

The Representation of women in the New Algerian Family Code in relation to marriage and its dissolution

المراة في قانون الأسرة الجزائري الجديد. الزواج وفسخه

Les femmes, le mariage et sa dissolution, dans le nouveau code algérien de la famille en ce qui concerne le mariage et sa dissolution

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Introduction

The present study opts for a critical discourse analysis approach to unveil women's representation in the Algerian legal discourse. For this particular purpose, the new Algerian family code in relation to marriage and its dissolution is examined following critical discourse analysis(henceforth CDA) framework with a special reference to Van Dijk 2004 model of analysis. In fact, the Algerian Family Code is a set of legal articles governing the family relationships. It provides a number of guiding principles for marriage and its dissolution to protect the rights of the family in general and women in particular. Therefore, this study is important to explore a new area of inquiring legal discourse which was given little attention by researchers in this field. Indeed, most of the previous researches about law tackle various issues from a legal or sociological viewpoint solely. However, thanks to critical discourse analysis, that is a multidisciplinary approach, the present research tends to examine the problem under investigation from distinct angles such as social, political, legal, etc.

Hence, the main goal of this research is to develop a better-informed, even detailed understanding of the amended code about marriage and its dissolution by considering the representation of women in legal discourse, and by highlighting the contextual factors that intervene in its production and interpretation. Thus, the target discourse is analysed to investigate how meaning is constructed. More importantly, the main objective of present research is to unveil the ways gender, ideology and power are implicit in the legal discourse about marriage and its dissolution.

Briefly, this study tends to increase knowledge about the representation of women in the new Algerian (2005) family code, as well as finding out the gaps that the legislator overlooked in the aforementioned code.

1. Introducing the Algerian Family Code

The family law is developed in the 20th century, with a particular emphasis on changes in women's rights (Kay, 2000). As for the Algerian Family Code, it is a set of laws which regulates familial relations in Algeria. . It contains some aspects of Islamic law known as shariaa together with some feminist basics. It is composed of four chapters: Marriage and its dissolution, legal representation, succession, and donations and contributions.

1.1. The Concept of Personal Status Law (Statut Personnel)

The civil law regulates two kinds of conditions, in particular and in personal cases. However, the Algerian legislator has set out a special system for personal status, which is called the "family law" because of the nature of the provisions (family affairs and domestic relationships) contained therein. (Nahas, 2007)

Personal status refers to the total relationships and situations that exist between a person and his or her family, and the legal effects of such relations and conditions. The term personal status law was not known in ancient jurisprudence and in Islamic jurisprudence. It is a term invented by Italian jurisprudence in the second and thirteenth centuries AD. As for the Islamic jurisprudence, it divides the provisions into those of acts of worship and those of transactions. It makes provisions related to the family fall within the second category of provisions.

1.2. The Development of Personal Status Law in Islamic Countries

The judiciary in the Arab and Islamic countries is based on Islamic jurisprudence in various areas of life, especially those related to personal status. Despite of the political problems that the Arab and Islamic world has witnessed for long centuries, the personal status law has remained far from the occupier's control despite of the many reform attempts. In fact, the connection of the Muslim world with the occident has led to the separation of personal status issues from the rest of the other legal systems due to their severe impact on their various legal systems and the keenness of the people of Islamic states to keep the family's provisions within the scope of the provisions of the Shariaa.

The emergence of personal status laws in the Muslim world coincided with the independence of these countries from colonization (**Nahas, 2007**). France had sought after Algeria to integrate this field within its legal arsenal, which was subjected to the values and customs of Algerian society, especially in:

1. Act of 2 May 1930 on engagement and the age of marriage.
2. Decree of 19 May 1931 on the legal status of Algerian women.
3. Order 23 November 1944 on the organization of the Islamic judiciary.
4. Law of 11 July 1957 concerning the provisions of the lost, guardianship, and how to prove marriage.
5. Order 17 September 1959 on the organization and dissolution of marriage in Algeria. (Neil, 2007)

After its independence, Algeria sought to regulate the scope of the personal status law. At the beginning, the family court, in accordance with the system of colonialism, retained a legislative vacuum in the decree issued on December 31, 1961, which provided for the continuation of the French law; In violation of public rights and freedoms, the law on the regulation of the age of marriage and the establishment of marital relations was promulgated on June 29, 1963, and on 23 June 1966, 16 September 1969 and 22 September 1971, special orders were issued on how to prove marriage.

The Algerian Family Code was amended by Order No. 05-02 of 27 February 2005, when significant changes to the personal status law (the Algerian Family Code of 1984) were introduced by the government as a response to the suggestions of the minister of Justice Tayeb Belaiz. To repeal the guardian's requirement to marry a woman, to restrict polygamy, to prohibit forced marriages are the main points covered by the new Algerian Family Code (Merzouki, 2010).

2. Theoretical and Methodological Framework

2.1 Approach

The theoretical and methodological framework on which this research is based is CDA specifically by referring to Van Dijk 2004 model of investigation.

Critical Discourse Analysis includes a variety of approaches toward the social analysis of discourse (Fairclough & Wodak1997). It is used as a fundamental discipline to answer some questions about the relationships between language, society, power, identity, ideology, politics, and culture. The rise of CDA has influenced most fields of humanities and linguistics.

Scholars in the field of CDA generally argue that social practice and linguistic practice complete one another and concentrate on how societal power

relations are maintained, exercised and reinforced through the use of language. Besides, Critical Discourse Analysis is a type of discourse analytical study that primarily investigates the way social power abuse, dominance, and inequality are enacted, reproduced and resisted by text and discourse in a particular context (Fairclough, 1989). For a better understanding of the term CDA, an overview of some related terms will be provided in the next few lines.

In fact, in the last decades, critical discourse analysis has become a significant research methodology in a variety of disciplines around the world. Hence, critical discourse analysts take an explicit position, aiming to understand, expose and ultimately resist social inequality.

One of the defining characteristics of Critical Discourse Analysis is that it can be applied in a wide variety of settings and contexts. Wherever there is continuous text, written or spoken, there is a potential analysis of such text. Law, therefore, is a fertile field for discourse analysts. It depicts instances of injustices in social interaction and aims at raising people's consciousness of them. Thus, ideology, power, hierarchy, gender and sociological variables are relevant topics in CDA (Weiss & Wodak 2003, p. 11). Interestingly, Critical discourse analysis essentially considers the ways in which power embedded and exercised in discourse. (Huckin & Clary-Lemon, 2012).

Ruth Wodak (et al., 1997) identifies the goals of critical discourse analysis as follows:

“Critical Discourse Analysis aims to make ideologically distorted, more or less opaque forms for use of power, of political control and manipulation as well as the use of discriminating - e.g. sexist or racist - strategies of suppression and exclusion in the use of language apparent... The critical discourse analysis is obliged to emancipatory engagement and takes the side of those, who have to suffer under political or social injustice”. (p.23-24)

Hence, CDA's purpose is to show how society and discourse shape each other and to reveal the way ideologies, power, and inequality are exercised and reflected in discourse. In addition, CDA views discourse as a social practice.

As far as the data collection and data analysis in the present work are concerned, a number of articles about marriage and its dissolution are gathered from the new Algerian family code and examined within the hypothetical foundation of CDA for the analysis. Moreover, CDA is an important tool to carry out a study on the relationship reflected by written structures and social issues.

2.2. Corpus

The corpus for this study is made up of 15 articles taken purposefully from the new Algerian Family Code which was amended in 2005, issued in Algeria, and run by the republic president from 2005 till the present days. The version of the Algerian family code used in this study is that of 2005 (the most recently amended version), published by Dar Ennadjah Livre in 2006 in Algeria.

2.3. Van Dijk Analytical Framework

Van Dijk's (2004) analytical framework is employed in this research. In this model, Van Dijk introduced two interrelated levels : the micro level which has to do with language, discourse, verbal communication, and the macro level which refers to the power relations, such as bias and discrimination. He identifies 27 strategies which are summarised as follows :

- **Consensus** : Constructing union and cohesion.
- **Actor description** : Describing social actors either positively or negatively.
- **Irony** : Using language that normally signifies the contrary or something different.
- **Authority** : Supporting statements by referring to authorities.
- **Polarization** : Grouping people as belonging to US with good actions and THEM with bad actions.
- **Vagueness** : Creating ambiguity and inexactness.
- **Disclaimer** : Supporting one's idea ; then, in the second sentence presenting it as negative using conjunctions, language markers...
- **Categorization** : Classifying people to distinct groups.
- **Self Glorification** : Elevating and praising Our country/action "positive self representation".
- **Hyperbole** : Enhancing and exaggerating.
- **Number Game** : Ensuring credibility by employing numbers and statistics.
- **Implication** : Presuming or assuming embedded data.
- **Lexicalization** : Referring to the semantic criteria of the words mainly for negative other-representation.
- **Evidentiality** : Supporting one's claims by mentioning hard facts.
- **Presupposition** : Assuming and taking things for granted.
- **Victimization** : Narrating bad stories about persons from the other group "Them" (Van Dijk, 2004,p. 70)

The strategy of polarization is employed in this research. It is divided into two sub-strategies : ‘self-positive-representation’ and ‘other negative representation’. Positive self-representation of the “Us” is a semantic macro- strategy of favoritism. In contrast, the negative other-representation of the “Them” is a different semantic macro-strategy relating to in-groups and out groups negative representation(Van Dijk, 2004,p. 42).

Van Dijk (2004) presents the above sub-strategies of polarization in a form of “ideological square” which creates the following dimensions :

1. Putting emphasis on “Our” positive actions.
2. De emphasising “Their” positive actions.
3. Putting emphasis on “Their” negative actions.
4. De emphasising “Our” negative actions.

3. Sample Analysis and Discussion

In 2005, significant changes to the Family Code of Algeria were introduced by the government as a response to the suggestions of the former minister of Justice Tayeb Belaiz. Repealing the guardian’s requirement to marry a woman and restricting polygamy are the main points covered by the new Algerian Family Code. The representation of women in the target code, vis à vis marriage and its dissolution, seems to be problematic. Thanks to Van Dijk’s (2004) framework, one can notice that women’s representation in the new AFC is typically ideological and depicts women’s social position in the Algerian patriarchal society. They are represented as follows :

Article 08 : It is permissible to marry more than one wife within the limits of the Islamic law, when the legal justification is available and the conditions and intent of justice are provided. The husband must inform the ex-wife and the woman he wants to marry and submit the marriage license application to the president of the court at the marital home city.

Article 09 : The marriage contract must meet the following conditions : - the capacity to marry, - dowry, - Wali, - two witnesses(men), - exemption from legal impediments to marriage.

Article 11 : The adult woman concludes her marriage contract in the presence of her “wali” who is her father or a close relative or any other person(man) of her choice...” Women are represented as weak and unable to make important life decisions, and hence they do not have equal opportunities as men to make their own choices.

The president of the court can authorize the new marriage after confirming their consent and proving the husband's legitimate justification and his ability to provide justice and the necessary conditions for marital life.

The purpose of this article is to protect every wife, from maneuvering, which may be issued by the husband, and to protect the family in general, and the children, who may be born of the second wife. However, the question to be posed here is 'what if the wife refuses polygamy? In fact, if the wife refuses polygamy, she can ask for divorce. If she refuses, and does not ask for divorce, the court automatically applies the principle of divorce.

Article 48: "Divorce is the dissolution of marriage, subject to the provisions of Article 49, below. It intervenes by the will of the spouse, by mutual consent of both spouses or at the request of the spouse within the limits of the cases provided for in articles 53 and 54 of this law.

Article 54: "The wife may separate herself from her spouse, without the agreement of the latter, by paying a sum as *khola* ". In the event of disagreement on the counterparty, the judge orders the payment of a sum the amount of which cannot exceed the value of the parity dowry *sadaq el mithle* evaluated at the date of the judgment.

From the above articles, one can deduce that, in article 48, it is clearly stated that men can easily file for divorce without mentioning the reasons. However, women, on the other hand, can file for divorce (or the so-called *khola*) without their husbands' consent and justifications in return for money. The article 54 seems to ensure women rights and empower them. Nevertheless, when going beyond the limit of the sentences, one can notice the opposite. In the article 54, women are treated as slaves who are obliged to purchase their freedom and negotiate with their master for a price while men are given the total freedom to separate from their wives, in article 48.

Article 65: "The period of custody ends when the male reaches 10 years and the female reaches the age of marriage. The judge may extend the period of custody for the male to 16 years. If the holder of custody (the mother) did not remarry taking into account the interest of the child."

The custodial mother is deprived of her right of custody if she remarries. This article compels women to choose between their private lives and their children neglecting that the best interest of the child generally dictates that children stay with their mothers (except in certain rare cases).

Conclusion

This paper has attempted to critically examine the new Algerian family code, through the ideological polarization of ‘Us’ and ‘Them’ by analysing a set of legal articles about marriage and its dissolution. It has investigated the ideological polarization of us and them in the legal discourse under examination.

The findings of this research have revealed that the target legal discourse reinforces and perpetuates patriarchal values. That is to say, women are represented negatively as weak, lacking control and protection, subordinate to men. On the other hand, men are represented as rational, strong, protectors and providers. In the new Algerian family code, women cannot even take major decisions about their lives as they are considered as irrational. In fact, they are represented as being always in need to men’s support. For instance, when women get married, they need to have a wali (who can be one of the bride relatives or anyone of her choice). In addition, the presence of two male witnesses is required too. Another example, when a woman files for divorce, she will be required either to justify her will or to pay her freedom, whereas men can file for divorce without doing so and his wife do not have any opportunity to refuse divorce.

As far as the dichotomy of positive self-representation of “Us” and negative representation of “Them” is concerned, women are negatively represented in the target legal discourse as belonging to “them” ; nevertheless, men are positively represented as belonging to “US”. That is to say, women or “Them” are represented as subordinate, obedient, and inferior. However, men or “Us” are represented as dominant, superior, and responsible. In brief, since the new Algerian family code is produced and manipulated by males “legislators”, it perpetuates and reinforces gender bias, discrimination and male domination.

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Abstract

This study aimed at analysing Algerian women's legal position between patriarchal conditioning and family code reforms. It scrutinized the Algerian Family Code of 2005, in relation to marriage and its dissolution to examine the implementation of patriarchal values and women subordination within this legal discourse. To investigate this issue, this study opted for Critical Discourse Analysis (henceforth CDA) as an approach. More precisely, in this paper, Van Dijk's (2004) socio-cognitive framework was employed to detect the discursive strategies of 'positive self-representation' and 'negative others- representation' (Polarization of US vs. THEM). The findings of this research indicated that women are discursively represented as inferior obedient, and dependent to men. In brief, the present paper identified how the aforementioned code reinforces men's power and authority, and reflects an existing negative image of women in the Algerian society.

Keywords

Patriarchal conditioning, legal discourse, socio – cognitive, discursive strategies

المخلص

يهدف هذا البحث إلى تحديد الموقف القانوني للمرأة الجزائرية بين التكييف الأبوي وإصلاحات قانون الأسرة. وقام بتحليل قانون الأسرة الجزائري لعام 5002 . فيما يتعلق بالزواج وانحلاله لدراسة تطبيق القيم الأبوية وتبعية المرأة في هذا الخطاب القانوني. للتحقيق في هذه المشكلة ، اختارت هذه الدراسة تحليل الخطاب النقدي (من الآن فصاعداً ت.خ.ن) كنهج. بتعبير أدق ، في هذه الورقة . تم استخدام إطار العمل الاجتماعي المعرفي لفان ديك (4002) لاكتشاف استراتيجيات "التمثيل الذاتي

الإيجابي” و”التمثيل السلي للآخرين” (استقطاب نحن مقابل هم). نتائج هذا البحث أشارت إلى أن النساء يتم تمثيلهن بشكل استطرادي على أنهن مرؤوسين أدنى، ومعتمدين على الرجال. باختصار، حددت هذه الورقة كيف يعزز القانون المذكور أعلاه قوة الرجل وسلطته، ويعكس الصورة السلبية الحالية للمرأة في المجتمع الجزائري

مفتاحية

التكييف الأبوي، الخطاب القانوني، الاستراتيجيات الاجتماعية - المعرفية، الخطابية

Résumé

Cette recherche visait à identifier la position juridique des femmes algériennes entre le conditionnement patriarcal et les réformes du code de la famille. Il a analysé le Code de la famille algérien de 2005, en relation avec le mariage et sa dissolution pour examiner la mise en oeuvre des valeurs patriarcales et la subordination des femmes dans ce discours juridique. Pour étudier cette question, cette étude a opté pour l'analyse critique du discours (désormais ACD) comme approche. Plus précisément, dans cet article, le cadre socio-cognitif de Van Dijk (2004) a été utilisé pour détecter les stratégies de ``représentation positive de soi`` et de ``représentation négative des autres`` (Polarization of Nous vs. Eux). ont indiqué que les femmes sont représentées discursivement comme subordonnées inférieures et dépendantes des hommes. En bref, le présent document a identifié comment le code susmentionné renforce le pouvoir et l'autorité des hommes et reflète une image négative existante des femmes dans la société algérienne.

Mots-clés

Conditionnement patriotique, discours juridique, stratégies socio-cognitives, discursives