

The Muslim family between Sharia and secular thought (CEDAW Agreement)

الأسرة المسلمة بين الشريعة الإسلامية والفكر المدني (اتفاقية سيداو)

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Abstract:

This study aims to highlight the fundamental divergence between the rules and principles laid down by Islamic Sharia for the regulation of family relations and those imposed by civil laws, particularly in societies influenced by Western legal models. The challenge, however, does not lie solely in this divergence itself, but also in the attempts of the new world order to impose its unilateral vision on family-related issues, and in the continuous endeavor to generalize this vision across different cultures and societies, including Muslim communities, without due consideration for their profound doctrinal and cultural specificities.

In this context, the present study seeks to analyze the concept of the family in Islamic Sharia from a precise legal perspective and to compare it with the provisions introduced by civil laws. The objective is to shed light on the points of convergence and divergence between the two systems, as well as to identify the major challenges faced by the Muslim family in light of the ongoing legal and legislative transformations witnessed by these societies.

Key words: Muslim family, Sharia, civil laws. CEDAW Agreement

Introduction

The family is regarded as the cornerstone of society and the foundation upon which human relations are built, as it constitutes the natural environment for the upbringing of generations, the transmission of values, and the preservation of identity. Within Islamic law, the family is granted a special status, being governed by divine rules aimed at ensuring cohesion, solidarity, and the protection of both individual and collective interests. Islamic Sharia establishes the family system on principles such as legitimacy in marriage, equity between spouses, and responsibility in parenthood, thereby ensuring stability and justice within the household.

In contrast, secular thought approaches the family from a different perspective, often prioritizing individual freedoms and contractual autonomy over religious or traditional constraints. Secular legal systems tend to redefine family relations in light of contemporary societal changes, sometimes recognizing non-traditional unions and granting them legal effects similar to those of marriage. This orientation raises fundamental debates on the limits of freedom in personal status matters and on the extent to which the law should intervene in the regulation of family life.

Thus, the comparison between the Islamic approach, rooted in divine command and moral obligation, and the secular approach, grounded in human will and societal evolution, reveals a profound divergence in the philosophical foundations and legal consequences governing the family.

Problematic Question: To what extent can the Islamic legal framework for the family be reconciled with secular perspectives that seek to redefine its structure, and how can a balance be struck between preserving identity and adapting to modern transformations?

In order to address this question, the paper is structured around two main Section:

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1. The Foundations of Family Organization in Islam, which explores the Sharia-based and ethical principles governing family relations, as well as the safeguards established by Islam to ensure its stability and protection.

2. The Family System in Secular Thought, which examines the positivist conceptions of family regulation under civil laws influenced by Western legal traditions, with particular emphasis on the implications of these conceptions for the social and moral fabric of Muslim societies.

1. The Foundations of Family Organization in Islam

In the Islamic perspective, the family constitutes the essential nucleus for building society, as it is the foundational unit upon which the entire social structure is based. The stability and integrity of the family ensure the strength and cohesion of the societal fabric as a whole. Islam has therefore attached great significance to regulating family matters, recognizing it as the natural setting for sound upbringing, the cultivation of values, and the realization of tranquility, affection, and mercy between spouses.

Accordingly, Sharia has laid down firm principles for the organization of family life, starting from the criteria of spouse selection, to the conclusion of the marriage contract with the rights and obligations it encompasses, and ultimately ensuring the continuity of family relations within a framework of responsibility, cooperation, and mutual respect. Through this meticulous regulation, Islam aims to safeguard the family institution from disintegration, maintain its stability, and strike a balance between individual needs and the collective interests of society.¹

1.1. Marriage as a Sharia Contract

From the Islamic standpoint, marriage is far more than a simple social arrangement or a matter of personal preference; it is a Sharia-based covenant that encompasses religious, spiritual, and social dimensions. Its objectives include safeguarding chastity, fostering tranquility, and ensuring procreation, while also serving as a cornerstone for building the Muslim community on principles of compassion and mercy. This understanding is explicitly affirmed in the Qur'an, Surah Ar-Rum (30:21), where marriage is described as one of God's signs, manifesting His wisdom in creating spouses and placing harmony between them. The sense of psychological peace and reassurance that flows from this bond represents its central aim, setting the Islamic perspective apart from purely civil conceptions.)Kazi Abdul Mannan and Khandaker Mursheda Farhana(2025 ‘

By contrast, in positive law, marriage is viewed merely as a civil contract between two consenting adults, subject to dissolution with relative ease at the request of either party. Such a conception overlooks the spiritual and emotional dimensions emphasized in Islam, where marriage is not only a legal contract but also a sacred and social institution founded on responsibility, cooperation, and mutual respect between the spouses.

From a jurisprudential perspective, Islamic law stipulates a set of essential pillars to guarantee the validity of the marriage contract and safeguard the rights of both parties. Among these are: the explicit offer (*ijab*) and acceptance (*qabul*) between the spouses, the presence of a guardian (*wali*), particularly in the case of a virgin woman, the provision of a dowry (*mahr*) as a symbol of respect and honor for the woman, and the attendance of two upright witnesses to attest to the contract. Article 9 of the Algerian Family Code similarly requires the consent of both spouses, the guardian, and the presence of two witnesses, along with the determination of the dowry. This reflects the alignment of Algerian legislation with Islamic jurisprudential principles in protecting the rights of spouses and reinforcing equity within the marital relationship.

1.2. The Reciprocal Rights and Duties Between Spouses

In Islam, marriage is regarded as a framework founded upon justice and complementarity between spouses, rather than on conflict or competition. The marital relationship is based on cooperation and mutual understanding, with rights and duties distributed between the husband and wife in accordance with their natural dispositions, capabilities, and roles within the family. The

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ultimate objective is to achieve balance between their respective rights and obligations in a manner that preserves the stability of the family institution and fosters cooperation in building a household founded on love and mercy.²

The husband in Islam is entrusted with the duty of providing for his family, which includes housing, food, clothing, and medical care, as established in Surah *An-Nisa* (4:34). This responsibility of *qiwamah* (guardianship) does not denote superiority or authoritarian control of the husband over the wife, but rather constitutes a divinely mandated responsibility aimed at ensuring sound management of family life and achieving its stability. The husband is thus primarily accountable for the material and financial needs of the household, a role that corresponds to his position of “leadership” within the family structure.

Conversely, the wife is expected to observe obedience *bil-ma ‘ruf* (within the bounds of Sharia and custom), which excludes blind or absolute submission. Moreover, Islam emphasizes the right to mutual good treatment between spouses, as reflected in Surah *An-Nisa* (4:19), where marriage is depicted as a bond based on kindness and compassion. This ensures that the relationship between husband and wife is grounded in mutual respect and understanding, prohibiting all forms of injustice, humiliation, or abuse.

From a legal standpoint, the Algerian Family Code translates these Islamic principles into explicit statutory rules. Article 36 imposes upon the husband the obligation to maintain his family and entrusts the wife with the duty of good marital conduct and refraining from causing harm. This demonstrates the legal system’s commitment to reinforcing Islamic values in family life and safeguarding the rights of both spouses in accordance with principles of justice and complementarity.

1.3. Equality With Due Regard to Natural Disposition

In Islam, balance between spouses is not founded on the notion of *absolute equality* promoted by modern secular philosophies, but rather on the principle of justice (*‘adl*). Justice entails assigning rights and responsibilities in a manner that corresponds to the natural disposition and capacities of each party.

Unlike the Western-inspired concept of equality, which in its absolute form may blur distinct roles and weaken the family structure, justice in Islam acknowledges the complementary roles of men and women without diminishing the dignity of either. Thus, while Islam permits women to work and participate in society, it places special emphasis on their role within the household, while entrusting men with the obligation of financial support. This represents a functional distribution of responsibilities, not an unfair discrimination.

Consequently, the marital relationship in Islam cannot be reduced to a power struggle, as certain secular perspectives suggest by framing marriage as a contest of competing interests. Instead, Islam conceives marriage as an institution grounded in complementarity, cooperation, and stability.

Moreover, marriage in Islam is not a privilege restricted to the wealthy or elite, but is open to all who seek chastity. This inclusive vision promotes social cohesion and curbs unlawful relationships, which some secular legal systems may tolerate under the banners of *individual freedom* or *open relationships*.

2. The Family System in Secular Thought

In this section, we will analyze the foundations upon which the family system in secular thought is based and compare them with the Islamic system, highlighting the fundamental differences, particularly in terms of concepts, sources of reference, and social consequences. This analysis will draw upon Western legal thought and the legislative models of certain secular-oriented countries, such as France, Canada, and several European states, which serve as both the theoretical and practical reference for this approach.

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2.1. The Philosophical and Legal Foundations of the Family System in Secular Thought

- Marriage as a Civil Contract Subject to Individual Will

In secular thought, marriage is regarded as a purely civil contract. It is not endowed with religious sanctity, nor is it based on a higher legislative authority such as the Qur'an or the Sunnah. Rather, it is regulated by positive law, which derives its legitimacy from the will of the people or the legislative authority, rather than from divine reference.

In France, for instance, Article 144 of the French Civil Code defines marriage as: *“a legal union between a man and a woman, or between two persons of the same sex, founded on mutual consent, and governed by civil rules.”*

This reflects how marriage has been reduced to a formal legal bond, subject solely to the will of the parties, without any religious conditions or spiritual dimension. In some countries, such as Sweden and the Netherlands, marriage may be concluded entirely in civil form, without any religious manifestation, and may be contracted between any two individuals, regardless of whether the relationship is intended for procreation or continuity of lineage.

By contrast, Islam views marriage as a devotional and legal contract aimed at achieving profound human and spiritual objectives tranquility, affection, procreation, and preservation of lineage. Secular thought, however, reduces marriage to a contractual arrangement designed to serve the immediate interests of the parties, with easy dissolution if desires change. This explains the high divorce rates in Western societies, which in most European countries exceed 40%.³

- The Abolition of Natural Roles Between Spouses in the Name of “Absolute Equality”

Modern secular philosophy is founded on the principle of absolute equality between men and women. This principle extends beyond the bounds of justice, as understood in Islam, to the point of abolishing the biological, psychological, and natural differences inherent in both sexes. Within this framework, men and women are no longer perceived as complementary partners with distinct roles, but rather as identical beings expected to perform the same functions both inside and outside the household.

This perspective has led to fundamental changes in the structure of the family within secularized societies. The husband is no longer held responsible for maintenance (financial support), the wife is no longer bound by any duty of marital obedience or child-rearing, and marriage itself is perceived as a purely economic contract that does not necessitate role differentiation, but merely a material partnership terminable at the unilateral will of either party.⁴

In this same context, radical feminist thought, which draws heavily on secular values, has gone further to consider the very institution of marriage as patriarchal and oppressive. It views the family as a mere social construct produced by male-dominated culture to maintain control over women. This notion is evident in the writings of Simone de Beauvoir, who explicitly stated: *“One is not born, but rather becomes, a woman ... The family is a social prison created by patriarchal culture.”* Such discourse questions the very foundations of traditional family relations and calls for their transcendence altogether.

Islam, on the other hand, views the family as a natural and divinely ordained institution, founded on complementarity rather than sameness. The husband is *qawwam* (responsible for provision, protection, and care), while the wife is entrusted with the household and the upbringing of children, in a delicate balance that guarantees stability and mercy. The Prophet (peace be upon him) said: *“A man is a shepherd in charge of his family and is responsible for them; and a woman is a shepherd in charge of her husband's household and children, and she is responsible for them.”*

When the secular model is imposed, with its denial of natural roles and inherent differences, the consequences are evident: persistent family conflicts, soaring divorce rates, decline of maternal involvement in child-rearing, and the erosion of family values that have historically formed the foundation of society. These outcomes are today manifest in Western societies, which face a structural crisis within the institution of the family.

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- Legislations Based on Individual Freedoms Rather than Moral Values
Family systems in secular thought are fundamentally grounded in *individualism*, whereby personal liberty is prioritized over any religious or moral considerations. Matters such as marriage, divorce, procreation, and even extra-marital relationships are regulated within the framework of statutory law, not divine law. Some notable examples include:

- The legalization of same-sex marriage in France (2013) and the United States (2015).
- The legal recognition of *concubinage* (cohabitation without marriage) and the granting of rights comparable to those of formal marriage.
- The legalization of abortion as a woman's right, even up to the later stages of pregnancy (as in certain U.S. states).

All of these developments are justified under the banner of “individual freedoms,” with a clear disregard for natural values or divine injunctions.

In Islamic law (*Shari'a*), freedoms are not exercised in isolation from responsibility. Islam regulates liberty in a way that preserves the welfare of both the individual and society. By contrast, secular thought permits freedom without boundaries, which has produced negative consequences for the family unit, such as:

- An increase in births outside wedlock.
- A decline in formal marriages.
- The disintegration of families, alongside the spread of addiction and suicide.

Ease of Divorce and the Erosion of the Sacredness of the Marital Bond
Within secular legal systems, divorce is considered an absolute right of either spouse and does not require the establishment of harm or serious grounds. It suffices to submit a request to the court, and in some jurisdictions divorce can even be finalized electronically within 24 hours, without any obligation for reconciliation procedures or family mediation. For instance, French Law No. 2004-439 abolished the requirement of proving harm and allowed for divorce by mutual consent, as well as unilateral divorce, known as divorce by *unilateral will*.

By contrast, in Islam, divorce follows a gradual process that emphasizes reconciliation and arbitration prior to dissolution, and it is considered a last resort rather than a swift option. Furthermore, it is prescribed that divorce take place in a state of purity where no marital relations have occurred, reflecting a pedagogical and psychological wisdom. While Islamic law ensures dignity and respect even at the stage of separation, secular divorce often degenerates into contentious legal battles over finances, custody, and alimony.

- Custody and Guardianship Detached from Shari'a or Pedagogical Considerations
In most secular systems, custody is determined according to standardized legal criteria (such as income, residence, or working hours), without necessarily prioritizing the psychological or moral needs of the child. In certain cases, custody may be granted to a parent even if he or she is in a same-sex relationship, provided that this does not contravene civil law. Some countries, such as Canada, even permit same-sex couples to legally adopt children, raising profound educational and moral concerns.

2.2. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Adopted by the United Nations General Assembly in 1979, the CEDAW Convention is regarded as the primary international legal reference for the secular approach to family and women's issues. Its provisions embody a practical application of secular feminist thought, particularly in its conceptualization of family relations, marriage, and gender identity. The following is an analysis of the most relevant provisions of the Convention in relation to family matters:

2.2.1. Full Equality Between Men and Women in Marriage and Family Relations

Article 16 of CEDAW obliges States Parties to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.” This provision compels states to guarantee complete equality between men and women throughout all stages of marriage—from the choice of spouse, to rights and responsibilities within the marital relationship, through to divorce and its consequences.

While this may appear, on the surface, as a defense of rights, in practice it imposes the abolition of any distinct role for the husband rooted in human nature (*fitrah*) or Islamic law. Concepts such as *qiwamah* (male guardianship) or marital obedience are considered forms of “discrimination” to be eradicated, notwithstanding the Qur’anic framework that defines *qiwamah* as a responsibility based on maintenance, protection, and care, rather than as a tool of male domination.

International pressures resulting from this provision have prompted many states to amend their family laws in line with the secular Western model, without consideration for religious particularities. This has included moves to abolish *qiwamah* provisions, grant women unconditional rights to divorce—even where the welfare of the family and children is jeopardized—and impose equal responsibilities for financial support and custody, disregarding the natural and functional differences between men and women.

This approach not only contravenes Islamic rulings, but also represents an attempt to redefine the very concept of family, reducing it from a divinely ordained institution based on compassion and complementarity to a cold contractual arrangement governed by rigid parity. Empirical evidence shows that such a model has led to higher divorce rates, family disintegration, and instability in societies that have adopted it. (Zygmunt Bauman, 2003, p. 56)

2.2.2. Rejection of Any Distinction Based on “Traditional Gender Roles”

Article 5 of CEDAW requires States Parties to “take all appropriate measures to achieve the recognition of the common responsibility of men and women in the upbringing and development of their children,” while defining motherhood as merely a “social function.” Though seemingly balanced, this language in fact denies the natural role differentiation within the family. Motherhood is thus stripped of its innate emotional and spiritual significance and reduced to a delegable social role.

This approach implicitly calls for the erasure of natural differences between men and women, even in functions that are biologically and psychologically unique to mothers—such as pregnancy, breastfeeding, and direct childcare. By contrast, Islam honors motherhood and places it at the center of childcare responsibilities, as reflected in the hadith of the Prophet (peace be upon him): “*Your mother, then your mother, then your mother...*” Such responsibility arises from nature itself, not from a legally imposed duty.⁵

The secular legal transformation has diminished motherhood to a mere function, creating imbalanced family structures where both parents are reduced to legal partners devoid of any innate or spiritual obligation toward the child. Moreover, the state has increasingly assumed a direct role in childrearing, imposing curricula and psychological frameworks that often displace parental influence, thereby weakening familial bonds and subordinating parents to institutional authority.⁶

2.2.3. Opening the Door to Recognition of Same-Sex and Alternative Families

Although the original text of CEDAW does not explicitly mention same-sex marriage, subsequent developments—through supplementary protocols and interpretative practices of the CEDAW Committee—have incorporated concepts such as “gender identity” and “non-discrimination on the basis of sexual orientation.” These expanded interpretations have been deployed as legal tools to support recognition of same-sex marriage, the right of same-sex couples to adopt children, and the

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classification of non-traditional households (not based on the union of a man and a woman) as legal families equal to natural families.

The CEDAW Committee has increasingly pressured Islamic states to reform their family laws, claiming non-compliance with the Convention’s principles. In its periodic reports, the Committee has urged Morocco and Tunisia to abolish polygamy, despite its clear Qur’anic authorization (Qur’an 4:3) with strict safeguards against injustice. It has likewise called upon Jordan and Egypt to abolish *qiwamah* in their personal status laws, framing any gender-specific role as unlawful discrimination.

These demands have even extended to inheritance law, with calls for full gender equality in inheritance shares, in disregard of explicit Qur’anic provisions (Qur’an 4:11–12) that ensure social and economic balance aligned with men’s financial and legal responsibilities.

As a result of these pressures, some Muslim-majority countries have already begun amending their family laws in line with secular frameworks—whether out of fear of economic sanctions or in pursuit of an enhanced international image. However, such reforms have often provoked direct clashes with religious authority and cultural identity, raising serious questions regarding the legitimacy and societal suitability of these new legal provisions vis-à-vis Islamic values.

Thus, the interpretative development of the CEDAW Convention not only reflects a deviation from its original provisions, but also demonstrates how the Convention has been transformed into a platform for promoting a family model fundamentally divergent from the Islamic vision. Consequently, the issue of harmonizing the Convention with Sharia is not merely technical or legal, but rather of profound doctrinal and civilizational significance.

2.2.4. The Absence of Any Consideration of Religion in the Regulation of the Family

CEDAW constitutes the clearest expression of the secular positivist reference framework embraced by contemporary international institutions. It does not recognize any religious regulation of the family, nor does it differentiate between cultures or religions. Rather, it obliges all States to fully comply with its principles, regardless of their normative or legislative backgrounds. This is evident in its preamble, which affirms that discrimination against women “constitutes a violation of the principles of equality of rights and respect for human dignity,” linking such discrimination to obstacles impeding women’s participation in all spheres of life.

This UN approach entirely disregards whether such distinctions are rooted in immutable religious sources or in legitimate cultural choices, thereby creating a direct conflict with Islamic Sharia. In Islam, the family is regulated as a devotional institution with religious, social, and moral functions—not merely as a civil contractual relationship subject to absolute Western-style equality. Through several of its provisions, particularly Articles 2 and 16, CEDAW becomes an official framework for imposing the secular Western vision of the family on diverse legal systems. It seeks to redefine the concepts of marriage, divorce, custody, and guardianship independently of religious reference, and even criminalizes any practice based on such reference if deemed “discriminatory” by Western definitions.

The Convention also seeks to dissolve innate and functional distinctions within the family by imposing a model of “absolute equality” between men and women in all aspects, without regard to the natural disposition (*fitrah*) upon which God created humankind, nor to the complementary roles established by God as a basis for family stability.

Thus, CEDAW embodies the most significant consequences of secular thought on the family: structural disintegration, loss of roles, decline of marriage, and erosion of educational and religious values. It does not merely call for the modernization of family laws, but rather seeks to impose a Western ideological model—one that has already proven its failure in its own context—by forcibly transplanting it into societies with deeply rooted Islamic identity.

3. Critique of the CEDAW Convention from the Perspective of Sharia and Islamic Law

3.1. Fundamental Conflict in Reference and Methodology

CEDAW is founded on a secular positivist reference framework that excludes religion from the legislative domain and regards religious values—including Islamic ones—as among the principal sources of gender-based discrimination, particularly in matters of personal status and family relations. Accordingly, the Convention views any legal system grounded in religious texts as an obstacle to achieving the “full equality” it seeks.

This conception is in direct conflict with the Islamic reference, which views the family as a devotional institution governed by divine law revealed by Allah, and not merely as a social construct subject to human whims. In Islam, the family is based on clear objectives that preserve human nature (*fitrah*), achieve balanced justice between rights and obligations, and acknowledge natural distinctions between male and female.

By contrast, CEDAW obliges States parties to repeal or amend any legal provisions derived from religion if deemed contrary to the principle of “absolute equality.” This practically amounts to a direct targeting of established Sharia rulings, such as the system of *qiwamah* explicitly mentioned in the Qur’an (al-Nisā’: 34), the lawfulness of polygyny under its Qur’anic conditions (al-Nisā’: 3), differentiated shares in inheritance (al-Nisā’: 11–12), and the rules of custody and *‘iddah*, which safeguard family balance and the welfare of the child.

Accordingly, the attempt to impose this unified international model of the family, detached from religious reference, represents not only an encroachment upon the legislative sovereignty of Muslim states, but also a fundamental threat to the identity of the Ummah and its moral and cultural foundations.

3.2. Disregard for Natural Disposition and Biological Differences between the Sexes

Islamic Sharia emphasizes the inherent dignity and equal value of both men and women, affirming that neither gender is intrinsically superior to the other. At the same time, it acknowledges the natural, psychological, and functional differences between the sexes, recognizing that these differences shape the roles, rights, and responsibilities each assumes within society and, particularly, within the family. By assigning responsibilities aligned with their innate capacities, Sharia seeks to maintain harmony and balance, ensuring that both men and women can fulfill their duties effectively while preserving the family as a stable social unit. This approach does not diminish the rights of either gender; rather, it frames them in a context that respects human nature and promotes equitable participation without imposing unrealistic expectations.

In contrast, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) advocates for absolute equality between men and women in all spheres, without consideration for these natural and functional distinctions. While this principle aims to eliminate discrimination, it can inadvertently place burdens on women by expecting them to perform roles for which they may not be naturally or socially suited, potentially undermining their physical, psychological, and social well-being. Furthermore, such rigid equality risks disturbing the intricate balance of family dynamics, which rely on complementary responsibilities and mutual support. By disregarding the differentiated but complementary nature of men’s and women’s roles, policies that adhere strictly to CEDAW’s model may inadvertently create social tensions and place additional strain on family structures, highlighting a fundamental divergence between the principles of Islamic law and the framework promoted by international conventions.

3.3. Disregard for the Cultural and Religious Specificities of Islamic States

CEDAW obliges States Parties to review and amend their national legislation to conform to the principles of the Convention, even where such principles conflict with religious values or local cultural specificities. This approach contradicts certain other international instruments which explicitly require respect for State sovereignty in domestic legislation, such as Article 2 of the International Covenant on Civil and Political Rights, which recognizes the primacy of national

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legal frameworks, and Article 27 of the same Covenant, which guarantees legal protection for cultural and religious particularities, especially with respect to minorities.

Nevertheless, the CEDAW Committee frequently issues observations and recommendations categorizing religious references as forms of “discrimination” to be eliminated. This has been clearly demonstrated in its reports on a number of Islamic States, where it has called for the abolition or amendment of firmly established Sharia-based provisions—for instance, its comments on Saudi Arabia regarding the guardianship system, Morocco concerning inheritance, and Algeria in matters of custody and *‘iddah*. Such recommendations reveal a manifest conflict with the principle of respect for cultural and legislative sovereignty of States.

4. Opening the Door to Deviant Concepts that Undermine the Family

Several provisions of CEDAW—particularly Articles 5 and 16—are invoked as legal grounds for entrenching concepts alien to the Islamic value system. These include support for gender identity fluidity and sex change, as well as the expansion of the definition of “family” to encompass same-sex marriage. Such concepts are in complete contradiction with the *fitrah* (innate disposition) upon which Allah has created mankind, and with the categorical principles that govern family relations in Islam. These notions not only signify a deviation from Sharia-based references, but also threaten the social balance and moral identity of the Ummah.

The same provisions are further employed to justify calls for abolishing traditional parental roles, such as the legal guardianship of father and mother over their children, and to recognize abortion as part of the woman’s “absolute bodily rights,” with no regard for the sanctity of human life as established in Sharia. Although such positions are often defended under the rhetoric of “freedom and equality,” in reality they lead to the disintegration of the family, the endangerment of progeny, and the promotion of practices rejected by religion, reason, and human nature alike.

4.1. Disrupting the Domestic Legal Systems of Islamic States

CEDAW has resulted in a form of legal dualism in several Islamic countries, where governments are compelled to operate on two contradictory tracks: on the one hand, striving to comply with the provisions of the Convention, and on the other, seeking to uphold Sharia and national constitutions that derive their authority therefrom. This tension adversely affects the stability of judicial systems, the coherence of legal references, and even the legitimacy of legislative institutions, which find themselves attempting to reconcile two irreconcilable sources: international norms and religiously grounded constitutional identity.

Moreover, the pressures exerted by international organizations—whether through conditionality attached to foreign aid or through requirements for integration into the global order—push many States to adopt the provisions of the Convention in a hasty and unconsidered manner. This is particularly evident in obligations under provisions such as Article 2, which requires States to amend their national laws in line with the “spirit of the Convention,” without according due weight to the particularities of legal sovereignty and cultural identity. Such impositions constitute a direct encroachment upon national decision-making and undermine popular confidence in constitutions and institutions.

Most alarmingly, CEDAW has evolved from a treaty ostensibly focused on women’s rights into an ideological instrument for imposing the secular Western family model. Provisions such as Article 5, which denies natural distinctions between the sexes, and Article 16, which restructures family relations according to a conception detached from the Islamic framework of *fitrah* and complementary roles, exemplify this transformation.

The application of such principles within Islamic societies poses a grave threat to the very fabric of the family. It leads to the dismantling of natural roles between men and women, the weakening of religious reference, the erosion of educational and social values, and the replication of a Western family model that has already proven defective in its own environment, as evidenced

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by rising divorce rates, growing reluctance toward marriage, and the fragmentation of parental bonds with children.

4.2. Lifting Algeria’s Reservation on Article 15, Paragraph 4 of CEDAW: Between Government Clarification and Societal Debate

The Algerian authorities acted swiftly to reassure public opinion after President Abdelmadjid Tebboune announced Algeria’s decision to lift its reservation on Article 15, Paragraph 4 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This provision guarantees equality between men and women in choosing their place of residence. The move was seen as an effort to ease the growing political and societal debate sparked by the announcement.⁷

According to the Algerian Press Service (APS), citing official sources, Algeria had initially placed a reservation on this article in 1996 due to its incompatibility with the Family Code in effect at the time. However, amendments introduced to the Code in 2005 eliminated the legal grounds for maintaining such a reservation. The government emphasized that lifting it will not require any changes to domestic legislation, since Algeria’s practice is to first amend internal laws before withdrawing reservations at the international level.

Officials emphasized that the decision aims to preempt any claims from external actors alleging that Algeria discriminates against women in matters of residence and mobility, clarifying that national legislation does not impose such restrictions. They highlighted that this measure is part of a broader trajectory of reforms, including the 2005 decision to lift the reservation on the provision granting mothers the right to transmit nationality to their children, following amendments to the Nationality Code.

The decision has ignited extensive debate within the political sphere. Progressive groups welcomed it as a significant step forward in promoting women’s rights, while conservative factions cautioned against adopting “imported models” that may conflict with the values and traditions of Algerian society.

Conclusion:

In conclusion, it becomes clear that Islamic Sharia has organized the family on solid foundations that guarantee stability, complementarity, and compassion between spouses, while taking into account human nature (*fitrah*) and ensuring a just distribution of roles. This organization was established in line with the higher objectives of Sharia (*Maqāṣid al-Sharī’ah*), foremost among them the preservation of progeny and honor, rendering the family in Islam a divinely ordained institution that is not subject to intellectual fluctuations or individual whims.

In contrast, secular thought—through its positivist foundations and international conventions such as CEDAW—presents a materialistic vision of the family, stripping it of its sanctity and redefining it as a mere civil contract subject to modification according to individual interests and formal equality. Although this vision may appear just on the surface, in practice it leads to family disintegration, the erosion of natural roles, and the loss of moral identity.

The Western experience itself has revealed the grave consequences of this model, including:

- Rising rates of divorce and spinsterhood;
- The prevalence of single-parent families;
- The weakening of social bonds;
- The normalization of promiscuity and homosexuality;
- The decline of parental roles in favor of the “State.”

The importation and imposition of this model on Islamic societies through international conventions constitutes an explicit threat to the identity and immutable principles of the Ummah. It therefore calls for a critical scholarly and Sharia-based stance that reaffirms and safeguards the Islamic model of the family.

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Recommendations:

1. The necessity of strengthening the legislative system in Islamic countries to ensure that personal status laws originate from Islamic references, not from conflicting international conventions.
2. Reassessing the extent of Islamic countries' involvement in international conventions, especially CEDAW, and urging international organizations to respect the specificity of Islamic legislation, or at least to reserve objections to conflicting provisions.
3. Launching intellectual and cultural initiatives to define the true Muslim family through media, education, and religious discourse, in order to block the promotion of the Western model as the so-called "ideal model of liberation."
4. Encouraging contemporary Islamic jurisprudential *ijtihad* in family matters to demonstrate the timeless validity of Sharia, while preserving its principles and objectives, and presenting it in a way that resonates with the younger generation facing Western cultural pressures.
5. Supporting the Muslim family through institutions (such as family counseling centers, awareness programs, and economic support) so that it remains cohesive from within and resilient against social pressures or externally imposed cultural changes.

Citations:

¹ - Avdullah ROBAJ, Marriage According To the Islamic Law (Sharia) And The Secular Law, Perspectives of Law and Public Administration, Volume 10, Issue 2, June 2021, pp 19-24

² صايفي حبيب، ديب أمينة، الحقوق والمسؤوليات أثناء الزواج بين القوامة ومبدأ المساواة بين الفقه الإسلامي والاتفاقيات الدولية، مجلة جامعة الأمير عبد القادر للعلوم الإسلامية، المجلد 33، العدد 1، 2019، ص ص 350-372.

³ Shabina Khalifa, Marriage as a Civil & Religious Contract In Islam & Christianity, May 2022, p110

4 Defri Purnanda¹, Burhanuddin², Isnadul Hamdi¹, Ade Daharis, Jurnal Elsyakhshi, Five Husbands' Negligence in Fulfilling Their Child Maintenance Obligations after Divorce: A Phenomenological Study in a Muslim Community, June 2024 Jurnal Elsyakhshi 2(1):25-32

⁵ - القرضاوي يوسف، الأسرة المسلمة في العالم المعاصر، دار الشروق، القاهرة، 1998، ص 41

⁶ - محمد سعيد رمضان البوطي، المرأة بين طغیان النظام الغربي ولطف التشريع الرباني، دار الفكر، دمشق،

1994، ص 32

⁷ - Lifting of the reservation on Article 15, paragraph 4 of CEDAW: facts and interpretations, <https://embmoscow.mfa.gov.dz>