

Article history (leave this part):

Submission date: 2024-09-10

Acceptance date: 2024-11-21

Available online: 2024-12-28

Keywords:

Codification; Family; wife, husband, Law, international agreement, CEDAW, protection, Family Jurisprudence

Funding:

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Competing interest:

The author(s) have declared that no **competing****interests** exist.**Cite as (leave this part):**

Mohamed Boukara, M. B. (2023). Jurisprudence and fundamentalism and its impact on doctrinal issues - The Arabized standard as a model – Journal of Science and Knowledge Horizons, 3(1s), 69-95.

<https://doi.org/10.34118/jskp.v3i1s.2893>

The authors (2024). This Open Access article is licensed under a Creative Commons Attribution-Non Commercial 4.0 International License (CC BY-NC 4.0)

[\(http://creativecommons.org/licenses/by-nc/4.0/\)](http://creativecommons.org/licenses/by-nc/4.0/). Non-commercial reuse, distribution, and reproduction are permitted with proper citation. For commercial use, please contact: journals.admin@lagh-univ.dz

Journal of Science and Knowledge Horizons

ISSN 2800-1273-EISSN 2830-8379

Family Jurisprudence Codification is a Modern Necessity for Family Protection. “Rights and duties of the wife as a model”

CHEURFA Samia

Faculty of Law and Political Science, University of M'sila (Algeria)

drchorfa@yahoo.fr<https://orcid.org/0009-0005-3859-8831>**Abstract:**

Islamic Sharia is a rich source of laws and regulations governing the individual Muslims and their relationships with others in all aspects of life. Collectively, these laws are commonly called Islamic jurisprudence or Fiqh. This paper specifically focuses on family law, particularly the marital bond, which is considered the family foundation. For the purpose of preserving the family and to deducing the appropriate Islamic legal rulings for family matters, then to facilitate its study and implementation by specialists. Some experts unlike others have seen the necessity to codify the Islamic jurisprudence and organize it into clear and easily applicable articles that are intact from any internal or external complications, like international agreements that interfere with family regulations, thus destabilizing the family unit and making it vulnerable to shocks and fractures.

***Samia Cheurfa**

INTRODUCTION:

The vast array of decisions crafted by scholars and the principles documented in books and encyclopedias have posed a significant challenge, for judges in upholding the implementation of Islamic law. It can be challenging for individuals to become acquainted with and use them when making decisions, on the cases brought before due to difficulties researchers face in understanding them. Therefore, the pressing demand for the law has arisen to create an Islamic legal framework that upholds traditional values while adapting to contemporary conditions (Mehdi, 2018-Ramadan 1439) .This is exclusively attainable through the codification of laws as an approach, to implementing legal regulations (Abdel Bar, 1407-1986, p. 62). The scope can be restricted to transactions as well as personal status and crimes along, with discretionary penalties and punishments (Abdel Bar, 1407-1986, p. 79). It is also an option to follow the school of thought in legal principles despite multiple schools of thought available for consideration. One could choose to adhere to the views of a respected religious leader like an Imam or Muftu or draw insights, from various schools (Abdel Bar, 1407-1986, p. 80).

Recognizing the role that families play in shaping individuals and society at large I have decided to study the topic of **“Family Jurisprudence Codification is a Modern Necessity for Family Protection. “Rights and duties of the wife as a model”**.

Whether the woman, as a daughter, sister, mother, or wife is still perceived to be the most effective driver for it, which was the paper subject. Who used it as bait to strip family law of its authentic Islamic structure, so they removed guardianship and custodianship from her and wanted to spread the spirit of hostility between her and those who are in charge of her, burdening her beyond her natural capacity. This is resulting and produces silent or apparent family breakdowns, which in turn results in several moral, psychological, social, health, economic and other risks consequently are shown in several moral, psychological, social, health, economic and other risks. Hence, I applied to research this topic and put forward the following problem:-**What are the actual implications of family law codification? -How does it protect the marital bond?**In which I divided the research paper study into three sections:

- 1- The concept of Family law codification.
- 2- The rights and duties of the wife in Islamic jurisprudence.

3- Aspects of protection of family law codification.

THE CONCEPT OF FAMILY LAW CODIFICATION

First requirement: Descriptive Definition of Codification

Definition of codification: In language: The word "code" is derived from the verb "coded", meaning: to establish laws; and the law is the measure of everything.

In terminology: A collection of regulations rules the behavior of the individual in society. Several features distinguish the legal rule; the most relevant of which is that it is accompanied by a penalty. This is because the law, as it intends to maintain order in society, has a material penalty inherent when the description of the violation involves commitment. This does not happen if the matter of compliance with its ruling is left to the discretion of the addressee of its rulings (Mehdi, 2018-Ramadan 1439) It is a collection of the concrete rules of a certain branch of law arranged and classified and made sure there are no contradictions and ambiguities between them in one blog. Alternatively, it is a collection of the specific rules for a branch of law after arranged and classified in one blog and made sure that there are no contradictions or ambiguities between them, then issued in the form of a law imposed by the state through the body authority legislation. Regardless of its source whether is legislation, custom, tradition, judiciary, or otherwise (Abdel Bar, 1407-1986, p. 21)

Definition of Jurisprudence : In language is understanding, and it was said that it is: reaching absent knowledge with present knowledge, so it is more specific than knowledge (Bin Al-Manawi, 1410 H-1990 AD, p. 91),and from it the Almighty's saying: "So what is [the matter] with those people that they can hardly understand any statement?" (Surat Nisa, verse seventy eight).

In terminology it is known as the practical legal rulings acquired from the detailed evidence, and some of them defined it by saying: "The set of practical rulings prescribed in Islam (Al-Zarqa, 1425 AH-2004 AD, p. 66).

Definition of Jurisprudential Codification (jurisprudential legal formulation):Jurisprudential codification (Bouqraa, 2023, pp. 69-95)or jurisprudential legal formulation can be expressed from the viewpoint of terminology, as making the legal rulings in the form of verbal practical rules suitable for binding actual

implementation. Categorized according to the topics that regulate them, to serve various needs that call for organizing the behavior among individuals, groups, and organizations, in a manner that achieves the objectives, which are expressed at their essence and desired by a wise legislator (Abdel Bar, 1407-1986, p. 21).

THE RIGHTS AND DUTIES OF THE WIFE IN THE ISLAMIC JURISPRUDENCE AND ALGERIAN FAMILY LAW

First requirement: The rights and duties of the wife in Islamic jurisprudence

Allah said: **"And due to the wives is similar to what is expected of them, according to what is reasonable"** (Surah Baqarah, verse two hundred twenty eight). The marriage contract in Islam is a partnership for the common and equal benefit of both partners, not slavery or possession ownership; according to the general spouses' interest; it binds rights by interest equally on the wife over her husband as well as rights upon the wife towards her husband (Al Zuhaili, 2003, pp. 698-700). From the previous verse, we deduce that women have marital rights over men substantially as men have, in terms of beautification, kind speech, treating well, avoiding harm, fearing God in each of them, and the wife's obedience to her husband. Ibn Abbas said: "I adorn myself for my wife as she adorns herself for me." Among the rights and obligations of this marriage is the chastity of each of the spouses so that they do not in need others (Al Zuhaili, 2003, pp. 698-700). Therefore, marriage is a partnership between two persons, and each one must reasonably fulfill his partner's rights. It was proven in the Sahih of Muslim & Al Bukhari that the Prophet, said in his sermon during the Farewell haj speech: "fear Allah concerning women, for indeed you have taken them as a trust from Allah, and have made their private parts lawful to you by the word of Allah. It is upon them that they not allow anyone whom you dislike to tread upon your bedding. But if they do so, then strike them, but not severely, and they have rights upon you concerning their food and clothing in a known manner" (Tafsir al-Tabari).

When one of the companions asked, the prophet peace be upon him about the rights of the wife over the husband. He told us in Sahih Abi Dawud (Al Zuhaili, 2003, pp. 698-700), that he should not hit her in the face or insult her, and he should feed and clothe her as he did the same for him, and that you do not leave her behind outside of the home.

Second requirement: Rights of the Wife

The manifestations of a woman's weakness require the man in charge of her to treat her with kindness, courtesy, gentleness, taking care of her feelings, and

tolerance to the extent that does not offend her dignity. This because women are like bottles that cannot bear violence and severity, they are described as such by the word of the prophet: "Be gentle, Anjasha, do not you break the bottles" (Agreed upon). Considering the weakness of women, when they were with him on a journey and Anjasha was urging camels, so they sped up and he feared that the women would fall (Saqr, 1427 AH- 2006 AD, p. 13). His saying:"...None will be patient with you except the patient" (Al-Shawkani) (Saqr, 1427 AH- 2006 AD, p. 13). In another narration, he said: "None will be kind to you after me except who is patient" (Shouaib Al-Arnaut). Among her clear rights are the following:

- 1- **Dowry:** means what is required for the marriage contract's validity and it is the wife's exclusive right. The contract is invalid if they agree to annul it. If he has married her, it should have a similar dowry to hers. According to what the Almighty stated as an obligation, therefore give them their due compensation for whatever you enjoy from them while marriage. (Surah Nisa, verse twenty four) ,this is agreed upon by scholars (Sakhal Al-Madjudj, 1431 AH-2010 AD, p. 29)
- 2- **Spending:** The husband must spend on his wife from the first time of marriage until they are separated by death or a final divorce (Sakhal Al-Madjudj, 1431 AH-2010 AD, p. 131). Spending is not determined by a specific amount, but rather depends on what is considered customary among people, which guarantees her what is sufficient in terms of food, drink, clothing, service, and housing. According to the husband conditions of wealth, poverty, hardship, and ease (Sakhal Al-Madjudj, 1431 AH-2010 AD, pp. 132-133).

The expenses of medical treatment, such as examination, diagnosis, medications and surgery, are not the husband (Sakhal Al-Madjudj, 1431 AH-2010 AD, p. 133) obligatory because Allah said: **"Upon the father is the mothers' provision and their clothing according to what is acceptable"** (Surah Bqarah, verse two hundred thirty three). Yet, whatever a husband spends on his wife is considered a charitable act, whether it is obligatory or voluntary (Sakhal Al-Madjudj, 1431 AH-2010 AD, p. 136), since the expenses are considered in terms of their amount and type as:

- a- Taking into account the customs of the people's country regarding the type and amount of food, drink and clothing required.
- b- Taking into account the circumstances of the husband and wife (Sakhal Al-Madjudj, 1431 AH-2010 AD, p. 136), as God Almighty says: **"Let a man of wealth spend from his wealth"** (Surat Talaq, verse seven).

3- **Justice:** If he has more than one wife, he must be just between them (Al-Rafiei, 1463 AH-2002 AD, pp. 486-487). The Prophet, peace be upon him said: "Whoever has two wives and leans towards one of them will come on the Day of judgment with one side leaning" (Sunan Abu Dawud).

Third requirement: The wife's Obligations

First section The duty of obedience to the one who has guardianship over her and discipline

As Allah said in Surah Baqarah, verse two hundred twenty two, that the women are expected to behave in a way that is considered appropriate and reasonable for their role, but the men have more authority and responsibility than them. This means a degree of guardianship, leadership, and management that Allah has granted them due to their physical constitution and preparation to bear burdens and their responsibility for providing to the woman (Al Zuhaili, 2003, pp. 698-700).

The Prophet was asked once which women are the best, and he said, the one who looks at her, she pleases him, complies with his requests, and does not disobey him in anything that displeases him regarding herself or his property.(Musnad Ahmad),this implies that she obeys him in every matter that is not a sin against Allah. If she obeys him in sin, she will be sinful like him, for there is no obedience to a creature in disobedience to the Creator. This is Allah's command to the woman to follow her husband's orders and his command for him to leave her if she obeys him (Raafat Othman, 1991, pp. 75-78). Allah also says in Surah Nisa, Verse thirty four (Al-Baydhaoui, pp. 72-73), the right of what Allah has given the responsibility of men towards women by their spend and wealth. This means that they are in charge of them as rulers are in charge of the ruled. He has explained this with two reasons: what is given by nature and what is acquired, then Allah said: "But the men have a degree over women in responsibility and authority"(Surah Baqarah, verse two hundred twenty eight)

A- Because Allah has favored men with greater intellect, sound judgment, better management and more strength in actions and worship, therefore they were specifically given granted prophethood, leadership, governance, leading prayers "Imamah", testifying in courts, the obligation of Jihad, attending Friday prayers, inheriting by agnatic relationship, and the right to initiate divorce (Al-Baydhaoui, pp. 72-73) through dowry and to contribute to their marriage expenses.

B- referring to the marriage contract like the dowry spending as a good wives are expected to be devoted loyal to their husbands this includes protecting their husbands honor wealth and family when he is absent and maintain their chastity. If a wife is obedient to her husband and fulfills her marital duties he should not mistreat or harm her then be aware due to Allah is the ultimate authority (Al-Baydhaoui, pp. 72-73).

In truth, this degree of authority is more of a burden and responsibility for the man than for the woman; thus, his right over her is more binding than her right over him. Ibn Abbas said: "The degree refers to urging men to treat their wives well, to be generous with by their wealth and character", which means that it is preferable for him to tolerate the other's mistakes, be patient with her, and manage his temper when handling problems and crises (Al Zuhaili, 2003, pp. 698-700).

The meaning of guardianship 'Qawamah' does not imply that the man should be severe or cruel, but rather that he should be gentle, kind and merciful. Allah says that Mohammad, the prophet you should be gentle, merciful, and kind to others. He emphasizes that his kindness and compassion are essential for keeping people united around him. If Mohammad had been harsh or cruel, people would have left him. (Surah Al-Imran, verse one hundred fifty nine).

Allah has commanded us treating women with kindness. Since he created spouses for the purpose, we could find peace and happiness with them. (Surah Al-Rum, verse 21). Therefore, they should be kind, loving, and merciful to her and maintain affection toward their wives (Mustapha, 1417 AH-1996 AD, pp. 15-18). (Nisa, verse nineteen).

1-Do not leave the house except with He also gave us love and compassion for each other his permission (Raafat Othman, 1991, pp. 75-78).

2-Do not fasting voluntary fasts in his presence except with his permission, and not allowing anyone to enter his house except with his permission (Raafat Othman, 1991, pp. 75-78).

3-Serving the husband.

Those who argue that it is obligatory have based their argument on custom, stating that it is customary for women to serve their husbands. They have also argued that if a woman is of high status and not accustomed to working, and her husband can afford a servant, then she should be provided with one. The proof for this is that

everything related to household matters is the husband's responsibility, as it is necessary for her needs. Whatever is due to her cannot be due from her, except that the scholars agreed that a wife's service to her husband, such as cooking, washing and doing other household chores, is not obligatory. (Abou Hanifa, Malik, Ahmad, Shafie).

However, some scholars like, (Al-Jarjani, Abou Thawr, Ibn Abi Shaybah) stated that it is obligatory. Some argue that her work and service to him are acts of kindness on her part, while those who argue for its obligation cite customs and traditions, stating that it is customary for women to serve their husbands. They also argue that if a woman is from a privileged background and is not accustomed to work, her husband should provide her with a servant (Al-Rafiei, 1463 AH-2002 AD, pp. 443-444).

However, Maliki scholars state that the husband's inability to serve his wife does not justify her seeking a divorce, unlike his inability to provide for her spending. She should perform the apparent services such as household chores, but not apparent works like weaving and spinning, as these are usually done for income, and which is not the wife's responsibility (Sakhal Al-Madjadj, 1431 AH-2010 AD, p. 56).

Second section: Rights and Obligations of the Wife in Algerian Family Law

In Algerian family law, the legislator established the husband's authority over his wife and family, as outlined in the first paragraph of the now-repealed Article 39 of Family Law 84/11, which stated: "The wife must obey her husband and respect him as the head of the family..." This provision clearly demonstrates that leadership in the family is assigned to the husband, not the wife, and that the husband's role carries the authority, with the wife obligated to follow his lead, in alignment with the principles of Islamic law.

However, the Algerian legislator retreated from affirming this principle after amending the Family Law in 2005 by decree 02/05, when it repealed the mentioned Article 39 and replaced it with the concept of partnership and determined the shared marital duties, as stated in Article 39 of the Family Law. These duties consist of:

- Maintaining the marital bond and the duties of mutual life.-Cooperating in the family interests.
- Consulting on the management of family affairs. These mutual duties came as alternative concepts to the idea of guardianship, which the Algerian legislator

abandoned, due to the transformations experienced by the Algerian family and the economic and social challenges it faced, as well as the need to comply with the provisions of international conventions to which Algeria has ratified in this regard.

The attribution of guardianship to the husband alone is due to the husband's ability to control and manage marital problems that may lead to divorce and the breakdown of the family. Considering him as the one who bears the financial and non-financial marital responsibilities and who has the authority to head the family and manage its affairs, and this cannot prevent him from consulting with his wife and taking her opinion into account (Ben Hamla).

Therefore, we find that the recognition of the husband's family guardianship is rooted in the financial responsibilities and preference that Allah has granted to the man over the woman. However without this concept being interpreted as a diminution of the woman's status, harming the wife, or disregarding her rights as affirmed by Islamic law, to preserve the family unit, which forms the nucleus of society, and to enable it to face the challenges in various fields, especially social and economic (Ben Hamla).

MANIFESTATIONS OF THE PROTECTION OF FAMILY LAW THROUGH JURISPRUDENCE (FROM FOREIGN LEGISLATIONS, SPECIFICALLY INTERNATIONAL CONVENTIONS ON WOMEN'S RIGHTS):

Initially we note that states and governments have complete freedom regarding joining or not joining international treaties however once a state becomes a signatory to a treaty or ratifies it, in which ratification means the formal expression of a state's consent to be bound by a treaty. Only states that have previously signed a treaty during the period it was open for signature may ratify it. It involves two main procedures:

Domestic Level: Obtaining approval from the relevant constitutional body, usually the head of state or parliament.

International Level: Formally transmitting the instruments of ratification to the depository of the treaty at the United Nations.

Ratification differs from signature and accession, Signature is a declaration of intent whereby a state expresses its provisional consent bounded to a treaty. while the accession is a state's consent bounded to a treaty that has already been opened for signature and which it was not able to sign. The ratification process typically takes a significant amount of time. For instance, the ratification of the Convention on the Elimination of All Forms of Discrimination against Women by Arab states occurred over several decades. Five Arab states ratified the convention in the 1980s, which are: Jordan, Morocco, Kuwait, Comoros, Lebanon, Djibouti and Algeria, seven more in the 1990s, and six in the 2000s (the Kingdom of Saudi Arabia, Bahrain, the United Arab Emirates, Syria, Mauritania) then lastly Oman. Ratification of a treaty signifies a legal and practical commitment, requiring the state to align its domestic legislation with the treaty and to ensure its implementation through appropriate measures.(Boujaadar & Rahmani, 1440 AH-2018 AD),

Thus it must comply with its provisions and agree to be subject to monitoring in this regard this is done by submitting periodic reports (Abdelkader)³⁹ on the implementation of the convention to the human rights committees which form real pressure on governments (Boujaadar & Rahmani, 1440 AH-2018 AD) . These reports submitted by State Parties are considered as an official document submitted to the Secretary-General of the United Nations in accordance with Article 18 of the Convention and the guidelines for the preparation of reports established by the United Nations.

These reports fall into two categories. Initial Report that are submitted in the first year following a State Party's ratification of the Convention, it aims to provide a clear and accurate picture of the framework within which the convention will be implemented, and Periodic Report, Submitted by the State Party every four years, it is generally less detailed than the initial report. Through these reports, the CEDAW Committee can assess:

- The positive impact of States' compliance.
- The gap between legal provisions and their implementation.
- The changes in the overall status of women resulting from accession to the Convention.
- The difficulties or obstacles encountered in fulfilling the obligations under the Convention.

Submitting Reports to the CEDAW Committee passed through preparation stages, in which all countries in the region have consistently prepared their initial and periodic reports, although State Parties may not always be able to complete their reports on time, leading to outdated information and an inaccurate representation of a country's progress. This undermines the report's effectiveness as a tool for monitoring and evaluating the implementation of the Convention. Consequently, strategies developed to pressure governments in the region at both the local and regional levels. This began with the launch of a regional campaign under the slogan "Equality without Reservation" in Rabat in June 2006. The campaign's work started with the establishment of its coordinating committee, which aims to operate at both the regional and national levels. It is also necessary to develop national strategies to advocate for and support these efforts at the local level of each country.

It is worth noting that the Algerian Constitution determines that international treaties take precedence over domestic Constitution (Article 132 / 1996; Article 150 / 2016). In line with this principle, Algeria has been actively working through various governmental and non-governmental sectors implement the provisions of these agreements effectively.

Algeria has established several institutions and mechanisms to monitor the implementation of its national policy on the protection and promotion of women and the constitutional principle of gender equality. The most important of these include the Ministry of National Solidarity, Family and Women's Issues. The National Council for Family and Women, established in 2007 as an advisory body composed of representatives from various government sectors, associations, university professors, and researchers, which provides opinions and recommendations on all matters that could enhance women's status and strengthen social cohesion among family members.

- The National Council for the Promotion of Persons with disabilities, also an advisory body.
- The National Council for Human Rights, established under the provisions of the 2016 Constitution, which has established a committee for women, children, and vulnerable groups; the Gender.
- Focal Points Committee, established in November 2016, composed of representatives of government sectors and national bodies, working to develop programs and activities to empower women to achieve equality with men and

development in all areas, and trying to integrate the gender concept into all sectorial programs and collect data on women's participation in all fields. A National Sectorial Committee tasked with monitoring the implementation of the sustainable development goals, composed of relevant government sectors. This committee prepared the national progress report (2016-2018) on achieving the Sustainable Development Goals in Algeria with a view to presenting it voluntarily at the United Nations in July 2019. This is being done despite the potentially significant negative impacts on women the family and society as a whole as we will discuss later.

First requirement: The Destructive Provisions for the Family stated in CEDAW Convention and its Implications on the Family

First section: The Destructive Provisions for the Family stated in CEDAW Convention:

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is founded upon the principle, that there are differences between men and women are not biological but it is rather the result of societal views of each. Therefore both women and men can perform and take on each others roles which leads to a change in how men and women perceive themselves. This ultimately leading to serious consequences including marriages between homosexuals or individuals transitioning to the opposite gender if they do not have the ability for a man to be a man or a woman to be a woman (Boujaadar & Rahmani, 1440 AH-2018 AD).

- The convention has not taken into account the biological differences between men and women which will negatively affect women who will find themselves tasked with duties that they are naturally incapable of performing both physically and psychologically (Boussaidia & Ghabouli , pp. 644-663).
- The convention is fundamentally done on absolute equity between men and women which is a flawed principle according to the Quranic verse "And the male is not like the female" (Surah Al-Imran, verse thirty six), and the Prophet's saying: 'Women are the counterparts of men' (Sahih al-Bukhari). A counterpart is a complement, not an equal. Differences in biological functions necessitate differences in external roles; similarly, differences in life roles require differences in rights and duties (Al-Nadjimi, 424 AH - 2007 AD, pp. 42-43).
- The convention is full of antagonism between men and women and see sharing of roles equal (Al-Nadjimi, 424 AH - 2007 AD, pp. 42-43) between them as mandatory.

- The convention has neglected women's duties and focused only on their rights (Al-Nadjimi, 424 AH - 2007 AD, pp. 34-35).
- It has granted women the right to give their name and nationality to their children, which is contrary to Islamic law.
- The convention has called for the elimination of any typical concepts about the roles of men and women in life, which will lead to family breakdown, where the women are the first victims.

As a part of its educational reforms and fighting the stereotypes, Algeria has taken significant steps to eliminate traditional gender stereotypes from textbooks. These materials now portray women in diverse and empowering roles, such as educated professionals, athletes, and leaders. The curricula also emphasize the importance of shared household responsibilities among all family members. A study (2017) on women in the media in Algeria revealed that women hold approximately 40% of leadership positions in the media sector. Furthermore, women are increasingly represented in positions of authority within the broadcasting sector. For instance, 15 women have been appointed as directors of local radio stations out of 48 directors. Public television and radio networks have introduced programs that address women's issues, showing successful female role models, and promote gender equality. These programs often prioritize rural women and highlight their contributions to society. To further promote gender equality through media, the Algerian Ministry of Communication, in collaboration with UN Women, has organized training workshops in the benefit of 50 journalists from both genders on the concept of gender sensitivity and the eradication of stereotypes. Second training for the benefit of 20 media professionals, which included several practical workshops. Additionally, Algeria has focused on empowering women economically through job creation and poverty reduction. As of 2018, women constituted 61.29% of the workforce in judicial institutions, and they held 59.99% of senior positions. Algerian women are also well-represented, where we record 07 women in the ambassadorial corps, 05 consuls, 04 consuls general, 06 women in the diplomatic corps and in UN human rights bodies.

- The convention has described motherhood as a social function that can be performed by anyone, allowing women to dedicate themselves to paid work, which is considered the primary task.
- Despite the fact that there is no comparison between the role of a mother and any other role, and no one can replace her, not even the father, the convention

ignores the unique nature of both women and men and their complementary roles (Boussaidia & Ghabouli , pp. 644-663).

- Article 2 of the convention implies that the assigned countries must annul all charts, regulations, and customs that discriminate between men and women in their laws, even those based on religion. This is a clear violation of Islamic law, and under these laws, all Islamic provisions related to women are annulled, and it is not allowed to refer to or rely upon them. Allah says to his messenger Mohammed in surah Nisa verse sixty five, that they will not have faith in him until he made judges between them.
- Article 16 grants women equality rights with men in marriage guardianship a spouse choice guardianship rights and children custody, as well as the right to choose a family name. It equates men and women to such an extent (Al-Nadjimi, 424 AH - 2007 AD, pp. 42-43) that it uses the terms "man" and "woman" instead of "husband" and "wife." Article 16 is considered one of the most dangerous articles in the convention, as it represents a bundle of violations of Islamic law. Among these is the call to annul guardianship (which was done in Algerian family law by annulling Article 39 and amending Article 11 of Law 84/11, as amended and supplemented by Decree 05/02). As a man has no guardian, so, according to this clause, any kind of guardianship or custody over a woman is annulled, based on the principle of absolute equality between her and the man. Thus, a daughter can marry whomever she wishes, even if he is an unbeliever, without the permission of a guardian. The Prophet statement focuses on the women marriage validity when her guardians are present thus to be regarded valid in Islamic law (reported by al-Tirmidhi, and authenticated by al-Albani). Likewise, children can bear the mother's name as well as the father's, while Allah says name your children by their father's name it is fairer to him(Surah Al-Ahzab, verse five).
- Prohibiting polygamy, on the basis of equality between men and women, as women are not allowed to have multiple husbands, and Allah says: { **then marry those that please you of [other] women, two or three or four** }. (Surah Nisa, verse three).
- The CEDAW Committee of the United Nations commented on the reports of some Islamic countries regarding polygamy: 'The reports of the parties concerning the practice of polygamy in several countries that polygamy is contradicted with women's rights when equating between men. Which can

have serious emotional and material consequences for women and their dependents, and therefore must be prohibited.

- Annulling the waiting period for women (after divorce or the death of the husband) so that they are equal to men, who do not have a waiting period after divorce or the death of their wives. Allah says: "And when you divorce women and they have fulfilled their term" (Surah Baqarah, verse two hundred thirty two), meaning they are nearing the end of their waiting period.
- Annulling the guardianship of men in the family altogether, as Allah says, **"Men are in charge of women"** (Surah An-Nisa, verse thirty four).
- The inheritance necessity of equality in, and if a man takes a larger share, it is at the expense of the woman's share in the inheritance."

Second section: The Implications of Algeria Ratification of CEDAW convention on Women and Family.

The desire of the Algerian legislator to involve the wife in the management of family affairs is similar to other Arab and Maghreb legislations, especially in matters related to childbearing, raising children, and bearing the responsibilities arising from managing married life. This has led to many practical problems that have become a source of the dissolution of the marital bond in Arab society in general and Algerian society in particular. This has reflected on the status of women and their marital rights on one hand, and the continuity of married life on the other ^(Ben Hamla).

The transformation of the legal status of the wife underwent in the Algerian Family Law after the 2005 amendment, has created an imbalance in marital rights and duties, especially for the wife, who has come to bear marital responsibilities, particularly financial ones, which were not recognized by Islamic law. In contrast, no provision for her most important rights that guarantees a woman's status in marital life and ensure its stability and continuity, all under the equality between men and women preventing the husband's abuse and giving women more freedoms, as these conventions promote in this area.

This transformation has also become a source of the dissolution of the marital bond in Algerian and Maghreb societies, whether in cases of divorce, or consensual divorce, as well as cases of "khule" (a wife's right to initiate a divorce

by returning her dowry). The recognition of the husband's guardianship and his heading of the family is a core matter and a basic principle for the establishment of the family and the management of its affairs, and a source of its stability and continuity, as recognized by Islamic law. Any interference with it is an interference with the family unit as a whole and a destruction of its foundation (Ben Hamla). The traditional authority of men in general has changed and become subject to competition. Therefore, relationships within the family, whether with respect to the husband, children, or wife, are based on understanding and cooperation in the first place. Discussing the center of authority leads to a family breakdown, especially if the man insists on retaining his traditional authority.

The position and role of the husband and wife have changed because of the change in the economic basis on which the family is based, especially when it became possible for the wife to be economically independent of the man. This led to the divorce rate augmentation and increased family breakdown as a result of family relationships not keeping pace with the change that occurred in the roles and positions of members. Moreover, with the collapse of the division of labor time outside the home, women get into professions that were once exclusively for men, and the increasing difficulty in finding professions exclusive to men, this shared participation in the same professions has led to increased competition and conflict between them (Ben Hamida , 2014).

THE IDEAL SOLUTION TO PRESERVE WOMEN AND THE FAMILY

The truth is that laws in Western societies aim to confirm and enhance the desires of individuals and work to avoid infringing on their absolute freedoms, even if this contradicts the laws of nature. As for Islam, which God has legislated as a religion for humanity, it is a comprehensive divine law that purifies souls from the vices of the pre-Islamic period, regulates relations between individuals and societies, and pays great attention to building the family as the cornerstone of society (Techoir, 2008, p. 91) .Therefore, everything that undermines the Islamic principles and identity, and seeks to exploit women's issues to impose Western family models, or aims to dismantle Islamic law in Islamic societies, must be resisted (Boujaadar & Rahmani, 1440 AH-2018 AD).

Hence, Algerian legislators in particular, and Maghreb legislators in general, must address these shortcomings, and retract the amendments that undermined the

principle of men guardianship, which is considered the cornerstone of building the family in Maghreb societies. They should clarify the marital rights and duties of both spouses by God's law, to preserve the unity of the family and protect the rights and status of women within the framework of the marriage contract (Ben Hamla). It is necessary to denounce such agreements, in accordance with the provisions of Article 26, which states, "Any contracting country may, at any time, denounce this convention by a notification addressed to the general secretary- of the United Nations."

After this brief overview of some of the legislations found in international conventions that claim to defend women's rights, it becomes clear that they are nothing more than a shock to the foundation of the Muslim family, a tool for dismantling its cohesion. This is natural, as long as those who have formulated and legislated them still do not understand the meaning of their existence in this life except for frivolity. The irony is that with good intentions, we want to protect women and through them protect men, children, and the family as a whole, while at the same time contradicting our legislations that do not conform to the provisions of our noble Sharia, which we have postponed and delayed, and even canceled, to keep pace with the world. This is one of the shameful fallacies that will inevitably lead to slips and disasters that Islamic societies will pay the price for since we are trying to push women into a vicious cycle of conflict between them and men, even if he is her guardian and the one who is responsible for her. Therefore, I emphasize the need to adhere to the provisions of Islamic Sharia, especially those that organize family relations. We must withdraw and completely dissociate ourselves, as soon as possible, from the poisonous foreign legislations that destroy our families and societies before it is too late.

CONCLUSION:

After this brief and quick presentation of some of the legislations included in the international conventions that claim defending women's rights, which have become clear to us that they are a kind of shocking blow to the structure of the Muslim family; and a tool for dismantling its cohesion. This is obvious since the one who formulated and codified it seems to view life as little more than a frivolous futility.

It's ironic that, in our well-intentioned efforts to protect women, and consequently men, children, and the family as a whole, and at the same time we contradicted the principles of our sacred Islamic legislations, by postponing, delaying, or even

abandoning our laws to conform to global standards, Such actions inevitably lead to societal decay and instability of Islamic societies. Since we are trying to involve women in a cycle of stupid conflict against men even if he is meant to be the guardian and supporter. Therefore, I emphasize the necessity of adhering to the Islamic ruling, basically to those that organize family relationships, We must immediately withdraw from this foreign legal laws that threatens and destroys our families and societies before the time limit has passed families and societies before the time limit has passed.

References:

1. Abed Raouf Ibn al-Mannawi. (1990). *Al-Taqwif ala Muhimmat al-Taarif*. In A. H. Hamdan (Ed.), 'Ilm al-Kutub. Cairo.
2. Ahmed Al-Zarqa. (2004). *Introduction to general jurisprudence* (2nd ed.). Dar al-Qalam.
3. Attia Saqr. (2006). *The Family Under Islamic Care: Marital Rights*. Wahba Library.
4. Mohamed Rifeat Otman. (1991). *Rights, Duties, and International Relations in Islam* (4th ed.). Dar al-Diyaa.
5. Mohamed Sakhal Al-Madjadji. (2010). *Al-Mohadheb fi al-Fiqh al-Maliki wa Adilatohu*. Dar al-Waei.
6. Mohamed Zaki Abd al-Bar. (1986). *The Codification of Islamic Jurisprudence: Principle, Methodology, and Application* (2nd ed.). Ihya al-Turath al-Islami.
7. Mostafa Al-Adaoui. (1996). *The Jurisprudence of Interaction Between Spouses and Glimpses from Prophethood*. Dar Ibn Rajab.
8. Nacer Edine Al-Baydaoui(2010). *Anwar al-Tafsir wa Asrar al-Tanwir*. Dar Ihya al-Turath al-Arabi.
9. Salem Al-Raffi. (2002). *The Rulings of Personal Status for Muslims in the West*. Dar Ibn Hazm.
10. Wahba Al-Zuhayli. (2003). *Al-Tafsir al-Munir* (2nd ed.). Dar al-Fikr.
11. Abbas Abdelkader. (Year). Title of the article. *Journal of Law and Political Sciences*, Volume (Issue), pages.
12. Ben Hamida Hind. (2014). *Women's work between family duties and professional challenges*. Humanization Journal for Research and Studies, 11.
13. Ben Hamla Sami. (Year). Title of the article. *Journal of Legal and Political Research*, University of Mohamed Seddik Ben Yahya, Jijel, Special volume1, Issue1, p.165-175.
14. Boussaidia Abdelraouf & Ghabouli Mona. (Year). Title of the article. *Academic Journal of Legal Research and Studies*, No. 3, pp. 644-663.
15. Mohammed Bouqraa. (2023). *Fundamental Codification and its Impact on Doctrinal Incidents - the Arabized standard as a model*. Journal of Sciences and Horizons of Knowledge, University of Amar Talji, Laghouat, Algeria, 3(1), p.69-95.
16. Techoir Jdilani. (2008). *Globalization of law and its impact on family provisions*. Algerian Journal of Legal, Economic and Political Sciences, Faculty of Law, Issue 3, p.91.
17. United Nations. (2019). *The National Report on the Implementation of the Beijing Platform for Action after 25 Years* (Beijing+25).
18. Hani Boujaadar & Ibrahim Rahmani. (2018). *The Convention on the Elimination of All Forms of Discrimination against Women and its Effects on the Foundations of the Family*. Second International Forum, Jurisprudential Developments in Family Provisions, Institute of Islamic Sciences, El Oued.
19. Mohamed Mahdi Lakhdar Ben Nasser. (2018). *Mechanisms of formulating the legal jurisprudential article* 177-194. Al-Ihya, 21, Ramadan.

20. Mohamed Yahya Al-Nadjimi. (2007). *Women's rights and the CEDAW Convention, a critical and purposeful reading*. Islamic Thought Forum, 42-43.