

# THE ARAB WOMAN'S LEGAL SITUATION AND CEDAW\*

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Through signing CEDAW, the international community acknowledged woman's dignity and recognized her rights. In the name of Islam, however, many Arab countries refrained from signing CEDAW, and even those countries which signed it attached to it a number of reservations. In the name of Islam, the principle of equality between men and women in regard to civil, economic and social rights is considered a western and foreign import. This supposed incompatibility lead Dr. Banani to present a comparison between the present legal status of the Arab woman and the status to which CEDAW ideally aims.

In her paper, Dr. Banani draws a comparison between the personal status code and CEDAW through two domains: the family and public life.

## FAMILY

### *A. Woman's status in the family according to the personal status code*

The personal status code that sets the rules for family relationships in most Arab countries is an expression of the worst forms of discrimination against women. This discrimination can be detected before, during, and after marriage. The legislator prevents the Muslim woman from marrying a non-Muslim, thus limiting her freedom in choosing her spouse. While the man is allowed to sign the marriage contract himself, the woman is obliged to entrust a male guardian with signing for her. Thus, a woman cannot express her satisfaction or discontent with the contract. Besides, the legislation strongly supports the traditional distribution of roles within the family, and the hierarchical structure of the family. Breaking the marriage contract is made so easy for the husband who enjoys the absolute right to divorce; However, it is not made as easy for the woman who will have to resort to court if she wishes to have a divorce. Discrimination continues to express itself even after marriage is broken. A divorcee with children loses custody of her children once she re-marries.

### *B. CEDAW*

Unlike the personal status code adopted in most Arab countries, CEDAW maintains equality between men and women in all matters related to marriage and family. Both men and women enjoy the same rights in relation to the choice of spouse and residence. Both are entitled to the same rights and responsibilities during marriage and after its dissolution. Both enjoy guardianship over their children and the ability to give them their nationality.

As mentioned above, the Arab countries which have

signed CEDAW imposed reservations on a number of articles. Most of these reservations are related to family and marriage matters. However, since it is stated in the second paragraph of the twenty-eighth article of CEDAW that "it is not permissible to express any reservation that contradicts with the primary aim of CEDAW", and since the aim is the elimination of all forms of discrimination against women and achieving equality among the sexes in all aspects of life, one inevitably wonders whether the reservations expressed by the Arab countries are valid from the legal point of view? The justification provided by the Arab countries that ratified the convention regarding the reservations that were made on certain articles which contradicted with the Islamic legislation leads to the following debate: what is meant by the term "Islamic legislation?" Does the term refer to the legitimate laws or the legislative ones, to religion itself or religious thought, what is considered heavenly and what is provisional? She then asks, "Doesn't justifying the imposition of reservations by Islam offend Islam? Doesn't it mean that woman's inferiority is sanctified in the holy text? Is Islam to be held responsible for the Arab Muslim woman's status at the end of the twenty-first century? One wonders why cultural identity is emphasized most when the issue of equality among the sexes is dealt with.

## PUBLIC DOMAIN/LIFE

### *Woman's Status in Public Life in the Arab Countries*

Woman's status fluctuates between equality and discrimination. Whereas equality is stressed when referring to the woman in general, discrimination is clear when talking about the married woman in particular. Thus, in the personal status code, there are two types of women: one who enjoys equality, and another who doesn't.

#### *1. The Woman who Enjoys Equality*

Arab constitutions in general support the principle of equality between men and women in the public domain. Both women and men have the right to education, paid work, participating in syndicates and playing an active role in political life. Woman's equality is further supported through a number of special laws related to different spheres of the public life.

#### *2. The Woman who Doesn't Enjoy Equality*

In many areas, women are still subject to discrimination. There is still a firm conception that women cannot perform certain jobs. The traditional view regarding the distribution of roles is still prevalent despite the changing reality. Discrimination in the Arab constitutions is sometimes introduced under the title of "protection". Just as the woman needs to be protected so does the man. In case of working in factories, for instance, poisonous dust is likely to harm both men and women alike. In addition, in several instances of protection, the woman is linked

with the child, and one wonders whether this association implies that women are perceived as immature or lacking the ability to judge. Protective measures are certainly one form of discrimination, based upon an ideological and patriarchal heritage that emphasizes the difference of woman's biological makeup that limits her participation in the labor force. There is no real difference between what may harm man's health and what may harm woman's health. Thus, protection should include both sexes. Even those laws that emphasize women's equality are not manifested in reality: although women enjoy the same political and educational rights, they tend to lag behind men both in the political and educational spheres.

**CEDAW**

CEDAW maintains equality among men and women not only in relation to family matters but also in relation to social, cultural, economic and political matters. CEDAW supports what is stated in the International Convention for Human's Rights. It clearly states in the second article that all signatory countries have to take the necessary measures to ensure equality among the sexes in their national constitutions and all relevant laws. It also affirms that signatory countries should eliminate all social, political and economic forms of discrimination against women in order to enable them to practice all their rights which are related to education, professional and vocational orientation, social security, legal competence, and the right to sign contracts and run their own businesses.

Apparently this article and others related to family, nationality and the public life were subject to reservations imposed by Arab

countries which signed CEDAW,

Based upon the second paragraph of article 28 of CEDAW which states that reservations contradictory to the primary aim of the convention are not permitted, one wonders whether the reservations made by the Arab countries are legal. Seemingly the status of women in those Arab countries which have signed the convention does not seem to have improved. Within this context, one could say that the restrictions imposed on woman's right to travel remain, even within the signatory countries which did not make reservations on the fourth paragraph of article 15 related to the free movement of people. Some of these countries still require the husband's approval for the woman to acquire a passport, while some request the guardian's approval of woman's application for a visa, even if the

guardian was under age (Sudan). Discrepancy also exists in the area of education. Although there is no discrimination between the sexes in laws related to compulsory education and the provision of equal opportunities, the laws remain merely theoretical. The policy of obligatory education is far from applied especially in rural areas, and thus the percentage of illiteracy is still considered high among women. There is a clear contradiction between the Arab countries' attitude towards CEDAW and their real and practical attitude towards women. It is interesting to note that none of the signatory Arab countries has published its ratification of CEDAW in the official newspaper - a necessary procedure for endorsement - a sign that ratifying CEDAW has been mostly a measure of diplomatic courtesies.

In light of the above, the Arab countries that signed the convention did not take the necessary measures to eliminate all forms of discrimination against women as required by CEDAW. Thus, the position of Arab countries fluctuates between ratification, reservation and lack of commitment. One wonders whether teaching the convention in law institutes will stimulate thinking about the most effective measures needed to ensure CEDAW implementation. The fact remains that CEDAW has a greater legal force than all internal laws and, therefore, Arabs need to drop all reservations they have imposed on CEDAW because a just society requires having equal and fair laws.

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*don't you worry, we have a man to protect us*



Picture credit: Daïffa, Women's Algeria (drawings)