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## **CEDAW from an Islamic Perspective: Jordan Reservation to Some of the Articles and its Effect on Women's Right**

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### **Abstract:**

*One of the most controversial human rights issues in the Middle East is woman's right issues as this region is considered a unique and dynamic region related to implementing CEDAW as a result of the region's social, political and economic diversity and the multi-cultural map. Accordingly, there are many social, political and legal obstacles face women to achieve quality in this area. Although most states in the Middle East have ratified in CEDAW convention, but some of these states (Jordan one of them) have entered reservations related to the primacy of the Islamic law for the reason of incompatibility with the provisions of CEDAW.*

*Therefore the primary objective of this study is to better understanding the studies that concern with women and their rights, in addition to exploring the justification by Jordan expressing the reasons that cause its reservation to some CEDAW's articles in which some of them were related to Islamic religious law and others concerning the difficulty to implement some of the convention's articles as it has offended the internal and family laws.*

*The main research question in this study states that why did Jordan reserve on some of CEDAW articles and how some of these articles do differ from the Islam law? To achieve the study goals the study used the descriptive analytical approach being the best for answering the main research questions. The data that is collected for this thesis consists of qualitative data through analyzing mechanisms, reports by Jordanian government, Amnesty International, Human Right Watch and other related organizations issuing important reports on implementing of CEDAW and the status of human rights, in addition of providing overview of the human rights situation in Jordan and the changes that take place over the years.*

*The study reached to many conclusions, the most important is if CEDAW comes into force and is implemented in the Muslim countries then the result will be going against the Islamic law of life.*

**Keywords:** CEDAW, women, Islamic law, reservations, human rights

### **1. Introduction**

No one denies the great role women play in developing communities & family welfare. In return for this role; women have to enjoy all the political, civil, economic, cultural, social and other rights. Taking care of women's issues is not new, since Islam from a very old time emphasized and maintained women's rights. Civil legislation, both national and international took women's rights into consideration when they set up their legislations.

The past few decades witnessed several stages of taking care of women's issues in the world: During the fifties and sixties of the past centuries, the focus was on women's social status as a mother and a wife. During the seventies, the focus was on women's political role; where the first world convention was held in 1975 in Mexico. In the eighties, attention to women's right increased showing her role in the developing sectors. More conventions were held during this period clarifying women's importance in developing the community including Copenhagen convention in 1980.

In the Nineties, more conventions were held which dealt directly and indirectly with women issues. The greatest convention was held by the UN at Beijing in 1995. The convention discussed women's rights as part of human rights. Stemmed from a strong belief of women's role in the promotion, rise of society and the necessity of passing legislations that preserve this role of women, The General Assembly of the UN considered preparing a convention of women which aims to eliminate all forms of discrimination against women. This convention is known as CEDAW which was implemented in 1981 and was one of the most prominent global conventions that won the agreement of the biggest number of convention members of the UN. At the Arab world level, so far, all the Arab states ratified the convention except for Sudan along with showing some reservation based on contradiction with Islamic Sharia'hand the domestic laws of these states which provisions are incompatible of human rights in general and women's rights in particular.

Jordan is considered one of the first countries to sign the convention but with some reservations, Jordan has gone a long way in the field of women empowerment in a variety of aspects, including political, judicial, and social fields. A number of Jordanian legislations were amended to get along with supporting women's role in the society. This includes the Jordanian Personal Status Law & the Civil Status Law.

Today, Jordanian woman enjoying law and has quota at the parliament, judges, governors and a judicial ministry. She has also occupied several posts as a Minister and Ambassador. Jordan has fought all forms of discrimination against women; Jordan's participation in this convention is a clear expression of Jordan's care about women's affairs where Jordan ratified this convention in 1992 and was published in the official gazette on 1\8\2007 despite formulating some reservations attributed to legal and Sharia'h reason.

### 1.1. Problem Statement

The study problem in achieving a balance between the Jordanian government's reservations on some provisions of CEDAW and the human rights stipulated by Islamic law and the Jordanian Constitution and human rights conventions. Also, there are many challenges mainly stemming from cultural practices on lifting the reservation of CEDAW that impacts the effectiveness of the implementation of CEDAW and how it influences the family ties.

### 1.2. Research Purpose

The main aim of this study is to have better understanding the studies that concern women and their rights, by shedding light on some of the convention's articles that are incompatible with Islamic law and traditions, analyzing, as well as studying parts of the convention from an academic perspective, this is all based on the fact that some of the articles of the convention conflict with the Islamic law, rules and tradition. It's also aims at clarifying the misconceptions about some of the issues concerning the Muslim woman, through highlighting her status prior and post the advent of Islam, the honoring position has granted her, and her significant role in society.

The study also deals with the subject of the Jordanian governments reservation incoming to the convention of the elimination of all discrimination forms against the women, and the reflected effects of these reservations on the women practice for her rights in Jordan, by using the description method to describe the laws and relating them with the legislation texts, so, this study aimed at focusing on the status of Jordanian women to analyze articles on which Jordan reserve and their effect on women's rights.

### 1.3. Research Questions

#### 1.3.1. Principle Question

What are the main reflections of Jordan's reservation to some CEDAW provision on women's right?

#### 1.3.2. Sub Questions

- Why Did Jordan reserve to some of CEDAW articles?
- What are the main justifications of Jordan on the reservation to some CEDAW's articles?
- . How does Jordan's reservation to some Articles of CEDAW affect the effectiveness and implementation process of the Convention?
- How some of the articles do differ from the Islam law and traditions?
- What are the obstacles to the realization of women's human rights in Jordan?

## 2. Background and Conceptual Framework of the Study

### 2.1. Definition of CEDAW

The general object and purpose of the Convention must be interpreted in light of its fundamental principles and values, as declared in the Convention's Preamble. This point back to the Charter of the United Nations, which firmly declares that all human beings are equal in rights and in dignity, this principle was elaborated in the 1948 United Nation's Universal Declaration of Human Rights, stating in the Preamble that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".

Most importantly, the Convention incorporates the standard that all forms of discrimination against women that lead to an infringement of their human rights should be eliminated<sup>1</sup>. The words' distinction, exclusion or restriction is interpreted in an extensive way by the Committee and by academic commentators. Such a broad interpretation of then on-discrimination principle indicates a human rights approach to combating discrimination, as opposed to a formal legal approach, in which a

1. <http://www.feminist.org/research/cedawmain.html>

(symmetrical) sex equality or equal treatment norm prevails. In such a human rights approach, discrimination against women is seen as an instance of their oppression.

The aims of the CEDAW convention described by committee are:

- To integrate the equality of men and women in the legal system and eliminate all the laws that are considered discriminatory and implement those that forbid discrimination against women.
- To instill the principle of equality amongst men and women in legal affairs, abolish all laws that could have any sort of discrimination, and implement those that do not show any discrimination against women in any sort.
- To create a committee as well as other public institutions in order to guarantee the effective protection that might be practiced against women.
- To guarantee the abolishment of all sorts of inequality against women, this includes any person, organizations or enterprise.<sup>2</sup>

CEDAW was the outcome of all the above conferences. It endeavors to eliminate all the forms of discriminations against women in the political, economic, social, cultural, civil or any other relating fields, of which according to the UN, emerged from the mere ground of being different sex. The convention consists of a preamble and 30 articles, which identify the reasons of why there is a discrimination against women, and then sets the rules and regulations for abolishing them

First of all, CEDAW declares that discriminations against women, shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field<sup>3</sup>.

Data shows that discriminatory practices exist in almost all parts of the world, and so many women are deprived of their rights. According to the UNIFEM<sup>4</sup>, those rights include the rights to: equal inheritance; marriage on a basis of equality with men, travel aboard; obtain a passport; confer citizenship to children or a husband, initiate a divorce; own, acquire, manage, and retain property brought into marriage; participate in social, cultural, and community activities; finally, the right of education<sup>5</sup>.

In conclusion, CEDAW went through several stages amid discussions, implementation and so on, as early in 1945; and resulted in the outcome of which is the convention we see today. Discrimination against women is from the mere ground of being a different sex, this result in being treated differently by various types of societies and in several fields of life. 'CEDAW' aims at eradicating this fact.

## 2.2. Status of Women through History

### 2.2.1. Status of Women in Islam and in the West

Before Islam, women all across the globe were deprived of inheritance and were themselves considered property to be inherited by men. Islam gave women the right to own property and inherit from relatives, which was a revolutionary concept in the seventh century. Whether a woman is a wife, mother, sister, or daughter, she receives a certain share of her deceased relative's property. This share depends on her degree of relationship to the deceased and the number of heirs. While many societies around the world denied women inheritance, Islam assured women this right, illustrating the universal justice of Islam's divine law.

Since the dawn of time, women around the world suffered from deprivation of their rights, the term 'Human Rights of Women' did not exist. By looking back at the societies established in early history and the earliest written codes of law, i.e. Hammurabi's Code, created in 1790 BC, in ancient Babylon<sup>6</sup>, one notices that some of the laws had so much discrimination against women. For example, women were treated like children and were not granted their complete rights. They were referred to as lesser human beings than men. They were literally bought from their fathers by the person who has married them, therefore, treated as a commodity<sup>7</sup>. Moreover, if a man wished to separate from his wife who has given birth to his child, he must return her the amount of her purchase money and the dowry which she brought along from her father's house, and let her free.

The Hammurabi code also declares that if a woman was a 'bad wife' she would be sent away, and the husband was able to keep their children. Another punishment for a bad wife would be for her husband to make her a slave in her own household. Yet, if a woman wanted to free herself from her husband she could only sue him, a bad husband 'did not exist, and punishment was only for a bad wife! Moreover, according to the Hammurabi Law, a man had the right to sell or lease a woman in order to pay his debt back.<sup>8</sup>

<sup>2</sup><http://www.un.org/womenwatch/daw/cedaw/>

<sup>3</sup><http://www.unhcr.ch/html/menu6/2/fs22.htm#substantive>

<sup>4</sup>United Nations Development Fund for Women

<sup>5</sup>[http://www.unifem.org/progress/justiceFS\\_panel1.html](http://www.unifem.org/progress/justiceFS_panel1.html)

<sup>6</sup>[http://en.wikipedia/wiki/Code\\_of\\_Hammurabi](http://en.wikipedia/wiki/Code_of_Hammurabi)

<sup>7</sup>Edwards, C. (1921). Hammurabi Code and the Sinaitic Legislation with a Complete Translation of the Great Babylonian Inscription Discovered at Susa (29). London: Watts

<sup>8</sup>Al Nabulsi, Mohammad Ratib (2004). Humom Al Mara'a Al Muslimah (33). (The worries of Muslim Women). Syria: Dar Al Maktabi.

In another part of the world, and in the land where the Prophet PBUH was sent, women suffered as well. The practice of infanticide was well known in pre-Islam Arabia, by which female infants were buried alive by their parents for fear of poverty and disgrace among their society.<sup>9</sup>The Holy Qur'an describes how pre-Islamic Arabian people who would feel ashamed and disgraced on the birth of a female child. "When news is brought to one of them, of (the birth of) a female (child) his face gets darker, and he is filled with inward grief! With shame he hides himself from his people, because of the bad news he had! Shall he retain it on (sufferance and) contempt, or bury it in the dust? Ah! What an evil (choice) they decide on?" (Al-Nahl,58-59)

It is recorded in history that the status of a woman during that era was very degrading. She had no right to inherit or have a share in her father or husband property;<sup>10</sup>on the contrary; she was part of the inheritance, for it was believed that she was not capable of handling her financial possessions. Looking at the civilized West, one is led to believe that women have reached the utmost level of freedom and fulfillment of their rights. Taking a closer look, it proves to be otherwise. The reason why women were in need of conferences, conventions and committees defending their rights was due to the fact that their rights were unfulfilled. But after all this struggle and quest, have women in the West reached their goals? That is why it is quite important to show how the Actual Muslim women lived at the time of the Prophet (PBUH) and post his death, and how women of the so called, civilized, free, and women's right's advocator Western community live today.

The following is an analysis of the main predicaments and suffering of women in the West and in non-Islamic Societies which mainly become under the exploitation of women:

**Prostitutions:** The United Nations Office on Drugs and Crime declared that most victims of this modern-day slavery are women and young girls, many of whom are forced into prostitution is considered to be legal and regulated in several countries such as: Albania, Armenia, Austria, Belarus, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Iceland, Ireland, Italy, Malta, Netherlands.<sup>11</sup>

It usually encompasses victims recruited from marginalized, weak, and deprived female societies. Those victims are exploited in order to fulfill one's sexual desires for a small amount of money. According to the International Organization of Migration, and in a 2003 survey of 185 clients, more than three quarters of them expressed a preference for prostitute aged 25 or under, 22% preferred those aged 18 or below.<sup>12</sup> Moreover, according to a BBC business report, many of the prostitute clients openly admitted to a preference for young persons because they are more obedient<sup>13</sup>. Not only are women exploited, but also young girls, in societies where ethics, morality, principles, and religion have died away, along with the hearts and feelings of those unfortunate women and young girls. Islam, in this case, solved this problem from two angles. First, that of the client when it allowed polygamy, as well as advising young people to get married at a young age. In both cases, not deviating and falling into illegal as well as irreligious acts. As for prostitute, women seem to fall into the trap of either economic necessities, poverty or emotional need.

Some prostitute's explanation for becoming involved in prostitution includes: having a history of sexual abuse, having grown up without love from the significant adults in their lives, and needing money.<sup>14</sup> Islam has a full, well-built structure for the ideal family that deals with all these predicaments. Women must not fend for themselves. Any male relative in their family must do so for them, whether her father, brother or husband. She must not be humiliated or lose her honor for the sake of money.

Rape is another significant problem facing the West, for instance, taking the current world's greatest power, the United States, as an example, the statistics are horrifying. According to the Federal Bureau of Investigation (FBI), a rape is reported about once every five minutes. Another statistical fact started by an American Rape study conducted by the National Victim Center in the United States, back in 1992, concluded that 60% of the women who reported being raped were less than 18 years old:

- 29.3% were less than 11 years' old
- 32.3 % were between 11 and 17
- 22.2% were between 18 and 24
- 7.1% were between 25 and 29
- 6.1% were older than 29

6.3.0% age was not available<sup>15</sup>

Another dilemma of women in the West is that prostitution, rape and violence committed against women all leads to what called: " Sexually Transmitted Infection" (STIs)

<sup>9</sup>Leary, D.L.(2000). Arabia Before Mohammad (201-202). London: Routledge

<sup>10</sup>Rahim, A. (1960). A short History of Islam (8). Dacca, Pakistan: Ahmed Publication House

<sup>11</sup>[http://en.wikipedia.org/wiki/legality\\_of\\_prostitution#Prostitution\\_legal\\_and\\_regulatd](http://en.wikipedia.org/wiki/legality_of_prostitution#Prostitution_legal_and_regulatd)

<sup>12</sup>The International Organization of Migration: is an intergovernmental organization established in 1951, and is committed to the principle that humane and orderly migration benefits migrants and society. IOM is the leading inter-governmental organization in the field of migration and works closely with governmental, intergovernmental and non-governmental partners.

<sup>13</sup><http://news.bbc.co.uk/2/hi/business/4532617.stm>

<sup>14</sup>Scramble, A. (1997). Rethinking Prostitution: Purchasing Sex in the 1990s (7). London: Routledge

<sup>15</sup><http://www.vpul.upenn.edu/ohe/library/violence/statistics.htm>

According to the World Health Organization (WHO), the STI diseases are a major global cause of acute illness, infertility, long term disability and death, with severe medical and psychological consequences for millions. WHO estimated that 340 million new cases of syphilis, gonorrhoea, chlamydia and trichomoniasis, which are STI's, have occurred throughout the world ages ranging between 15-49 years.

### 2.2.2 The Enlightenment of Women at the Advent of Islam

In the history of this world, Islam was the only religion to grant women their rights, giving them dignity, establishing a proper social system and abolishing any sort of discrimination against women based on sex. This is evidently declared in the Holy Qur'an by Allah the Almighty, as well as in the narrations and actions of the Prophet (PBUH). More than fourteen hundred years ago, Islam gave women their rights, during the same time conferences were being held on whether to consider her a human or not! Montgomery Watt described the Prophet Muhammad (PUBYH) as: "Muhammad improved things quite a lot. By instituting rights of property ownership, inheritance, education and divorce, he gave women certain basic safeguard. Set in such historical context the prophet can see as a figure who testified on behalf of women's rights"<sup>16</sup>.

By applying the rules in the Holy Qur'an and the narrations of the Prophet (PBUH), many degrading and disrespectful actions towards women, and their status were abolished. For example, the practice of infanticide, during the age of ignorance prior the advent of Islam, was prohibited. "When the female (infant), buried alive, is questioned – for what crime she was killed." (Al Takwir 81: 8-9). In tafsirIbnKatheer, the explanation of this verse is that the young female will be questioned on doomsday on why she was buried alive. This is an evident that Allah the Almighty, on doomsday, will give back the rights of those whom were deprived and whom were victimized in this world.<sup>17</sup>

Another example on the change of the status of women was the dowry. Prior Islam it was regard as the price of a wife paid to her father, but it later became a gift for her and a part of her property. Moreover, marriage was no longer a purchase act, rather it became a contract were the women had the right to approve of it or not. A woman in Islam even has the rights after she is separated from her husband by divorce. "For divorced women Maintenance (should be provided) on a reasonable (scale), this is a duty on the righteous " (Al Baqarah2:241). This maintenance is defined as the funds given by the male divorcees to his wife, after the divorce takes place, whether it is money, clothes or anything else.<sup>18</sup> Islam envisioned divorce as a source of harm caused upon women that of which cannot be amended, thus it tries to compensate as much as possible<sup>19</sup>. Islam honored women, for after its arrival; Women were also requested to dress modestly, a trait that gave them dignity. For when comparing women of previous ages and prior the advent of Islam to Muslim women, one can see how they were disgraced and had no honor. The religion of Islam took such good care and consideration towards women, for it considered them to be the main element of society, for she was the daughter, then a wife then a mother who nurtured one generation after another.

The Holy Qur'an mentions women and their issues in more than ten chapters, two of which are directly connected to women, one under the name " A-Nisa", which means women, and the other " Al-Talaq", which means divorce. Other examples are "Al-Baqarah" (thecow), and "Al-Mai'da" (thefeast).

The Holy Qur'an refers to women as a mother and shows how important it is for her children to respect her and consider disobeying her as one of the greatest sins "al kaba'ir ". It even ordered Muslims to continue visiting their parents even if they were non-believers. Allah the Almighty honored women with the mission of being the foundation of society and the main part of constructing a family. The perfection of a woman emanates from the fact that she has been assigned with the difficult task of bringing up a future generation, that of which a man cannot do due to the nature of his creation. That task includes conceiving, breastfeeding, nurturing, upbringing and educating a whole society, as well as encompassing all the noble emotions which binds a family together, and spreads harmony amongst its members, resulting in the unity of the whole society.<sup>20</sup>

A man came and asked the Prophet (PBUH): who has the right to my company? He replied: your mother. He asked again: then whom? The Prophet (PBUH) said once again: your mother. He asked again: then whom? And again He said: your mother. Finally he asked: then whom? The Prophet (PBUH) replied: then your father.<sup>21</sup> Finally, Islam honored women as a wife. In the Holy Qur'an she is described as a part of man, both created from the same source and soul. "And among his signs is that he created for you mate from among yourselves, that he may dwell in tranquility with them, and he has put love and mercy between your (hearts): verily in that are signs for those who reflect." (Al Rum 30:21)

<sup>16</sup>Watt, W. M. (2000). The whole house of Islam, and we Christians with them, (B. M. McIntosh, Interviewer).The coracle, the Iona Community. Pp. 8-11

<sup>17</sup>IbnKatheer (2000). TafsirIbnKather. Beirut: Mo'asastAl-Risalah

<sup>18</sup>Shalabi, Mohammad (1977). Ahkam Al U'srahfe al Islam (388). ( family rules in Islam). Beirut: Dar Al Nahdah Al Arabiyah.

<sup>19</sup>Thiyab, Ali Subhi (1992). Mot'at Al Talaq (15).(Divorce Maintenance). Amman: Dar Al Yanbee'.

<sup>20</sup>Al Sahmarani, As'ad (1997). Al Mar'a Fe Al-tareekhWa Al-Shari'a (124) ( women in history and Shari'a). Beirut: Dar Al Nafa'is

<sup>21</sup>Narrated by Al-Bukhari, Acc. No.5971

### 3. Reservations Provided by Jordan Government to the Convention and its Compatibility with Jordan's Other International Obligations

CEDAW has been ratified by 186 states, with many reservations. The number of states that have entered reservations to substantive provisions of the CEDAW is large, but there is one common element to almost 40% of the reservations: Islamic states and countries made twenty-four of a total of sixty-one reservations to CEDAW<sup>22</sup>. However, Jordan signed CEDAW in 1980 and ratified the agreement in 1992, one of the first Islamic states to do so. As part of the ratification process that same year the state created the Jordanian National Commission for Women (JNCW) to oversee the rights of women in the state<sup>23</sup>.

When Jordan, like many other states, enters a convention and becomes a part of it, Jordan is entitled to formulate reservation to any provision of that convention, if the convention itself permits so. Since the researcher speaking here about CEDAW Convention that permitted formulating reservations, Jordan formulated reservation to three Articles of CEDAW Convention. This went on until 2009 when it withdrew one of these reservations on 31/3/2009. The royal Decree<sup>24</sup> issued approval of the Cabinet's resolution No. (4476) stating withdrawal of reservation to Article (15/4)<sup>25</sup>

In this section, the researchers shall review the provisions that Jordan formulated reservations to in CEDAW convention and their compatibility with Jordan's other international obligations regarding international instruments that Jordan is considered a party of, especially those concerned with women.

First, Reservations formulated by Jordan Government to the Convention:

Jordan considers itself not binding by the following provisions:<sup>26</sup>

- Clause 2 of Article 9 of CEDAW Convention (Equality with regard to the nationality of children)
- Clause 4 of Article 15 (Woman's residence following her husband's residence)
- Sub-clause 1© of Article 16 (related to rights resulting from marriage dissolution regarding alimony and compensation)
- Sub-clause 1 of Clause (d) and sub-clause 1 of (g) of Article 16.

Since the researcher discussing women rights, from the point of view of the Islamic Sharia's and statutory laws<sup>27</sup>, the justifications for such reservations should be connected with religion and law. The researcher going to brief these justifications here.

Article 9 of the Convention stipulates as follows:

- States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
- States Parties shall grant women equal rights with men with respect to the nationality of their children.

The Jordanian Nationality Law permits women to retain her nationality when getting married to a non-Jordanian, or when she is married to a person who has obtained a nationality other than the Jordanian nationality.<sup>28</sup> This means that the nationality of the Jordanian woman is not affected when she gets married to a non-Jordanian. Jordan formulated a reservation to Clause 2 of this Article, since it contradicts with item 3 of Article 3 of the Jordanian Nationality Law No 6 for the year 1954 which stipulates:

The following shall be deemed to be Jordanian nationals:

(Any person whose father holds Jordanian nationality).

In addition, Jordan has signed The Convention of Arab League <sup>29</sup> which provided prohibiting having a double nationality among the Arab citizens. Jordan had also formulated a reservation against Article (15/4) which stipulates as follows:-

- States Parties shall accord to women equality with men before the law.
- States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
- States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

<sup>22</sup>Rana Husseini, Jordan, NGO, Women's Rights in the Middle East and North Africa: Progress and Resistance (New York, NY: Freedom House, 2010), 1,

<sup>23</sup> Ibid.,3.

<sup>24</sup>Article (33) , clause 1 of the Jordan Constitution stipulates that "The King declares war, concludes peace and ratifies treaties ...

<sup>25</sup>Jordan withdrew its reservation to Article (15/4) of CEDAW stipulating that States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile) that was published in the official gazette,2,No.4960 issued on30/4/20089.

<sup>26</sup>The Official Gazette,No.4839, p.4956, Amman , Wednesday, 1/8/2007

<sup>27</sup>Al-Rajehi, Saleh bin Abdullah (2004), Human rights, and basic freedom in Islamic Sharia's and Statutory Law, 1<sup>st</sup> Ed., Riyadh, Obeikan Library, P.11

<sup>28</sup>See Article (8) of the Jordanian Nationality Law, for the year 1954

<sup>29</sup>See Article 6 of the Convention of the Arab League for the year 1954

- States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

We notice that Clause 1 of this Article is consistent with the provisions of the Jordanian Constitution for the year 1952, Article (6), clause (1) which provides as follows:

"Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion".

Equality right is a right guaranteed by the first Jordanian Constitution in 1928, and the second Jordanian Constitution in 1947. This means that the Jordanian Constitution has guaranteed this right from the very beginning of passing it, and that human rights and freedom are the top goals of legislations passed by the state.<sup>30</sup>

Clause 2 of the same Article stipulates that women enjoy the same capacity as men; Jordanian women have a legal capacity that is identical to men's capacity in all civil matters such as concluding contracts and running properties without the interference of their husbands or any other member of their families.<sup>31</sup>

Article (101) , clause 1 of the Jordanian Constitution binds state parties to consider every law restricting women's legal capacity null and void. There is no provision in the Jordanian laws that restrict women's legal capacity to conclude any contract. Article (116) of the Jordanian Civil Law stipulates that: "Every person is competent to conclude contracts unless their competence is robbed or restricted by law". As for the legal competence of marriage, the marriage of a virgin is concluded by her parent, in case of not being available or of being incompetent, the judge is entitled to marry her.

This is stipulated by Article (17) of the Jordanian Personal Status Law No. (36) for the year 2010 which provides" If the closest guardian is absent, and if waiting for him misses the good of the betrothal, guardianship is moved to the one who comes next. If that one is not available, the guardianship right is moved to the judge."<sup>32</sup>

As for clause 4 of Article (15) which stipulates as follows" States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile."

When Jordan ratified the convention, it formulated a reservation against this clause for reasons connected with The Islamic Sharia's and the Jordanian Law, since there is a point of contact <sup>33</sup> between this clause and the travel of Muslim women where Islam has set some restrictions that women should travel with one of the un marriageable persons even if she is traveling for pilgrimage or with a safe companionship of her husband. This restriction was not passed in vain, since it achieves two aims:

- Provide protection and safety for women.
- Maintain the strong family relations and consolidations.

On the other hand, the provision stipulating giving women the freedom to select the place of residence gives an implication that a woman is entitled to have a residence other than the marriage residence where she lives independently away from her husband. God Almighty said in the Holy Book, Divorce Surat, No.6,

Lodge them [in a section] of where you dwell out of your means and do not harm them in order to oppress them.

Article (72) of the Jordanian Personal Status for the year 2010 has addressed the issue of lodging, which states in general that a wife has to reside at her husband's legal residence and to move with him if she feels safe with him.

Jordan has withdrawn this reservation on 13/3/2009. The withdrawal was published in the Official Gazette on 30/4/2009. The last reservation that Jordan formulated to this Convention is concerned with Article (16/1/c, d, g).

Article (16) stipulates as follows:

- A. 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 a basis of equality of men and women:

- The same right to enter into marriage;
- The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- The same rights and responsibilities during marriage and at its dissolution;
- The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- The same rights and responsibilities with regard to guardianship, ward ship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

<sup>30</sup> Assaf, Nezam,(1999),Introduction to Human Rights in International Regional and Jordanian Documents, 1<sup>st</sup> Ed., Amman, National Library, p. 292.

<sup>31</sup>The Jordanian Civil Law No. 43 for the year 1976 identified a natural persons as" every person approaching the adulthood with full mental abilities without being interdicted with full capacity to commence civil rights. Adulthood is 16 complete solar years

<sup>32</sup>Farrajlawyer.com. (2017). ..Farraj Law Firm... [online] Available at: <http://www.farrajlawyer.com/> [Accessed 14 Jul. 2017].

<sup>33</sup>The International Islamic Commission for Women and Children,(2000), Acritical Vision of CEDAW Convention,P.50

- B. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.<sup>34</sup>

As for the first and second clauses of this Article, the Personal Status Law No. 36 for the year 2010 included provisions to govern familial relationships regarding: marriage guardianship, concluding marriage, sufficiency, prohibitions, and kinds of marriage, dowry, alimony, divorce, breast feeding, and nursery. The Jordanian Personal Status based its provisions of marriage and family relations on the Islamic Sharia's. The Jordanian Personal Status Law included a number of Articles that accord both husband and wife the same right in concluding the marriage contract. Article (4/a) of that law stipulates: Both of the suitor and his fiancée may refrain from betrothal." Article (6) stipulates: "Provided that marriage contract is concluded from one of the suitors or proxy and acceptance from the other or proxy at the place of contract."

We also find that both Articles guarantee for women the same right of choosing a husband and of not concluding the marriage contract except when she completely agrees on it. Article (31/g) of the Personal Status Law for the year 2010 stipulates that marriage shall be spoiled if it is concluded by coercion.

Jordan formulated reservations to item (C) of Clause 1 of this Article because it can be interpreted in a way that violates Islamic Sharia<sup>35</sup>, since it ignores a man being guardian and protector of his wife. God Almighty said in the Holy Quran, Surat Al-Nisa' (women), Verse (34):

"Men are the protectors and maintainers of women"

Having differences in obligations and duties creates a difference in rights and responsibilities.<sup>36</sup>

Jordan formulated a reservation to item (d) for reasons concerned with Islamic sharia'h since this article separates the role of woman as a mother and as a wife while they are inseparable.

Jordan didn't formulate any reservation to item (e) and (f) since the Jordanian law doesn't provide any provision that gives or prohibits father or mother from deciding the number of the family or the spacing between giving birth to a child and another.

Jordan formulated reservation to item (g) of Article 16 of the Convention since Islam doesn't permit children kinship other than their fathers. God almighty said in the holy Quran, Surat Al-Ahzab (The Clans), Verse (5): "Call them by (the names of) their fathers: that is more just in the sight of Allah"<sup>37</sup>.

Islam permits women to take up any honorable occupation provided husband agreement and in a way, that doesn't conflict with her duties and obligations as a mother and a house keeper. In Islam, women going out to work is not absolute, but a necessity and a need<sup>38</sup>.

Jordan didn't not formulate reservation to item (h) since there are no sharia'h or legal provisions that discriminate between the right of husband and wife in ownership, acquisition and supervision of them. Even more, the sharia'h law which is considered one of the sources of statutory law stipulates that women's receivables are independent and woman has the right to sell and buy using her own money. God almighty said in the holy Quran, Surat Al-Nisa'a (women), verse (32) said: "And in no wise covet those things in which Allah Hath bestowed His gifts more freely on some of you than on others: To men is allotted what they earn, and to women what they earn." As for clause (2) of Article 16, Article 10 of the Jordanian Personal Status law stipulates: "Marriage competency requires that suitor and fiancée approaching the age of 18" but the judge may permit the marriage of those who didn't approach this age after completing 15 years of age if such marriage is for their good, the basics are specified under instructions issued by the chief judge for this purpose.

Article 36 of the Personal Status Law stipulates the following:

- The suitor shall refer to the judge or the proxy before concluding marriage contract
- The judge or whoever he allows documents the marriage contract through an official document
- If a marriage contract is concluded and was not officially documented the one who concluded it, the husband, the wife and the witnesses are punished by a penalty provided in the penalty code in addition to paying 200 JD.
- Any official authorized to conclude the marriage contract and doesn't recording it in the official document prepared for this purpose shall be punished by both penalties provided in clause (c) of this article along with quitting the job.
- Officials authorized to document marriage contracts are appointed and their jobs regulated according to regulations issued by the chief judges.

In addition to the penalty provided for those who conclude a marriage contract for a girl less than 15 year of age<sup>39</sup>. After the researchers had reviewed the provisions to which Jordan formulated reservations along with justification for such

<sup>34</sup>Un.org. (2017). Welcome to the United Nations. [online] Available at: <http://www.un.org/> [Accessed 14 Jul. 2017].

<sup>35</sup>The United Nations Economic and Social Commission for Western Asia(ESCWA),(2007),The Convention of Eliminating all Forms of Discrimination against women, Shadow Reports, New York ,P. 59

<sup>36</sup>International Islamic Commission for Women and Children, A Critical Vision, a previous reference, P. 20.

<sup>37</sup>Shadow Reports for Arab States, a previous reference, P. 59

<sup>38</sup>Jadul-Haq, Sheikh Jadul-Haq Ali, (1995) About the Convention of Eliminating all Forms of Discrimination against Women from an Islamic Perspective, P.35.

<sup>39</sup> Article (179/2) of Jordan Penalty Code stipulates as follows :A prison sentence for a period of one (1) to six (6) months shall be imposed upon any person who: Marries a girl or, performed, or assisted in performing in any manner whatsoever, the marriage ceremony of a girl under fifteen (15) years of age;



reservations, the researcher will move to talk about Jordan international obligations and the compatibility of such reservation with these obligations.

The general international law specifies the effects entailed from concluding international treaties from an international point of view, while the national law of a state specifies and operates individuals' and tribunals' commitments to them.<sup>40</sup>

As for the situation, in Jordan, the Jordanian Constitution doesn't provide a provision regarding the International Law being on top of the domestic law. There are large number of international conventions of human rights that can't be implemented by the judge at court without being published at the Official Gazette, and without having a constitutional provision to determine that the Treaty is on top of the domestic law.

Article (33) of the Jordanian Constitution for the year 1952 grants the king the authority to conclude international treaties along with the approval of the National Assembly on some of these conventions.

Article (33/2) stipulates the following:

"Treaties and agreements which involve financial commitments to the Treasury or affect the public or private rights of Jordanians shall not be valid unless they are sanctioned by the National Assembly."

The Jordanian judiciary has established, through the Court of Cassation, upon which resolutions we depend, that the international convention has a rank lower than the constitution, but higher than the regular law.<sup>41</sup> Nevertheless, the court can't implement what is provided in the international treaty without being in force and being published at the Official Gazette.

Jordan had participated in numerous international conventions and charter to emphasize commitment to human rights to sanctify the principle of equality, where Jordan ratified the World Declaration of Human Rights for the year 1948. This declaration has brought about a clear effect all over the world. Most of the rights provided in the Declaration are inserted in the national constitutions and local legislations of the many states that ratified the Declaration.<sup>42</sup>

Jordan had also ratified the International Pact on Civil and Political Rights, and the International Pact on Economic, Social and Cultural Rights, in addition to the ratification in 1957, and the ratification on the Convention of Eliminating all Forms of Racial Discrimination in 1974.

Jordan, as an Arabic State that has its international relations at the Arab World or through relations with foreign states, it is known that the goals which the state strives for in its external policy and in its dealing with other states is represented in achieving the national interest implied in the power, welfare and status. Such aims are never changed by any state<sup>43</sup>.

Since commitment to international charters and customary practices, and respecting human rights is a style followed in practicing the foreign policy in Jordan, this can be fostered by the participation in international conventions and instruments which entail at the end an international commitment from Jordan regarding what has been ratified. The Convention of Eliminating all Forms of Discrimination against Women also falls within Jordan's international obligations. Therefore, we have to look at the conformity of Jordan's reservations to this convention with Jordan's international obligations.

We previously mentioned that Jordan formulated reservations to Article (9) of the Convention. This Article addresses mothers giving their nationality to their children. Jordan has also ratified the Arab League convention known as "5th April, 1954 Convention" which included not to double the nationality of the Arab states citizens.

If we go back to the Provision of Article (15) of the World Declaration of Human Rights, we find that it stipulates that every individuals is entitled to have a certain nationality, and that no person shall be deprived from their nationality, or deny their right to change this nationality.<sup>44</sup>

When Jordan participated, and ratified the World Declaration, it didn't formulate a reservation to this Article. The provisions of the World Declaration of Human Rights have their equivalence of constitutional and legal provisions of Jordan's legislations.<sup>45</sup>

Some researchers<sup>46</sup>. In international law consider that Jordan reservation to this Article contradicts with what Jordan is bound to at international treaties, since the majority of states didn't formulate reservations to Article (23) of the International Pact of Civil and Political Rights which stipulated equality between two genders inside one family. It also stipulates the necessary protection of children in case of having some, and that women granting their nationality to their children is considered a protection for them especially in the case of marriage dissolution between parents.

In addition to what has been provided in Article (26) of that pact which stipulates that people are equal with no discrimination among them. The Article stipulates that, " All people are equal in front of law. They enjoy an equal right of enjoying law's protection without any discrimination."

<sup>40</sup>Al-Jaddar, Sa'ed, (1999), The Application of International Law at Egyptian Tribunals, Alexandria, University Publications House, P.32

<sup>41</sup>Makhadmeh, Muhammad, a previous reference.

<sup>42</sup>Tarawneh, Muhammad, (2003), Human Rights and Guarantees.

<sup>43</sup>Krauthammer, Charles, (1991), the Unpopular Moment Foreign Affairs, vol.70, No.P. 23.

<sup>44</sup>Un.org. (2017). Welcome to the United Nations. [online] Available at: <http://www.un.org/> [Accessed 14 Jul. 2017].

<sup>45</sup>Al-Zu'bi, Mekhled, (2005), Citizens' Rights (765) question and answer, 1<sup>st</sup> Ed. Amman, Dar Althaqafah for Publication and Distribution. 9.

<sup>46</sup>Dr. Banai, Farida, A Law and Islamic Jurisdiction Expert in the Field of Women Rights in Islam, The Training Program for women human rights (CEDAW Convention), 2004, P. 36.

Article (3) of the Pact also stipulates that state parties undertake to guarantee equality between men and women in the right to enjoy all civil and political rights provided in this Pact."

Article (3) of the International Pact of the Economic, Social and Cultural Rights also stipulates that," State parties of this Pact undertake to guarantee equality between males and females regarding enjoying all the economic, social and cultural rights provided in this Pact."

Article (24) of the International Pact on the Civil and Political Rights, Clause (3) stipulates that: "Each child has the right to acquire a nationality.<sup>47</sup>"

Jordan ratified the Children Rights Convention in 1991<sup>48</sup>.The first clause of Article (7) of the Children Rights Convention stipulates that " A child shall be registered as soon as s/he is born and shall have the right as from his/ her birth to be given a name and to acquire nationality, and the right to know their parents as possibly as can be and to receive care from their parents."

Jordan had also ratified the International Convention to Eliminate all Forms of Racial Discrimination in 1974. The ratification was published in the Official Gazette<sup>49</sup>. Article (5) of this Convention stipulates the right to acquire a nationality.

At the beginning, many Arab states formulated reservations to this item. Afterwards, some state parties lifted their reservation such as Egypt when it decided to grant the children of an Egyptian women who is married to a non-Egyptian nationality man certain registers that guarantee their belonging to Egypt. Law No. 154 for the year 2004 related to that was issued<sup>50</sup>.

Morocco was also one of the countries that formulated reservations to this item, but it withdrew its reservation<sup>51</sup>, and amended Article (6) of the Morocco Nationality Law in 2007 which provided that, "A child born from a Morocco father or Morocco mother shall be considered Morocco."<sup>52</sup>

In Iraq, a new nationality law was issued under the number (26) for the year 2006 which equals between man and woman in granting nationality to their children. Article (3) of this law stipulates that "Any child born to an Iraqi father or Iraqi mother shall be considered Iraqi."

Therefore, we urge legislators to change their attitude and give the blood right from the mother's side the same role determined for the father side regarding the transfer of nationality to the children, since this forms a kind of care and protection for both the mother and the children.

Jordan lifted reservation to Article (15/4) as we mentioned before in response to the demands of Women Affairs Commissions and non-governmental organizations. Some researchers<sup>53</sup> see that " the states formulating a reservation to this item, where Jordan was one of them before withdrawing that reservation, were violating the obligations of international agreements, since any restrictions imposed on women's right to choose the place of her residence identical to man's right limit her right to file a complaint at the courts where that woman lives, or prohibits her from entering or leaving the state where she lives freely. And as she wished any legislation that fosters the principle of married women's following her husband regarding the residence and the choice of the place of residence which is considered under such Article a remarkable legislation."

When Jordan responded to the demand of lifting this reservation, it has become consistent and committed with what was provided at the International instruments concerned with human rights which Jordan has joined.

Jordan has participated in the Convention to Eliminate all Forms of Racial Discrimination, Article (5) of which emphasized the state parties undertaking to prevent racial discrimination and to eliminate all forms of it , and to guarantee the right of each man , with no discrimination of whatsoever of equality in front of law, and to have the right to move and reside within the borders of his country, and the right to leave any country including his own country.

Article (13) of the World Declaration of Human Rights stipulates the following:

- Everyone has the right to freedom of movement and residence within the borders of each State.
- Everyone has the right to leave any country, including his own, and to return to his country.

As for the International Pact of Civil and Political Rights, and the International Pact of Economic, Social and Cultural Rights, both had emphasized equality between men and women and on the right to enjoy all human rights. Article (12) of the International Pact of Civil and Political Rights stipulates that:

- Every one available legally inside a state has the right to freedom of movement and residence.
- Everyone has the right to leave any country, including his own country.

The Jordanian Constitution has guaranteed this right and provided it in Article (9) which stipulates as follows:

- A Jordanian shall not be banished from the Kingdom land.
- A Jordanian shall not be prohibited from residing in a certain place except for the cases stated in the law.

<sup>47</sup>Both International Pacts are published at the Official Gazette, No. (4764), 15/6/2006.

<sup>48</sup>The Official Gazette No. (4787) on 16/10/20065.

<sup>49</sup>The Official Gazette No. (4746) on 15/6/2006

<sup>50</sup>Abu-Zeid , RushdiShehateh,(2007), The Convention of Eliminating all Forms pf Discrimination against Women from an Islamic Perspective, 1<sup>st</sup> Ed. Alexandria, Dar Al-Wafa' for Printing and Publication. 189.

<sup>51</sup>Shadow Reports of Arab States, a previous reference, P.59

<sup>52</sup> Revolv.com. (2017). Revolv. [online] Available at: <https://www.revolv.com/main/show.php?cmd=list> [Accessed 14 Jul. 2017].

<sup>53</sup>Dr. Benani, Farida, a previous reference, P. 42

It is clear that the provision of Article (9) of the Jordanian Constitution and the provision of Article (12) of the International Pact of Civil and Political Rights are consistent<sup>54</sup>. All that has been previously mentioned indicates that Jordan has achieved conformity with international instruments that it ratified when it withdrew its reservation to Clause 4 of Article (15). Nevertheless, the provision of Article (3) in both Pacts which bind state parties to equal men and women regarding enjoying all rights inserted in both documents upon which dispute is going on, since Jordan when it participated in both pacts didn't formulate reservations on any Article of them. Therefore, regarding the issue of nationality, Jordan has breached some of its international obligations of the instruments it had ratified and agreed with other instruments. In the issue of nationality, Jordan has based its reservation on the fact that there is a contradiction to the domestic laws of the country. This means that they contradict the constitution. Article (5) of the Constitution stipulates that, "Jordanian nationality is specified through the law."

We should bear in mind that the provisions of the domestic law can be amended to overcome this contradiction regarding the issue of nationality without contradicting the Constitution. In this way, there might be conformity between the Constitution and the international conventions.

The last reservation to the convention was to Article (16), the 1<sup>st</sup> clause regarding items (c, d and g) which Jordan based its reservation on breaching the Islamic Sharia'h. Some other Arab states, such as Egypt, based their reservation to breaching Family Laws. Some researchers<sup>55</sup> consider variation in Arab reservations to the items of Article (16), and the non-reservation of other states such as Yemen, Moon Islands, Mauritania, and Djibouti a proof of the reservation being null and void.

Jordan has also ratified the World Declaration of Human Rights which stipulates in Article (16) that "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. "Women are entitled to separate from her husband through Kholou', or to demand divorce through the judiciary if she is harmed from this marriage.

A husband also has the right to dissolve marriage by divorce through a separate will. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Sharia'h and the Jordanian Personal Status Law have specified the origins of marriage and what is inflicted of rights and duties. A woman has the right to get married to another man when her marr

Article (23) of the of the International Pact of Civil and Political rights, clause (4) stipulates the following:" State parties take the appropriate measures to guarantee the equality of both husband and spouse and their duties when getting married and during the marriage and at its dissolution. In case of dissolution, all measures shall be taken to guarantee the necessary protection of children in case of having any."

Jordan didn't formulate reservation on this item. Some researchers in the field of women rights and Islam<sup>56</sup>consider that "Jordan has breached this commitment to the International Pact, by formulating reservation to some of the items of Article (16) of the Convention of Prohibiting discrimination against women.<sup>57</sup>

The researcher sees that equality between men and women doesn't mean that each of man and woman having the same requirements and duties. For example, if a divorce occurred, the husband bears the responsibility of spending money on his children (Nafaqa). This is regulated by Sharia'h and by the Personal Status Law. Mothers are not to bear the responsibility of spending money on their children unless the father can't afford it and the mother has money. This, of course, is considered a loan on the father. The nature of the marital relation is based on compassion and love, not on the conflict of competition and power and determining who is dominating.

The rights provided in the International Pact of Civil and Political Rights are not absolute; since state parties may, under definite conditions, set some restrictions on individuals' rights and freedom provided in the Pact in order to achieve balance between the individual's rights and the group's rights.<sup>58</sup>

Article one of the Conventions to Eliminate all Forms of Racial Discrimination, provides a definition of Racial Discrimination. The subject of this article is based<sup>59</sup> on the recognition of human rights and the basic freedoms or enjoying them or implementing them equally at every<sup>60</sup> walk of life. Jordan didn't formulate reservation to this Article.

From the point of view of the international law, Arab states reservations, including Jordan, to some of the items of Article (16) of CEDAW Convention are not legal reservations. How can Arab states conform between reservation to Article (16) of the convention and its commitment to the provisions of Article (5) and Article (24) of the Convention, to which no Arab state formulated reservation. Based on the point of view of the International Law, Jordan has breached its international commitments in the instruments which Jordan joined.

<sup>54</sup>Tarawneh ,Dr. Muhammed, (2003), Human Rights between Provisions and Application, 1<sup>st</sup> edition, Amman, National Library, P.130..

<sup>55</sup>Hamid, Saad, a researcher specialized in international law and Islamic Jurisprudence, the Training Program of Women Human Rights(CEDAW Convention), a previous reference, P. 59.

<sup>56</sup>Dr.Banai, Farida, Law and Islamic Jurisprudence Expert in the Field of Women Rights in Islam, a previous reference, P.

<sup>57</sup>Ohchr.org. (2017). OHCHR | Home. [online] Available at: <http://www.ohchr.org/EN/pages/home.aspx> [Accessed 14 Jul. 2017].

<sup>58</sup>Tarawneh, Dr. Muhammad, Human Rights between Provisions and Application, a previous referenc.P.208

<sup>59</sup>Assaf,Dr. Nizam, a previous reference, P. 173.

<sup>60</sup>The Official Gazette , No.(4764), on 15/6/2006

The researcher thinks that when Jordan formulated reservation to some of the items of Article (16) of CEDAW, a reservation based on Islamic Sharia'h and the Jordanian Personal Status Law, and which is based on Abu-Hanifah Approach has protected women and kept them within the framework and correct model of women, in a way that suits their feminine qualities. Equality between men and women can't be imagined regardless of the nature of these responsibilities, in addition to the necessity of observing the marital status of women and of not separating between their roles as mothers and their role as wives, especially if she was married to a man who is not the father of her son. Item (d) of this Article puts the interest of children first and last of anything else without considering the situation of the mother. This topic has been regulated by Islamic Sharia'h from all its aspects. In addition, this convention is concerned with women, not children.

There are some issues that can be interpreted in a way that breaches the Islamic Sharia'h such as item (g) which equals between men and women including the right to choose the family name and attributing it to herself, bearing in mind that every child follows his father whether the husband or the wife. The other aspect of this Article is the freedom of choosing the occupation and the job. A man is entitled to work and so is the woman, but the issue here is linked to the kind of this job, not the right to take up a job.

Women have a great power to contribute to the building of the family, its stability and the successful performance of its cultural, health and educational role. And as the researcher points out on previous that some of the CEDAW provisions goes against Shariah it also goes against traditions of the Jordanian culture.

#### 4. Justifications and the Effect of Formulating Reservations to Women Rights In Jordan

It has previously been addressed the Article provisions that Jordan formulated reservations to in the Convention. The researcher mentioned that the justifications are concerned with breaching the Islamic Sharia'h provisions and the provisions of domestic law. Jordan justifications are as follows<sup>61</sup>:

Article 9/ Clause 2: Jordan Nationality Law provides that "Whoever is born to father having the Jordanian nationality has the Jordanian Nationality." .It also stipulates that the sons of a Jordanian are Jordanian wherever they are born, even if their mother is a foreigner."

Article 15, clause 4: This clause was considered as breaching the Islamic Sharia'h provisions which prohibit women from traveling alone even they are going for pilgrimage. Women can't be granted the freedom to choose the place of her residence and living since she follows her husband and can't choose to live alone whether she is married or single.

Article (16) clause C: This clause contradicts the teachings of our religion which provides that men are protectors and maintainers of women. In this way, a wife is not given the freedom to act on her own.

Article (16) Clause d: Since guardianship is given to man where he has the ability to encounter the community, but this doesn't cancel women's guardianship over her children.

Article (16) Clause g: Islam permits to women to take up an honorable occupation, provided the consent of her husband and of not ignoring her duties and obligations as housewife and as a mother.

Most Arab states formulated reservations on the same Articles as Jordan such as: Bahrain and Syria. The Arab states were not the only reserving countries, since there are Islamic countries such as: Malaysia<sup>62</sup> that attributed its reservations to contradicting the Islamic Sharia'h and domestic law.

Sa'ad Hamid, a researcher specialized in international law and Islamic jurisprudence considers such reservations null and void from the prospect of international law since they contradict with the provisions of Article (28) stipulating that reservations incompatible with the object and purpose of the present Convention shall not be permitted. The purpose of the convention is to eliminate all forms of discrimination against women and complete equality between men and women regarding their rights. In fact, the issue of incompatibility of Arabic reservations with what has been provided in CEDAW and its object shall be settled down by the International Court of Justice<sup>63</sup>, since it is the jurisdiction of this court to decide the range of compatibility and to give a consulting opinion in this regard. Article (29) of the convention stipulates: "Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court."

In this chapter, the researcher is going to discuss the reasons that led the Jordanian government to show reservations, represented by Islamic Sharia'h reasons and statutory law reasons.

##### 4.1. Sharia'h and Legal Justifications of the Reservations

Islam was the first to decide upon the justice between men and women. Islamic Sharia'h approved this equality between males and females in general and at the time when all nations put women under guardianship and look upon them with contempt.<sup>64</sup>

<sup>61</sup>Shadow Reports in Arab States, a previous reference, P. 59.

<sup>62</sup>The International Islamic Commission for Women and Children, A Critical Vision, a previous reference.P.20

<sup>63</sup>MENA region compilation: reservation to CEDAW by Middle Eastern and North African countries, P. 33.

<sup>64</sup>Jadul-Haq, Sheikh Jadul-Haq Ali, a

The researcher is going to talk about the justifications for Jordan's reservations which Jordan based on breaching the Islamic Sharia'h, the Jordanian constitution and the effective Jordanian laws.

#### 4.1.1. Justifications from the Islamic Sharia'h

The provisions of Islamic Sharia'h are considered one of the official source of law and the personal status law in Jordan. Article (2) of the Civil Code No.43 for the year 1976 stipulates the following:

The provisions of this law are valid on all the issues addressed by these provisions regarding their verbal and meaning, with no interpretation to the provision supply.

- If the court didn't find a provision in this law, it shall rule with the Sharia'h jurisprudence provisions that are the most compatible to the provisions of this law. If the court didn't find that, it shall rule according to the Islamic principles."<sup>65</sup> Islamic Sharia'h means what God has ordained of provisions for Muslims through the Holy Quran and the prophet's Hadith (Sunnah) which includes what Prophet Muhammad (Peace be upon him) said or did or approved.

What is meant here is the (Kitab and Sunnah).<sup>66</sup>If we consider the provisions of the Jordanian Constitution, we shall find that they are compatible with the rules of Islamic Sharia'h. We have numerous examples proving that.

Example:

Article (6) of the Jordanian Constitution stipulates the following:

"Jordanians shall be equal before the Law. There shall be no discrimination between them as regards to their rights and duties, on grounds of race, language or religion".

The same provision can be found in the Holy Quran where several verses emphasize this equality showing that the Jordanian Constitution has taken this provision from the Holy Quran. God Almighty said in the Holy Quran in Surat Al-Imran (the Family of Imran), verse (195)": "And their Lord responded to them, "Never will I allow to be lost the work of [any] worker among you, whether male or female; you are of one another".

Woman is considered as part of man, while man is considered part of woman which means that they complement each other.

If we consider the law of the Jordanian Personal Status Law, we find that the Jordanian legislation has taken the Islamic Sharia'h principle into consideration when formulating the law provisions. The researcher had previously mentioned that the Jordanian Personal Status Law for the year 2010 has addressed the issue of the waiting period "Iddah" in the provisions of Articles (145-154).

Let's take the provision of Article (146) of the law as an example:

"The waiting period "Iddah" of the woman whose husband in a correct marriage died, except for the pregnant, whether he married her or not is four months and ten days."

This is exactly mentioned in Verse (234) of Surat Al-Baqarah:

"And those who are taken in death among you and leave wives behind – they, [the wives, shall] wait four months and ten [days].

The provision of Article (95) of the same law stipulates the following:

"A divorced woman for the third time is not lawful to her husband until she gets married to another husband with a marriage of its real meaning."

This is mentioned in verse (230) Surat Al-Bqarah:

"And if he has divorced her [for the third time], then she is not lawful to him afterward until [after] she marries a husband other than him. And if the latter husband divorces her [or dies], there is no blame upon the woman and her former husband for returning to each other."

Islamic Sharia'h is provided to realize the good of people, maintain their dignity and improve their life. It is based on bringing benefits and warding off evil. Islamic Sharia'h can't be bothered by people needs and achieving their interests, since its aim is to achieve and complete interests and disable minimize the evil.<sup>67</sup>

The researcher talks here about the compatibility and balance between these reservations and what has been provided in the Islamic Sharia'h .the researcher going to begin with Jordan's reservation to Article (16), since Jordan's justifications to such reservation stemmed from the Islamic Sharia'h only.

Article (16/1.c) stipulates that the rights and responsibilities are the same at marriage and at dissolution.

Islamic Sharia'h specified the responsibility of husband and wife. Prophet Muhammad has also explained that by saying:

"All of you are shepherds and each of you is responsible for his flock. A man is the shepherd of the people of his house and he is responsible. A woman is the shepherd of the house of her husband and she is responsible. Each of you is a shepherd and each is responsible for his flock."<sup>68</sup>

<sup>65</sup>Wipo.int. (2017). WIPO - World Intellectual Property Organization. [online] Available at: <http://www.wipo.int/portal/en/index.html> [Accessed 14 Jul. 2017].

<sup>66</sup>Zeidan,Abdul-Karim,(1998), Introduction to The Study of Islamic Sharia'h, Ed.16 Beirut, Al-Resalah Establishment for Printing, P.34.

<sup>67</sup>Zeidan,Abdul-Karim,a previous reference,P.42

<sup>68</sup>Sunnah.com. (2017). Hadith - Book of Responsibility - Al-Adab Al-Mufrad - Sunnah.com - Sayings and Teachings of Prophet Muhammad (صلوات الله عليه وسلم). [online] Available at: <https://sunnah.com/adab/10/1> [Accessed 14 Jul. 2017].

The Jordanian Personal Status law has stipulated the rights and responsibilities of both husband and wife. For example, a husband is responsible for spending money on his wife, and a wife has the right to be separated from her husband because of her husband's not spending on her. Article (115) of the said law stipulates these rights. The wife's duty, as a right of her husband on her, is to move to the marital house in case of the husband spending money on her and preparing a lawful house for her. Article (60) of the Jordanian Personal Status Law for the year 2010 stipulates the following:

Maintenance is dutiful for a wife even if their religion is different as from the correct legal contract even if she was dwelling in her family's house. If her husband demanded her movement to the marital house and she refused without having the right to, she shall not deserve alimony. A wife has the right to refrain, upon the husband not paying her instant dowry, or the husband's not preparing a marital house".

The researcher sees in this item of Article (16) a trespassing of what has been provided by the Islamic Sharia'h to protect women's dignity and status. The nature of women is completely different from the nature of men since each has his own function. The difference in duties and obligations makes rights and responsibilities different. A man, upon getting married, has to offer a dowry and to furnish the marital house. Upon dissolution of marriage, he has to bear the losses. In the case of a woman separation from her husband (Khulu'), she has to refund the dowry that she has taken from him, and a man can't ask for separation because his wife doesn't spend money on him and because she didn't prepare and furnish a marital house. What has been stipulated in item (d), where Islam has been taken into consideration, since the nature of the folk requires that one of them shall assume taking care of their affairs and speaking on their behalf.<sup>69</sup>

A family in great need for someone to take care of her interests. God made man a protector and maintainer as a mandate not as an honor, while the woman keeps the elements of her personality.<sup>70</sup> Where God Almighty ordained in Surat Al-Nisaa'(Women), verse 34:

"Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth."

This responsibility that God has given and ordained to man was for two reasons:<sup>71</sup>

First, man's nature that allows him to carry out hard missions and the physical power, determination and labor that God has bestowed on him, while the woman was created in a nature that helps her to carry out her basic function which is maternity, nursery and wise education which represent an aspect of her femininity.

Second, spending on the house requirements of life affairs and living needs.

Therefore, spending money is the duty of the father. In case of the father being insolvent, the mother is obliged to spend on her children if she was affluent, provided that such money would be a debt on the father that he has to repay when he becomes affluent.

This is stipulated in Article 193<sup>72</sup> of the Jordanian Personal Status Law based on the provisions of Islamic Sharia'h. It should be mentioned that the most important reasons of family's problems is that both husband and wife don't realize the nature of the other that God has created, without resort to God's Provisions when doing rights and responsibilities.<sup>73</sup>

The last reservation to this Article is item (g) of the first clause, where the Islamic Sharia'h provides that a wife follows her family, not her husband's family or another family, along with children who follow their father. God Almighty ordained:

"Call them by [the names of] their fathers; it is more just in the sight of Allah."<sup>74</sup>

The other aspect of this item of Article 16 is related to women's work. Muslim women starting to work in all fields is not absolute in Islam, especially if she is not in need of working to earn her living. However, if the society is in need of her and in need of manpower and thinking minds in a way that prevents the society from being dependent on foreigners, women's work becomes natural and lawful. Women can work except in four cases<sup>75</sup>:

First, a woman being of a particular genius that is rare among men and women and that may benefit the society or the general good of people.

Second, a woman assuming a job that is more appropriate for women and children, but without getting out of her home wearing makeup and being trite in her behavior.

Third, a woman shall help her husband in their work such as being a farmer or a cattle owner.

Fourth, a woman being in need for work in order to ensure her and her children's living.

A woman's work is considered a necessity and a need if the work needs her or if she needs the work.

<sup>69</sup>JadulAluq, Sheikh Jadul-HaqAli, a previous reference, P. 30

<sup>70</sup>Al-Jalaein Interpretation, a previous reference. 77

<sup>71</sup>JadulAluq, Sheikh Jadul-HaqAli, a previous reference, P.69

<sup>72</sup>Clause 2 of Article 193 stipulates the following:

In case of the father being insolvent, unable to pay for doctor's wage or medicine, or education expenses, the mother is obliged to spend on her children if she was affluent and was able to do so, provided that such money would be a debt on the father that he has to repay when he becomes affluent, and in the case of the father being not available and the money can't be collected from him.

<sup>73</sup>Oglah, Dr. Mouhammad, (1989), Family System in Islam, Part1, 2<sup>nd</sup> Ed., Amman, Al-ResalaAl-Hadithah Library, P.27

<sup>74</sup>Surat Al-Ahzab (The Clans), Verse 5

<sup>75</sup>JadulAluq, Sheikh Jadul-HaqAli, a previous reference, P. 35

Dr. Farida Banani<sup>76</sup> said regarding women work that there are no Quranic provisions that prohibit women from assuming any job, otherwise, the Holy Quran would have clarified this as required.

The researcher sees in this respect that work is an attribute innate of man. God has created men and women with this attribute, provided that the work being lawful and keeps the dignity of women.

Jordan formulated reservations to this item since it can be interpreted in a way that is contrary to Islamic Sharia'h. The issue here is not concerned with taking up a job as right for women, but it is related to the nature and kind of that job.

Sheikh Jadul-Haq has somehow a strict opinion when he specified the kind of jobs women can take up and the cases in which women can go out to work, such as being a doctor or helping her husband at farming, and that her work should be excluded to providing a living for her and for her children only. The changes in life requirements were not taken into consideration in this respect since these requirements are not exclusive to food only. On the other hand, we can't imagine that all women being doctors or farmers. As for Dr. Farida Banai, it involves women taking up any job with no restrictions. In fact, there is a condition that such job being permissible (Halal) and lawful for both males and females.

After the researcher had discussed Article (16) to which Jordan based its reservation on the Islamic Sharia'h for justifying such reservations on some of its items, we come back to discuss the first reservation which was on Article (9) clause 2.

Islamic Shari'ah is based in the issues of nationality on the fact that both men and women are equal regarding the issue of nationality, taking into consideration the good of children and the public interest.<sup>77</sup> No provision in the Islamic Sharia'h provides discrimination between men and women regarding nationality.

Jordan formulated reservations to Article (15/4), but this reservation was withdrawn later on since Islam approved the right of freedom movement from one place to another inside the state or out of it unless this contradicts with the public interest. God Almighty said:

"And we have certainly honored the children of Adam and carried them on the land and sea."<sup>78</sup>

Islam recommended that the right of movement should be used wisely since it permitted movement and travel for work and trade. In case of feeling safe at a certain place, man can move to another place where he can feel secure and safe. Islam also permitted movement for the sake of knowledge.<sup>79</sup>

Pilgrimage (Hajj) is obligatory on Muslims who can afford it. To do pilgrimage, you have to travel to Mecca. Women should have one of her unmarried relatives when she travels to Mecca in order to take care of her and observe her needs.

Islam is also keen on maintaining public morals, manners and public interest, and so it closes any door that might breach them. Ward off evils is one of the restrictions that respond to the right of movement in Sharia'h.<sup>80</sup>

When Sharia'h permits something and calls for it, it does so to ward off evil and bring good to people. Therefore, if the evil and the good are contradicted, warding off the evil precedes bringing the good.

#### 4.1.2. Constitutional and Legal Justifications of Reservations

This section addresses the legal provisions that are incompatible with the Convention's Article provisions that Jordan had formulated reservations to. The researcher is going to talk about the Jordanian Constitution provisions that are related to such provisions. And to analyses them in addition to analyzing the Jordanian laws in force. And to review some of the Jordanian laws represented in the Jordanian Nationality Law for the year 2010, Passports Law, No. 2 for the year 2003.

The first reservation of Jordan to CEDAW Convention was to Article (9/2) which stipulates women's rights to give their children their nationality.

Article 5 of the Jordanian Constitution stipulates that:

"Jordanian nationality shall be defined by Law."

The provision of this article means that there is a certain law that determines the controls and Fundamentals of granting the nationality.

Giving a nationality to the children of Jordanian women who are married to non-Jordanians solves several problems including the difficulty of joining schools, universities, jobs and others. Sometimes, there are cases when a father can't give his nationality to his children because of the laws of his country. Other times, a husband deserts his Jordanian wife and his children before giving them his nationality, and in this case, the children become with no identity or nationality. This has negative effects that influence the fundamentals of human rights.<sup>81</sup> In addition, all the Arab states that joined CEDAW had ratified the International Pact of Civil and Political Rights, and so they are demanded to implement the Pact's requirements. The Jordanian National Commission for Women Affairs demanded that the Jordanian wife giving her nationality to her children in some exceptional cases that are based on a Cabinet Resolution.

<sup>76</sup>Training Program for Women's Human Rights, a previous reference, P. 44

<sup>77</sup>The International Islamic Commission for Women and Children, a Critical Vision, a previous reference, P.72.

<sup>78</sup>SuratIsra', verse (70)

<sup>79</sup>Prophet Muhammad (Peace be upon him) said, Seek Knowledge even in China. Seeking knowledge is obligatory on every Muslim. Angels lie their wings for knowledge seekers if they are satisfied with what they do."

<sup>80</sup>Hussein, Muhammed Bakr, (2007), Rights and Public Freedom, 1<sup>st</sup>Ed., Cairo, Dar el-FikrAl-Jamei'l, P.174.

<sup>81</sup>United Nations Development Fund for Women (UNIFEM), a previous reference. 24

Therefore, the nationality laws through which children get the nationality of their fathers, not their mothers is incompatible to what has been provided in Article (2) and (3) of CEDAW, since Article (3) stipulates, "to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men", while Article (2) stipulates, "To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women"

Article (34/3) of the International Pact of Civil and Political Rights stipulates that each child has the right to get a nationality<sup>82</sup>.

The majority of states did not formulate reservations to Article (32) of the International Pact of Civil and Political Rights<sup>83</sup> which included equality between males and females inside the family, and what has been provided by the Convention of Eliminating all Forms of Discrimination against women which is considered a confirmation and clarification of what has been provided by the International Pact of the Civil and Political Rights.

In addition to the provisions of Article (6/1) of the Jordanian Constitution which stipulates that "Jordanians shall be equal before the Law regarding rights and duties."

The second Jordanian reservation was to Article (15/4) which stipulates granting women equal and identical rights of men to move, travel and transfer and the freedom to choose residence and domicile.

Jordan's reservation was based on this clause's incompatibility with Islamic Sharia'h teachings. Article (2) of the Jordanian Constitution for the year 1952 stipulates that, "Islam is the religion of the State and Arabic is its official language".

Based on this constitutional provision, Jordan formulated a reservation to this Article since it breaches Sharia'h and so it breaches the Constitution.

We pointed out in the previous pages that Jordan has withdrawn this reservation as a response to the demands of non-governmental organizations to lift such reservation. There are several Arab States that didn't formulate reservations to this item of Article 15 although their reference in their law provisions and constitutions is the Islamic Sharia'h. This shows that such States don't see any contradiction between Article (15/4) and their laws.

Article 9 of the Jordanian Constitution stipulates the following:

- No Jordanian shall be deported from the territory of the Kingdom.
- No Jordanian shall be prevented from residing at any place, or be compelled to reside in any specified place, except in the circumstances prescribed by law."

Sheikh Doctor Abdul-Aziz Khayyat says regarding this matter, that granting women the right to move and the freedom to choose residence is not breaching Islamic Sharia'h since Islamic Sharia'h clearly admits women's right to specify the place of their residence, and that she has to provide this as a condition in the marriage contract.<sup>84</sup>

Neither the Holy Quran, nor the prophet Sunnah provides what proves that the women movement is unlawful and that work is required from both man and woman, and woman going out to work is considered as a movement.<sup>85</sup>

The researcher see that the issue of women movement and the freedom to choose the place of her residence is a practice of a right given to her by Islam and law, since the origin of Islamic Shari'ah is based on giving that right for both man and women except for the cases where man is harmed. The exception is the standard of the common. We have mentioned in the previous chapter that when Jordan lifted this reservation, it has achieved a compatibility with the international instruments which it ratified, in addition to not breaching Sharia'h and constitution.

The last reservation of Jordan to this Convention was to Article (16/1/c, d, g) because they can be interpreted in a way that is incompatible to the Islamic Shariah teachings. Let's see now the breaching of the provisions to Jordan's domestic laws. If we consider Article (9/2) which is related to mothers giving their nationality to their children. Such article has breached the Jordanian nationality law for the year 1954 and the Passport Law for the year 2003.

The Jordanian Nationality is granted according to the provisions of the Jordanian Nationality Law, No. 6 for the year 1954, where Article (3/3) stipulates that, "Whoever is born to Jordanian is given the Jordanian nationality."

Article 3 of the Jordanian Passport Law for the year 2003 stipulates that "Jordanian passports are given to who asks for them from Jordanians whose nationality is originally proved, or after getting a certificate of nationality or naturalization." This is also the provision of Article 3 of the same law for the year 1969.

We notice that what has been provided in the Jordanian Passports Law is consistent with the Jordanian Nationality Law, where passports are granted according to the bases of Article (3) of the Jordanian Passports Law.<sup>86</sup>In addition, Jordan has signed a convention of the Arab league that included not doubling the nationality among the citizens of the Arab States.<sup>87</sup>

<sup>82</sup>Official Gazette, No. (4746), on 15/6/2006

<sup>83</sup>See, <http://www.un.org>

<sup>84</sup>Article (37/a) of the Jordanian Personal Status Law Stipulates that" If the wife puts a condition on her husband to achieve an interest for her that is legally lawful, without affecting others' rights, such as not to take her out of her country, or not to get married to another wife, or to lodge her at a certain country, such is correct and if the husband didn't fulfill, the marriage contract can be dissolute at the wife's request while requesting all her marital rights.

<sup>85</sup>Shameseddin, Sheikh Muhammad,(1996),Marriage Rights, Beirut, International Establishment for Studies and Publications,P.77.



The topic of the nationality of the Jordanian children has been addressed by Article (3) of the Jordanian Passport Law.<sup>88</sup>

Jordan reservation to Article (15/4) was because this item is incompatible with the Jordanian Personal Status Law which stipulates that a wife shall reside at her husband's legal residence and shall move with him to any destination he wishes for in case of feeling safe with him. This item breaches the provision of Article (72) of the Jordanian Personal Status Law for the year 2010.

Article (72) of this law stipulates that " The husband has to prepare a residence with lawful necessities according to his financial condition and at his place of residence or work and the wife shall, after taking her instant dowry, follow her husband and live with him in that residence and she shall move with him to any destination even if it was outside the Kingdom of Jordan, provided that she feels safe with him , and provided that the marriage contract shall not provide a condition contrary to that. If the wife refrains from obedience, she shall lose her right of her husband spending on her.

The third reservation was to Article (16/1/c, d, g) which addresses women' rights in the frame of family and marriage contract, where such items might be interpreted in a way that breaches the Islamic Sharia'h teachings.

If we consider the provision of Article (21) of the Jordanian Personal Status Law which stipulates that" Marriage requires that the man shall be equivalent to the woman in being religious and in having money. This means that the husband shall be capable of paying the instant dowry and of spending on the wife."

Article (40) also stipulates that, "A wife shall have the nominated dowry as soon as a correct marriage contract is convened."

Article (59) addressed the subject of alimony<sup>89</sup> and Article (74) which stipulates that a woman has the right to live with her husband in a separate house, unless his parents are poor and disabled and he had to keep them with him to spend money on them without preventing the marriage life between the husband and wife. The wife shall not bring her children from another man or her relatives to live with her without the consent of her husband.

As for the dissolution of the marriage and ending the marital contract, we know that a man bears the whole loss when he divorces his wife. This includes enjoyment, alimony and others. On the other hand, if the wife separates from her husband "Kholu' ", she shall pay back what she has taken from him. The Jordanian Personal Law and Islamic Sharia'h clarified that the husband is the one who is authorized to divorce his wife whom he has got married to her in a correct marriage. The wife also has the right to divorce herself if she put that as a condition in the marriage contract.

This is concerned with the provisions of Article (16/c).

Jordan formulated reservation against Article (16/d) because it is incompatible with the Jordanian Personal Status Law<sup>90</sup> which we shall discuss regarding breast feeding and nursery: Article (168) of the same law stipulates that," The mother of an infant doesn't have the right, in case of getting married, or at the waiting period of the first divorce (Iddah) to get a wage in return of breast feeding her child, but she deserves this light at the waiting period (Iddah) of the third divorce.

Article (171) of the same law, provides about the contract marriage with a nursing mother to non-relative that is unlawful of the nursed child, drops her nursery.

We should also point out to the provision of Article (170) which provides that" A mother of kinship has the right to nurse and educate her child as soon as marriage is convened and after separation. After the mother, the right is moved to her mother, then to the father's mother, and then the court decides upon evidence for the good of the nursed child to refer to the nearest competent relatives.

From what has been previously mentioned, we notice that, both man and woman can in no way have the same rights and responsibilities with the pretext of observing the good of children, and the marital status of parents can't be overlooked. Such issues had been addressed by the Islamic Shariah where alimony is the responsibility of the father unless being insolvent, where it becomes a debt on him and has to pay it back to his wife when he becomes affluent. This is provided in Article (193) of the same law which stipulates that "In case of the father being insolvent, unable to pay for doctor's wage or medicine, or education expenses, the mother is obliged to spend on her children if she was affluent and was able to do so, provided that

<sup>86</sup>Jordanian Nationality Law, No. 6 for the year 1954, and the Jordanian Passport Law, No. 2 for the year 1969 and the amended laws of nationality and passports for the year 1078.

<sup>87</sup>Article (6) of The Arab League Convention on April 5<sup>th</sup>, 1954 regarding some nationality provisions among Arab States which included not to double the nationality of the Arab states citizens except with the consent of their State while removing the other nationality. Article 8 of the same Convention stipulates that whoever has more than one nationality of the nationalities of the Arab League has the right to choose one of them during two years as from the date of this convention being effective. After two years had passed without making this choice, one is considered that he had chosen the nationality of the latest date. If the date of getting more than one nationality is unified, one is considered that he has chosen the nationality of the State where one is residing, while other nationalities shall be removed.

<sup>88</sup>Article (3/4) of the Jordanian Nationality Law stipulates that," whoever is born in the Hashemite Kingdom of Jordan from a Jordanian mother and a father of unknown nationality, or a non-nationality father or the father whose kinship to father was not legally proved is given the Jordanian nationality.

<sup>89</sup>Article (59) of the Jordanian Personal Law stipulates that "a. Any one spending of his money, except for the wife whose husband shall spend on her even if she were affluent.

b. A Wife alimony includes food, clothes, residence and medical treatment in the known amount and serving the wife who used to have a servant.

<sup>90</sup>The Jordanian Personal Status Law No. 36 for the year 2010, Jordanian legislation Encyclopedia

such money would be a debt on the father that he has to repay when he becomes affluent, and in the case of the father being not available and the money can't be collected from him"

Jordan had also formulated a reservation to Article (16/1/g) of CEDAW. This doesn't negate that the Jordanian woman keeps the name of her family after getting married, but the children shall follow only their father in kinship. The Islamic Sharia'h itself provides that a woman shall take the name of her family, not the family of her husband. The other aspect of this item is related to the choice of a job or occupation/. We have pointed out that going out to work is one of women's rights in Islamic Sharia'h and law, but she can't go out to work without the permission of her husband, or her right in getting alimony drops according to the provisions of Article (61/a) of the Jordanian Personal Status Law which stipulates that, "The wife who works outside her home deserves alimony upon two conditions: 1. The work shall be lawful. 2. The husband shall show express or evident consent to this work."

The woman has the right to put a condition in the marriage contract that she can go out to work, since the Jordanian law doesn't have any provision that prevents her from doing so

## 5. The Effect of Reservations on Women Practicing their Rights in Jordan

Women in Jordan practice their rights under the Islamic Sharia'h that granted them such rights. When practicing their rights, women are based on the provisions of the Jordanian Constitutions and the domestic laws in force.

In the last section of the study, the researcher is going to discuss the effects reflected from Jordan reservations to CEDAW in the field of women's practicing their rights in the presence and absence of such reservations.

If Jordan had not formulated reservations to this item, there would have been various effects on women practicing their own rights in a way that affects such rights especially in the case of marriage dissolution, where providing the Sharia'h residence along with the requirements of modern life becomes the duty of the wife exactly as its being a duty on the husband. The same goes for the issues of dowry and alimony, where both become equal trespassing the rules of the Islamic Sharia'h since the father is not obliged to spend money on the family, since the woman shares him the same duty.

Jordan has also formulated reservation to Article (16/1/d) where you can't imagine that man's responsibilities becoming identical to women's responsibilities, or what is considered as man's responsibility becoming a wife's responsibility, especially if she got married to another man, with the pretext of taking care of the children.

This item makes the woman bear the responsibility of spending money on her children equally with her husband even if she was divorced. There would be a separation between her role as a woman and her role as a wife, knowing that both roles can't be retained. In addition, the folk in its nature requires having one individual person to take care of its interests.<sup>91</sup>

The last reservation of Jordan was to Article (16/1/g) since it stipulated giving the same personal rights of both husband and wife regarding family name, occupation and kind of job.

Islam decides that children follow their father, since the husband himself follows his father and the wife herself follows her father. Work is a right for all citizens since Islam encouraged Muslims to take up an occupation. The problem is concerned with the nature and kind of occupation to be taken up. There are some occupations that don't fit women for purely physical reasons since they don't fit their feminine build up. A woman who goes to work without the permission of her husband loses her right to get alimony according to Article (61) of the Jordanian Personal Status Law, knowing that there are several positive aspects and benefits achieved by adopting an occupation that we had clarified in the previous pages.

The researcher thinks that if a man and a woman are equal in both rights and duties, this in itself, forms a kind of prejudice of women's rights which is against her interests. How can a woman be in charge of alimony exactly like man, if she doesn't have an income to spend from it and become equal in this respect with man in the family? How can this point be positive for women?

Life is based on placing each individual in their proper place in a way that fits their nature. If a woman wishes to spend money on her house, this is done by her own free will without a legal obligation. The woman has the right to get back what she had spent in case of the husband insolvency, since what she has spent is considered a debt on the husband, until he gets affluent to be able to pay it back for his wife.

If CEDAW, going into force, it might replace the Divine rules, when ALLAH the Almighty created earth, he laid down a set of rules and regulation to manage it in a systematic and proper way. He the Almighty, created human beings, hence, he is the one that knows what is in their favor and what is not. When neglecting those rules and regulation, one can imagine the pandemonium and chaos that might spread on this globe. And what a better proof than all what is happening to the world right now. Morals spring from religion and the strong belief that we were sent to this earth for a reason, and that one day we shall be judged, as we do unto the others so shall be done unto us. Replacing divine rules, leads to opposing religion, which is due to deviation from morals, belief, essence of creation, reason for living and not taking into account the deeds and actions committed by a person. This allows people to perform all sorts of sin, harm towards others and towards one's own self, and live a chaotic meaningless life.

Just as the Convention is a case of rebellion against the Creator. It represents a state of rebellion against our entire doctrines. And on our social stability. And pose a serious threat to the Jordanian family. Our society is threatened with further fragmentation. Especially when women give free housing. We do not mean that the requirement of housing in the contract of

<sup>91</sup>Jadul-Haq, Sheikh Jadul-Haq Ali, a previous reference, P.30

peers, but the absolute freedom of women, to practice whenever they like. Without the permission of her father, brother, or husband. Which means in a picture that the marital relationship is limited to the moment of sexual desire. If this desire is met, each spouse moves to his or her place of residence, a stark contrast to the concept of affection and serenity, which forms the basis of marriage.

We would like to remind you that Jordanian society is a conservative society with a social and cultural heritage in the sense of its own unique and equal protection of the value of Muslims and Christians. Therefore, our social, political and economic stability cannot be held hostage by a handful of women and men who have lost all their values, and traditions, in response to whims, and for personal gain secured by foreign funding, which turned them into tools to implement its agendas.<sup>92</sup>

The call for full equality between men and women in all matters of marriage and family relations is an invitation that clashes with the provisions of Islamic law in many family issues. Islam, which called for the respect and appreciation of women, mother, sister, wife and daughter, and rejected all forms of injustice that can be inflicted on women Or derogating from their rights, has distinguished between men and women in certain provisions in order to achieve the principle of justice among individuals, taking into account the innate, physical and psychological characteristics in which men differ from women in many matters such as the right of the husband to guardianship and obedience to virtue, and the right of the wife to custody, dowry and maintenance, as well as the provisions of inheritance, estates, divorce, descent, polygamy, and the jurisdiction over women in marriage, and other issues that cannot achieve full equality between men and women. The differences and characteristics that God created people, as well as the injustice and injustice against both men and women.

The call for full equality between men and women will undoubtedly lead to the disintegration and destruction of the family and to the corruption of the marital relationship which is based on Islam on the basis of complementarity, cooperation, mercy and affection, not on the basis of equality and equality as required by the Convention.

The lifting of these reservations would nullify the Jordanian personal status law, which derives from the provisions of the Islamic Shariah, which, in a number of its articles, discriminated between men and women in certain rights and duties, in accordance with the provisions of the peremptory Shari'ah that require such discrimination. In this regard, we would like to point out that the Personal Status Law derives from the provisions of the Islamic Shariah, which is the Jordanian Constitution. Article 105 states that the Shariah courts alone have the right to adjudicate matters of personal status of Muslims. Article 106 stipulates that courts Shariah in its ruling the provisions of Sharia law.

This makes the lifting of reservations to the Convention a violation of the provisions of the Jordanian Constitution, as well as the violation of the provisions of Islamic law and peremptory norms.

The lifting of these reservations is contrary to what was issued by the Jordanian Ifta Council in its Resolution No. 132-10-2009, dated 23-7-2009, which stated: "Anything that contravenes Islamic law, as stated in the CEDAW, is haraam and may not be applied, The wife to live and travel as she wishes, because this eliminates the meaning of the family, which is keen on Islamic law, and like the marriage of non-Muslim Muslim, this is contrary to what is known of religion necessarily.<sup>93</sup>

Islam recognizes the principle of equality between male and female in human value, and considers that men and women are equal before Allah in creation and formation, and they are equally equal in rights and duties within and outside the family.

However, this equality between men and women is not fully equal. It does not include biological formation and does not include the physiological functions that result in differences in costs and burdens of life, and differences in the worldly responsibilities and responsibilities of each. In many places of the Qura'an, and perhaps the most prominent verse stands out is the meaning of the words of Mary peace be upon her)

God created the male and female and made the relationship between them an integrative relationship and not a relationship of symmetry, which singled out both men and women with special characteristics necessary for the continuation of human life, characterized women with the qualities of softness, affection and tenderness and related qualities indispensable in the exercise of its function Concerning the custody and upbringing of children, while the man is characterized by all qualities of strength, hardness, toughness and other qualities indispensable to the performance of his duty in seeking to secure his living and the livelihood of his children.

This reality, which is recognized by all divine laws, is rejected by the Convention on the Elimination of All Forms of Discrimination against Women, which rejects this reality and calls for equality of rights between women and men, and calls for steps to modify social and cultural patterns that make discrimination increasingly stereotyped<sup>94</sup>.

Finally, as a researcher I would like to summaries the bellow under:

- The Convention is the principle and the end, and its flesh and blood, is the absolute equality and full symmetry between men and women in all political, economic, social, sports, legal and so on, and this principle is a side of the right, contrary to the apparent book, and the frankness of the year and his opposition to what is settled in the understandings is not requiring much statement, for the clarity that the differences in physiological functions must lead to differences in the functions of life a stinging blow.

<sup>92</sup><http://www.jordanzad.com/index.php?page=article&id=113653#sthash.cm8wfMBI.dpuf>

<sup>93</sup><http://olamaa.org/%D8%A8%D9%8A%D8%A7%D9%86%D8%A7%D8%AA%D8%A7%D9%84%D8%B1%D8%A7%D8%A8%D8%B7%D8%A9/117%D8%A7%D8%AA%D9%81%D8%A7%D9%82%D9%8A%D8%A9-%D8%B3%D9%8A%D8%AF%D8%A7%D9%88.html>

<sup>94</sup><https://sites.google.com/site/socioalger1/drasat-qanwnyite/qrate-aslamyite-fy-atfaqyte-alsydaw>

- The agreement is fraught with hostility between men and women. It depicts the relationship between men and women as a historical injustice that they want to put an end to, and is based on a narrow mentality that believes that if a man takes a larger share, it is at the expense of women. It is true that life is not so narrow, it is spacious and spacious together, and each role and function in harmony and integration to enrich life and achieve acquaintance and affection and compassion and conservation of the type, and that the different roles of life requires a difference in rights and duties without injustice or injustice.
- The Convention develops the spirit of individuality and considers women to be independent and not members of a family or part of a society.
- The Convention seeks to eliminate all forms of discrimination against women, which is unacceptable to reason, logic and indecency, because discrimination by all standards is good and ugly, and if the name of the Convention was replaced by another name such as the Convention on the Elimination of All Forms of Discrimination against Women, it would be acceptable.
- Article 2 of the Convention is contrary to Islamic law in its attempt to eliminate all forms of discrimination against women. Shariah supports the affirmative discrimination of women, rather than against women. It determines the equality of women in men and the dignity of creation. And in the penalty of mundane and ecclesiastical, equality in the entitlement of each pair to the right, and the establishment of rituals and the adoption of laws and ethics, and then decided to distinguish positive for the difference of some of the physiological functions of women from men, women do not pray and fast when a female exhibitor, but equal men in the Palace of prayer in travel and disease , And affirmative discrimination is determined when the man is given the responsibility to spend on the family and Juba punished by father or minors, and then not equal in inheritance in limited cases.

Even in inheritance, there is no injustice to women in Islamic legislation, as they sometimes take the same share of the male if she was a mother and died her sons well as in the case of brothers and sisters of the mother.

- Article 16 calls for equality between men and women in marriage at the time of marriage, during marriage and at its dissolution, the right to choose a husband, the rights of state and guardianship, guardianship of children and the right to choose a family name. The article contravenes Islamic law that divided roles in the family between men and women, and did not make them equal in equal rights and obligations.

## 6. Conclusion

This study has demonstrated the reasons for Jordan's reservations to some of the convention items and the effect of such reservations on women's rights in Jordan. It has also defined the meaning of reservation, conditions and its compatibility with the Jordanian constitution and law from the one hand, and the Islamic Sharia'h from the other hand. A number of conclusions had been approached including:

- Discrimination as defined by CEDAW is based on sex, a term that was radically eliminated more than 1400 years ago, at the advent of Islam.
- CEDAW sprouted from a society that had not treated women well, but rather they were neglected through the time line of history, under-trodden and pushed aside. It was the outcome of several years of misery, disgrace, and the sense of an overwhelming inferiority.
- Islam granted women a higher and soaring status than any other religion or society in the whole history of mankind. Women, alongside men became equals before their Lord and the divine law instilled on this earth. That equality was of divine nature, hence, a perfect one.
- Islam saw males and females as two pairs of one source complementing each other, and finding comfort and love in one another and not a relationship of competition and inferiority.
- It must be realized that in one sense, equality between men and women is possible and reasonable because they are both human, they are equal since both have responsibilities, obligation, and in worship before Allah the Almighty. In another sense, equality between men and women is impossible due to their natural differences in physical, mental, emotional and physiological qualities, inclinations and abilities.
- This study demonstrated that there are some provisions to which Jordan formulated reservations for the benefit of women in order to support her rights, observing the feminine nature of women. There are reservations that had restricted women in certain aspects of her life from practicing her rights in a way that provides a guarantee for such rights.
- The Jordanian constitution and laws taken from the Islamic Sharia'h had guaranteed women's rights while achieving a kind of balance between the international standards of human rights and the domestic laws of the state.
- Jordan realizes the effects of respecting human rights including development and rising and so, Jordan set forth some controls that regulate practicing such rights along to determining their place in the Jordanian laws.
- Giving women their right to give their children from non-Jordanian husbands their Jordanian nationality neither negatively neither influence the community, nor it contradicts the constitution or the Islamic Sharia'h which both emphasized equal rights of all Jordanians. On the contrary, this helps in improving and strengthening women's along to defending her stability.

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