

Consensual Marriage between National and International Laws (A Descriptive Comparative Study)

شرط التراضي في الزواج بين القوانين الوطنية والدولية (دراسة مقارنة)

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Abstract:

The consent in marriage is one of the main topics that raise a lot of legal debates and controversies and express the protection of various feminist organizations and associations, which explicitly ask for specific provisions to regulate it . Other positions call for its abolition from the family law without taking the wife's opinion in such important matter.

The aim of this study is to identify the legal framework that regulates the national and international efforts to deal with the persons status and family rights .We investigate the provisions of international documents that regulate these rights, in order to understand the international legal system applied to marital rights issues, and the effective guarantees and procedures adopted at the local and international levels in practice connected to such issues.

We have reached several results among them: The Algerian Family Law did not define the element of consent. In this regard, the Article 10/1 specifies only the sides of the consent and the verbal expression through which the expression of offer and acceptance is pronounced. The Algerian legislator opts for the equality men and women in matter of marriage which is 19 years for both of them. As an exception, a judge can permit this for a minor if it is convenient. As a recommendation, it is needed to reconsider the consent in marriage to be consistent with the Islamic religion.

Keywords: Consensual Marriage. National and International Law.

Introduction

Marriage is considered to be one of the most important human social systems as it is the legal way to establish a family. Marriage has been known since the ancient civilizations. It is a sacred bond between a man and a woman with its own rules and provisions. Almighty God has legislated marriage to reinforce tranquillity and stability between spouses.¹

Almighty God has legislated marriage for many noble get prosperous, including those related to the development and prosperity of the Earth. The Earth will not be inhabited or prosperous except through marriage and procreation.

The issues related to family affairs must be carefully regulated as they are private and sensitive. The freedom of marriage cannot be absolute, but restricted. Some restrictions are related to legal procedures before marriage in accordance of the laws and regulations of the State.

During the globalization era the marriage raises controversies and debate for the societies that imitate blindly the western countries.

The phenomenon of homosexuality emerged on the pretext of the freedom of women and men to choose a partner of the same sex grows prevalent under the label of "individual freedom". In this context, many organizations and associations call for the rights of homosexuals .

The other challenge facing communities including Arab societies is what known as the transsexual. Such a phenomena affected deeply both the notion of marriage and the structure of the family as a whole.²

The imposition of social and legal restrictions on the will of the spouses, which has also raised widespread controversy and intense debate, particularly on the condition of the absolute will of the woman to marry herself, and the condition of will and consent with regard to the issue of polygamy as it has a strong relationship with our subject matter.

The issue of marrying more than one woman is considered by conservatives as a protection for women and a preservation of their dignity, unlike opponents who see it as a an obstacle of a woman's freedom to choose a partner.³

The main purpose of the present study is to identify the legal framework that regulates the status of the person in light of national and international provisions. We also analyse the International legal documents applied to issues of marital rights, and adequate, effective and advanced procedures. At the local and international levels from an applied standpoint, which contributes to recognizing the importance of studying such issues?

Based on what has been said, the question of the research is the following:

What is the importance and specificity of consent in the marriage contract in comparative laws and international conventions, and what are the limits of the wife's will and rights while concluding the marriage contract?

In this regard, this study examines the issue of consent in marriage in comparative laws and international conventions, with the intent to propose certain recommendations that will contribute to enrich this important topic.

Firstly: The marriage between consent and formality in comparative Laws.

The contract is an agreement between two or more parties whose effects do not take place except after issuing their consent through specific words, movements, or signals by the parties expressing their will to conclude any contract. It is also required from individuals who want to conclude the contract to have the full capacity. Researchers in contract theory have defined a consensual contract as being sufficient for its conclusion to be a combination of offer and acceptance, and the consent of both parties alone constitutes the contract.⁴

In line with the above mentioned, we will study the specificity and concept of mutual consent in marriage in accordance with the provisions of Algerian legislation and relevant comparative Arab legislation, as follows

1. The privacy of mutual consent in the marriage contract.

The marriage contract is a consensual contract based on consent, while most jurists have considered it to be a formal contract due to the requirement of the presence of witnesses and the requirement of a legal guardian during the conclusion of the marriage contract.

These two conditions are considered as formal. The marriage contract is a valid formal contract because in addition to the two previous conditions, the legislator added administrative and regulatory conditions in order to establish legal its effects Due to its crucial importance , the Algerian legislator provided in the Family Law a plenty of provisions closely related to marriage contract (Articles 18, 19, 21 and 22 of Algerian Family Law).⁵

1.1. Definition of the consent in the marriage contract

The Family Law did not define the consent as a fundamental element of the marriage. It is mentioned in the 1st paragraph of Article 10 specifying the two sections of consent and verbal expression in general, with which it is permissible to express offer and acceptance.

The absence of the definition of the consent by Algerian legislator's let us rely on the definition given by the jurisprudence . In this regard, Mr. Sabik defines it as "the agreement of the will of the two parties in the relationship through the expression indicating the determination to establish the relationship, expressing the offer and the acceptance."⁶

Dr. Badran Abou-El Ainine Badran defines it as "the offer and acceptance issued by the contracting parties who each one of them is linked to the other, so they achieve the purpose of their issuance."⁷

Through the review of these definitions and the text of Article 10 of the Family Law, we conclude that the element of consent in the marriage contract is divided into two parts, namely the offer and acceptance.⁸

1.2. Definition of both offer and acceptance

The Article 10/1 of Family code is in complete agreement with what Islamic Sharia jurists have stated, in which the consent consists of two parts: the offer and acceptance. However, what is taken into account with this article is that it specified the offer and acceptance without defining them and did not specify their conditions. Therefore, in accordance with Article 222 of the Family Code:

We refer to what Islamic Sharia jurists have said on this matter. Jurists agree that the offer is what is issued by one of the contracting parties indicating that he wishes to engage in a marital relationship with the other party of the contract. It is therefore called an offer. It is first and most often issued by the husband or his representative, so he says to the wife's guardian, "Marry me (or marry me)".⁹

The Jurists define acceptance as the expression issued by the second contracting party to whom the offer was made indicating his agreement to what the husband has requested. He is called the acceptor. He is often from the wife's guardian, so he says, for example, "I accept to marry you my assignor," and there is no objection to the acceptance being from the husband or his representative.¹⁰

The holy Quran contains many provisions related to marriage.¹¹

For the validity of the offer and acceptance, Muslim jurists stipulated that certain conditions be met which are as follows:

- Concerning the formula of the offer and acceptance, the Article 10 of the Family Law stipulates that "consent shall be through an offer from one party and acceptance from the other party, with every word or expressions that indicate the meaning of marriage according to the law."

What can be concluded from this article is that the Algerian legislator did not specify the expressions used to express the offer and acceptance, and did not specify the language in which the contract is concluded or the form of the words when expressing the offer and acceptance. In order to clarify this point, we back to what Islamic law has stated.¹²

According to the Article 222 of Family Law, Muslim jurists have discussed this issue broadly, as follows:

The Article 222 of the Family Code did not clarify the doctrine that must be followed, especially since there is disagreement among jurists about the meaning of the words, as the Hanafis and Malikis see that the contract is concluded with every word or expression that indicates the meaning of marriage.

It prescribes that the marriage is concluded in what people consider to be a marriage, in whatever language and pronunciation it may be.¹³

- Conditions related to the validity of the contract which are a set of conditions required in the formula to produce its effect.

The wording of the marriage contract must be accomplished: The intention in concluding the contracts must be genuine, but given the specificity of the marriage contract and its importance confirming what the Prophet, peace and blessings of Allah be upon him, said, : “There are three things that are serious among them marriage and divorce”.¹⁴

Al-Khattabi said that the conclusion of marriage requires the respect of the appropriate forms and expressions of offer and acceptance, otherwise, it will be without effects.¹⁵

- The wording of the marriage contract must express permanence and should be free of defects of will: that is, an indication that the marriage contract shall be life long, because what is required of the marriage contract is the cohabitation to establish the family, raising the children, and taking care of their affairs, It cannot be fully fulfilled unless the marriage contract last and can only be ended by death.

2. Estimating the element of consent in the marriage contract

Algerian law considers marriage to be an act that requires full capacity to bear the financial obligations and social duties. This is because it is not appropriate to allow anyone to undertake it without maturity, financial ability, and knowledge of life affairs and marital burdens.

The Algerian legislator defined the marriage contract in Article 4 of Law No. 84-11 of June 9, 1984, related to Family Code, amended and supplemented by Order No. 05-02 of February 27, 2005. It is noted that he added the word “consensual” to the text of the article after amending it.

This addition shows that the legislator attaches great importance to the pillar of consent. It complied with what was approved by the jurisprudential position including the Maliki majority. It is also in line with what was included in international conventions provisions.

Comparative laws of family in Maghreb Arab countries considered the consent to marriage a right for both men and women as a matter of equality. This appears clearly through the legal texts that affirmed that the marriage contract is a consensual contract concluded between the man and the woman. If the man has the right and freedom to choose his life partner, then a woman has also the right to freely express her opinion on a subject that concerns her in the, as she is a fundamental part to the contract. She has the freedom to agree and she has the freedom to reject whomever she does not want or approve.¹⁶

3. The importance of the pillars of the marriage contract

The Algerian legislator has defined the elements of the marriage contract in Article 9 of Law No. 84-11 of June 9, 1984 related to Family Code amended by the Order No. 05-02 of February 27, 2005, which stipulates that: “Marriage is concluded by mutual consent.”

Accordingly, if the element of consent is violated, it will be invalid, in accordance with the Article 33/1 of the Algerian Family Code, which stipulates: “The marriage is invalidated if the element of consent is violated.”¹⁷

What can be noted in this regard is the following:

1. The Algerian legislator has adopted the Hanafi doctrine and what some Hanbalis have considered as a cornerstone of marriage: the offer and acceptance expressed in the form in which the contract is established, whether this is done verbally, in writing, by gesture, or by action.

2. The Algerian legislator has made consent the only pillar upon which marriage is concluded. Thus, he has deviated from adopting the Maliki doctrine, which also considers the legal guardian to be one of the pillars of marriage, as it is the case under Law 84-11 before it was amended, as Article 9 stipulated:

“The marriage contract is concluded with the consent of the spouses, the wife’s guardian, two witnesses, and a dowry.”¹⁸

It is not possible to imagine any happy and successful marriage without the consent of both parties and the convergence of their wills with the intention of linking them legally, and this is what all Arab laws affirmed, including Algerian law, which emphasized the consent of the marriage contract, as Article 4 of the Algerian Family Code stipulates:

“Marriage is a consensual contract,” so it added the phrase “consensual” to restrict or limit the fact that marriage is essentially consensual and is based on the meeting of the wills of the spouses through the conjunction of offer and acceptance. This was also confirmed by Article 9 of the same law stating that: “Marriage is concluded by mutual consent of both spouses.”

A contract is also defined as the agreement of two or more wills to arrange legal effects, whether the effects are the creation, transfer, modification or termination of the obligation. In this way, the definition of contract expands to all forms of agreements that deal with commitment.¹⁹

The Article 7 of Law 84-11 related to the Family Code, has determined a specific age for marriage, which is 19 years for men and women, and at the same time it is the legal age of majority in accordance with Article 40/2 of the Algerian Civil Code, which stipulates that eligibility is complete and free of obstacles.

According to what has been mentioned previously, we can say that the Algerian legislation as well as most of comparative laws, especially in the Arabic and Islamic world made it clear that the marriage is not considered as valid without the consent between the future spouses. The establishment of marriage as a social institution requires that both parties of the contract (man and woman) to fully agree on conditions included in this legal document. It is important to note that Islamic Sharia along with Comparative laws denied forced marriage and insisted on understanding and mutual consent to establish the foundation of the harmony inside the family.

II. Women's rights in marriage in International conventions

Since the beginning of the 19th century, the International community has worked to codify issues related to the family by concluding many international conventions, such as the Hague Conventions in 1912 regarding the conflict of national laws related to marriage, divorce, separation, and guardianship over minors,

then the Convention on Maternity Protection of 1919 under No. 03, issued by the Labour Organization.

International law aims to protect working women and take into account)their role outside home and care for their children.

The international community's interest in the family increased after the end of World War II after the adoption of the United Nations Charter of 1945, which emphasized in its article 1: "The necessity of strengthening respect for human rights and fundamental freedoms for people."²⁰

«All, without distinction as to sex, language or religion, and without distinction between women and men." This was followed by the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948, in which the term family is seen as the basic and natural unit of society, and the marriage and establishment of family is considered a human right, as it is stated in Article 19/3 of the declaration:

1 - When men and women reach the age of puberty, they have the right to marry and establish a family without any restrictions due to race, nationality, or religion. They have equal rights, during marriage, and at its dissolution.

2 - Marriage shall not be concluded except with the complete consent of the two parties to be married, without coercion.

3 - The family is the natural and basic cell of society and has the right to enjoy the protection of society and the state. ".²¹

1. The historical context of the protection of women's rights in international conventions in dealing with issues concerning women's rights and their freedoms are based on the idea of banning discriminatory practices against women and the violation of their rights.

It is worth noting that since ancient time, women have faced unfair discrimination because of their gender, based on the idea of their alleged inferiority, and they suffered greatly from this discrimination. The civil society in modern era tried to abolish existing laws, customs and practices that are considered discrimination against women in order to establish the basis of real equality between men and women in dignity, destiny, rights and the different roles that each of them can play in society.²²

Secondly: International human rights law and women's rights

The United Nations Charter is one of the first international instruments that called for equality between men and women in specific terms, as its preamble stated the following: "We the peoples of the United Nations. We have pledged ourselves... to reaffirm our faith in the fundamental rights of the human person and in the dignity and worth of the individual and in the interests of men and women and nations large and small have equal rights.

Similar to the above, many articles in the Charter stipulated, calling for equality, including Articles 8, 13, 55, and 76. The States pledged under Article 56 to work individually and collectively in cooperation with the United Nations to achieve this

goal, which arranged a primary obligation for states towards women in the face of any violation of their rights.

A- Committee on the Status of Women (CSW): The Economic and Social Council established this committee in 1946, the same year in which the Commission on Human Rights was established.²³

The Committee faced strong resistance that prevented it from receiving individual complaints, as the Human Rights Committee was doing based on Resolution (1503).²⁴

In any case, the Committee worked within the framework of the instructions of the Economic and Social Council to prepare drafts of a number of important international documents, including:

1 - Women's Political Rights Convention of 1952.

2 - Married Women's Nationality Convention of 1957.

3 - Agreement on Consent to Marriage and the Minimum Age for Marriage of 1962.

But the most important achievement of the Committee of all was its drafting of the 1979 Convention on the Elimination of All Forms of Discrimination against Women, as follows:

2.1.1. Consensus in marriage in the international conventions

There conventions that deal with women rights can be divided into two categories: the first related general international human rights conventions, and The second is specific to the protection of women's rights.

2.1.1. 1. General international human rights conventions

Most international agreements recognized the basic principle of equality and non-discrimination regardless of age and sex.²⁵

In its article 1 of the Declaration of human rights established the principle of equality, stating that : "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and they must treat one another in a spirit of brotherhood.

" Its article 2 also indicated that every human being has the right to enjoy all rights. The freedoms mentioned therein are without discrimination of any kind.²⁶

The Article 16 of the same declaration states that: "When men and women reach the age of puberty, they have the right to marry and found a family, without any restrictions due to race, nationality, or religion.

They have equal rights upon marriage, during marriage, and at its dissolution.

Marriage shall not be concluded except with the complete consent of the two parties to be married, without any coercion.

The family is the natural and basic cell of society and has the right to enjoy the protection of society and the state.

At the light of the provisions of the Universal Declaration, we notice that men and women have the right to marry at the age of puberty and establish a family.

It also indicates that this marriage is without restrictions due to the person's race, nationality, and religion, and that both parties of the marriage (man and woman) have all rights during marriage or its dissolution.

Marriage must be concluded with the consent of both parties, and the family emerging from marriage must enjoy the protection of society and the State. This protection is included in the legislations and laws issued by the State to protect the family, this is what was emphasized by the convention on Consent to Marriage, the Minimum Age for Marriage, and the Registration of Marriage Contracts.²⁷

1. International conventions on the protection of women's rights

The Committee on the Status of Women, which was adopted by the Economic and Social Council in 1946, as previously mentioned, contributed to the drafting of a number of important agreements and declarations, namely:

1 - Convention on the Political Rights of Women:

The entire contents of the convention referred to the right of women to vote, to be nominated, and to hold public office on conditions equal to that of men, without any discrimination.

2 - Married Women's Nationality Convention:

The texts of this Convention include a basic principle that stipulates that a woman's nationality is not automatically affected by the husband's nationality after marriage or after its dissolution.

The Convention obliges the states party to agree to grant a foreign wife the nationality of her husband if she requests this through a special privileged naturalization procedure if there is no objection to this based on the interest of national security or public order.

3 – Convention on consent in marriage and the minimum age for marriage:

In addition to previous international agreements, there are many other conventions that deal with the prohibition of trafficking targeting women. It pledged the states parties to criminalize a number of practices affecting negatively women social status.

But all of these declarations did not play a major role in protecting women because, they lacked compulsory force. This is why the adoption of the most important international document ever in the field of women's protection, which is the Convention on the Elimination of All Forms of Discrimination against Women, which was adopted by the General Assembly on 12/18/1979 as a result of tremendous international efforts that lasted for decades.²⁸

4 - Protection of women's rights in international criminal law:

The criminal protection of women's rights is one of the types of legal protection, and even the most important, because of its close connection to the human being and his freedoms, given that international criminal law as a whole is of course fully applicable to women and the basic human rights described in the conventions. However, as the treaties and declarations precise, it is a necessary to address effectively the multiple violations of women's rights that continue to happen in the

majority of countries, including widespread discriminatory practices, to develop separate legal documents specific to gender that emphasize Special needs of women.²⁹

While in some countries women have made giant steps towards ensuring the protection of human rights, including the right to equality with men in areas such as family law and inheritance and access to education, adequate health care and the labour market. But, the majority of women still suffer from violations of the most basic human rights they enjoy.

For example, they are not allowed to marry freely or divorce under the same conditions as men.

In some countries, they do not enjoy equal rights with men in terms of inheritance, a woman's right to life, personal freedom, and security of her person, often including the right to health. What is violated through local violence and practice at the institutional and community levels, such as cases of dowry-related killings and honour killing, beatings, sexual violence, traditional practices, trafficking in women and forced prostitution can further deprive women of their right to education and even the most basic health care services.³⁰

Women's legal and real status is particularly fragile in many cases given their social situation as migrants, refugees, or displaced persons, or simply because they belong to an ethnic or racial minority, and therefore governments and members of the legal profession have a duty to remain vigilant to such problems and identify the appropriate solutions.³¹

Thus, women often find themselves trapped in a vicious social, cultural, religious, political and legal circle. In order for women to be improve their situation, they need the support of independent and impartial legal bodies that are knowledgeable about international human rights law ,and enhancing awareness among judges, prosecutors and lawyers towards achieving much-needed treatment and reparation tools for the benefit of the women.³²

These legal provisions clearly demonstrate that states parties to international agreements have a legal duty to take specific positive steps in all areas of society that witness discrimination based on gender, including the right decisions to change discriminatory practices in the private sector, where women are suffering as a result of a number of mistreatment including violence.³³

2. CEDAW Convention on the Elimination of All Forms of iscrimination against Women.

Since its adoption in 1979, the Convention on the Elimination of All Forms of Discrimination against Women has been considered the Universal Bill of Rights for All Women.

It is a comprehensive instrument that brings together all the rights stipulated in previous declarations and agreements related to human rights in general and women's rights in particular, and adds a complete list of rights to which women are entitled that women can enjoy, and aims to establish legal rules to protect these rights. It gains

many importance because it approved the principle of non-discrimination against women as a fundamental principle of human rights.

Therefore, it is a legal document that defines the concept of discrimination against women and considers it a violation of the principles of equality in rights and respect for human dignity and emphasizes that human rights are comprehensive and indivisible.

Despite the adoption of the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights in 1966, in addition to a number of other conventions, declarations and resolutions related to women's rights, including the Equal Pay Convention (1951), the Convention on the Political Rights of Women (1952) and the Convention on Consent With the introduction of the Minimum Age for Marriage and Registration of Marriage Contracts (1962), the Declaration on the Elimination of Discrimination against Women (1967), and the Declaration on the Protection of Women and Children in Situations of Emergency and Armed Conflict (1974), the international community realized that women needed a comprehensive instrument to guarantee their full rights.³⁴

The agreement is entrusted with three tasks:

A- It guarantees the private rights of individuals and provides a mechanism for submitting individual complaints.

B - Clarifies the obligations and responsibilities associated with these rights on states.

C - Create mechanisms to monitor the compatibility of countries' commitments.

3. Content of the convention

The agreement mainly encompasses a preamble and a various articles that include a list of rights established for women. The conventions contains also articles related to the mechanism that can monitor the implementation of the convention, then the process of signing, ratifying and withdrawing from the convention and other procedural matters.³⁵

Among the rights granted to women in the Convention can be summarized as follows:

1 - Civil political rights:

Under Articles 7 and 8, States parties pledged to protect women's rights in the field of political and public life.

They agreed that women should have the right to vote, nominate, and hold positions that enable them to formulate government policies on an equal basis with men. She also pledged to support women's participation in international governmental and non-governmental organizations and enable them to represent their countries on the global scale.

As for Article 9, it referred to the civil right related to the acquisition of nationality, obliging states to grant women equal rights with men, so that their acquisition or retention of nationality is not affected by a change in the nationality of the husband.

This article also stipulates that women must be granted the right to pass on their nationality to their children, in the same way as men. This article received the largest number of reservations, especially by Arab and Islamic countries, which found it to be in violation of the principles of Sharia.³⁶

2 - The right to education, work and health:

Article 10 stipulates that women must have access to the same educational opportunities as men. It also obliges states parties to provide the same educational curricula for both sexes. Such practices are in place in many countries that base their policy on multiple considerations.

3 - The right to equality with men in economic and social life :

Article 13: This means equality with regard to family benefits and the possibility of obtaining bank loans, mortgages, etc.,

in order to enhance the economic independence of women and facilitate their entry on an equal footing with men into the field of trade and markets.³⁷

But this was not possible in practice because of what the convention contained.

Article 28 stipulates that states may express reservations to its articles during the ratification process, provided that such reservations do not contravene the goals and purpose of the agreement.³⁸

The most controversial reservation was the reservation related to Article 2, which is according to many represents the essence of the Convention. It stipulates that States Parties must pledge to denounce all forms of discrimination against women and to adopt a policy capable of eliminating such discrimination by making appropriate amendments to their constitutions, legislation and the work of their public authorities, both judicial and non-judicial.³⁹

However, the countries that had reservations about the text of the article were not prepared to repeal all of their legislation, which in some cases includes discrimination due to religious, social, or cultural reasons that cannot be acted otherwise, as will be explained shortly.

Thirdly: The importance of consent to marriage in international conventions

The protection of women's rights begins with the family. All international legal documents on the protection of human rights, whether global or regional, recognize that both society and the state bear a binding responsibility towards the family and may include the international community, through the United Nations, in issuing texts on family rights, starting with the Declaration. Universal Declaration of Human Rights on December 10, 1948, where Article 16 stipulates the following:

1- When men and women reach the age of puberty, they have the right to marry and form a family without restrictions due to race, nationality or religion. They have equal rights upon marriage and during the marriage....

On November 1, 1965, the General Assembly issued a recommendation regarding consent to marriage, the minimum age for marriage, and the registration of marriage contracts, although this recommendation does not have a binding nature,

like the Universal Declaration of Human Rights of 1948. In 1966, the International Covenant on Civil and Political Rights was issued, which states in Article 23 /2 and 3, the right to marry and found a family, and the necessity of the marriage to be concluded with the consent of both parties without coercion on either of them. It also emphasized in Article 23 /4 the need for States Parties to take appropriate measures to ensure equal rights and duties of the spouses upon marriage.

In 1975, the United Nations declared the Women's Decennial from 1975 to 1985. It was during this decade, precisely in the year 1979, that the Convention on the Elimination of All Forms of Discrimination against Women was issued,⁴⁰

which is considered the summit of what the international community has achieved in the field of protecting women's rights. The necessity of women's participation in all areas of life, as this convention emphasizes, affirmed the right of women not to be discriminated on the basis of sex and that women and men are equal in exercising human rights and basic freedoms in the civil, economic, social, political and cultural fields.

This convention essentially aims to eliminate any traditional role for women, as religious traditions, customs and rules prevail in many societies that define the role of men and women, and these are stereotypical attitudes from the vision of the convention that must be eliminated by establishing equality between women and men.

The Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women states the following:

"States Parties shall take all appropriate measures to eliminate discrimination against women, in all matters relating to marriage and family relations, and in particular shall ensure, on the basis of equality between men and women:

The same right to contract marriage.

The same right to choose a husband and not to enter into marriage except with her free and complete consent.

The same rights and responsibilities during marriage and upon its dissolution.

They have the same rights and responsibilities as parents in matters relating to their children.

The same rights to decide freely and consciously about the consequences of marriage.

The same rights and responsibilities with regard to guardianship, and custody of children.

The same personal rights for husband and wife, such as work and choosing a family name and children.

Both spouses have the same rights with regard to ownership, possession, supervision, management, enjoyment and disposal of property, whether for or without compensation." ⁴¹

Through these conventions, we remark that international law call for the equality and rejecting all restrictions on women in marriage, as they have complete freedom to choose their partner without any limitations.

Pressure increased on Algeria since it joined all international human rights conventions in 1989, to amend the family law and strengthen women's rights, including their right to marry with their free and full consent.⁴²

The international conventions insist on women's rights in general and their right to marry with their free and complete consent of both parties in a marriage contract to enable the spouses to build a family in which the spirit of love, affection and mutual respect prevails among all family members.

Algeria made reservations regarding specific articles of the Convention of Elimination of all forms of Discrimination against Women CEDAW as they are not congruent with Islamic religion. In the matter of conditions of marriage and consent of parties, the Algerian legislator is in harmony with Islamic teachings as Sharia is one of the sources of Algerian law.

Conclusion.

Marriage is considered as one of the most important contract based on consent. It is described by the Holy Quran as a strong covenant and has a great value in human lives. It is also the only contract that introduces radical changes to a person's life.

Based on that, the Islamic Sharia reinforced it with a set of conditions. Accordingly, consent is at the forefront of all pillars and conditions. Rather, it is considered the basic and only pillar upon which .

the Islamic scholars have unanimously agreed, as it expresses the bonds of compassion and the foundations of love, frees the conscience from the restrictions and coercion, It and achieves one's freedom in choosing the appropriate partner for his life.

The conclusion of the marriage contract lies in the consent of both contracting parties as regard to its content. This consent constitutes the basis on which the act of marriage is carried out. For this, the Almighty God established the language as a means to express the consent. The offer issued through a clear language by man expressing the desire to establish a marital relationship with the other contracting party, while the acceptance which comes, subsequently, being issued by the clear words of the other contracting party , expressing the consent.

Indeed, the offer and the acceptance which express consent are, according to the unanimous opinion of Muslim scholars, the two foundations of contracts. These two foundations are linked to the conditions required in the conclusion of the marriage contract. It is required that the formula of request and acceptance be expressed in words which signify marriage.

Furthermore, among the conditions required for the conclusion of the marriage contract, which are related to both contracting parties, is that the offer and the acceptance should be issued by appropriate persons who are qualified to conclude

and establish the contract and whose consent and choice are taken into consideration, while ensuring the possibility of hearing and understanding what each of them has to say.

In conclusion, it appears through the study that the Algerian legislator and some Arab laws, by adopting the principle of consent in marriage, were influenced, firstly, by the principles of Islamic Sharia law, as Sharia law is built on consent even in belief, and secondly, by the provisions of the international agreements ratified by Algeria.

Through the present study, we have reached the following results:

- The Family Law did not define the element of consent, but only limited it in Article 10/1 to specifying both sides of consent and verbal expression in general, through which the expression of offer and acceptance is pronounced.

The legislator opts for the equality men and women in matter of the of marriage which is 19 years for both of them.

As an exception, a judge can permit this for a minor if it is convenient.

- Islamic Sharia jurists, legal scholars, various legislations, and international agreements have all agreed that consent is the basic pillar of the marriage contract.

At the conclusion of this study, we have certain recommendations:

- The consent in marriage must be reconsidered in a way that is consistent with the Islamic religion.

- Activating the wife's will by devoting the freedom of stipulation to both spouses in light of the provisions of the Algerian Family Code.

- Educating Muslim women about the dangers of the CEDAW Agreement on Algerian society.

- Rejecting all discrimination against women and protecting their legitimate and legal rights in the various actions.

Promoting studies and research on the importance of protecting women's rights as they are the basis for the progress of society.

Margins:

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