

**HARMONISATION OF *SHARI'AH* AND THE  
CONVENTION ON THE ELIMINATION OF ALL FORMS  
OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

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**ABSTRACT**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by Resolution No. 34/180 of the United Nations General Assembly on December 18, 1979, embraces the principle of eliminating all forms of discrimination against women in political, economic, and social realms. It urges signatory countries towards absolute gender equality, which is inconsistent with Islamic law. This study aims to discuss women's rights under CEDAW and Islamic law as well as the compatibility and conflict between CEDAW and Islamic law. Through the doctrinal research, this article endeavours to shed light on the avenues through which *Shari'ah* and CEDAW can come up with common ground, fostering a harmonious coexistence that upholds the rights and dignities of women within the context of Islamic law and the broader international legal framework. It is concluded that that *Shari'ah* offers women comprehensive rights and suggests that harmonisation between *Shari'ah* and the CEDAW could be achieved through substantial amendments to provisions conflicting with Islamic law or by states ratifying the CEDAW with reservations to articles inconsistent with Islamic law.

**Keywords:** Harmonisation, Islamic law, international law, women's rights, CEDAW.

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## **INTRODUCTION**

The issue of women's rights is considered significant in both ancient and modern societies, serving as a focal point for intellectual inquiry. Within this discourse, there are secularists advocating for liberating women from the restrictions that govern their rights, while a moderate faction contends for women to enjoy their rights and duties in accordance with Islamic law's provisions and without exaggeration or negligence.

Amidst the clamour for freedom and equality among individuals, emerged the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It was adopted by Resolution No. 34/180 of the United Nations General Assembly on December 18, 1979. CEDAW stands as a pivotal step for proponents of absolute gender equality across all domains and the combatting of any discrimination limiting women's agency. To attain the Convention's desired goal of equal rights between men and women, it included articles outlining measures for its implementation while safeguarding against violations.

Yet, the CEDAW encompasses provisions conflicting with Islamic law. Islamic jurisprudence endows women with rights and protection, such that they boast of privileges surpassing those articulated in the Convention.

In the realm of legal discourse, the intersection of *Shari'ah* and international conventions, particularly the CEDAW, has sparked extensive debate and deliberation. The convergence of *Shari'ah*, deeply rooted in Islamic jurisprudence and ethics, and the principles enshrined within CEDAW, a pivotal international convention advocating for gender equality and women's rights, presents both challenges and opportunities.

The primary objective of this research is to unravel the pathways toward reconciling these legal systems, identifying points of convergence, and addressing potential divergences. Through the doctrinal research, this article endeavours to shed light on the avenues through which *Shari'ah* and CEDAW can find common ground, fostering a harmonious coexistence that upholds the rights and dignities of women within the context of Islamic law and the broader international legal framework.

## **DEFINITION OF HARMONISATION**

The Arabic term for harmonisation is "*tawfiq*", which aims to bring two or more different ideas or systems into agreement or harmony with each other. In the context of legal systems like *Shari'ah* and international law, achieving *tawfiq* or harmonisation involves finding common ground or reconciling the differences between the two systems.<sup>3</sup>

Harmonisation refers to the process of bringing different legal systems, principles, or norms into alignment or agreement with each other. It involves reconciling and integrating diverse legal frameworks, rules, or practices to achieve consistency, coherence, and mutual compatibility.<sup>4</sup>

The process of harmonisation often requires careful examination and analysis of the principles, values, and objectives underlying each legal system. It may involve identifying areas of compatibility, seeking common principles, or finding ways to accommodate certain aspects of one system within the framework of the other.<sup>5</sup>

The harmonisation of *Shari'ah* and international law requires careful consideration, dialogue, and respect for legal pluralism. It is a complex issue that varies depending on the jurisdiction and the specific aspects of the law being considered.<sup>6</sup>

It is crucial to note that international law's harmonisation technique involves Islamic teachings. In this respect,

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<sup>3</sup> Mohammad Hashim Kamali, "Shari'ah and Civil Law: Towards a Methodology of Harmonization," *Islamic Law and Society*, 14(3), (2007): 392.

<sup>4</sup> Kidjie Saguin, Michael Howlett, "Enhancing Policy Capacity for Better Policy Integration: Achieving the Sustainable Development Goals in a Post COVID-19 World." *Sustainability*, 14(18) (2022): 11600.

<sup>5</sup> Arthur Rosett, "Unification, Harmonization, Restatement, Codification, and Reform in International Commercial Law," *American Journal of Comparative Law*, 40(3) (Summer 1992): 683-698.

<sup>6</sup> Shanna Corner, "The Boundaries of Religion in International Human Rights Law", *Journal of Human Rights*, 21(2), (2022): 191-209.

harmonisation should not be used to make Islamic prohibitions permissible, morality should not be compromised, the Qur'an and *Sunnah* should not be modified, and Islamic justice and equality should not be violated. *Shari'ah's* goals, objectives, public interest, prohibiting evil tactics or pretence, and other principles may be used in this harmonisation process.

In legal literature, the concept of legal harmonisation is primarily discussed in relation to comparative law.<sup>7</sup> Harmonisation refers to particular and broad aspects of the legislation of several nations or states within a federated country in order to improve interactions between their inhabitants.<sup>8</sup>

## **PRINCIPLES OF CEDAW CONVENTION**

The principles underpinning the CEDAW Convention signify a monumental stride in the global commitment to safeguarding women's rights. This international accord, adopted by the United Nations General Assembly on December 18, 1979, and enacted on September 3, 1981, stands as a beacon advocating for the eradication of all forms of discrimination against women. Comprising 30 articles across six segments, the Convention aligns itself with pivotal international treaties, such as the United Nations Charter of 1945, the Universal Declaration of Human Rights of 1948, and the two International Covenants on Human Rights of 1966; the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>9</sup>

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<sup>7</sup> Walter Joseph Kamba, "Comparative Law: A Theoretical Framework." *International & Comparative Law Quarterly*. 23(3), (1974): 485-519.

<sup>8</sup> Martin Boodman, "The Myth of Harmonization of Laws," *American Journal of Comparative Law*, 39(4), (Fall 1991): 699-724.

<sup>9</sup> United Nations, "The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)", accessed December 24, 2023, <https://www.un.org/womenwatch/daw/cedaw>.

In its preamble, the CEDAW Convention included a set of fundamental principles stressing the belief in basic human rights and the imperative of equal rights between men and women. The Convention emphatically underscores the necessity of eliminating segregation and discrimination between genders, recognising this as a cornerstone for bolstering international peace and security. Moreover, it addresses the challenges impeding its implementation.<sup>10</sup>

At the heart of the Convention lies the concept of gender equality, compelling member states to obliterate any disparities, irrespective of their nature. Discrimination against women, as defined by the Convention, encompasses any distinction, exclusion, or restriction rooted in sex that diminishes or obstructs women's realisation of their human rights and freedoms across political, economic, social, cultural, civil, and other spheres. This definition disregards marital status, emphasising equality between women and men.<sup>11</sup>

With the impressive backing of 188 States parties, the CEDAW Convention enjoys widespread support. As governments become state parties, they hold the prerogative to enter reservations, delineating specific aspects of the treaty to which they won't adhere. Declarations, carrying equivalent weight, also feature in the implementation process.<sup>12</sup>

The foundational pillars of the CEDAW Convention rest upon three cardinal principles: non-discrimination, state obligation, and substantive equality.<sup>13</sup>

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<sup>10</sup> Ahmed Gomaa, *Elimination of all forms of violence and discrimination against women* (Cairo: Al-Warraq for Publishing and Distribution, 2014), 92.

<sup>11</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art 1.

<sup>12</sup> IWRAW Asia Pacific, "CEDAW Principles", accessed December 20, 2023, <https://cedaw.iwraw-ap.org/cedaw/cedaw-principles/cedaw-principles-overview/>.

<sup>13</sup> PLD, "CEDAW South Asia Core Concepts", accessed December 20,

1. **Non-discrimination:** At the crux of equality lies the elimination of discrimination against women in every facet of life, holding both state and non-state actors accountable in the event of rights violations.
2. **State obligation:** Encompassing respect, protection, promotion, and fulfilment of human rights. This principle obliges due diligence in preventing, investigating, and sanctioning private acts of discrimination. All arms of government -legislative, executive, and judiciary, bear responsibility in fulfilling state obligations.
3. **Substantive equality:** Addressing negative female stereotypes. This principle strives to obliterate discrimination at individual, institutional, and systemic levels through corrective measures and positive actions. It seeks to rectify imbalances and aims for "equality of outcomes" by ensuring equal opportunities, access, and benefits for women.

## **WOMEN'S RIGHTS UNDER THE CEDAW CONVENTION**

The provisions within the CEDAW encompass a range of rights specifically granted to women without discrimination. These rights are detailed as follows:<sup>14</sup>

### ***Right to Non-Discrimination between Men and Women***

The Convention articulates this right within its initial provisions, spanning from Article 1 to Article 6. These articles diligently address the eradication of all forms of discrimination based on gender. The Convention defines discrimination against women as any prejudice or restriction that favours one sex at the expense of the other. It calls upon state parties to condemn and combat all discriminatory practices, mandating the implementation of gender equality across political, social, and cultural spheres. Notably,

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2023, <https://cedawsouthasia.org/about-cedaw/core-concepts/>

<sup>14</sup> United Nations, "The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)".

states are prohibited from circumventing the application of gender equality. Instead, they are urged to take comprehensive measures to alter societal behaviours and norms that perpetuate discrimination. The Convention also urges legislative action to combat the trafficking of women and the exploitation of women in prostitution.<sup>15</sup>

According to Article 2 of the CEDAW convention, state parties to the convention work to adopt legislation and all appropriate measures to eliminate acts of discrimination against women so that women can enjoy their rights on an equal basis with men.

### ***Women's Right to Exercise Political Rights***

Article 7 to 9 underscore the entitlement of women to exercise their political rights without discrimination. The Convention urges states to eliminate discriminatory practices against women in the political arena, ensuring their equal participation alongside men. Specifically, it grants women the right to vote, partake in policy formulation, and engage in various organisations. Moreover, the Convention obligates countries to provide opportunities for women to represent the government at an international level. Additionally, it emphasises women's right to acquire, change, or retain nationality.<sup>16</sup>

### ***Women's Economic and Social Rights***

Article 10 to 14 delineate women's economic and social rights comprehensively. The Convention addresses measures to eliminate discriminatory practices in education, advocating for equal opportunities in vocational and career guidance, ensuring parity in educational access and scholarships, equal participation in sports, and grants to uphold family health and well-being. It

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<sup>15</sup> United Nations, "The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)", Art 1-6.

<sup>16</sup> *Ibid*, Art 7-9.

stresses the need to eliminate workplace discrimination and underscores states' responsibility to ensure healthcare provision and services. Furthermore, it mandates granting women equal economic and social rights as men, with consideration for issues faced by rural women, including healthcare, social security, and community participation.<sup>17</sup>

### ***Women's Right to Equality in Marriage and Family Life***

Articles 15 to 16 specifically affirm women's rights to equality in marriage and family life. The Convention acknowledges women's entitlement to equal legal status with men and nullifies any contract that undermines women's rights. Furthermore, it endorses women's right to choose their place of residence and imposes measures on states to ensure women's rights in marriage and family relations. These measures include the choice of spouse, determining offspring, guardianship rights, choosing a family name, and equal rights to ownership and possession of property.<sup>18</sup>

These provisions underscore the Convention's commitment to eliminating discrimination against women and ensuring their equal rights and opportunities in diverse spheres of life, including politics, economics, society, and family.<sup>19</sup>

## **WOMEN'S RIGHTS UNDER ISLAMIC LAW**

Islamic law, deriving from the Holy Qur'an and the *Sunnah* of the Prophet, offers a comprehensive framework that defines and safeguards women's rights, shielding them from prejudice or vulnerability. Within this framework, Islamic law outlines various fundamental rights for women, including but not limited to the right to life, eligibility, employment, social entitlements, and

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<sup>17</sup> United Nations, "The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)", Art 10-14.

<sup>18</sup> *Ibid*, Art 15-16.

<sup>19</sup> Gomaa, *Elimination of all forms of violence and discrimination*, 98-105.



marital privileges. These rights are intricately woven into the fabric of Islamic teachings, ensuring equitable treatment and protection for women within society.

### ***Women's Right to Life***

The Islamic legal framework stands as a bastion of equity and fairness, particularly in safeguarding the fundamental right to life. Within this framework, women are granted an unequivocal right to life, holding an equal footing with men, devoid of any discriminatory biases. Islamic jurisprudence, rooted in the teachings of the Qur'an and the Prophet's *Sunnah*, unequivocally mandates the preservation of life without gender-based prejudice.<sup>20</sup>

In Islamic law, the sanctity of life is a foundational principle, transcending gender distinctions. The Qur'an distinctly states, "*And do not kill the soul which Allah has forbidden, except by right*".<sup>21</sup> This injunction categorically prohibits the taking of any human life unjustly, affirming the equal value and sanctity of every individual, irrespective of gender. Such teachings emphasise the universal dignity and worth of both men and women, ensuring their right to life is inviolable and equal in stature.<sup>22</sup>

Islamic legal principles prescribe severe penalties for the unjust taking of a life, reinforcing the equality of this right. The concept of *Qisas*, or equal retaliation, is applied impartially in cases of homicide, regardless of the gender of the victim. The Qur'an asserts, "*And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous*".<sup>23</sup> This principle underscores the sanctity of life and

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<sup>20</sup> Abdur Rahman I. Doi, "Women in the Quran and the Sunnah", accessed Dec. 20, 2023, [https://www.iium.edu.my/deed/articles/woman\\_quran.html](https://www.iium.edu.my/deed/articles/woman_quran.html)

<sup>21</sup> Al-Qur'anm 17:33

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid*, 2:179

retribution, reiterating the equality of men and women in the eyes of the law.<sup>24</sup>

Furthermore, Islamic law considers any assault on a woman's right to life as an affront to humanity itself. The Prophet Muhammad S.A.W. unequivocally declared, "*Whoever kills a person having a treaty with the Muslims will not smell the fragrance of Paradise, though its fragrance is found for a span of forty years*". This profound statement underscores the gravity of violating the life of any individual, irrespective of gender, highlighting the stringent consequences of such transgressions.<sup>25</sup>

The teachings of Islamic law thus firmly establish the intrinsic value of life, extending this principle equitably to both men and women. The core tenets of equality and fairness enshrined within these teachings underscore the universal and unassailable right to life for all individuals, transcending any gender-based discrimination.<sup>26</sup>

### ***Women's Right to Legal Capacity***

Islamic law is distinguished by its provision of equal rights for women, mirroring those afforded to men within the sphere of legal actions such as concluding and terminating contracts, engaging in trade, and pursuing legal claims. There are no specific conditions imposed other than the general prerequisites necessary for ensuring the validity and safety of these actions.<sup>27</sup>

An illustrative example supporting this is found in Sahih narrations, where Umm Hani' daughter of Abu Talib approached the Prophet Muhammad S.A.W. on the day of conquest along with

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<sup>24</sup> Niaz a. Shah, *Women, the Koran, and International Human Rights Law* (Netherlands: Brill, 2006), 45-67.

<sup>25</sup> *Ibid.*

<sup>26</sup> Abdur Rahman, "Women in the Quran and the Sunnah".

<sup>27</sup> Mahdi Zahraa, "The Legal Capacity of Women in Islamic Law," *Arab Law Quarterly* 11, no. 3 (1996): 245-63, <https://doi.org/10.1163/157302596x00282>

his companions. She informed him, "O Messenger of Allah, "Messenger of God, my mother's son 'Ali has asserted that he is going to kill a man to whom I have given protection, so and so the son of Hubaira." He replied, "We have given protection to those to whom you have granted it, Umm Hani'."'<sup>28</sup>

It's crucial to note that while *Shari'ah* dictates that the testimony of a woman is considered half that of a man, this is not a diminishment of her competence or inherent worth. This ruling stems from concerns regarding potential lapses in memory or errors. As Allah S.W.T. states in the Qur'an, "If one of them forgets, the other will remind her".<sup>29</sup> highlighting the collaborative nature of testimony to mitigate the possibility of forgetfulness.<sup>30</sup>

### ***Women's Right to Work***

The right of women to work under Islamic law is grounded in principles that advocate for justice, equality, and dignity for all individuals, regardless of gender. Islamic teachings emphasise the importance of women's participation in society, including the workforce, while upholding their rights and safeguarding their well-being.<sup>31</sup>

In Islam, there is no prohibition on women engaging in lawful professions or occupations. The Qur'an and *hadith* provide guidance that supports women's participation in economic activities and contributes to the betterment of society. Prophet Muhammad's first wife, Khadijah, was a successful

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<sup>28</sup> Muḥammad ibn 'Abd Allāh Khatib Al-Tabrizi, *Mishkat al-Masabih* (Beirut: Islamic Office, 1985), Hadith 189, 3977.

<sup>29</sup> Al-Quran, 2:282.

<sup>30</sup> Farhan Iqbal, *Are two female witnesses equal to one in Islam?*, accessed December 20, 2023, <https://www.alhakam.org/female-witnesses-in-islam>

<sup>31</sup> Muhammad Yahya Al-Nujaimi. "Women's Rights in Islam and the CEDAW Convention: A Purposeful Critical Reading," *Islamic Thought Forum, International Islamic Jurisprudence Academy*, (2007): 13-15.

businesswoman, serving as an exemplary figure for women's economic empowerment within Islamic history.<sup>32</sup>

Islamic law encourages fairness in employment practices, ensuring that women receive equal pay for equal work and are granted similar opportunities for career advancement as men. The principle of justice is inherent in Islamic teachings and applies to all aspects of life, including the workplace.<sup>33</sup>

However, within Islamic legal frameworks, there are considerations aimed at preserving modesty, protecting family life, and ensuring the well-being of women. For instance, certain professions or roles may be regulated to maintain modesty and respect cultural norms, but this doesn't equate to a blanket restriction on women's right to work.<sup>34</sup>

Moreover, Islamic jurisprudence places an emphasis on the importance of consent and choice. Women are not compelled to work but are granted the autonomy to decide whether to pursue employment based on their circumstances and personal choices.<sup>35</sup>

Islamic law also recognises and supports women's rights to property, ownership, and financial independence. This includes their right to retain their earnings and manage their wealth, ensuring economic autonomy irrespective of their marital status.<sup>36</sup>

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<sup>32</sup> Haleema Sadia, Rukhsana Shaheen Waraich, Sadia Halima, "CEDAW & Woman's Right to Work in Islamic Law," *Journal of Social Sciences and Humanities* 30(2), 2023: 26.

<sup>33</sup> Gomaa, *Elimination of all forms of violence and discrimination*, 40.

<sup>34</sup> Manjur Hossain Patoari, "The Rights of Women in Islam and Some Misconceptions: An Analysis from Bangladesh Perspective," *Beijing Law Review* 10(5), 2019: 1220.

<sup>35</sup> *Ibid.*

<sup>36</sup> Gomaa, *Elimination of all forms of violence and discrimination*, 41.

### ***Women's Political Rights***

In Islam, women possess equal political rights to men, including the right to vote and run for election in all parliamentary councils formed through elections. Hence, they hold the entitlement to serve as voters, candidates, deputies, or members within all parliamentary councils in their respective countries. This equality is rooted in the understanding that the electoral process, candidacy, and representation constitute forms of agency or testimony, and women hold the right to provide testimony. They also have the authority to appoint others to represent their interests. There exists no religious restriction preventing a woman from acting as an agent for another individual, notably as a candidate or representative of the populace, expressing their desires, aspirations, and will. Women engage in various services, oversee the execution of the state's financial policies, and contribute to legislation, particularly those concerning childhood, motherhood, and marriage, demonstrating an awareness of their gender-specific nature, issues, and concerns.<sup>37</sup>

Throughout Islamic history, there have been instances where women actively participated in political life. For example, during the time of Prophet Muhammad S.A.W., women were known to offer counsel, engage in public discussions, and contribute to important decisions affecting the Muslim community. The Prophet himself S.A.W. sought the advice of women and acknowledged their valuable insights.<sup>38</sup>

### ***Women's social rights***

In Islam, women actively engaged in various facets of social life, embodying roles that contributed significantly to their communities. Take, for instance, Umm Shrek, a prominent figure known for her support and affluence. She generously spent in the

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<sup>37</sup> Gomaa, *Elimination of all forms of violence and discrimination*, 41.

<sup>38</sup> Jamal A. Badawi, "The Status of Women in Islam," accessed December 21, 2023, <https://www.iiium.edu.my/deed/articles/statusofwomen.html>

path of Allah and opened her home to accommodate guests, establishing a place of hospitality and care within her household.<sup>39</sup>

Moreover, women made impactful contributions to healthcare. Umm Al-Ala' stands as an example; she tended to Uthman bin Maz'un during his illness until his passing, showcasing the vital role women played in providing care and support during times of need.<sup>40</sup>

In the realm of knowledge and intellectual pursuits, women actively participated in scholarly gatherings and consultations. Umm Al-Darda' notably confronted Abd Al-Malik bin Marwan when he unjustly cursed a slave girl. She referenced the teachings of the Prophet Muhammad S.A.W. stating that those accustomed to cursing would not serve as intercessors or witnesses on the day of resurrection, highlighting women's engagement in upholding ethical standards and moral values.<sup>41</sup>

One of the fundamental social rights granted to women in Islam is the right to education. Islamic teachings emphasise the importance of seeking knowledge for both men and women. The Prophet Muhammad S.A.W. himself encouraged the education of women, stating that seeking knowledge is obligatory for every Muslim. This right to education empowers women to engage intellectually, contribute meaningfully to society, and pursue personal and professional growth.<sup>42</sup>

Islam also facilitated opportunities for women in professional domains, including roles within state offices. Women were able to contribute significantly to many fields such as healthcare and

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<sup>39</sup> Muslim bin Al-Hajjaj Al-Qushayri Al-Naysaburi, *Sahih Muslim* (Cairo: Dar Ihya' al-Kutub al-Arabiyya, n.d.), Hadith 2942, 4/2261.

<sup>40</sup> Muhammad bin Ismail al-Bukhari al-Jaafi, *Sahih al-Bukhari* (Beirut: Dar Ibn Kathir, 1993), Hadith 3714, 1/1430.

<sup>41</sup> Muslim, *Sahih Muslim*, Hadith 2598, 4/2006.

<sup>42</sup> Jamal A. Badawi, "Gender Equity in Islam," accessed December 21, 2023, <https://www.iium.edu.my/deed/articles/genderequityinislam.html>

education, excelling in certain occupations where their strengths and abilities often surpassed those of men.<sup>43</sup>

It's evident that Islam, in its general framework, grants women a range of social rights, thereby acknowledging their diverse contributions to society. However, certain responsibilities are specific to each gender, not as a result of discrimination but rather based on the unique roles that men and women are expected to fulfil within the societal framework. This distinction is grounded in complementary roles rather than inequality, recognising that some duties align more naturally with either men or women based on their inherent strengths and capabilities.<sup>44</sup>

### ***Women's Marital Rights***

Islam has bestowed upon women exceptional marital rights unparalleled in other religions. The foundation of conjugal life in Islam is rooted in honourable cohabitation, in accordance with the Almighty's directive: *"And live with them in kindness"*.<sup>45</sup> Furthermore, women have the right to receive their dowries, as stated in the Qur'an: *"And give the women [upon marriage] their [bridal] gifts graciously"*.<sup>46</sup>

Islam places great emphasis on ensuring that marital relationships are founded on principles of decency, respect, kindness, and the pursuit of mutual benefit while avoiding harm. The Prophet Muhammad S.A.W., highlighted the significance of treating one's spouse with kindness and benevolence, affirming, *"The believers who show the most perfect Faith are those who have the best behaviour, and the best of you are those who are the best to their wives."*<sup>47</sup>

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<sup>43</sup> Al-Nujaimi. "Women's Rights in Islam," 14.

<sup>44</sup> *Ibid.*

<sup>45</sup> Al-Quran, 4:19

<sup>46</sup> *Ibid*, 4:4

<sup>47</sup> Muhammad bin Isa Al-Tirmidhi, *Jami' at-Tirmidhi* (Beirut: Dar Al-Kutub Al-Ilmiyyah, n.d.), Hadith 1162, 3/466.

Yet, Islam goes further in safeguarding women's rights within marriage. It obligates men to provide for their wives' essential needs, including clothing and shelter. This obligation stems from the Qur'anic principle: "*Men are in charge of women*",<sup>48</sup> signifying the responsibility men bear for the welfare and care of their spouses.<sup>49</sup>

*Shari'ah* meticulously organises and safeguards the rights of wives, accounting for their physical and emotional well-being. These rights are unparalleled, considering women's unique nature, both physically and psychologically.<sup>50</sup> This stands as a significant precedent, surpassing other treaties or agreements aimed at protecting women's rights within marriage. Islam prioritises the preservation and guarantee of these rights, setting a remarkable standard for the treatment and respect of women within marital relationships.

## **COMPATIBILITY AND CONFLICT BETWEEN CEDAW CONVENTION AND ISLAMIC LAW**

CEDAW convention seeks to ensure gender equality by eliminating discrimination against women in various spheres of life. It advocates for absolute equal rights in all fields such as education, employment, politics, and family life.<sup>51</sup>

One area of compatibility lies in the shared goals of both CEDAW and Islamic law regarding women's rights. Both aim to ensure women's dignity, non-discrimination, and equitable treatment in various aspects of life. Many principles within CEDAW align with the broader spirit of justice and equality advocated by Islamic teachings.<sup>52</sup> Equality between the genders is

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<sup>48</sup> Al-Quran, 4:34

<sup>49</sup> Patoari, "The Rights of Women in Islam and Some Misconceptions," 1216-1218.

<sup>50</sup> Badawi, "The Status of Women in Islam."

<sup>51</sup> United Nations, "The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)".

<sup>52</sup> Musawah, "CEDAW and Muslim Family Laws", accessed December



an acceptance of the dignity of the two genders in equal measure. There must be no discrimination on the basis of caste, creed, colour, region or gender. Allah S.W.T. said: "*O humankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, so that you may know each other. Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you ...*".<sup>53</sup> This verse applies to the relations between man and woman.<sup>54</sup>

However, conflicts arise between CEDAW and Islamic law regarding specific issues, such as inheritance, testimony, and family laws. For instance, CEDAW advocates for equal inheritance rights for men and women, while certain interpretations of Islamic law prescribe different inheritance shares based on gender. Allah S.W.T. stated: "*Allah directs you regarding your children's inheritance: to the male, a share equal to that of two females*".<sup>55</sup> The concept of equality in this context shouldn't be seen as a simple mathematical equation. The division of inheritance doesn't imply any inherent inferiority of the daughter but considers her economic prospects and societal role. This rule reflects the responsibility placed on males as financial providers, while women are exempt from financial obligations.<sup>56</sup>

Similarly, in matters of testimony, CEDAW promotes equality, yet Islamic law assigns different weight to the testimony of men and women, where the testimony of a woman is considered half that of a man.<sup>57</sup> As previously mentioned, this ruling doesn't

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21, 2023

<sup>53</sup> Al-Qur'an, 49:13

<sup>54</sup> Najibah Mohd Zin, "Women's rights in Islam". *Human rights law: International, Malaysian, and Islamic perspectives*. (Malaysia: Sweet and Maxwell Asia, 2012), 414.

<sup>55</sup> Al-Qur'an, 4:11

<sup>56</sup> Shaikh Shaukat Hussain, *Human Rights in Islam*, 3rd Edition, (New Delhi: Kitab Bhavan, 2001), 64; Najibah, "Women's Rights in Islam", 428-429.

<sup>57</sup> Al-Quran, 2:282

diminish a woman's abilities or inherent value. It arises from concerns about possible memory lapses or mistakes. As Allastates in the Qur'an, "*If one of them forgets, the other will remind her*".<sup>58</sup>

In addition, the CEDAW convention conflicts with Islamic family law concerning women's equality with men in all matters related to marriage and family relations, both during marriage and upon its dissolution. This is because Islamic law assures the wife's rights that correspond to those of the husband, aiming to establish a fair balance between them. This practice arises from the respect for the sanctity entrenched in firm religious beliefs governing marital relationships. The foundation of the relationship between husband and wife lies in the harmony between their rights and responsibilities, fostering a complementary dynamic that strives for genuine equality rather than superficial formalities. According to the *Shari'ah*, the husband is obliged to provide the wife with an appropriate dowry and fully support her financially from his own resources. Additionally, upon divorce, the husband is responsible for her maintenance, whereas the wife retains her complete rights to her own finances and isn't obliged to contribute from her resources for her own upkeep. Consequently, *Shari'ah* confines the wife's right to initiate divorce, stipulating that this must involve a judge's ruling, whereas no such constraint is placed on the husband.<sup>59</sup>

## **MECHANISMS FOR HARMONISING CEDAW CONVENTION WITH SHARI'AH**

Harmonisation between CEDAW principles and the *Shari'ah*, which forms the basis of legislation in many Muslim-majority countries, poses challenges due to divergent interpretations and religious and cultural contexts.

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<sup>58</sup> Iqbal, *Are two female witnesses equal to one in Islam*. See also Al-Quran, 2:282

<sup>59</sup> Yvonne Yazbeck Haddad and John L. Esposito, *Islam, Gender, and Social Change*, (New York and Oxford: Oxford University Press, 1997), 46-47.

Harmonisation between the CEDAW convention and the *Shari'ah* can be achieved through one of two approaches:

*i. Amending the CEDAW Convention*

One approach to align CEDAW with *Shari'ah* involves amending convention texts to reflect compatibility with Islamic principles. This requires a nuanced understanding of *Shari'ah* and collaboration between legal scholars, policymakers, and representatives from Muslim-majority nations. Amendments could be made to specific articles or clauses to better resonate with Islamic values while upholding the essence of gender equality.

Amending CEDAW in line with Islamic principles might involve rephrasing certain provisions to accommodate varying interpretations. For example, areas where conflict arises, such as inheritance rights or testimony, could be revised to offer flexibility while ensuring the fundamental principles of gender equality are maintained. This process would require careful consideration to uphold women's rights while respecting religious and cultural diversity.

However, this strategy demands delicate negotiations and a comprehensive understanding of both CEDAW and Islamic legal frameworks. It requires a balancing act to ensure that amended texts retain the essence of gender equality while adhering to Islamic principles.<sup>60</sup>

Accordingly, Islamic countries can submit a written notification to the Secretary-General of the United Nations, in accordance with Article 26 of the Convention, requesting that he reconsider some articles of the Convention that violate the *Shari'ah*.<sup>61</sup> Article 26 of the CEDAW Convention stated that: “*I. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing*

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<sup>60</sup> Abdul Rahman Ghoneim, “Palestine Joins CEDAW Agreement: A Critical Study in the Light of Islamic Sharia,” *Jeel Journal of Comparative Studies* 10, 2020: 89.

<sup>61</sup> Abdul Rahman Ghoneim, “Palestine Joins CEDAW Agreement: A Critical Study in the Light of Islamic Sharia,” *Jeel Journal of Comparative Studies* 10, 2020: 89.

*addressed to the Secretary-General of the United Nations. 2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.*"<sup>62</sup>

*ii. Signing with Reservations to The CEDAW Convention*

When states ratify the convention, they have the option to enter reservations or declarations that exempt them from specific articles or provisions.<sup>63</sup> A reservation, made upon signing or ratifying a treaty, allows a state to assert its right not to adhere to certain provisions of the treaty. According to Article 2.1(d) of the Vienna Convention on the Law of Treaties 1969, a reservation is defined as "*a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.*"<sup>64</sup>

The process of making and withdrawing reservations is governed by Articles 19-23. Under Article 19(a) and (b) of the Vienna Convention, a country can make reservations to a treaty at the time of signing or ratifying it, provided that the treaty does not prohibit or limit the types of reservations that can be made. However, compliance with these subsections alone doesn't automatically validate a reservation. Article 19(c) of the Vienna Convention prohibits reservations that are incompatible with the object and purpose of the treaty.<sup>65</sup>

The CEDAW Convention doesn't impose further restrictions or limitations on the types of reservations that signing or ratifying States can make. Instead, it explicitly allows for reservations against certain procedural articles on dispute resolution. Hence,

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<sup>62</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art 23

<sup>63</sup> Musawah, "CEDAW and Muslim Family Laws".

<sup>64</sup> Vienna Convention on the Law of Treaties, 1969, Art 2.1(d).

<sup>65</sup> *Ibid*, Art 19-23.

the Women's Convention permits reservations that align with its object and purpose.<sup>66</sup>

In terms of the sheer number of reservations, the CEDAW Convention has encountered significant opposition.<sup>67</sup> Several Muslim countries referred to Islam, Islamic law, or *Shari'ah* as grounds for reservations on substantive matters.<sup>68</sup>

For instance, Saudi Arabia is one of the countries which made a general reservation to CEDAW. The reservations consist of the following:

1. *In case of contradiction between any term of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.*
2. *The Kingdom does not consider itself bound by paragraph 2 of article 9 of the Convention and paragraph 1 of article 29 of the Convention.*<sup>69</sup>

The Sultanate of Oman also made reservations to all provisions of the CEDAW Convention not in line with the provisions of the *Shari'ah* and legislation in force in the Sultanate of Oman.<sup>70</sup>

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<sup>66</sup> Bharath Anandi Venkairm, "Islamic states and the United Nations convention on the elimination of all forms of discrimination against women: are the sharia and the convention compatible?" *The American University Law Review* 44, 2010: 1954.

<sup>67</sup> *Ibid*, 1955.

<sup>68</sup> Musawah, "CEDAW and Muslim Family Laws".

<sup>69</sup> United Nations, *Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women* (New York: UN, 2010): 24.

<sup>70</sup> United Nations, *Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women* (New York: UN, 2010): 22.

Egypt raised reservations to Articles 2, 9, and 16 of the CEDAW convention, affirming it would apply these articles only insofar as they didn't conflict with Islamic law. Article 2 urged nations to counter discrimination through legislative measures. Article 9 stipulated equal rights for women concerning their children's nationality. Article 16 mandated the elimination of discrimination against women in matters concerning marriage and family relations. In its reservation to Article 16, Egypt specified that its commitments

*must be without prejudice to the Islamic Shari'ah provisions .... This is out of respect for the sanctity deriving from firm religious beliefs which govern marital relations in Egypt, and which may not be called into question...*<sup>71</sup>

Bangladesh, Libya, Iraq, and Tunisia expressed similar reservations.<sup>72</sup>

The Kingdom of Bahrain made reservations with respect to Article 2 of the CEDAW convention in order to ensure its implementation within the bounds of the provisions of the *Shari'ah* as well as Article 16 of the CEDAW convention insofar as it is incompatible with the provisions of the *Shari'ah*.<sup>73</sup>

The Government of the State of Kuwait declared that it does not perceive itself as obligated by the provision outlined in Article 16, paragraph 1 (f), as it contradicts the principles of *Shari'ah*,

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<sup>71</sup> Jennifer Jewett, "The Recommendations of the International Conference on Population and Development: The Possibility of the Empowerment of Women in Egypt," *Cornell International Law Journal* 29(1), 1996: 208.

<sup>72</sup> Ann Elizabeth Mayer, "Universal Versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?," *Michigan Journal of International Law* 15(2), 1994: 323-324.

<sup>73</sup> United Nations, *Declarations, reservations, objections, and notifications of withdrawal of reservations*, 7.

where Islam holds the status of the official religion of the State of Kuwait.<sup>74</sup>

The Government of Brunei Darussalam has reservations concerning certain provisions of the Convention that might conflict with the Constitution of Brunei Darussalam and the beliefs and principles of Islam, the country's official religion. Specifically, without limiting the scope of these reservations, Brunei Darussalam expresses reservations regarding paragraph 2 of Article 9 and paragraph 1 of Article 29 of the Convention.<sup>75</sup>

The Government of the Republic of Maldives made reservation to article 16 of the CEDAW Convention, specifically regarding the equality of men and women in marriage and family matters without infringing upon the provisions of the *Shari'ah*, which governs all marital and family relations within the country's entirely Muslim population.<sup>76</sup>

Upon Malaysia's accession to the CEDAW Convention on 5 July 1995, the country issued reservations through the following declaration:

*The Government of Malaysia declares that Malaysia's accession is contingent upon the understanding that the provisions of the Convention do not contradict the provisions of Shari'ah Law and the Federal Constitution of Malaysia. Accordingly, the Government of Malaysia does not consider itself bound by the provisions of articles 2(f), 5(a), 7(b), 9, and 16 of the aforementioned Convention.*

After committing to execute strategies and programmes aligned with the Beijing Platform for Action in 1995, Malaysia

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<sup>74</sup> United Nations, *Declarations, reservations, objections, and notifications of withdrawal of reservations*, 14.

<sup>75</sup> *Ibid*, 8.

<sup>76</sup> *Ibid*, 16.

subsequently withdrew its reservations to articles 2(f), 9(1), 16(1)(b), 16(1)(d), 16(1)(e), and 16(1)(h) on 6 February 1998.<sup>77</sup>

Following a constructive dialogue with the CEDAW Committee in May 2006, Malaysia intensified efforts to potentially withdraw the remaining reservations. Consultations were conducted with relevant government agencies, state governments, non-governmental organisations (NGOs), and other stakeholders. Consequently, on 19 July 2010, the Government of Malaysia informed the Secretary-General of its withdrawal of reservations to articles 5(a), 7(b), and 16(2) of the Convention. Currently, Malaysia maintains reservations solely on articles 9(2), 16(1)(a), 16(1)(c), 16(1)(f), 16(1)(g), and 16(2).<sup>78</sup>

Qatar was specific in the reservation, where the Government of the State of Qatar accepted the text of article 1 of the Convention provided that, in accordance with the provisions of Islamic law. It made a reservation to Article 15, paragraph 1, in connection with matters of inheritance and testimony, as it is inconsistent with the provisions of Islamic law in addition to Article 15, paragraph 4, and Article 16, as it is inconsistent with the provisions of Islamic law and family law.<sup>79</sup>

## CONCLUSION

This study delved into the intricate relationship between *Shari'ah* and the CEDAW. The Convention emphasises absolute gender equality across political, economic, and social domains, stands at odds with certain aspects of Islamic law, posing challenges regarding the harmonisation of *Shari'ah* and the CEDAW.

Throughout this exploration, it became evident that the *Shari'ah* grants women substantial and comprehensive rights,

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<sup>77</sup> United Nations, *Consideration of reports submitted by States parties under article 18 of the Convention Combined third to fifth periodic reports of States parties due in 2012: Malaysia* (New York: UN, 2016), 4.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*, 23-24.



underlining the potential for compatibility and balance between the principles of CEDAW and Islamic law. However, achieving harmonisation requires thoughtful consideration and action.

The legal implications of this study underscore the need for nuanced approaches to reconcile CEDAW principles with *Shari'ah*, potentially through substantial amendments to conflicting provisions or ratification with reservations by states. This suggests a potential pathway towards fostering a more harmonious coexistence between the international legal framework advocated by CEDAW and the Islamic legal system, safeguarding women's rights without disregarding religious and cultural contexts.

Socially, this study highlights the significance of recognising and respecting cultural diversity and religious beliefs while striving for gender equality. It emphasises the importance of engaging in dialogue and seeking common ground to uphold women's rights within the context of Islamic societies. As for future research, further exploration could focus on comparative analyses between specific provisions of CEDAW and corresponding Islamic legal texts, seeking deeper understanding and potential avenues for alignment. Additionally, empirical studies could assess the practical impact of harmonising CEDAW principles with Islamic law in various socio-cultural settings, providing insights into its real-world implications for women's rights and societal dynamics.