered Convention concerning the Employment of Women on Underground Work in Mines of all Kinds, Date of Adoption by ILO: 21.06.1935. Date of Adoption by Turkey: 09.06.1937, no: 3229.

<sup>230</sup> See Art. 19 of *Milli Korunma Kanunu*, Law no: 3780, Date of Adoption: 18.01.1940.

<sup>231</sup> See Articles 26, 30, and 31.

parliament: to increase child birth, to improve the living and working conditions, and to protect women.<sup>232</sup> The law draft also stated that the insurance helped working-class families to bring up children in solidarity with society.<sup>233</sup>

Another law in 1950, the Law of Sickness and Maternity Insurance (*Hastalık ve Analık Sigortası Kanunu*) arranged maternity benefits in the same line with the 1945 law adding the healthcare benefits for pregnancy and delivery as well as the increase of the duration of paid leave up to a period of nine weeks in total (three weeks before and six weeks after the delivery).<sup>234</sup> Afterwards, the SSK law arranged the maternity insurance for the insured women and the uninsured wives of insured men<sup>235</sup> which has lasted until today with a few amendments: healthcare benefits during pregnancy and delivery; breast-feeding allowance for once; and temporary incapacity allowance (2/3 of the daily wage) along with a maternity leave of a period of twelve weeks in total (six weeks before and six weeks after delivery). The duration of maternity leave was later amended as a total of sixteen weeks in accordance with the Labor Law of 2003.<sup>236</sup> In addition, the reform of 2006 extends the breast-feeding allowance to all insured persons (the ES and the Bağ-Kur did not include such a benefit) for a period of six months with the amount of one third of the minimum wage.<sup>237</sup>

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<sup>232</sup> TBMM, *Zabıt Ceridesi*, Term 7, Session 2, vol. 18, 15 June 1945, 270-285.

<sup>233</sup> “İş kazaları ile mesleki hastalıklar ve analık sigortaları hakkında kanun tasarısı ve Geçici Komisyon raporu (1/316),” TBMM, *Zabıt Ceridesi*, Term 7, Session 2, vol. 18, Order no. 120, 1945, 4.

<sup>234</sup> See Articles 11-18 of *Hastalık ve Analık Sigortası Kanunu*, Law no: 5502, Date of Adoption: 04.01.1950.

<sup>235</sup> This provision was amended to include the pensioner women and the wives of the pensioner men. Law no. 4958, Date of Adoption: 29.07.2003.

<sup>236</sup> For the provisions on maternity, see Articles 43-51, and 89. For the amendment, see Law no. 4958, Date of Adoption: 29.07.2003.

<sup>237</sup> Art. 16.

As for civil servants, the Law on Civil Servants arranged maternity benefits in 1965. The duration of maternity leave was a total of nine weeks (three before and six after the delivery). The salaries of civil servants were paid in this period. Also, a non-paid leave up to twelve months was made possible on request. Male civil servants were entitled to a three-day leave in the case of delivery by their wives, too. Besides, a breast-feeding break of one hour and a half a day was arranged for the following six months after the end of maternity leave; but there was no breast-feeding allowance. The law, however, entitled married civil servants to family allowances. This allowance is calculated according to the working status of the spouse (who are required not to be working and without pensions) and up to two children who are not married and less than 19 years of age. If both spouses are civil servants, the allowance is paid to the husband.<sup>238</sup> The law has been amended to increase the period of maternity leave to a total of sixteen weeks in 2004 following the same kind of arrangement by the Labor Law of 2003.<sup>239</sup> In addition to establishing parallelism with the rights provided to workers, the main reason for the amendment was stated as the encouragement and facilitating of women to work, ensuring both health and working rights during maternity. The commission reports referred to the traditional division of labor and motherhood roles of women as reasons for working conditions being more difficult for women and for the non-return of women to the working life after maternity; hence, emphasizing the need for positive discrimination.<sup>240</sup> The amendment was also shown as a requirement of the

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<sup>238</sup> See Articles 104, 108, 202-206.

<sup>239</sup> Amendment Law no: 5223, Date of Adoption: 14.07.2004.

<sup>240</sup> “Ankara Milletvekili Oya Araslı ve 10 Milletvekilinin; 657 Sayılı Devlet Memurları Kanununun Bazı Maddelerinin Değiştirilmesi Hakkında Kanun Teklifi ile İstanbul Milletvekili Zeynep Karahan Uslu ve 9 Milletvekilinin; Devlet Memurları Kanununda Değişiklik Yapılması Hakkında Kanun Teklifi ve Plan ve Bütçe Komisyonu Raporu (2/211, 2/221),” TBMM, *Tutanak Dergisi*, Term 22, Legislation Year 2, vol. 57, Order no. 637, 2004.

related EU directive<sup>241</sup> and in parallel to the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), which Turkey ratified in 1985 with reservations. In addition, the provision arranging the conditions for not granting family allowances for children was amended to include non-married daughters more than 25 years of age for family allowance while it had been payable until 25 years of age for children of both sex as long as they were not married.<sup>242</sup>

So, back to the labor legislations, during the process between the laws of 1936 and 2003, the Labor Law of 1967 arranged maternity benefits and the working conditions of women according to the same provisions as the former law except the duration of paid maternity leave extended to a period of twelve weeks in total.<sup>243</sup> Besides, the law concluded the principle of equal pay for equal work regardless of sex parallel to the ILO “Equal Remuneration Convention” Turkey ratified in 1966.<sup>244</sup> As for the Labor Law of 1971, which was in force with its by-laws until the year 2003, basically same gender-norms were maintained as the former law with a few changes. A non-paid leave up to six months on request was provided for the women in addition to the paid-leave.<sup>245</sup> Besides, woman workers have been entitled to severance pay in case they leave employment within one year following marriage.<sup>246</sup>

The Labor Law of 2003<sup>247</sup> was legislated in harmony with certain directives of the EU regarding gender and employment, and further adaptation

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<sup>241</sup> “Council Directive 92/85/EEC of 19 October 1992 on the implementation of measures to encourage improvements in the safety and health of pregnant workers, women workers who have recently given birth and women who are breastfeeding.”

<sup>242</sup> See Art. 206 which is amended by the Art 28 of Law no: 5335, 21.04.2005.

<sup>243</sup> See Articles 26, 51, 68-70, 78, and 81 of *İş Kanunu*, Law no: 931, Date of Adoption: 28.07.1967.

<sup>244</sup> *100 numbered Equal Remuneration Convention*, Date of Adoption by ILO: 29.06.1951. Date of Adoption by Turkey: 13.12.1966, no: 810.

<sup>245</sup> See Articles 14, 26, 68-70, 78, and 81 of *İş Kanunu*, Law no:1475, Date of Adoption: 25.08.1971.

<sup>246</sup> Art. 14/5 as amended in 25.08.1999.

<sup>247</sup> *İş Kanunu*, Law no: 4857, Date of Adoption: 22.05.2003.

arrangements in the realm of social policy were planned in the National Programme of Turkey for the adoption of *acquis*.<sup>248</sup> So, the Law of 2003 brought about some differences in the former policy line in relation with the gender-specific provisions. First, the long-lasting prohibition of night-work by women in industry was abandoned<sup>249</sup> in parallel to the Directive 2002/73/EC on “the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.”<sup>250</sup> Hence, persons less than 18 years of age are prohibited from night-work in industry and the principles on the night-work of women more than 18 years of age are arranged by the *By-law on the Working Conditions of Female Workers at Night Shifts*.<sup>251</sup> According to this, female workers are obliged to obtain a medical report showing that they have no obstacles to work prior to the commencement of work and then a medical check is required in every six months. As for the duration of work, female workers cannot be asked to work more than seven and half hour night shifts. The employers are obliged to provide transportation to the female workers if the work is outside the municipality borders, or if the work is within the borders but transportation is difficult in the hours of changing shifts. Employers also are required to submit the list of women workers they employ to the related administrative directorates.<sup>252</sup> In

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<sup>248</sup> “Avrupa Birliği Müktesebatının Üstlenilmesine İlişkin Türkiye Ulusal Programı,” *Resmi Gazete*, no: 25178, 24 July 2003.

<sup>249</sup> Art. 73.

<sup>250</sup> “Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.” The Directive announces that it is without prejudice to provisions concerning the protection of women as regards pregnancy and maternity. As for the related provision of the Labor Law, see Art. 73.

<sup>251</sup> “Kadın İşçilerin Gece Postalarında Çalıştırılma Koşulları Hakkında Yönetmelik,” *Resmi Gazete*, no. 25548, 09 August 2004.

<sup>252</sup> According to the Article 69 of the Labor Law, the same conditions apply to men workers for night shifts except transportation.

addition, it is prohibited to ask pregnant, breastfeeding and newly gave-birth worker to work at night until six months after the delivery.

The Labor Law of 2003 increased the duration of maternity leave to a period of sixteen weeks in total, eight weeks before and eight weeks after delivery in parallel to the Directives 92/85 on “the implementation of measures to encourage improvements in the safety and health of pregnant workers, women workers who have recently given birth and women who are breastfeeding” which required an uninterrupted period of at least fourteen weeks.<sup>253</sup> Besides, paid leaves for periodical checks during pregnancy were also arranged.<sup>254</sup> *By-law on the Working Conditions of Pregnant or Breastfeeding Women, Breastfeeding Rooms and Child Nursing Homes* was arranged to harmonize the Turkish legislation with the Directive as planned in the National Programme.<sup>255</sup> In addition, *By-law on Hard and Dangerous Work* has been arranged to specify the works and the conditions whether women and children between the ages of sixteen and eighteen can be asked to work or not according to the new Labor Law. For the allowed works, female workers are required to get medical reports.<sup>256</sup>

Another commitment of the National Programme concerns parental leave and requires the harmonization of the Labor Law and the Law on Civil Servants in parallel to the Directive 96/34 on parental leave which aims the reconciliation of work and family.<sup>257</sup> There is currently a draft law on the agenda of the parliament

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<sup>253</sup> Council Directive 92/85/EEC of 19 October 1992.

<sup>254</sup> Art. 74.

<sup>255</sup> “Gebe veya Emziren Kadınların Çalıştırılma Şartlarıyla Emzirme Odaları ve Çocuk Bakım Yurtlarına Dair Yönetmelik,” *Resmî Gazete*, no. 25522, 14 July 2004.

<sup>256</sup> “Ağır ve Tehlikeli İşler Yönetmeliği,” *Resmî Gazete*, no. 25494, 16 June 2004.

<sup>257</sup> “Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.” The Directive grants male and female workers an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child, for at least three months. The parental leave right is explained as a measure to

that defines the parental leave right for civil servants and workers.<sup>258</sup> According to the draft law, an *unpaid* parental leave of up to 12 months in the following year of the paid maternity leave period is defined for the female civil servant or her husband who is also a civil servant upon their request. This right is the same for the adoption of a child at maximum three years of age. These leaves can be used as successive periods upon the request of spouses. For the workers, this leave is up to six months for the female worker and her husband, who is also a worker upon their request. This period can also be used as successive periods and it can be extended to 12 months upon the request of spouses. This right is non-transferable for workers while the non-transferable character is not mentioned for civil servants. Last, the labor contracts of the persons on paternal leave cannot be annulled because of the leaves.

For the grounding of this arrangement, the draft law states various facts about the condition of (working) women in Turkey. Referring to the decrease in the labor market participation by women from 34% in 1990 to 27.7% in 2004, the working opportunities for women are said to be quite limited, especially in the urban areas. The reasons for the low ratio of participation are explained by the fact that women are not preferred for employment positions by both public and private employers although there is no legal discrimination. Since only women are held to be responsible for child-care due to the traditional division of labor in Turkish society,

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“to encourage balanced sharing between working men and women of the care to be provided for children, elderly, disabled or other dependent persons . . . maintaining their rights relating to employment.” See “Resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council of 29 June 2000, on the balanced participation of women and men in family and working life.” Available (online) at <<http://europa.eu/scadplus/leg/en/cha/c10917.htm>>

<sup>258</sup> “Devlet Memurları Kanunu ve İş Kanununda Değişiklik Yapılmasına Dair Kanun Tasarısı ve Avrupa Birliği Uyum;Sağlık, Aile, Çalışma ve Sosyal İşler ile Plan ve Bütçe Komisyonları Raporları (1/948),” TBMM, *Tutanak Dergisi*, Term 22, Legislation Year 3, 2005, Order No. 834. Available online at: <<http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss834m.htm/>> The Law Draft for the Public Personnel, *Kamu Personeli Kanunu Tasarısı* (2005), also incorporates parental leave rights in parallel to this draft. Available (online) at:

<<http://www.bumko.gov.tr/duyurular/Tasari/KamuPersoneli.htm>>.

maternity leaves and conditions lead to a lesser preference for women for employment and to dismissals from work.:

The facts of practice like the non-hiring of women because of their sex; their dismissal from work in the period of pregnancy and post-delivery leave; being more backward than male workers as they forget the information or could not gain new knowledge in a developing society when they get back to work, and being unable to rise to the managing cadres with the same reasons; and their employment in works which we can mostly describe as routine are all known realities.<sup>259</sup>

The draft asserts that the general principle of equality in the laws does not ensure equality between women and men in practice and that the discrimination women face in working life result especially from stereotypes. It further is claimed that measures of positive discrimination should be taken for the equal enjoyment of rights by women and for their equal participation to societal development. So, the aims of parental leave are explained in this context: the ending of gendered division of labor, the prevention of the unjust treatments women face because of maternity and the equal sharing of the responsibility among mother, father, and the state or the employer.<sup>260</sup> Also the reference to the related Directive summarized the aim of parental leave as the reconciliation of work and family. In addition, the leave is emphasized as not only a health-issue, but also a bond between the child and the parent; hence, providing the ground for both entitlements of fathers to leave and the case of adoption.

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<sup>259</sup> “Uygulamaya bakıldığında kadının sadece cinsiyeti sebebiyle işe alınmaması, hamileliği ve doğumdan sonra izinli olduğu dönemde işten çıkarılması, yeniden işine döndüğünde mevcut bilgilerini unuttuğu ya da gelişen toplum sürecinde yeni bilgiler edinemediği için erkek çalışanların gerisinde kalması, sayılan sebeplerle yönetim kadrolarına gelememesi, çoğunlukla da rutin diyebileceğimiz görevlerde çalışması bilinen bir gerçektir.” Ibid.

<sup>260</sup> “Hazırlanan kanun tasarısı ile ülkemizde cinsiyete dayalı rol ayrımlarının ortadan kalkması, çalışan kadının doğum nedeniyle mağduriyetinin önlenmesi, çocuğun doğumundan ya da evlat edinilmesi amacıyla geçici bakım sözleşmesi yapılması tarihinden itibaren 12 ay kadar bir süre içindeki sorumluluğun anne, baba ve Devlet ya da işveren tarafından eşit şekilde paylaşılması öngörülmektedir.” Ibid.

Having examined the development of the maternity insurance and “protective” labor regulations, as policy issues of differentiated treatment, benefits concerning pregnancy and maternity/parenthood again seem to be two-faced in terms of positive discrimination and gender-based essentialism. Paid maternity leaves aim to protect both health and working rights of women during pregnancy and childbirth; so do the regulations concerning the working conditions of women workers who are pregnant and breast-feeding. Hence, they seem to provide positive discrimination for women satisfying specific needs. However, maternity and care for children are not simply a women’s issue; they also concern the gendered division of labor both in the domestic sphere and the labor market. First, maternity leaves reflect and reinforce the assumed role of women as the main responsible for child-care. In addition, as stated above, the practical effects of leaves and conditions regarding pregnancy show lesser preference for and more frequent firing of women workers, hence, contributing to the return of working women to family life. So, the chosen policy is more of an affirmative remedy type. Here, the change from maternal to parental leave aims to provide solution to these problems through entitling both women and men to unpaid leaves in case of birth or adoption of a child.

This policy line can serve to transform the gendered division of labor which expects women as the sole care-giver; hence, the equal sharing of responsibilities in family life. It should be not just the reorganization of family life, encouraging men to participate in household tasks, but also expanding public services and the reorganization of labor market. For the latter, alternative measures (used by especially the Nordic countries) as also stated in the introduction are such: reducing daily working hours of parents; interim part-time work with the option to return to full-time hours; bringing work to home; and changing tax and social security

incentives (for instance, “Sweden has separate taxation for part-time and full-time work to increase after-tax earnings for part-time work”).<sup>261</sup> So, the emphasis on the sharing of the care-responsibility between parents and the state or the employer as stated in the draft law is significant. Yet, the actual effects of the right to parental leave might not happen so in practice due to individual choices, and gender norms in society;<sup>262</sup> however, it is important that the equal benefits and opportunities are provided to both women and men. In addition, giving the right to leave to both parents can operate against the problem of lesser preference for women workers, relatively equalizing the issue in terms of employers.<sup>263</sup> So, the adoption of parental leave joined with the late retirement age can be seen as a move from the policy of supporting the return of working women to family life (though there is still severance pay as an incentive for working women who get married to leave the workplace) towards a policy of, as commonly expressed, the reconciliation of work and family life.

On the other hand, the prohibitions and restrictions on the employment of women in specific types of work appear to be shaped more with gender stereotypes rather than as a positive discrimination policy to remedy disadvantages. Barring women from night work and certain kinds of work which are classified as hard or dangerous (like those requiring physical labor in the construction, chemical and

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<sup>261</sup> UNDP, *Human Development Report 1995: Gender and Human Development*, 8.

<sup>262</sup> An empirical study on eight European countries which provide parental leave entitlements show that majority of leavetakers were still women in 1999. See Gwennaele Bruning and Janneke Plantenga, "Parental Leave and Equal Opportunities: Experiences in Eight European Countries," *Journal of European Social Policy* 9, no. 3 (1999).

<sup>263</sup> Human Rights Watch, "Global Report on Women's Human Rights." Available (online) at: <<http://hrw.org/about/projects/womrep/General-173.htm>>.

metal industries, etc.) depicts women as the “weaker sex” in need of paternalist protection.<sup>264</sup>

The representation of women along with children as a vulnerable group which needs to be protected in terms of working conditions also appears in the Constitutions. Article 43 of the Constitution of 1961 states that “no one shall be required to perform work unsuited to his/her age, sex, and capacity.” Then, Article 50 of the Constitution of 1982 adds to this clause: “Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions.” Hence, follow the prohibitions and restrictions on women’s employment, reducing women’s employment opportunities “instead of removing the risk from the workplace for the protection of all workers health.”<sup>265</sup> So, these gender-specific “protective” discriminations seem mainly bias-oriented without objective grounding. An ILO report on occupational safety and health from gender perspective argues that the gender-based criteria for the division of work have no grounding in biological differences, but supported only by traditional cultural assumptions:

In general terms there is no great difference between men's and women's biological response to physical, biological or chemical hazards. The average strength of men is not so different from that of women, some women can be even stronger than men . . . (I)n the last 15 years gender-oriented research on health aspects has been developed demonstrating that differences among working populations are mainly based on individual human variability rather than on biological differences between sexes.<sup>266</sup>

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<sup>264</sup> The term paternalism exactly suits this example with its specific usage to mean “the interference of a state or an individual with another person, against their will, and justified by a claim that the person interfered with will be better off or protected from harm.” See Gerald Dworkin, “Paternalism,” *The Stanford Encyclopedia of Philosophy (Winter 2005 Edition)*, ed. Edward N. Zalta . Available (online) at:

<<http://plato.stanford.edu/archives/win2005/entries/paternalism/>>.

<sup>265</sup> Valentine Forastieri, “Information Note on Women Workers and Gender Issues on Occupational Safety and Health,” (Geneva: International Labor Office, 2000). Available (online) at

< [http://www.ilo.org/public/english/protection/safework/gender/womenwk.htm#N\\_10\\_](http://www.ilo.org/public/english/protection/safework/gender/womenwk.htm#N_10_)>.

<sup>266</sup> Ibid. The exception of pregnancy for vulnerability must be noted, though.

In this respect, the abandonment of the long-lasting prohibition on night work by women seems progressive in providing equal opportunities for women and men as regards access to employment. The conditions under which women are allowed to work night shifts such as the requirements of medical reports, regular medical checks, and a limitation on the duration of work apply to men workers as well, providing the same health measures to both sexes. Only the provision regarding transportation appears to be women-specific. There is no explanation in the By-law except the possible cases of difficult transportation. However, a general concern about women's works and outdoors presence at night in general is no doubt security-related: the dangers of sexual violence and such against women at dark. So, a real solution for such a problem must be to make the streets safe for women during both the day and night instead of just providing some protection through special transportation. This is what the ongoing international rally movement of *Reclaim the Night* has risen against: the mentality "that place(s) restrictions on the behavior of women as a way of dealing with violence."<sup>267</sup>

Last, the policy that family allowances are being paid to men when both spouses are civil servants needs attention. The preference for men appears to be supporting the ideal of male-headed family. This can be compared with the recent social assistance program, *Conditional Cash Transfers*, under the so-called Social Risk Mitigation Project organized by the General Directorate of Social Assistance and Solidarity (*Sosyal Yardımlaşma ve Dayanışma Genel Müdürlüğü*) with the support of the World Bank which allocates cash transfers to mothers, targeting the

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<sup>267</sup> "Reclaim the Night marches were initiated on 23 November 1977 by women in Leeds in the United Kingdom as a result of the Ripper murders occurring at that time. In response to advice by police to stay indoors after the latest ripper killing, hundreds of angry women marched with torches through the town to protest against the curfew mentality that placed restrictions on the behaviour of women as a way of dealing with violence. In other words, the victims were made prisoners." See the discussion in New South Wales Legislative Council Hansard, 25 October 1995. Available (online) at: <<http://www.parliament.nsw.gov.au/prod/PARLMENT/hansArt.nsf/V3Key/LC19951025003/>>.

poorest six percent of the population in order to provide their children with basic health and education services on conditions. Here, the reason for preferring women is stated as to strengthen the status of women in family and society, and improve their self-confidence.<sup>268</sup> The allocation of other social assistance benefits by the Directorate also tends to be benefited more by women than men since “able-bodied unemployed males are often shamed away from applying for social assistance.”<sup>269</sup> This policy line might turn out as a sort of *feminization of social assistance* which again runs the risk of stigmatization.

All in all, this chapter examined the gender-specific policies of social security and labor legislations with a historical approach. The gender implications of each insurance branch with their varying issue-areas were explored one by one. The overall view will be made in the conclusion of the thesis after the findings of the next chapter which aims to further elaborate on the arguments given by the policy-making elites about the position and the capabilities of women in Turkey to justify the policies. So, the next chapter will shed light on the capabilities of women from labor market to education to politics, and so forth, in order to place the gendered-policies in their actual social context. This can help to evaluate the needs for and the efficiency of the (non)provisions.

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<sup>268</sup> See the webpage of *Sosyal Yardımlaşma ve Dayanışma Genel Müdürlüğü*:

<<http://www.sydtf.gov.tr/ENGLISH/snt.html#tr>>.

<sup>269</sup> Ayşe Buğra and Çağlar Keyder, “Poverty and Social Policy in Contemporary Turkey,” (Boğaziçi University Social Policy Forum, January 2005). Available (online) at:

<<http://www.spf.boun.edu.tr/docs/WP-Bugra-Keyder.pdf>>.

## CHAPTER 4

### CAPABILITIES OF WOMEN: FROM EMPLOYMENT TO EMPOWERMENT

The policy-making elites made certain arguments about the situation and the capabilities of women in Turkey to justify the gendered-policies examined in the former chapter. Here, most of the arguments show a relative continuity throughout the history. While gendered-policies formulated in the past with particular reasoning were generally taken for granted without any further discussion on their gender aspects, the same kind of reasons originally stated were again voiced in some of the recent changes in the policies as well. The reasons for the gender-specific treatment concerned social phenomena such as the lack of employment opportunities for women, emphasizing the regional disparities; the type of family structure in which women were not allowed to work; the burden of the double-shift of domestic and paid labor of working women without the sharing of men of domestic responsibilities; the lack of employment-enabling services like day nurseries; and a recently emphasized lack of job guarantee in the case of pregnancy.

The aims of the policies followed in parallel (not to repeat the ongoing rhetoric of protecting “destitute” women): to improve working conditions; to

encourage women to work but also not to disrupt the family structure by forcing women to work (so the survivor pensions were justified); to encourage women to marry; to ensure that familial responsibilities are carried out by women; and the recent differing aim of changing the gendered division of labor in the domestic sphere with the equal sharing of responsibilities between spouses and so the reconciliation of family and work life.

So, this chapter aims to shed light on the capabilities of women from the labor market to education to politics in order to evaluate the arguments by policy-making elites and to place the gendered-policies in their actual social context, focusing on contemporary Turkey. A full analysis of these capabilities extends far beyond what can be covered in this chapter. Instead, I will present an overview of women's position, supported by statistical data, surveys, and a few international comparisons.

### Gender-Related Development and Gender Empowerment

As stated before, the capabilities approach has been quite influential in the *Human Development Reports* (HDR) published by the UNDP since 1990. Being the primary indicator of these reports, “the human development index (HDI) measures the average achievement of a country in basic human capabilities.” So, the HDI takes into account indices in life expectancy, adult literacy, enrollment in schools, and per capita GDP, showing “whether people lead a long and healthy life, are educated and knowledgeable and enjoy a decent standard of living.”<sup>270</sup> As for the gender-related development index (GDI), which was developed later in 1995, it measures the same

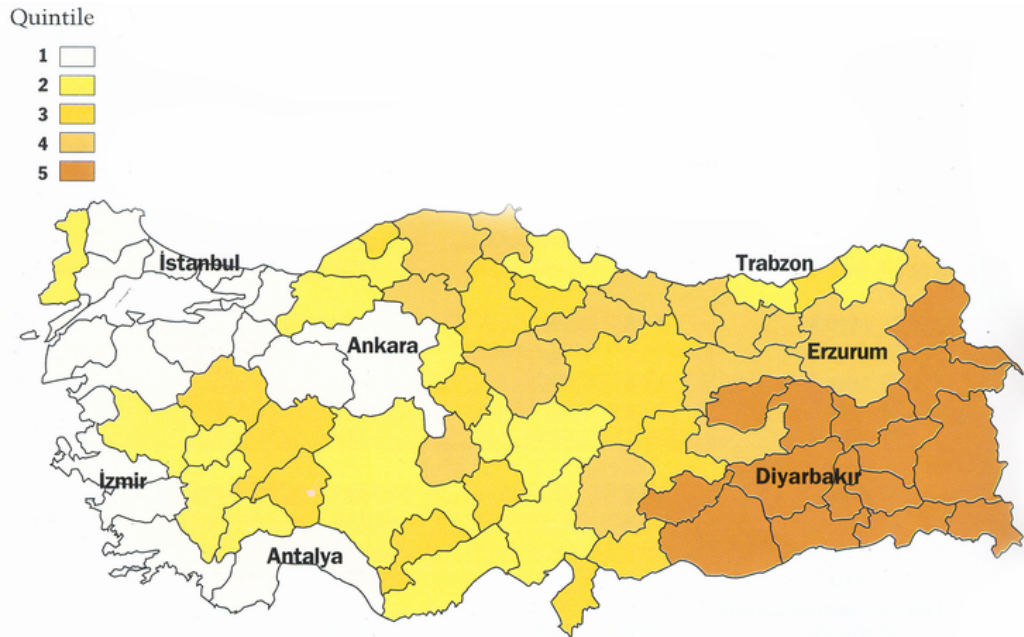
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<sup>270</sup> UNDP, *Human Development Report 1995: Gender and Human Development* (New York: Oxford University Press, 1995), 75.

basic capabilities, but takes into account inequality in achievements between women and men.

The Human Development Report of 1995 noted that in no country do women enjoy the same opportunities as men. This is an ongoing phenomenon. According to the values reported in the 2002 HDR for the year 2000, the gender-related development indices ranged between 0.942 (Norway) as the highest and 0.263 (Niger) as the lowest. As for Turkey's ranking on the world scale, Turkey is 71<sup>st</sup> among 173 countries with a GDI value of 0.734.<sup>271</sup> According to the 1995 HDR, Turkey achieved this medium development level mainly between 1970 and 1992, increasing from a GDI value of 0.381 to 0.744.<sup>272</sup>

Figure 2. Rank distribution of province HDI values by quintile, 1997

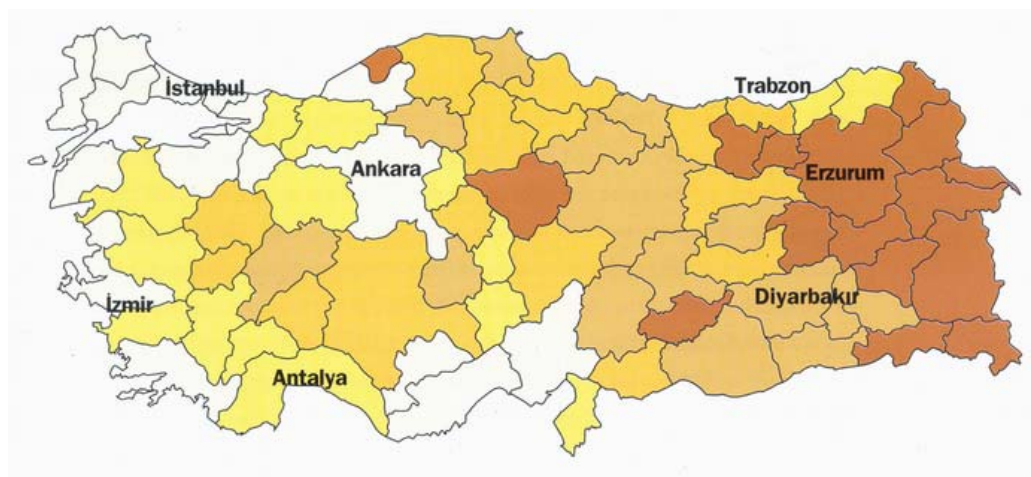


Source: UNDP. *Human Development Report 2001 Turkey*.

<sup>271</sup> UNDP, *Human Development Report 2002* (New York: Oxford University Press, 2002). According to the HDR of 2005, the GDI value of Turkey 0.742. I will use the world report of 2002 to provide parallelism with the 2004 HDR for Turkey as both reports show the values for the year 2000.

<sup>272</sup> UNDP, *Human Development Report 2001 Turkey* (Ankara: Published for the United Nations Development Programme, 2001), 80. The rise in the HDI in this period is less steep: from 0.480 to 0.682. See page 6.

Figure 3. Rank distribution of province GDI values by quintile, 1997.



Source: UNDP. *Human Development Report 2001 Turkey*.

Comparing the HDI (0.742) and the GDI (0.734) values of 2000, the distribution of basic capabilities between women and men seems not too much divergent overall; looking at the components individually, on the other hand, women appear to be clearly disadvantaged in terms of income and educational achievements while their life expectancies are higher than those of men: life expectancy for women and men are 72.4 and 67.3 years, respectively; adult literacy rates are 76.5 and 93.5 percent, respectively; and the estimated earned income are 4,379 and 9,516 (PPP US\$), again, respectively.<sup>273</sup> The provincial and regional disparities are much sharper both in terms of the HDI and GDI. At the top, Kocaeli has a HDI value of 0.869 and a GDI value of 0.839 whereas Şırnak is at the lowest with values of 0.560 and 0.543, respectively. Here, the most striking gender disparity comes with respect to literacy: Kocaeli has 0.859 and 0.972 ratios of adult literacy for women and men, respectively, whereas Şırnak has 0.358 and 0.826.<sup>274</sup> These values underline the fact

<sup>273</sup> UNDP, *Human Development Report 2002*, 223.

<sup>274</sup> UNDP, *Human Development Report 2004 Turkey* (Ankara: Published for the United Nations Development Programme, 2004), 66-67.

that women and men throughout the country are not homogenous groups, either. Figures 2 and 3 show the regional disparities on the base of 1997 values which were quite the same as those of 2000.

Table 6. Male and Female Literacy Rates, 1935-2000

<b>Year</b>	<b>Male (%)</b>	<b>Female (%)</b>
1935	29.4	9.8
1940	36.2	12.9
1945	43.7	16.8
1950	45.3	19.4
1955	55.8	25.5
1960	53.6	24.8
1965	64.0	32.8
1970	70.0	41.8
1975	76.0	50.5
1980	79.9	54.7
1985	86.0	68.0
1990	88.8	72.0
2000	91.4	75.4

Source: Arranged from UNDP, *Human Development Report 1996 Turkey* and UNICEF, *A Gender Review in Education, Turkey 2003*.

These disparities between the achievement of basic capabilities by women and men show women's generally disadvantaged position in Turkey, which differs a lot between regions as well. However, as the Report of 1995 indicates, in the last three decades there has been a significant improvement of overall basic capabilities that GDI brings together, especially with the increase in female adult literacy (see Table 6) and school enrollment. Yet the participation in labor force has not shown such a parallel increase; rather there is a constant decrease in the ratio of female labor force as will be mentioned below.

As for gender empowerment measure (GEM), it “examines whether women and men are able to actively participate in economic and political life and take part in decision-making. While GDI focuses on expansion of capabilities, GEM is concerned with the use of those capabilities to take advantage of the opportunities of life.”<sup>275</sup> So, it looks at variables such as parliamentary representation, share of managerial and professional positions, and share of earned income. The disparity between the GDI and the GEM indices is much sharper. Turkey is the 63<sup>rd</sup> with a GEM value of 0.312 among 173 countries on global scale while the top value is 0.837 by Norway and the lowest 0.223 by Bangladesh. So, seats in parliament held by women is 4.2 percent of the total; female legislators, senior officers, and managers comprise nine percent of the total; female professional and technical workers comprise 36 percent of the total; and the ratio of estimated female to male earned income is 0.46.<sup>276</sup> The provincial disparities (political participation is measured with regards to municipal councils) in terms of the GEM is relatively lesser, converging on the lower level. Ankara comes first with a GEM value of 0.382 and Bayburt comes last with a value of 0.140.<sup>277</sup>

The lower values of political representation by women cited above are valid not only for the report years, but the whole Republican period since women were recognized of the right to vote and to stand in elections in 1934. There were 18 female MPs between 1935-1939; 16 MPs between 1943-1946; 24 MPs between 1946-1960; 26 MPs between 1960-1980;<sup>278</sup> and 85 MPs between 1983-2002 while

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<sup>275</sup> UNDP, *Human Development Report 1995: Gender and Human Development*, 73.

<sup>276</sup> UNDP, *Human Development Report 2002*, 226-28. Detailed statistics on the female share of high and middle managerial positions in the public sector and local governments can be found at the online gender database of *T.C. Başbakanlık Kadının Statüsü Genel Müdürlüğü* (KSSGM):

<<http://www.kssgm.gov.tr/>>

<sup>277</sup> UNDP, *Human Development Report 2004 Turkey* 68-69.

<sup>278</sup> Arat, "Türkiye'de Kadın Milletvekillerinin Değişen Siyasal Rollerini, 1934-1980," 249-66.

the total number of MPs in this period changed between 380 and 537.<sup>279</sup> Along with these ratios of quite low representation, those women in parliaments were not quite active, either.<sup>280</sup> It appears so in this study as well. Among the parliamentary minutes searched for this study, there is only one female MP who talked about the gendered policies in question as outlined in the chapter three. Hence, the policy-making elite, mentality of which this study aims to explore, is undoubtedly male-dominated whereas women have been deprived of the most direct way through which they could exert meaningful influence on policies that shape their life conditions.

### Women, Labor Market, and Family

As the third chapter shows the development of labor legislations from a gender perspective, the legislative structure maintained a relatively unchanging policy during the last half of the century in terms of gender until the recent changes: so, equal pay for equal work was recognized as a principle; there have been restrictions on working hours and banning women from specific occupations; maternity was formulated as a health and care issue of women; women were supported to return to the home through earlier retirement policies, repayment of contributions and severance pays in case of marriage, and so on. Recently, there have been amendments on these labor market regulations which can be interpreted as encouraging the employment of women and the reconciliation of family and work life; however, the effects of these policies remains to be seen. As for the earlier policies, the ongoing situation of (working) women can be related to them. So, an

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<sup>279</sup> Başbakanlık Kadının Statüsü Genel Müdürlüğü, *Seçim Yılı Ve Cinsiyete Göre Parlementer Sayısı*, available from <http://www.kssgm.gov.tr/tcg/7.pdf>.

<sup>280</sup> Arat, "Türkiye'de Kadın Milletvekillerinin Değişen Siyasal Rollerini, 1934-1980."

overview of the conditions and actual achievements of women in terms of employment and family follows.

Since the 1950s, women's labor force participation rate has been continuously decreasing (see Tables 3 and 8), fueled especially with the decrease in agricultural employment with the migration from the rural to the urban areas. This rate decreased from 69 percent in 1955 to 33.7 in 1991 and to 24.3 in 2004. During the same period, male participation rates have also decreased although much less severely: from 90 percent in 1955 to 76.3 percent in 1991 and to 67.9 in 2004.<sup>281</sup> According to the OECD, during the same period of 1991-2004, the average OECD rate for female employment increased from 52.7 to 55.6 percent and the corresponding rate for the EU-15 (the fifteen EU countries excluding the new ten members) increased from 49.7 to 56.7 percent. According to the 2004 values, Turkey has the lowest female employment rate among OECD countries, followed by Mexico which has a much higher rate of 41.3 percent.<sup>282</sup>

In 2005 values, labor force participation rate for women is 24.8 percent in Turkey whereas it is 72.2 for men (see Table 7). Women's participation rate is lower in the urban sector with a ratio of 19.3 percent and higher in the rural parts, 33.7 percent, where women mostly work as unpaid family workers, while men's participation in labor force do not show a meaningful disparity between the rural and urban areas. Accordingly, throughout the country women are employed most in the agricultural sector (51.6 %), then in the services (33.3 %), and industry (14.6 %).

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<sup>281</sup> UNDP, *Human Development Report 1996 Turkey*, 57; OECD, *Factbook 2006: Economic, Environmental, and Social Statistics*, available (online) at: <<http://new.sourceoecd.org/factbook>>. In terms of absolute numbers, employment of both women and men increased, of course, as a result of population increase.

<sup>282</sup> OECD, *Factbook 2006: Economic, Environmental, and Social Statistics*.

Table 7. Women and Men in the Labor Market, 2005

2005	Female			Male		
	Turkey	Urban	Rural	Turkey	Urban	Rural
Population 15 years of age and over ('000)	25,617	15,801	9,815	25,209	15,876	9,333
Employed ('000)	5,700	2,525	3,175	16,346	10,041	6,305
Unemployed ('000)	652	518	135	1,867	1,315	552
Population not in labor force ('000)	19,264	12,759	6,506	6,996	4,520	2,476
Labor Force Participation Rate (%)	24.8	19.3	33.7	72.2	71.5	73.5
Unemployment Rate (%)	10.3	17.0	4.1	10.3	11.6	8.1
Unemployment Rate for the Young (%)	19.6	27.6	9.8	19.3	20.8	16.8
<b>Branch of Economic Activity %</b>						
Agriculture	51.6	11.1	83.9	21.7	3.9	50.1
Industry	14.6	25.4	5.9	21.1	27.6	10.9
Construction	0.5	0.9	0.2	7.0	8.1	5.3
Services	33.3	62.6	10.1	50.2	60.5	33.8
Total	100.0	100.0	100.0	100.0	100.0	100.0
<b>Employment Status %</b>						
TOTAL						
Regular and Casual Employee	43.8	78.9	15.9	57.8	70.9	37.0
Self-Employed and Employer	14.5	10.9	17.3	35.1	26.5	49.0
Unpaid Family Worker	41.7	10.1	66.8	7.0	2.7	14.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
AGRICULTURE						
Regular and Casual Employee	6.2	22.9	4.4	9.6	24.0	7.8
Self-Employed and Employer	18.8	27.1	18.0	67.9	65.3	68.2
Unpaid Family Worker	75.0	50.0	77.6	22.5	10.7	24.0
Total	100.0	100.0	100.0	100.0	100.0	100.0
NON-AGRICULTURE						
Regular and Casual Employee	84.0	85.9	75.8	71.2	72.8	66.4
Self-Employed and Employer	9.8	8.9	13.8	26.1	24.9	29.7
Unpaid Family Worker	6.1	5.2	10.3	2.7	2.4	3.9
Total	100.0	100.0	100.0	100.0	100.0	100.0

Source: Arranged from KSSGM, "Toplumsal Cinsiyet Göstergeleri – Çalışma Hayatı." Available (online) at: <<http://www.kssgm.gov.tr/tcg/2.pdf>>.

Table 8. Population by Labour Force Status, 1980-2000

Census year	Total population	Population 12 years of age and over	Labour force	Employed	Labour force participation rate (%)	Unemployed	Unemployment rate (%)	Population not in labour force	Unknown
<b>Total</b>									
1980	44,736,957	30,539,621	19,212,193	18,522,322	62.9	689,871	3.6	11,194,199	133,229
1985	50,664,458	35,339,299	21,579,996	20,556,786	61.1	1,023,210	4.7	13,670,254	89,049
1990	56,473,035	40,783,431	24,726,601	23,381,893	60.6	1,344,708	5.4	16,030,516	26,314
2000	67,803,927	51,724,194	28,544,359	25,997,141	55.2	2,547,218	8.9	23,173,230	6,605
<b>Female</b>									
1980	22,041,595	15,137,801	6,927,936	6,813,509	45.8	114,427	1.7	8,169,368	40,497
1985	24,992,483	17,535,704	7,647,265	7,492,733	43.6	154,532	2.0	9,849,302	39,137
1990	27,865,988	20,234,706	8,653,041	8,408,414	42.8	244,627	2.8	11,570,818	10,847
2000	33,457,192	25,683,222	10,164,540	9,429,736	39.6	734,804	7.2	15,516,101	2,581
<b>Male</b>									
1980	22,695,362	15,401,820	12,284,257	11,708,813	79.8	575,444	4.7	3,024,831	92,732
1985	25,671,975	17,803,595	13,932,731	13,064,053	78.3	868,678	6.2	3,820,952	49,912
1990	28,607,047	20,548,725	16,073,560	14,973,479	78.2	1,100,081	6.8	4,459,698	15,467
2000	34,346,735	26,040,972	18,379,819	16,567,405	70.6	1,812,414	9.9	7,657,129	4,024

Source: DİE. Available (online) at: <<http://www.die.gov.tr/tkba/t143.xls/>>.

As to employment status, 43.8 percent of the total employed female population consists of regular and casual employees while unpaid family workers comprise 41.7 percent, a fact which indicates that unpaid labor in general has a female face, comparing with the rate of 7.0 percent for men. As for the self-employed and employers, they cover only 14.5 percent of female employment whereas the corresponding proportion for men is 35.1 percent. The ratios dramatically change when focused on the disparities between the urban and the rural; unpaid female labor appearing as a mainly rural phenomenon (66.8 %) and paid female employment as an urban phenomenon (78.9 %).

In addition to the high ratio of unpaid labor, paid employment does not appear without problems, either. Women's paid employment in the non-agricultural sector is mostly characterized with low-paying, non-skilled, labor-sensitive occupations which are commonly perceived as normally "female jobs."<sup>283</sup> So, women are generally concentrated in limited occupations which have little or no authority as GEM indices show, too.<sup>284</sup> Here, income inequality results from not only such gendered occupational segregation, but also differing wages for the same type of work that women and men perform. No matter what the laws say, women generally receive less pay than men (see Table 11), a fact which is commonly justified with the assumption that women are kept by the male-head of their family

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<sup>283</sup> Saniye Dedeođlu, "Toplumsal Cinsiyet Rollerini Aısından Trkiye'de Aile Ve Kadın Emegi," *Toplum ve Bilim* 86 (2000), Meryem Koray, "alıřma Yařamında Kadın Gerekleri," *Amme İdaresi Dergisi* 25, no. 1 (1992), Ferhunde zbay, "Kadınların Evii Ve Evdiři Uđrařlarındaki Deđiřme," in *1980'ler Trkiye'sinde Kadın Bakıř Aısından Kadınlar* (İstanbul: İletifim, 1993).

<sup>284</sup> There also seems a relatively higher level of female participation in some "prestigious" professions as law, architecture, dentistry, and academia. See UNDP, *Human Development Report 1996 Turkey*, 53. But their share in the total female labor force is certainly low. As for unionization among women workers, the proportions seem similar for women and men; however, women do not take part enough in decision-making bodies in trade-unions, either. See Glay Toksz, "'Sayımız ok Az': Sendikalarda Kadınlar," in *Neoliberalizmin Tahribatı: Trkiye'de Ekonomi, Toplum Ve Cinsiyet*, ed. Neřecan Balkan and Sungur Savran (İstanbul: Metis, 2004).

and their income is generally a mere contribution to family budget.<sup>285</sup> Accordingly, incomes of female headed households are much lower than those of male headed households.<sup>286</sup> When all these factors are coupled with other variables, a portrait of poverty appears where women suffer more from poverty, what is called the “feminization of poverty” (see Table 12).

As GDI values indicate gender disparities prevail in educational attainment as well. Here, education is also an important determinant of female participation in the labor force (see Table 9). Higher levels of education are accompanied by increases in the ratio of labor force participation in urban centers. On the other hand, lower educational attainment results in disadvantages for women such as in fewer employment opportunities and poorer working conditions. For instance, such educational disadvantages also make women more suitable for many of the informal sector occupations which rely on flexible and cheap labor for temporary and unqualified work (see Tables 10 and 13) and which are characterized by lack of security and lack of benefits.<sup>287</sup>

Women are frequently employed by small-size enterprises and especially the apparel industry (*konfeksiyon sanayii*) which comprise a considerable part of the informal sector.<sup>288</sup> Here, an important kind of female informal employment involves so-called home-based work. Prevalent gender norms and division of labor in domestic sphere make these kinds of work more “practical” for women. On the one hand, the domestic responsibilities of care and housekeeping result in a preference for flexible working hours; on the other hand, many women are subject to the

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<sup>285</sup> Yıldız Ecevit, "Türkiye'de Ücretli Kadın Emeğinin Toplumsal Cinsiyet Temelinde Analizi," in *75 Yılda Kadınlar Ve Erkekler*, ed. Ayşe Berktaş Hacımırzaoğlu (İstanbul: Tarih Vakfı Yayınları, 1998).

<sup>286</sup> UNDP. *Human Development Report 1996 Turkey*, 52.

<sup>287</sup> Dedeoğlu, "Toplumsal Cinsiyet Rollerini Açısından Türkiye'de Aile Ve Kadın Emeği."

<sup>288</sup> Toksöz, "'Sayımız Çok Az': Sendikalarda Kadınlar."

approval of their husbands and fathers in order to work. Thereby, home-based work and other work in female-dominated environments such as in apparel industry make it “easier” for women to work.<sup>289</sup> Hence, such informal occupations do not reflect only gender norms and the gendered division of labor in the domestic sphere, but also can help to reinforce them. So, the informal sector happens to provide the so-called reconciliation of family and work life in a reverse way, contributing to the reproduction of the unfair gender order by “facilitating” the double-shift for women and ensuring production for the market without provision of social security benefits. So, the unjust gender order and unregulated market mechanisms go hand in hand.

Table 9. Labor Force Participation by Level of Education, 1992

Level of Education	Urban (%)		Rural (%)	
	Female	Male	Female	Male
Illiterate	7.2	52.2	44.9	64.5
None	10.7	49.5	46.2	59.3
Primary	11.4	73.0	55.4	83.4
Junior high school	13.0	53.6	27.4	53.9
Voc.&tech. junior high school	10.2	51.0	19.6	62.7
High school	37.9	74.6	46.0	83.3
Voc.&tech. high school	49.0	78.6	79.7	83.3
University	83.3	89.1	88.1	98.0
Total	16.1	69.2	50.2	76.6

Source: UNDP. *Human Development Report 1996 Turkey*.

<sup>289</sup> Dedeoğlu, "Toplumsal Cinsiyet Rollerini Açısından Türkiye'de Aile Ve Kadın Emegi."

Table 10. Distribution of Informal Employment According to State of Education, 2003

State of Education	Persons (thousand)			Percent			
	Women	Men	Total	Women	Men	Total	Cum. Total
Not literate	1,025	387	1,412	72.6	27.4	12.9	12.9
Primary School	2,451	4,213	664	36.8	63.2	60.8	73.7
Junior High School	167	775	942	17.7	82.3	8.6	82.2
High School	135	501	636	21.2	78.8	5.8	88.0
Higher Education/Faculty	46	138	184	25.0	75.0	1.7	89.7
Other	378	749	1,172	33.5	66.5	10.3	100.0
Total	4,202	6,763	10,965	38.3	61.7	100.0	

Source: Çalışma ve Sosyal Güvenlik Bakanlığı. "Proposal for Reform in the Social Security System," 29 July 2004. Retrieved in 23.10.2005 (online) from: <<http://www.calisma.gov.tr>>

The division of labor within the family, thus, appears not to change much when women work, either. According to a survey of 2003, in urban areas the children of working mothers are taken care of mostly by the mothers themselves (34 percent of working mothers) or by grandmothers (39.9 %); if not possible, then the children are taken care of by the daughters of family (7.4 %), or by paid caregivers (7.6 %) or by institutional service (8.9 %).<sup>290</sup> So, working women reconcile their work life with familial responsibilities mostly without disrupting, or transforming, the gender roles; either themselves or their female relatives doing the job. In other cases, some working women get other working women to do the care and housework; hence, class differences among women making up gender roles for some of them thanks to others.<sup>291</sup>

However, the problem of care and housekeeping responsibilities is not always solved by protection of their working status, it also results in the return of women to

<sup>290</sup> The survey concerns the care of children under six years of age. The rates change according to variables such as education level, the type of economic activity, and urban-rural differences. See KSSGM, "Çalışan Kadının Çocuklarının Bakımı." Available (online) at:

<<http://www.kssgm.gov.tr/tcg/12.pdf>>.

<sup>291</sup> Aksu Bora, *Kadınların Sınıfı: Ücretli Ev Emegi ve Kadın Öznelliğinin İnşası* (İstanbul: İletişim, 2005).

the home. According to a survey of 1997 carried out among 530 women who live in İstanbul, 53.1 percent of women stated familial reasons as the cause of leaving their jobs: marriage and delivery as a total of 35.2 percent; the demand of husband or family as 12.6 percent; and care for children or the sick as 5.3 percent. Among these women, those who had never participated in the labor force related this, first of all, to the objection by family members and husband (60.8 %) and to the responsibilities of care and housekeeping (24.9).<sup>292</sup> According to the *Hanehalkı İşgücü Anketleri* (Household Labor Force Surveys by DİE), of the 19,264,000 women who are not involved in labor force throughout the country in 2005, 13,025,000 of them stated household work as a reason not to participate in the labor force.<sup>293</sup> In parallel, another survey which was carried out among the general population in 2006 indicates that 71 percent of the participants believe that the primary “duty” of women is to serve their husbands, and 67 percent stated that if women’s work hinder their responsibilities they should not work.<sup>294</sup>

All in all, this chapter shows that women in contemporary Turkey continue to face disadvantages and deprivations, which are recognized by the policy-making elites to some extent. Gender inequalities prevail from education to employment opportunities; from income to political participation; from the social expectations to the division of labor in the domestic sphere. What this overview shows in terms of social policy is again the need for a gender-sensitive approach because of the different conditions and constraints to which women are subject. In this respect, this

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<sup>292</sup> İpek İlkkaracan, “Kentli Kadınlar ve Çalışma Yaşamı,” in *75 Yılda Kadınlar ve Erkekler*, ed. Ayşe Bertay Hacimirzaoğlu (İstanbul: Tarih Vakfı yayınları, 1998), 291.

<sup>293</sup> “Hanehalkı İşgücü Araştırması Sonuçları,” in *TÜİK Haber Bülteni*, no. 70, 25 April 2006. Available (online) at: <[http://www.die.gov.tr/TURKISH/SONIST/ISGUCU/k\\_250406.xls](http://www.die.gov.tr/TURKISH/SONIST/ISGUCU/k_250406.xls)>

<sup>294</sup> The survey, Conservatism, Family, Religion, and the West in Turkey (*Türkiye’de Muhafazakarlık, Aile, Din, Batı*), was carried out by Boğaziçi University and the Open Society Institute. See *Milliyet*, 2 April 2006.

chapter also can help to evaluate the efficiency of the gender-specific policies examined in this study. The relative continuance of “the special conditions of the country” which were cited in 1945 as a reason for gender-specific treatment answers the main question of the thesis in a way. Positive discrimination policies, by definition, aim to compensate disadvantages and to satisfy divergent needs via “unequal treatment of the unequal;” however, the ongoing relatively disadvantaged position of women implies a failure of these gendered policies –if they were meant to improve women’s position– along with the reproduction of unfair gender relations and norms; hence, a female second-class status in family and society in general.

Table 11. Average Monthly Earning by Main Characteristics, 1994

[12 years and over population employed as regular employee and casual employee)

Thousands TL.

	Public			Private		
	Female	Male	Male/Female	Female	Male	Male/Female
<b>Educational status</b>						
Illiterate	5950,0	7260,1	1,2	1286,2	3152,2	2,5
Literate without diploma & primary school	5691,6	7885,1	1,4	1798,3	3850,0	2,1
General junior high school & high school	5324,0	7663,7	1,4	3003,3	4956,9	1,7
Vocational junior high school & vocational high school	5881,2	9215,3	1,6	4134,6	5427,7	1,3
University & higher	7396,6	9691,7	1,3	8730,5	12910,5	1,5
<b>Occupational group</b>						
Scientific, technical, professional and related workers	6653,7	7768,9	1,2	4267,4	6390,8	1,5
Administrative, executive and managerial workers	8956,0	9390,3	1,0	11932,0	14169,3	1,2
Clerical and related workers	5396,5	7021,5	1,3	4157,8	6397,8	1,5
Sales workers	3227,8	7802,3	2,4	2880,8	4967,0	1,7
Service workers	4408,7	6514,4	1,5	2434,7	3567,6	1,5
Agricultural animal husbandry, forestry workers, fishermen	1457,3	6279,9	4,3	885,3	2196,3	2,5
Non-agricultural production and related workers	7778,3	9793,0	1,3	2111,6	4096,8	1,9
<b>Branch of economic activity</b>						
Agriculture	2248,9	5732,3	2,5	862,3	2199,7	2,6
Mining and quarrying	9776,2	11478,3	1,2	2744,8	4843,4	1,8
Manufacturing	7682,2	10727,5	1,4	2427,0	4864,8	2,0
Electricity, gas and water	6608,6	10297,3	1,6	-	8164,9	-
Construction	10436,0	11437,2	1,1	2931,9	4016,8	1,4
Wholesale and retail trade, restaurants and hotels	6000,1	7122,9	1,2	2922,8	3960,3	1,4
Transportation, communication and storage	5333,4	8023,2	1,5	6647,5	5098,4	0,8

	Finance, insurance, real estate, business services	7386,8	9081,2	1,2	4701,0	6094,9	1,3
	Community, social and personal services	6115,2	7404,7	1,2	2639,8	4297,3	1,6
<b>Size of establishment</b>							
	Less than 2	3140,5	4234,2	1,3	1592,7	2571,8	1,6
	2-4	5262,7	6506,0	1,2	2564,7	3900,7	1,5
	5-9	6270,7	7761,0	1,2	2743,3	5016,2	1,8
	10-19	6897,2	9009,3	1,3	3801,9	5914,5	1,6
	20+	7352,1	9196,8	1,3	2688,9	5680,0	2,1

Source: DİE. Available (online) at: < <http://www.die.gov.tr/tkba/t206.xls>>

Table 12. Percentage of Household Members by Poverty Type and Main Characteristics, 1994

Population 12 years and over

	Female				Male			
	Absolute poor	Relative poor	Middle	The highest	Absolute poor	Relative poor	Middle	The highest
<b>Educational status (Aged 6-24)</b>	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
<b>Illiterate</b>	24.6	12.9	6.7	7.3	15.9	9.0	6.3	5.6
<b>Literate &amp; primary school</b>	72.3	76.8	71.0	66.9	74.4	72.7	65.7	62.0
<b>Junior high school / high school</b>	3.1	10.2	21.7	24.7	9.6	18.0	27.4	31.0
<b>vocational junior high &amp; high school</b>								
<b>University &amp; higher</b>	0.0	0.1	0.6	1.1	0.1	0.3	0.6	1.4
<b>Educational status (Aged 25 and over)</b>	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
<b>Illiterate</b>	66.6	49.9	34.6	23.6	27.8	16.3	8.7	4.6
<b>Literate &amp; primary school</b>	32.6	46.9	55.1	49.5	67.7	69.7	64.7	53.4
<b>Junior high school / high school</b>	0.9	3.1	9.5	19.5	4.1	13.1	22.5	27.5
<b>vocational junior high &amp; high school</b>								
<b>University &amp; higher</b>	0.0	0.1	0.8	7.4	0.3	0.8	4.1	14.6
<b>Marital status</b>	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
<b>Never married</b>	39.8	35.9	24.1	32.8	41.0	39.1	29.9	37.9
<b>Married</b>	53.5	57.1	65.6	60.5	57.5	59.5	68.1	60.5
<b>Widowed</b>	5.8	6.3	9.2	5.8	1.4	1.2	1.6	1.2
<b>Divorced</b>	0.7	0.4	0.8	0.7	0.1	0.1	0.3	0.3
<b>Separated</b>	0.2	0.3	0.3	0.2	0.0	0.1	0.1	0.1
<b>Employment status</b>	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
<b>Not working</b>	58.5	61.6	65.0	64.1	32.4	29.7	26.6	25.2
<b>Working / agriculture</b>	39.0	34.0	26.5	22.8	44.2	31.5	23.5	19.9
<b>Working / non-agricultural</b>	2.5	4.4	8.5	13.1	23.4	38.7	49.8	54.9
<b>The percentage of unpaid family worker</b>	82.6	77.2	66.0	62.2	26.7	19.7	10.1	18.0
<b>Without social security protection</b>	98.8	97.0	91.1	83.2	89.0	72.7	49.4	49.9

<b>Without health insurance protection</b>		75.9	57.2	36.6	35.1	76.3	58.3	37.4	38.4
<b>Type of income</b>		100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	<b>Do not have income</b>	88.9	85.8	78.1	78.2	42.8	36.1	21.7	31.3
	<b>Only activity income</b>	6.3	7.4	7.1	5.6	12.8	15.9	14.5	16.0
	<b>Both activity / non activity income</b>	1.5	2.4	5.6	8.6	38.5	41.8	52.3	46.3
	<b>Only non activity income</b>	3.3	4.5	9.2	7.7	5.9	6.2	11.5	6.5

Source: DİE. Available (online) at: <<http://www.die.gov.tr/tkba/t209.xls>>

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Table 13. Persons Not Registered by Social Security Institutions as Regards to Their Own Work, 2005. (in thousands, over the age 15)

Year	Total						Agriculture						Non-Agriculture					
	Total	Regular worker	Casual Worker	Employer	Self-Employed	Unpaid Family Worker	Total	Regular Worker	Casual Worker	Employer	Self-Employed	Unpaid Family Worker	Total	Regular Worker	Casual Worker	Employer	Self-Employed	Unpaid Family Worker
<b>2005</b>																		
<b>Female</b>	3,895	533	310	18	714	2,319	2,899	4	172	9	531	2,183	996	529	138	9	182	137
<b>Male</b>	7,155	1,851	1,156	277	2,830	1,041	2,827	58	224	69	1,715	761	4,327	1,793	932	208	1,114	280
<b>Total</b>	11,050	2,384	1,467	295	3,543	3,360	5,726	62	397	78	2,247	2,943	5,323	2,322	1,070	218	1,297	417

Source: Arranged from "Hanehalkı İşgücü Araştırması Sonuçları." In *TÜİK Haber Bülteni*, 25 April 2006, no. 70. Available (online) at : <[http://www.die.gov.tr/TURKISH/SONIST/ISGUCU/k\\_250406.xls](http://www.die.gov.tr/TURKISH/SONIST/ISGUCU/k_250406.xls)>

## CHAPTER 5

### CONCLUDING REMARKS

The gendered policies and the accompanying discourses by policy-making elites cover a variety of issue-areas and argumentations; however, it is not impossible to lay out the common mentality which underlies these policies through the history. Below I will present this mentality again along the differentiation in principles for the benefits and regulations in question.

The social security policies which I grouped under the principle of dependency (survivor benefits and healthcare for the dependents) are established around a normative model of family in which men are the principal breadwinners and women are kept by the male-heads of families, which are either fathers or husbands. So, women get their entitlements like healthcare on the basis of the labor market status of “their men” whom they are presumed to be dependent on for living. Here, the state interferes in the absence of these male breadwinners providing entitlements like survivor pensions to “protect” girls and women until they start to work or marry

again. These survivor benefits which favored female survivors over male survivors were explained by the lack of employment opportunities for women and by the family structure, which hinders women's participation in labor force in most cases, along with a discourse of the paternalist state, which protects "the destitute" woman. Anxieties also were stated not to disrupt this gender order by forcing women to work, discouraging them from marriage, and encouraging illegal affairs thanks to regular pensions. So, survivor women have been encouraged to marry via marriage bonuses; marriage being assumed to be the real social security mechanism for women, indeed. Here, the different treatment of disabled orphans clearly shows the assumption and reinforcement of this dependency for women. Disabled sons have been entitled to pensions regardless of age and marital status whereas the pensions of disabled daughters have been terminated when they get married. This proves the assumption that women are, or should be, kept by their husbands and that differential treatment for women relates to the absence of this male breadwinner rather than a positive discrimination which would compensate for such a gender-independent objective disadvantage like invalidity.

The changes in the policy which equalized the conditions and benefits for survivor spouses (in the mid-1980s and 2006) and extended the invalidity pension to married survivor girls (2003) might signal a move from this ideal of "male-breadwinner family" with a dependent role for women towards a model of "universal breadwinner," also undermining the depiction of women as a specific vulnerable group in need of protection. The recent change (2006) in the healthcare benefits for dependents indicates a further step in this direction. The arrangement of universal healthcare for all persons under the age of 18 without condition means a change of the basis of entitlements from the dependency and labor market status of the child's

parents to social citizenship. In this case, citizenship as the basis of entitlement, first, nullifies the distinction of formal-informal labor, which has been a significant problem determining the access to the benefits, so, covering the uninsured children as well; second, it gives rights independently from family, hence, undermining the principle of dependency on family in favor of personal autonomy. Here, it also should be noted that citizenship as the basis for social rights would reverse the principle of commodified labor as the basis for entitlements in favor of recognizing the domestic and unpaid labor of women.

So, the policies which I grouped under the principle of labor (retirement, maternity insurance, and “protective” labor legislation) are founded around a similar set of ideals and assumptions. Working women again were represented as a weaker and vulnerable group in need of special protection; so, they were entitled to specific benefits and subjected to certain prohibitions or restrictions regarding working conditions and occupations, which were largely based on gender stereotypes. Also, the familialist approach prevailed again in both discourses and provisions. Housekeeping and care were assumed and reinforced as the obligations of women with the explicitly stated concerns about ensuring of the functioning of the family. Through earlier retirement, women were supported to go back home and perform their familial duties after the acknowledged years of the tiresome double-shift of domestic and paid labor. Married women workers were encouraged to return to their homes also through the repayment of contributions and severance pays. In addition, maternal leaves also were formulated as a matter of health and care duty of women, reaffirming the gendered division of labor for child-care. Hence, the policies were more of an affirmative type, reinforcing the prevalent gender norms that underlie the

difficulties women face instead of transforming both the culture and political economy.

However, the recent changes (2006) in the policy which aim to turn maternal leave into parental leave are promising for such a transformation. This policy line can serve to transform the gendered division of labor which expects women to be the sole care-givers and instead, enable and support the equal sharing of responsibilities in family life. This also can help to reconcile family and work life instead of women having to return to the home due to the double burden. So, also considering the changes in retirement (2006), it might be said that recent changes point to a transition from a policy of supporting the return of women to the home towards a policy of the encouragement of female employment and the reconciliation of family and work life.

All in all, the assumptions and principles underlying the gendered policies and discourses in question represent women as a weaker, vulnerable group in need of special protection and largesse stigmatizing them as “the destitute.” The provisions reinforce the conditions of familial dependency and the gendered division of labor both in the domestic sphere and paid employment, confining women to traditional gender roles. Remedies appear to be mostly directed to the outcomes instead of the processes and underlying norms and relations, in other words, affirmative remedies providing surface allocations rather than transforming the core structures. Also looking at the continuing disadvantaged position of women in contemporary Turkey, these gender-specific policies appear to be mostly reinforcing the prevalent unfair gender relations and norms instead of a transformative positive discrimination to compensate such gender-specific disadvantages; hence, a female second-class citizenship. On the other hand, some of the changes during the last two decades from social security to labor legislation to the new Civil Law promise chances for another

gender order in society which can allow more “freedoms to achieve various lifestyles” for both women and men. Here, one can observe that while the post-1980 period is usually defined as a period of the erosion of social rights because of the neo-liberal policies both in Turkey and abroad, this period shows a plurality of dimensions for social rights from a gender perspective.

To conclude, what have to be emphasized are again the need for a gender-sensitive approach considering the specific disadvantages and constraints to which women are subject and the need for a deliberative process of politics in which all persons can equally participate to determine the policies and the principles that concern their life conditions and chances. Such an understanding of active political and social citizenship can produce alternatives against the reliance on charity, familial dependency, and the logic of the market in favor of personal autonomy. This requires an understanding of politics from the below which subjects every aspect of socio-economic life to constant negotiation and contestation against determinancy by hegemonic ideologies, be these cultural or economic. Due to the limited scope of a master’s thesis and the long extent of the period under examination, this study focused mainly on the policy and the discursive side, aiming to explore the underlying mentality and its potentials. The other side of the coin, that is, how women and men have been influential in the formation of these policies throughout the history and how these policy-issues have been experienced and redefined in everyday life practices (though the fourth chapter provides a glimpse of this) are subjects of further studies.

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