

# “If You Wish to Enjoy Them” Islamic Marriage and Women’s Human Rights in Jordan

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## Introduction

In most Muslim-majority countries of the world, and in some countries where Muslims constitute a significant minority, family law is not secular in nature but relies in content, and at times also in administration, on Islamic jurisprudence. It is not evident that all Muslims living under these laws are aware of their origin. That is because codified family laws in the Arab world do not display these roots clearly.

This article will dwell on one such example, the Jordanian Personal Status Law-2019, (“JPSL” henceforth), using it to highlight this phenomenon. In the process, the article will outline the connections between particular formulations in the JPSL and the *Hanafi* school of law since the JPSL adheres to its tradition in particular. The article will also draw on relevant sources of the Qur’an and *Hadith* as interpreted in the *Hanafi* legal tradition. On the other hand, the article will employ the CEDAW (see below) as an example on international women’s rights to argue that family law based on Islamic jurisprudence is not compatible with women’s human. In the Islamic legal tradition, the dominant view of marriage is of it being as a mere contract whereby the wife’s role is limited to giving the husband access to sexual pleasure in return for money; basically, the dower (*ajr*) and the alimony (*nafaqah*). Traces of this are clearly there in the JPSL, but hidden from plain sight.

The article will start by giving a theoretical perspective on both the CEDAW and the JPSL. Then it will move to explore aspects of the JPSL dealing particularly with three specific areas, the concept of marriage, the dower and alimony. Then it will show how some aspects of these areas violate some provisions of women’s human rights as stipulated in the CEDAW. The article does not claim to provide a comprehensive analysis of the JPSL against the CEDAW, but rather aims at exploring the three areas mentioned above in particular with view at arguing that Islamic family law violates internationally-recognized women’s rights.

## Theoretical Perspective

CEDAW (The Convention on the Elimination of All Forms of Discrimination Against Women) is an international human rights treaty adopted by the UN in 1979. It has 189 state parties and its major objective is to protect women against any form of discrimination. The treaty consists of 30 articles, 16 of which outline four major areas of women’s rights; namely, (1)

nondiscrimination (2) elimination of sex trafficking, (3) health, education, employment, and socio-economic life (4) equality in marriage as well as before the law (Meyer, 2016). The treaty clearly provides that states parties are obliged to “embody the principle of the equality of men and women in their national constitutions or other appropriate legislation ... and to ensure, through law and other appropriate means, the practical realization of this principle (taking) appropriate measures ... to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” (cited in Meyer, 2016: 564). It also stipulates that states parties have to ensure 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 ... [and t]he same rights to decide freely and responsibly on the number and spacing of their children. (cited in Meyer, 2016: 565).

Jordan signed the CEDAW in 1980 declaring reservations on some articles, which were confirmed upon ratification in 1992. The reservations were made particularly on three articles; namely 9(2), 15(4), and 16(1) (c), (d) and (g). (UN Committee, 2010). In 2009, thanks to some feminist voices in the country, Jordan withdrew its reservation on article 15(4), which grants “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.” Still, the remaining reservations on the two articles deprive women of some fundamental rights. Article 9(2) grants women “equal rights with men with respect to the nationality of their children,” and article 16(1) (c), (d) and (g) grants men and women “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 ... (and) the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation”. (UN General Assembly, 1979). The reservations on the last article in particular were maintained in relation to their contradiction with Islamic jurisprudence, which governs the current JPSL.

The history of the JPSL goes back to 1951, when it was first enacted under the name “Jordanian Law for Family Rights”, which was replaced in 1976 by the “Personal Status Law” (Welchman, 1988). Similar to other Arab family laws, The JPSL is not listed within secular courts that deal with the rather public disputes, but operates within separate *Shariah* courts, which are administered by the Chief Qadi Department (*qadi al-qudat*). As such, it basically governs family issues like marriage, divorce, kinship and inheritance. Up until 2000, the JPSL stipulated that the minimum marriage age was 16 years old; in addition, the wife had no right to initiate divorce, while the husband had unconditional right to polygamy. In 2001, some amendments to these stipulations were introduced. They included raising the legal marriage age for both sexes to 18, in addition to endowing women with

the right to annulment of marriage, and – in the case of polygamy- the obligation of the court to inform the previous wife (wives) of the new marriage (Clark & Young, 2008). In 2019, further amendments to the JPSL were introduced, which, as far as marriage is concerned, touched on alimony only. Whereas the 2001 law stated that the imprisoned woman is not entitled for alimony at all, the 2019 amendments provided that this is only the case if the husband is not involved in her incarceration.

All in all, the JPSL adheres to Islamic jurisprudence as a source of its provisions. Article no. (323) clearly states that articles of the law are to be understood and interpreted in accordance with principles of Islamic Jurisprudence (Qanun, 2019). In more particular terms, the JPSL adheres to the *Hanafi* tradition adopted since the time of the Ottomans as article (325) states that the areas not covered within the law are to be determined in accordance with the predominant (*rajih*) views of the *Hanafi* school; otherwise, courts shall apply the provisions of Islamic jurisprudence most in common with the articles of the law (*ibid*). By and large, “in Jordan ... the dominant school of Islamic jurisprudence has historically been the *Hanafi* ... and most members of the Fatwa Committee adopted the *Hanafi* view of *Shari'a*” (Maali & Napier, 2010: 100-101).

This adherence to the provisions of *Shariah* has created notable contradictions with international women human right such as CEDAW. As Vikør (2005) demonstrates, when compared with traditions of pre-modern Europe and pre-Islamic culture, *Shariah* is evidently more empowering to women both socially and economically. However, in relation to contemporary times, *Shariah* provisions clearly form an obstacle towards such empowerment, which appears more evidently in Islamic marriage. Svensson (2000) locates these obstacles in the Islamic assumption that women’s human rights contradict the supposedly *Shariah’s* “eternal, unchangeable and superior religious demands,” which do not essentially reject gender equality, but redefine it on the basis of an essentialist gendered view of human nature that allocates different rights and duties for each gender (p. 46). Jordan officially admitted this disparity in its explanation of the reason behind rejecting CEDAW’s recommendation of reviewing Jordanian reservations made on some provisions of the Convention. Jordanian report submitted to the committee clearly states that those recommendations were not approved “on the grounds of their incompatibility with Islamic *Shariah*” (UN Committee, 2016, para. 108).

This being said, the article will start by focusing on three major areas in the JPSL; namely the conception of marriage, the dower and the alimony. It will trace these provisions to their roots located in the *Hanafi* legal tradition, and draw on relevant *Hanafi* interpretations of the Qur’an and *Hadith* to explain the foundation for the *Hanafi* tradition in these areas. Then it will show how the provisions of JPSL in these three areas are in opposition to the

provisions of CEDAW. In conclusion, the article will contend that Islamic family law is incompatible with internationally recognized women's rights.

### The conception of marriage (*nikah*)

In its definition of marriage, the JPSL states that marriage is a contract between a man and woman whom is legitimate for him to marry, aiming at establishing a family and producing offspring (Qanun, 2019, art. 5). An exploration of some foundational Islamic sources shows that this definition is rooted in the dominant Islamic jurisprudence. Devin Stewart argued that, based on the presentation of its rules in the Qur'an, "the main purposes of marriage ... are to satisfy male sexual needs and to allow procreation while preserving accurate male genealogy." (n.d, para. 7). More into the *Hanafi* tradition, the *Encyclopaedia of Islamic Jurisprudence* (2002) states that, drawing from the Qur'an and *Hadith*, a considerable number of Muslim scholars emphasized that *nikah* denotes having sex and connotes marriage (marriage being the main framework for legitimate sexual relations), which is the dominant understanding of the *Hanafi* school. (*Nikah*, p. 205). Accordingly, the *Hanafi* school defined *nikah* as a "contract which endows the man with the absolute right of having pleasure with a female; i.e it legitimates the sexual pleasure a man may get from a certain woman where there is no religious impediment to the marriage" (ibid).

In a similar vein, in his multi-volume book, *Islamic Jurisprudence According to the Four Sunni Schools* (2003) - which has been a core component of the curricula of Al-Azhar University, a well-known academic institution in the Islamic world for the study of *Shariah* and Islamic law - Abdul Rahman Al-Jaziri reiterates that despite the different conceptualizations of *nikah* among the various schools of law (*madhahib* sing. *madhab*), they all relate to one conception represented in the fact that *nikah* is a contract that has been put by the Islamic authorities so that the husband may *make use* of the wife's vagina as well as the rest of her body for the pleasure of sex. Al Jazairi moves on to draw on the view of the *Hanafi* school of law to illustrate their contention that marriage contract is essentially an *ownership* contract in particular, not very different from the ownership of a slave-concubine (concubinage being the other legitimate framework for sexual relations). The only difference, according to them, is that sexual pleasure of the husband is the main target of the marriage contract, whereas in the slavery contract, the main target is the service of the slave-concubine, while sexual pleasure is just embedded in this contract:

Some *Hanafis* said that it (*nikah*) directly entails endowing the husband with ownership of pleasure, which means man's ownership of the pleasure from the woman's vagina and the rest of her body, not full-fledged ownership. Other *Hanafis* say it is the ownership of the wife's sexual self, which means possessing the vagina for pleasure purposes. Others (of the *Hanafis*) say it entails the benefits of the vagina and the rest of the body, which means that the husband has

the exclusive right to these pleasures. All these views entail one meaning, as those who say that he (the husband) owns the self-do not mean real ownership since the free woman shall not be owned, but they mean ownership of benefits. Their saying “directly” is meant to single out the indirect pleasure the man gets when he purchases a female slave, as her purchase contract legitimates having sex with her indirectly, which is clearly not a marriage contract (p. 8).

Asifa Quraishi (2013), the scholar of Islamic law who is an affiliate of the Muslim Women’s League and the past President and Board Member of “Karamah: Muslim Women Lawyers for Human Rights,” dwells on the *Hanafi* analogy of the concubine sale contract indicated above, arguing that despite the existence of considerable differences between the situation of the wife and that of the concubine, the issue of ownership remains instrumental in legitimizing sexuality in both cases. She explains that the historical context facilitated this analogy as Islamic marriage contract law was formulated in an age of acceptable concubinage and slavery. Both marriage and concubinage came to be the only channels for acceptable sexuality for Muslim men, which lead to the conclusion that acceptable sexuality entails aspects of male ownership of the woman. Thus, it is no wonder that the provisions governing the husband-wife are not very different from those governing the concubine-master one.

Implicitly, the JPSL sticks to the *Hanafi* conceptualization of marriage, where marriage is conceptualised as a *contract*, at the roots of which is an economic transaction. In the same vein, the phrase “legitimate for him to marry” concords with the *Hanafis’* stress on the absence of any religious impediment to the marriage. In the dominant Islamic discourse, legitimacy to marry someone equals legitimacy to have sex with him (her). Furthermore, the use of the masculine pronoun, “him”, as opposed to “them”, implicitly shows that the marriage contract, just like the sexual sale contract, is a gendered one, where the man is the doer and the woman is the just an object or recipient. In other words, the JPSL, submits to the *Hanafi* understanding that, despite relative recognition of the sexual rights of married women, conjugal sex is viewed as more of the man’s right, not his duty. The man has the right to compel the woman for pleasure, where the woman does not have to compel him but once ( Al Jaziri, 2003).

This gendered view is also implicitly present in other articles of the JPSL. Articles (132) and (130) are illustrative. They dwell on the right of each spouse to annulment of marriage for reasons related to sexual shortcomings of the other. However, article (132) provides that the husband is entitled to annulment immediately once he finds out that his wife has got a sexual shortcoming that hinders him from having sex with her such as vaginal atresia, whereas article (130) gives the same right to the wife, but with restrictions. It establishes that this right is only applicable in the case of the husband’s irremediable impotency; otherwise he is given a one-year notice for remedy, after which annulment applies only if impotency remains and the

wife is still virgin and insists on divorce (Qanun, 2019). Regardless of the specifics, the immediate annulment in the case of the woman's sexual shortcoming compared to the restrictions imposed in the case of the man's clearly submits to the *Hanafi's* view that the sexual side of marriage is the core duty of the wife rather than the husband. As Vikør (2005) shows, in giving women access to divorce, the wife simply "borrows" this access – under certain conditions – from the husband, who originally has the free access to divorce.

This androcentric ease of access to divorce is further established as the JPLS – in accordance with *Shariah* provisions - endows the husband with the exclusive right to unilateral divorce, unless stipulated otherwise in the contract, which almost never happens, taking into consideration the conservative nature of Jordanian society. Although there is clear distinction between Islamic marriage and slavery, especially as the married woman - different from the slave - is entitled for dower, the above-mentioned right shows an instance of connection between slavery and Islamic marriage. Just like the slave owner has the exclusive right of freeing the slave, so does the husband in relation to his wife. It is true that the JPSL endows the woman with the right to *khulu'*, which is the right of the wife to get divorced in return for a compensation given by the wife to the husband upon their agreement (Qanun, 2019, art. 102), however, as suggested by Quraishi (2013), even this right evinces as a channel through which the wife purchases her freedom through financial compensation of the husband, just like *kitaba* in Islamic jurisprudence enables the slave to pay for her freedom. Both cases necessitate the husband's (owner) consent, and force the wife (slave) to make some financial compensation. Along these lines, in the case of male unilateral divorce, the JPSL gives the husband the right to declaring reunion after male unilateral revocable divorce, regardless of the woman's consent (Qanun, 2019, art. 98). This is based on the predominant (*rajih*) jurist understanding of the Qur'anic order: "Divorced women shall wait by themselves for three periods. And it is not lawful for them to conceal what Allah has created in their wombs, if they believe in Allah and the Last Day. Meanwhile, their husbands have the better right to take them back, if they desire reconciliation ..." (Qur'an, 2:228).

Additionally, further connections between conjugal sexuality and other forms of sexuality are suggested in the JPSL. For example, article (26) states that having sex with a woman outside wedlock necessitates the same prohibitions ensuing from marriage relationship unless there was no consummation. (Qanun, 2019). This is based on the *Hanafi* understanding of the Qur'anic stipulation: "Do not marry women whom your fathers married, except what is already past. That is improper, indecent, and a bad custom" (4:22). As they take *nikah* to mean having sex, the *Hanafi* jurists determined that this Qur'anic rule applies when a man has sex outside marriage. So,

drawing on this Islamic rule, the article above stipulates that prohibitions ensuing from sex in marriage apply also to sex outside marriage.

The keenness on the distinction between consummated and non-consummated marriage highlighted above further proves that the marriage contract is purely a contract of sexual access. The JPSL further recognize this distinction in several articles. For example, article (95) provides that a man may not remarry his irrevocably-divorced ex-wife unless she gets divorced from another man who had consummated his marriage with her in legitimate marriage. Harald Motzki highlights this Islamic distinction, arguing that “marriage is not definitely concluded until its consummation, through which all legal consequences become effective” (n.d, b. para. 5). This understanding of marriage being dependent on sexual consummation for its validity comes from core foundational Islamic sources which the *Hanafis* rely on. For example: “If he divorces her, she shall not be lawful for him again until she has married another husband. If the latter divorces her, then there is no blame on them for reuniting, provided they think they can maintain Allah's limits” (Qur’an, 2:230). Again, based on the *Hanafi* understanding that *nikah* means having sex, the phrase “has married” above entails sexual consummation. The Prophet Muhammad implemented this rule with the ex-wife of of Rifa’a Al Qurathi, when he refused to allow her to remarry Rifa’a, instructing her “No (you cannot remarry your first husband) till you taste the second husband and he tastes you (i.e. till he consummates his marriage with you) ” (Al-Bukhari, n.d., no. 238).

Clearly enough, in accordance with the *Hanafi* legal tradition, marriage in the JPSL can be defined as a mere contract that gives man sexual access to a woman. As such, this links the marriage contract to female slavery, especially as it submits to the *Hanafi* understanding that the right to sexuality is almost exclusively the husband’s pejorative. In short, the JPSL just reformulates this *Hanafi* conception of marriage in a more prudish way, without changing the content. This is further authenticated with a critical look upon the foundational Islamic provisions about the dower.

### The dower (*ajr*)

In the context of slavery analogy highlighted above, and in line with the *Hanafi* tradition, the dower provisions in the JPSL can be clearly viewed as the *down payment* within the sale contract; i.e the return for the woman’s submission of her sexual self to the man. For example, further highlighting the distinction between consummated and non-consummated marriage, The JPSL establishes that if the man initiates divorce before consummation or meeting in privacy, the woman is entitled to only half of the dower, but if the woman is the one who initiates it, then she automatically waives her right to half of the dower (Qanun, 2019, arts. 44 - 45). This provision is rooted in the *Hanafi* understanding of the Qur’anic order: “If you divorce them before you have touched them, but after you had set the dowry for them, give them half

of what you specified ..." (Qur'an, 2:237). The fact that the woman is still entitled to part of the dower even before consummation or meeting in privacy further validates the link between marriage and sex as this part is due because the woman has surrendered her sexual self to the man. Accordingly, in line with this view, The JPSL admits that if the man does not get the *full* sexual pleasure (consummation), he does not have to pay the full dower.

The sexual function of the dower is clearly enunciated in verse (4:24), where the Qur'an establishes a general rule of thumb for marrying women outside the group of prohibited women: "Permitted for you are those that lie outside these limits, provided you seek them in legal marriage, with gifts from your property, seeking wedlock, not prostitution. *If you wish to enjoy them, then give them their dowry*—a legal obligation." (Qur'an, italics mine). As the *Hanafis* argue, the Qur'anic stress on "with gifts from your property" clearly testifies that the dower is paid as a return for sexual pleasure the wife provides for the husband. Accordingly, the majority of the *Hanafi* jurists define the dower as "the name given to the money imposed on the husband in the marriage contract in return for (the pleasure from) the vagina" (Al Kasani, p. 480)

In submitting to the above conception of the dower, the JPSL stresses that the dower is exclusively the woman's right, and that neither the wife's parents nor any of her relatives may take money or any other thing from the husband in return for marrying her to him or finalizing the wedding ceremony (Qanun, 2019, art. 54). Motzki beautifully shows how this point is very seminal to the real conception of dower in Islamic tradition as a reward (*ajr*) for sexual intercourse. He argues that, contrary to the pre-Islamic dower, which was given to the father of the bride, Islamic tradition reserves the dower for the wife as "a compensation for the permission to have sexual intercourse (not a compensation for the loss of a potentially productive member of a clan as *mahr* was probably considered in pre-Islamic Arab tribal society) and, related to this idea, the choice of the term *ajr* (reward)" (n.d, a, para 3). Vikør (2005) reiterates the same point as he shows that Islamic dower is not the "bridewealth" that is given in return for the sale of the woman's reproductive power as the case with some African societies; nor is it a bridal gift aiming at maintaining wives' social security, which is essentially "outside the husband's concern" (p. 302).

In the same vein, the JPSL subscribes to the *Hanafi* distinction made between the dower on the one hand and the gift and the trousseau on the other, which contributes to undermining the mistaken idea that dower is a gift presented by the husband to the wife, or alternatively a sum intended for the wife's trousseau. In this regard, the JPSL dedicates a special article for rules regarding gifts separate from those governing the dower in the cases of divorce and death. Article (4-d) states that the party who initiates the divorce has to return unconsumable gifts to the other party. Articles (4-b) and (4-c), on the other hand, distinguish between the dower and the gift in the case on



the fiancée's death, where the former is to be paid back, the latter not. The bottom line is that the gift is not a dower or part of it, otherwise it would not have taken a special article regardless of the content. In the same vein, The JPSL clearly shows that the dower is not indented for trousseau. Article (57-a) bluntly states that the dower is the property of the wife, and that she shall not be obliged to use it for trousseau. The JPSL even has a special chapter entitled "The Dower and Trousseau," clearly showing that each is different from the other; otherwise they would not have distinct names (Qanun, 2019).

As indicated above, this distinction is present in the *Hanafi* legal tradition. The *Hanafi* jurists distinguished between what the husband gives to his wife or her *wali* (guardian) as a dower or part of the dower on the one hand and what he gives as a gift on the other. For them, the dower and its parts are reclaimable if they have not been consumed, otherwise, the husband is entitled to reclaim their value. On the other hand, although the gift is similarly reclaimable if not consumed, its value is not reclaimable otherwise (Al Omrani, p. 307). In the same vein, the *Hanafi* school stresses that the trousseau is an obligation on the side of the husband, which is different from the support, shelter and dower, the latter being solely in return for sexual pleasure (Al-Zuhayli, p. 312). The bottom line is that essentially the dower is neither a gift nor intended for the trousseau, but is simply a reward for the sexual pleasure.

### Alimony (*nafaqah*)

The *Hanafi* doctrinal details about alimony go in line with the slavery analogy indicated above. They stress that alimony is conditional upon the wife's submission of her sexual self (Al-Zuhayli, p. 788). In line with this, the JPLS links alimony to dower in as much as both complement the return for sexual access to the wife. Just like the dower signifies the woman's surrendering her sexual self to the man at the start of the marriage, alimony functions as a return for her continuous sexual availability within marriage. That is why the wife is obligated to move to the husband's place once she receives the dower (Qanun, 2019, art. 72), which is due once the contract is completed (Qanun, 2019, art. 40). Once together, the husband's duty is to provide financial support and shelter for the woman even if she is wealthy (Qanun, 2019, art. 59-a), which further clarifies the purposes of the alimony as it has nothing to do with the wife's needs; but just represents a reward for her constant sexual availability. As Quraishi (2013) contends, even the fact that Muslim women are not required to the housework further substantiates the alimony-sex paradigm. This is because the wife's maintenance is not essentially presented as a return for her housework, but for the sexual access she provides to the husband.

In return for this support and shelter, the woman is obligated to provide wifely (sexual) obedience, otherwise, she is not entitled to alimony (Qanun,

2019, arts. 60, 62). Indeed, Jordan's *Report* (2006) submitted to the CEDAW Committee clearly admits the support-obedience framework as it states that:

Under Jordanian law, marriage is not based on equality of rights and duties for husband and wife, but on reciprocity, i.e. rights for the wife with corresponding duties for the husband, and rights for the husband with corresponding duties for the wife. It follows that the concept of equality between spouses cannot be made to fit into the existing legal system. By way of illustration, *the wife has a right to support, and the husband has a corresponding right to require her to obey him and live under his roof.* (UN Committee, 2006, para. 248, *Italics mine*).

Contrary to the relatively candid illustration of the report, the JPSL does not clearly state this money- sexual obedience paradigm, but impedes it in legal terminology. For example, it stresses out that one of the conditions of legal marriage is the financial capacity of the man that qualifies him to pay the dower and maintains support for the woman (art. 21), and in case it is found that the man is financially incapable of paying the dower or providing support, the wife has the right to annulment of marriage (Qanun, 2019, arts. 22-b. and 139). The bottom line is that in the case of the husband's inability to pay the dower or provide support or both, the marriage contract is annulable simply because he is not providing return for the wife's continuous sexual availability.

In return, the JPSL submits to the *Hanafi* provision that, in the case of sexual unavailability of the wife, the husband does not have to support her. For example, article (63) clearly states that the wife incarcerated by a decisive sentence in which the husband is not involved is not entitled for alimony as of the date of incarceration. (Qanun, 2019). Again, understanding this article is best reached with a view at the foundational *Hanafi* jurisprudence. In this regard, Al Jaziri (2003) state that the *Hanafi* tradition lists 11 cases where the wife is not entitled for alimony. Among these cases are the little wife who cannot stand sex and the wife who is incarcerated, even unjustly, as long as incarceration detains the man from having sex with her (p. 497). It is clear that the reason for the lapse of the right to alimony in both cases is that the wife is unable to make herself sexually accessible. Again, the JPSL does not clearly mention the reason as stated in Al Jaziri.

### The JPSL and women's human rights

Examining the above provisions of the JPSL against those of the CEDAW proves that the JPSL does show considerable violation of women's human rights. Article (1) of the CEDAW defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (UN General

Assembly, 1979). Looking at the previously discussed aspects of the JPSL against this definition proves that the JPSL does condone discrimination against married women as rooted in Islamic jurisprudence. This discrimination is summed up in Jordan's reservation entered to article 16(c), which gives women "the same rights and responsibilities during marriage and at its dissolution." (Ibid).

Evidently, the root of this violation is located in basing the overhaul conception of marriage on the sex-for money formula informed by the *Hanafi* tradition, which restricts women's agency, situating them within a limited dehumanizing role represented in providing sexual pleasure to husbands. These sexual duties of the wife are enforced in the JPSL provisions regarding the dower and alimony. As mentioned above, in the case of divorce before consummation or meeting in privacy, the woman is either entitled only to half of the dower, or not entitled at all. (Qanun, 2019, arts. 44 - 45). In the same vein, wives incarcerated without the husband's involvement are not entitled to alimony (Qanun, 2019, art. 63). In both cases, women are deprived of (part of) their financial rights simply because they are sexually unavailable. This understanding of marriage, informed by stereotypical gender roles of the *Hanafi* tradition, stands in stark opposition to article 5(a) of the CEDAW, which calls on state parties to eliminate practices "which are based on the idea of the inferiority or the superiority of either of the sexes or on *stereotyped roles for men and women*" (UN General Assembly, 1979, italics mine). As indicated above, Jordan's *Report* (2006) was clear enough to admit that the JPSL does not accommodate equal rights and duties for the husband and wife but rather stipulates "rights for the wife with corresponding duties for the husband, and rights for the husband with corresponding duties for the wife" (UN Committee, 2006, para. 248).

Not only does the JPSL restrict women's marital position to these sexual "duties," but it also fails to fully recognize their right to sexuality on equal footing with men. As article (130) and (132) mentioned above show, whereas the husband has the right to immediate annulment of marriage in the case of the woman's sexual shortcoming, there are restrictions on the woman's right in the case of the man's impotency. Evidently, this ruling goes in line with the *Hanafi* tradition, which does not fully recognize the right of woman to sexual pleasure (Al Jaziri, 2003). As such, this goes against the provisions of article 2(a) and (c) of the CEDAW, which calls on state parties to "embody the principle of the equality of men and women in their national constitutions or other appropriate legislation" and to "establish legal protection of the rights of women on an equal basis with men" (UN General Assembly, 1979).

Further instances of violation of this particular article permeate the JPSL. For example, women do not have access to divorce on equal terms with men. As illustrated above, whereas men can initiate divorce by pronouncing it, women have to go through a long judicial journey whereby they have to provide compensation for the men (Qanun, art.102). In the same vein, it is

only the man who has the right to declare reunion after revocable divorce, regardless of the wife's consent. The very idea that women do not have the freedom to reject this reunion represents defiance of article (3) of the CEDAW, which guarantees women "the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men" (UN General Assembly, 1979).

Remarkably enough, Jordan officially admits the JPSL's inconsistency with the provisions of human rights and locates this inconsistency in the adherence to Islamic *Shariah*. In its reply to CEDAW recommendations mentioned earlier, the Jordanian report states:

These recommendations failed to meet with Jordan's approval before the Human Rights Council *on the grounds of their incompatibility with Islamic Shariah* ... The Jordan Islamic Scholars League sent a letter to the speaker of the House of Representatives calling upon the house not to approve lifting the reservations to the Convention, *on the grounds that they violate Islamic Shariah*. Accordingly, the issue of lifting the reservations has to be dealt with very sensitively and gradually, *in a manner that balances the promotion of women's human rights with the obligation to reject whatever contradicts the provisions of Islamic Shariah* (UN Committee, 2016, para. 108).

The report is clear enough to highlight women's rights' "incompatibility with Islamic Shariah," and to situate *Shariah's* provisions against "the promotion of women's human rights." In the dominant Islamic jurisprudence, these provisions are so fundamental to the theoretical framework of Islamic marriage that they can hardly accommodate any changes. That is why the "the concept of equality between spouses cannot be made to fit into the existing legal system" (UN Committee, 2006, para. 248).

## Conclusion

Islamic jurisprudence is a wide arena of different and often conflicting interpretations so much so that it is impossible to provide a fixed view on a certain issue. Hence, the current study does not claim to provide a comprehensive outlook on the unanimous Islamic provisions of marriage, but rather yearns to dig in some problematic aspects of Islamic marriage as theorized in the JPSL and rooted in *Hanafi* tradition, with view at showing their incompatibility with women's human rights. As such, the article raises the question of to what extent can these doctrines be amended for the promotion of women's rights.

In her *Inside the Gender Jihad* (2006), the famous Islamic theologian, Amina Wadud, addresses this question thoroughly. Admitting the sexist tendency in Islamic law, she fully repudiates the continuous fruitless attempts at reaching alternative interpretations of scriptural sources as these attempts fail to achieve the desired objective. Instead, she calls for "a more radical synthesis of strategies and struggles toward the end of gender equality"

(p.188). In more particular terms, she encourages a process of rewriting the Islamic law altogether so that it fits contemporary standards of gender equality:

... In fact, we must rewrite the law ... By rewriting the legal codes, through distinguishing their sexist assumptions, we can achieve an Islamic reality more meaningfully reflecting Qur'anic principles in a harmonious equilibrium. (p. 205)

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