

Protection of Women's Rights in Algerian Legislation

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Abstract:

Algerian women, like the broader population, endured significant hardships during the French colonial period, yet they played an active and courageous role in the struggle for national liberation alongside men. Independence in 1962 fulfilled aspirations for national freedom but also marked the beginning of a new struggle: securing women's rights and freedoms within a modern society.

In line with many conservative societies, Algerian social structures remained strongly attached to traditional principles and cultural norms, which imposed limitations on women's freedoms and rights. These restrictions were often codified in the country's constitutions and internal legislation, shaping the social and legal environment in which women lived. As a result, post-independence advocacy focused on challenging and reforming legal provisions perceived as unjust or discriminatory.

This struggle was marked by tension between two opposing currents: one advocating for the abolition or reform of restrictive laws, and the other emphasizing the preservation of certain legal provisions as newly acquired rights or social protections. Navigating this dynamic required resilience, strategic advocacy, and sustained engagement with both legal and societal structures.

The evolution of women's rights in Algeria reflects both the progress achieved since independence and the ongoing challenges in attaining full legal and social equality. This historical and legal trajectory underscores the determination of Algerian women and highlights the continuing importance of reform, advocacy, and societal dialogue in advancing gender equality.

Keywords: *Women; Rights; Freedoms; Injustice; Constitution; Legislation; Algeria.*

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Introduction:

The Algerian people have long suffered from violations of their rights, particularly their most fundamental right—the right to exist. ⁽¹⁾

They endured massacres and torture during the colonial period, as acknowledged by leaders of the French army. After a long and arduous struggle, Algeria gained independence on July 5, 1962, leading to the establishment of a sovereign Algerian state, which was crowned with its first constitution in 1963 ⁽²⁾.

After independence, demands were no longer limited to basic civil and political rights, but also to economic, social and other rights. Algerians sought more comprehensive rights, including cultural rights, identity recognition and women's rights. The latter were particularly strongly represented by associations and political parties. At the same time, these rights received great attention from the authorities at various stages, both through the successive Algerian constitutions since independence and through legislative amendments to bring them into line with international human rights conventions. However, Algeria expressed reservations to certain treaties or specific provisions, especially those that conflicted with national legislation on family and nationality laws. ⁽³⁾

First Main Title:

Despite these reservations, women's rights and their legal protection in Algeria have seen significant progress in recent years, especially with the constitutional amendments of 2008 and 2016, as well as revisions to the Family Code and Penal Code aimed at strengthening women's rights. Nevertheless, the issue of advancing women's rights remains highly debated. One perspective argues that women have yet to achieve full equality with men, while another claims that women have been granted more than necessary.

1-Chetab Kamal, *Human Rights in Algeria: Between Constitutional Reality and Lost Reality*, Al-Khaldounia Publishing House, Algeria, 2005.

2-Noura Yahiaoui, Ben Ali, *The Protection of Human Beings in International and Domestic Law*, Houma Publishing House, 2006.

3-Amar Yahiaoui, *Equality in Rights between Men and Women in International Law and Algerian Legislation*, Al- Amal Publishing House, 2010.

This raises the central question: To what extent do the Algerian constitution and ordinary legislation align with the demands for advancing women's rights? Which rights have received the most legal recognition and reinforcement?

To address this issue, I will examine the following aspects:

First: Women's Rights in the Algerian Constitution.

1. Women's Political Rights
2. Economic and Social Rights

Second: Women's Rights in Algerian Ordinary Legislation.

1. Criminal Protection of Women's Rights
2. Protection of Women's Rights in the Algerian Family Code

Chapter One: Women's Rights in the Algerian constitution

The constitution is the supreme legal document that establishes the constitutional rules governing the state's system of governance, the three branches of power—executive, legislative, and judicial—in terms of their composition, jurisdiction, and relationships, as well as individual rights and freedoms. Given its status as the highest legal authority in the state, the Algerian government has sought to address important matters concerning individual rights and freedoms within its provisions. Consequently, the country's leadership has amended the constitution to align with political, economic, and social developments. These amendments have included measures to promote women's political rights, which will be discussed in the following section.

Section One: Promoting Women's Political Rights in the

Algerian Constitution

The 1996 Algerian Constitution was amended in 2002 and 2008 at the initiative of the President of the Republic, with the Constitutional Council providing a justified opinion and parliamentary approval, without being subjected to a public referendum. These amendments aimed to achieve three main objectives:

1. Protecting the symbols of the revolution, promoting the documentation, and teaching of history.
2. Advancing women's political rights.
3. Allowing the President of the Republic to run for more than two terms and restructuring the internal organization of executive power¹.

Our focus in this study is the second objective—advancing women's political rights. This was enshrined in Article 31 (bis) of the 1996 Constitution and later reinforced by Article 35 of the 2016 Constitutional Amendment, which states: «*The state works to promote women's political rights by expanding their opportunities for representation in elected councils. An organic law shall determine the implementation modalities of this article.*» This highlights the political reforms undertaken by the Algerian state since 1999 to empower women in exercising their political rights. It reflects the state's commitment to gender equality, aligns with Algeria's international obligations, and seeks to increase women's representation in elected councils. This initiative also acknowledges women's contributions and sacrifices during the armed revolution and national crises.

To further this commitment, **Organic Law No. 03/12 of January 12, 2012**, was enacted to regulate the expansion of women's representation in elected councils. This law introduced mechanisms to ensure its implementation and was first applied in the **2012 legislative elections**, leading to a significant increase in female representation within elected bodies, thanks to a mandatory quota system²—a form of temporary positive discrimination.

Additionally, the **2020 Constitutional Amendment** introduced **Article 40**, which protects women from all forms of violence in all places and circumstances, both in professional and private settings. This article also mandates the provision of reception facilities and legal assistance for women. Moreover, **Article 68** reinforces the principle of gender equality in employment,

1- Sultani Laila Fatima, Article: Rights, Freedoms, and Duties under the Algerian Constitutional Amendment of 2016, Jil Research Journal, Issue 07, October 2016, Algeria.

2-abbas Ammar. Constitutional Amendments in Algeria: From Constitutional Amendment to Constitutional Reform – A Continued Study of Upcoming Amendment Procedures and Content. Journal of the Academy for Social and Human Studies, Issue No. 12, June 2014, pp. 96–108.

as established in the **2016 amendment**, and emphasizes the state's commitment to promoting women's access to leadership positions in public institutions and administrative bodies.¹

Successive Algerian constitutions have guaranteed Algerian women the right to vote and run for office on an equal footing with men. In fact, the 1976 Constitution considered this a duty, stating that "women must fully participate in socialist construction and national development."

Similarly, Article 50 of the 1996 Constitution affirms this right, stating: "Every citizen who meets the legal requirements has the right to vote and be elected," reinforcing the principle of equality between men and women. This principle was upheld by the Constitutional Council in 1991.²

When evaluating the legal and legislative framework in Algeria, it is clear that women's right to participate in political life, whether as voters or candidates, is enshrined in Algerian constitutions and in its commitments to international agreements that promote these rights. This includes the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and other agreements. Electoral laws also confirm these rights, emphasizing equality between men and women. This commitment is further reinforced by labor laws, structural policies, and family law. Overall, Algerian legislation has paid great attention to the role and status of women in society.

Section Two: Women's Economic and Social Rights in the Algerian Constitution

Various Algerian constitutions have recognized economic and social rights for all citizens, especially women. Article 42 of the 1976 Constitution states that "the state guarantees equality in political, economic, social, and cultural rights for women." Similarly, Article 31 of the 1996 Constitution calls for removing obstacles that prevent all citizens from actively participating in political, economic, social, and cultural life. Despite Algeria's transition from a planned economy to a free-market economy in the 1980s, women's position in the economic and social system has not significantly changed. Article 51 of the 1996 Constitution guarantees equal opportunities for all citizens in holding public positions.

1-Presidential Decree No. 20-442 concerning the promulgation of the 2020 Constitutional Amendment – Official Gazette No. 82, December 30, 2020.

2 - Amar yahiaoui previous reference page 230

Article 55 explicitly ensures the right to work for all citizens, with the necessary legal protections.⁽¹⁾

The 2016 constitutional amendment reinforced these principles. Article 34 reaffirmed the provisions of Article 51 from the 1996 Constitution, while Article 69 reinforced the same guarantees. These constitutional provisions align with international labor agreements, particularly those from the International Labour Organization (ILO).

These agreements aim to eliminate discrimination against working women and promote equal employment opportunities.

A significant new addition in the 2016 constitutional amendment was Article 36, which states that "the state works to promote gender parity in the labor market and encourages women to take leadership positions in public institutions and administrations." This article strengthens the principle of equality in employment by actively supporting women in leadership roles, complementing previous constitutional texts on women's rights.

By ensuring equal work opportunities and promoting gender balance in leadership positions, Algerian constitutions have positively influenced related rights, such as equal pay, social security, healthcare, rest periods, and paid leave. However, providing legal and social protection is not enough; economic empowerment is also necessary. Women must receive fair wages based on objective criteria, such as working hours and productivity.

The state's commitment to gender equality in economic and social participation requires creating the conditions that allow women to achieve their full potential in society.

Chapter Two: Protecting Women's Rights in Algerian Legislation

Most Algerian domestic laws align with international legal standards regarding women's rights, particularly in achieving gender equality¹ and eliminating all forms of discrimination. However, some contradictions remain, particularly in family law, which is based on Islamic principles. As previously mentioned, the Algerian Constitution includes multiple provisions protecting women's rights, influencing the country's ordinary

1 -Ben Ahmed Mohamed, *The Algerian Protection of Women's Rights in Algerian and Egyptian Legislation: A Comparative Study*, New University House, (Alexandria, 2017).

legislation. This chapter explores how Algerian law protects women through criminal law and family law.

Section One: Criminal Protection of Women in Algerian Penal Law

The Algerian legislator has placed special emphasis on protecting women through various provisions in the Penal Code and the Code of Criminal Procedure. These legal measures reflect the state's commitment to both deterrence and prevention. The penal approach combines strict penalties for crimes against women with flexibility to protect their well-being, sometimes prioritizing women's interests over strict retribution against offenders¹.

In principle, the Penal Code serves as the primary legal instrument for protecting women from different forms of violence that hinder their role in society. Over the years, legal protections for women have been strengthened and expanded².

The general provisions of the Penal Code punish crimes regardless of the offender's gender or motive, including those committed under the pretext of "honor." The law criminalizes offenses such as indecent assault and rape, imposing prison sentences ranging from five to ten years. If the victim is a minor, the sentence increases to twenty years. Harsher penalties apply when the offender is a relative or holds authority over the victim. These crimes are addressed in Articles 333 to 341 of the Penal Code.

Additionally, the Penal Code criminalizes trafficking in women and girls for prostitution and immoral purposes, as stated in Articles 349 to 362. Algerian legislation provides extensive protections for women, whether as symbols of honor and virtue, as individuals in need of protection due to their reproductive role, or as members of a family unit that requires legal safeguards.

- In 2006, amendments to Law No. 66/156 (originally enacted on June 8, 1966) criminalized sexual harassment, giving victims legal means to seek justice. Article 341 of this law introduced penalties for perpetrators.

¹ Louail Ismail, *The Legal Status of Women in the Code of Criminal Procedure*, Dar Houma, (Algeria, 2000), p. 4.

² Radi Hanan, *Legal Protection of Women from Violence Based on Ordinary Legislation*, *Journal of the Faculty of Human and Islamic Sciences*, (Oran, 2015), p. 390.

- In 2015, further amendments strengthened protections for women. Article 330 penalized husbands who abandon their pregnant wives for more than two months without a valid reason.

• The 2015 amendments also introduced stricter penalties for sexual harassment in workplaces, increasing prison sentences to one to three years and expanding the definition to include any verbal or physical sexual advances.

Second Requirement: Protection of Women's Rights in the Algerian Family Code

The enactment of the Algerian Family Code in 1984 was of great significance, as it became the sole legal framework governing family relations. The Algerian legislator took an important step in establishing an appropriate legal framework for family relationships, despite some deficiencies, which are natural in any law issued for the first time¹

The Family Code No. 84/11, issued on June 9, 1984,² faced numerous criticisms, especially from feminist movements, civil society organizations, and some political parties. In reality, this law does not deviate from the principles of Islamic law (Sharia), even if it does not explicitly state rulings on certain matters. However, feminist movements, organizations, and political parties considered some of its provisions unfair to women, as they institutionalized discrimination against them and reinforced male dominance in many aspects. These include the requirement of a male guardian (wali) for women in marriage, the allowance of customary marriage, and the lack of recognition of a wife's right to marital housing after divorce.³

For instance, Article 52 of the Algerian Family Code originally stated that "if there is only one family home, it should be given to the husband in the event of divorce, as he is considered the head of the family."

1- Lawil Muhammad al-Amin, previous reference, p. 37.

2-The Algerian Family Code No. 84-11, issued on June 9, 1984, was officially promulgated in the Official Gazette (Journal Officiel) No. 24 of 1984

3-Samia Newspaper, Issue No. 15, dated February 27, 2005, p. 18. This order was approved by Law No. 05-09 of May 4, 2005. (C) No. 43/2005.

Similarly, Article 48 faced strong opposition from women's rights activists, political parties, and associations, as it was seen as fundamentally undermining the spirit of the Algerian Constitution, which guarantees equality between men and women. It was also viewed as incompatible with international treaties and agreements ratified by Algeria.

The Algerian Family Code of 1984 was later amended on February 27, 2005, by Ordinance No. 05-02¹. However, this amendment also did not stray from the principles of Islamic law, as Article 222 explicitly refers to Sharia, stating that "any matter not addressed in this law shall be governed by Islamic law."

Among the key amendments were:

- Restricting polygamy by requiring a judge's authorization.
- Providing suitable housing for the mother with custody of children after divorce.²

Reducing the role of the guardian (*wali*) to a ceremonial one, making it only a formal requirement for a valid marriage contract.

Additionally, the amendment abolished proxy marriage by repealing Article 20 of Ordinance 05-02, which had previously allowed a representative to conclude the marriage contract on behalf of the spouse through a special power of attorney. This provision had facilitated forced marriages by allowing representatives to act on behalf of the couple.

Furthermore, Article 40 of the amended Family Code permits DNA testing to establish parentage, significantly improving the legal standing of single mothers and their children.

It is also worth noting that the Family Code includes numerous provisions that strengthen women's rights, such as financial independence, the right to request divorce or inheritance rights, and the ability to manage and dispose of their property independently.

In this regard, Article 38-02 of the pre-amendment Family Code (later reintroduced with minor modifications) stated that each spouse

1- Article 9, Family Code No. 84-11 of June 9, 1984 [Official Gazette No. 24, 1984]. *Journal Officiel de la République Algérienne Démocratique et Populaire*.

2- Article 72, Family Code No. 84-11 of June 9, 1984 [Official Gazette No. 24, 1984]. *Journal Officiel de la République Algérienne Démocratique et Populaire*

maintains an independent financial identity, aligning with Article 16¹ of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Moreover, the Family Code recognizes a complete separation of property between spouses. This system of ownership enhances women's economic independence, allowing them to retain their assets.

In the event of divorce, each spouse retains their possessions, even those acquired during the marriage while both contributed to the household.

Additionally, the 2005 Family Code stipulates that household items customarily used by men should be given to the husband, while those typically used by women belong to the wife. Items of common use are divided between the spouses, as per Article 73, paragraph 2, which also allows spouses to mutually decide on the distribution of jointly acquired belongings.

One of the major gains for women in the new amendment is their right to housing or rental compensation upon divorce. Accordingly, when custody is granted to the mother, she is entitled to rental support², provided that the rental contract is under the father's name. The father is required to cover the housing expenses as part of child support obligations.³

In conclusion, the Algerian Family Code has introduced numerous advancements that safeguard women's dignity, whether before, during, or after marriage and divorce. The legislator has sought to balance the principles of Islamic law, Algerian traditions, and evolving social norms while also aligning with international human rights agreements ratified by Algeria.

Conclusion:

One of the main challenges faced by jurists and legislators is achieving equality and eliminating gender disparities as a continuous goal in the evolution of society. Despite these efforts, discrimination against women remains deeply rooted in all agreements, and women are still expected to reflect biological differences, oscillating between the reality

¹ -The issue of the right to rent in favor of the custodian is decided by the judge competent for divorce, because determining the benefit of the rent is greater than the effects of divorce.

² - Articles 72 of the Family Code

³ - Articles 78 of the Family Code

of social practices, the taboos of customs and traditions, religious obligations, and legal constraints. It is therefore unsurprising that the issue of women in Algeria and elsewhere continues to be the subject of discussions, conferences, and symposiums that receive significant attention.

Since its independence, Algeria's constitutions have given great importance to women, particularly in terms of ensuring their equality with men in rights and duties. This approach has been reinforced by Algerian legislators through various legal provisions aimed at protecting women, whether criminally or economically, securing their financial independence, and preserving their dignity—especially through the Family Code, which has taken a balanced stance between the requirements of social progress, the objections of those who demand stricter regulations, and international agreements. At the same time, it upholds the application of Islamic law in family matters, considering that Algerian society remains conservative.

Additionally, Algerian legislation has not overlooked the economic and social protection of women by ensuring the rights of working women and guaranteeing their participation in economic development. However, the most significant role in raising awareness about women's rights remains with civil society organizations, which can achieve this through media, education, and various public forums.