

# Intellectual Discourse

Volume 25

Special Issue

2017



**International Islamic University Malaysia**  
<http://journals.iium.edu.my/intdiscourse/index.php/islam>

# *Intellectual Discourse*

---

Volume 25

Special Issue

2017

**Editor**

Ishtiaq Hossain

**Book Review Editor**

Mohd Helmi

**Associate Editors**

Saadah Wok

Khairil Izamin bin Ahmad

Anke Iman Bouzenita

---

**Editorial Board**

Alparsalan Acikgenc, *Turkey*

Daniel J. Christie, *United States*

Mohamed E. El-Meswai, *Malaysia*

Aimillia Mohd Ramli, *Malaysia*

Serdar Demirel, *Turkey*

Abdul Kabir Hussain Solihu, *Nigeria*

Thameem Ushama, *Malaysia*

Ibrahim M. Zein, *Qatar*

Zafar Afaq Ansari, *United States*

Kamada Shigeru, *Japan*

Hazizan Md. Noon, *Malaysia*

Hussin Mutalib, *Singapore*

Kenneth Christie, *Canada*

James D. Frankel, *China*

Serdar Demirel, *Turkey*

Badri Najib Zubir, *Malaysia*

**International Advisory Board**

Jonathan A. C. Brown, *United States*

Muhammad K. Khalifa, *Qatar*

Chandra Muzaffar, *Malaysia*

M. Zakyi Ibrahim, *United States*

Redzuan Othman, *Malaysia*

Anis Malik Thoha, *Indonesia*

John O. Voll, *United States*

Muhammad al-Ghazali, *Pakistan*

---

*Intellectual Discourse* is a highly respected, academic refereed journal of the International Islamic University Malaysia (IIUM). It is published twice a year by the IIUM Press, IIUM, and contains reflections, articles, research notes and review articles representing the disciplines, methods and viewpoints of the Muslim world.

*Intellectual Discourse* is abstracted in *SCOPUS*, *ProQuest*, *International Political Science Abstracts*, *Peace Research Abstracts Journal*, *Muslim World Book Review*, *Bibliography of Asian Studies*, *Index Islamicus*, *Religious and Theological Abstracts*, *ATLA Religion Database*, *MyCite*, *ISC* and *EBSCO*.

ISSN 0128-4878 (Print); ISSN 2289-5639 (Online)

<http://journals.iium.edu.my/intdiscourse/index.php/islam>

Email: [intdiscourse@iium.edu.my](mailto:intdiscourse@iium.edu.my); [intdiscourse@yahoo.com](mailto:intdiscourse@yahoo.com)

Published by:

IIUM Press, International Islamic University Malaysia

P.O. Box 10, 50728 Kuala Lumpur, Malaysia

Phone (+603) 6196-5014, Fax: (+603) 6196-6298

Website: <http://iiumpress.iium.edu.my/bookshop>

Printed by:

Workline Systems Sdn. Bhd.

37-1(1st Floor), Jalan Setiawangsa 11A

54200 Taman Setiawangsa, Kuala Lumpur, Malaysia

## **Cedaw Implementation in Malaysia: An Overview of Reservations from Islamic Perspective**

**Nadzrah Ahmad\***, **Rabiah Aminudin\*\***, **Roslina Othman\*\*\***,  
**Norzulaili Ghazali\*\*\*\*** and **Nurul Syuhada Ismail\*\*\*\*\***

**Abstract:** This study examines the extent to which CEDAW has been implemented in Muslim countries particularly in Malaysia. Applying a qualitative approach comprising of content and comparative analyses, the paper seeks to understand the reservations Muslim countries have concerning the compatibility of CEDAW's understanding of gender equality with the Shari'ah's perspective on gender and gender relations. It does this by examining Malaysia's implementation of CEDAW in three areas: constitution, legal and policy based on the Shari'ah, and CEDAW's articles. By doing so, the paper clarifies misconceptions regarding the Shari'ah's treatment of gender

---

\* Nadzrah Ahmad, Assistant Professor, Department of Quran and Sunnah Studies, Kulliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia (IIUM). E-mail: anadzrah@iium.edu.my

\*\*Rabi'ah Aminuddin, Assistant Professor, Department of Political Science, Kulliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia (IIUM). E-mail: rabiahamin@iium.edu.my

\*\*\* Roslina Othman, Professor, Kulliyah of Information and Communication Technology, International Islamic University Malaysia (IIUM). E-mail: roslina@iium.edu.my

\*\*\*\* Norzulaili Ghazali, Senior Lecturer, Fakulti Pengajian Quran dan Sunnah, Universiti Sains Malaysia. E-mail: alongzulaili@gmail.com

\*\*\*\*\* Nurul Syuhada, Graduate Research Assistant, Department of Qur'an and Sunnah Studies, Kulliyah of Islamic Revealed Knowledge and Human Sciences, International Islamic University Malaysia (IIUM). E-mail: brightsyuhada@gmail.com

related issues. This paper will also explore the different roles given to each gender and how they are positioned in the overall worldview of Islam. The paper concludes that both the Shari'ah and CEDAW share the same positive advocacy of gender equality albeit with different approaches. The differences in approach should be respected as they underscore deep and complex creedal and social commitments that define the different countries with their unique cultural settings.

**Keywords:** CEDAW, Implementation, Reservation, Muslim Countries, Malaysia.

**Abstrak:** Kajian ini mengkaji sejauh mana CEDAW telah dilaksanakan di negara-negara Islam dengan tumpuan khusus terhadap Malaysia. Dengan menggunakan pendekatan kualitatif yang terdiri daripada kaedah analisis kandungan dan perbandingan, kajian ini bertujuan untuk memahami kewajaran tindakan reservasi negara-negara Islam terhadap CEDAW dan pembandingannya dari sudut Shariah terutama dalam aspek kesamarataan gender dan hubungan di antara keduanya. Pelaksanaan CEDAW di Malaysia dikaji dalam tiga sudut: perlembagaan, undang-undang dan dasar polisi berdasarkan Shariah dan peruntukannya di dalam artikel-artikel CEDAW. Hal ini dapat menjelaskan kekeliruan ke atas isu-isu berkaitan gender dan perbincangannya di dalam Islam. Kajian ini juga akan meneroka peranan khusus yang disandarkan kepada lelaki dan wanita dan kedudukan mereka dia dalam perspektif Islam. Kajian ini menyimpulkan bahawa Shariah dan CEDAW berkongsi pandangan positif dalam hak kesamarataan gender walaupun berbeza dari sudut pendekatan dan perlaksanaan. Perbezaan pendekatan ini haruslah dihormati kerana terkandung di sebaliknya perbicaraan teras agama dan komitmen sosial yang kompleks yang memaparkan keunikan tersendiri sosio-budaya bagi negara-negara tersebut.

**Kata Kunci:** CEDAW, Perlaksanaan, Pengecualian, Negara- Negara Islam, Malaysia.

## Introduction

Gender issues have always been an agenda for the international community. Decades of planning, constructing and refining documents and actions to eradicate gender discrimination led to several declarations enforced as treaties. These include the Convention on the Political Rights of Women, 1952; the Convention on the Nationality of Married Women, 1957; the Convention and Recommendation on Consent to Marriage, Minimum Age for Marriages, 1962 and 1965; the Declaration on the Elimination of Discrimination of Women, 1967; the Convention on the Elimination of all Forms of Discrimination of Women (CEDAW), 1979;

the Declaration on the Elimination of Violence against Women, 1993; and the Optional Protocol to the Convention on the Elimination of all Forms Discrimination against Women, 1999. Despite the existence of many international conventions and treaties on gender, CEDAW is seen as the most effective instrument to address gender gap globally due to its broad mandates and continual reporting mechanisms that require signatory member states to report the steps taken to comply with CEDAW (Simavi, Clare and Blackden, 2010: 69).

CEDAW originated from the proposal made by delegations at the First World Conference on Women held in Mexico City in 1975 (Human Rights Watch). After more than 30 years in the making, December 18, 1979 marked CEDAW's inauguration after it being adopted by the United Nations General Assembly (UN Women, n.d). Previous declarations and treaties have been unable to stem a widening gender gap as they focused on specific areas such as political participation, national identity, and protection from abuse of marriage (Boshell, n.d: 2-3). CEDAW was initially ratified by 20 countries and enforced on 3rd September 1981 with 30 articles representing definition, gender equality, state party's obligation and the creation of Committee on the Elimination of all form of Discrimination against Women and their engagement (Oswald, Durham & Bates, 2010: 103). Discrimination against women is described 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 Womenn.d).

To date, 189 countries have ratified and accessed CEDAW. However, CEDAW's objective has been hampered by reservations made by many state parties (Mutua, 2016: 44). The situation worsened when the most powerful key player in the international political system, the US, defied the ratification of CEDAW as it failed to accumulate votes from 67 senators (Baldez, 2014: 2).

CEDAW's blanket definition of discrimination against women that disregards local social values and practices has led 79 of the signatory

countries to express reservations on contested articles (UN Women n.d). Several Muslim countries have expressed concerns regarding Articles 2 and 16 pertaining to personal matters. CEDAW's position on family and marriage are deemed contradictory to the injunctions of the Qur'ān and *Sunnah* (Bowman, 2012: 51). Implementing CEDAW's Articles would compromise the society's religious principles, i.e. the Sharī'ah which is the Muslim code of law derived from the most important Islamic sources: the Qur'ān and *Sunnah* (Brotman, et al. 2008: 2-3). According to Bano, the Sharī'ah determines how certain aspects of everyday life are to be practised according to the model provided by these two major sources in Islam (Bano, 2012: 80). Any law based on the Sharī'ah's is considered a divine law by Muslims and therefore it is extremely well-regarded and protected by Muslim societies.

Prior to the colonisation of Muslim societies by the Western empires, Muslim societies had embedded principles in all aspects of their lives including public, private, and international relations (Hamid, 2007: 145). The colonial powers forced the adoption of Roman law on their public and international affairs. Although many aspects of Sharī'ah law have been abolished, most Muslim countries preserve certain elements of Sharī'ah law especially on matters concerning personal matters, such as family affairs, marriage etc. known as Islamic Family Law (Hamid, 2007: 145). This contradicts CEDAW's articles as illustrated in the reservations of Muslim countries to the Convention. For example, the Saudi Kingdom stated that it will not recognise any provision of the Convention which contradicts Islamic law. Another example is Brunei Darussalam's reservation which maintains that the country would ignore any terms of the Convention that may be contrary to the country's official religion i.e. Islam and its principles (UN Women, n.d).

*Table 1: CEDAW's articles to which many Muslim majority states have reservations*

Article	Purpose
Article 2	All state parties need to remove all means that can be a discrimination tool whether custom, practice and law.
Article 9	Guarantee women's rights to obtain, alter and retain their nationality and convey it to their children.

Article 15	Guarantee of full legal magnitude, right to freedom of movement and option of their domicile for women.
Article 16	Terminate discrimination against women in term of marriage, divorce, custody and inheritance facets.

Source: (Altiok, 2015)

Table 1 highlights the CEDAW's articles to which Muslim societies have reservations, and deem contradictory to the local religious and customary values and practices. CEDAW delineates that all state parties should implement the Convention as stated in its "obligation of state parties" charter. CEDAW introduced a system where a reservation can be expressed by other state parties such as the objection of the United Kingdom regarding reservations made by Saudi Arabia. Similarly, the objection of the Netherland regarding Malaysia's reservation on Article 2 (f), Article 5 (a), Article 9 and Article 16 (Hamid, 2007: 160-161).

Malaysia ratified the Convention in 1995 after 16 years of CEDAW's adoption by United Nation (UN) (SUHAKAM, 2010: 7). However, Malaysia's constitution stipulates that Islam is the official religion for the country. Islamic principles are also embedded within state institutions, and Shari'ah law is practised in the Shari'ah courts as Malaysia practices a dual court system. Malaysia reserved eight CEDAW Articles; 5(a), gender role stereotyping and prejudice; 7(b), women participation on political realm particularly in policy making and higher up position; 9(2), equal nationality between man and women in respect to their children; 16(1)(a), equality on the rights to enter marriage; (c), equality in the rights of responsibility during marriage and its dissolution; (f), on the equal rights regarding guardianship, wardship, trusteeship, and adoption of children; (g), the same personal rights between husband and wife; (h), the same rights on ownership, acquisition, management, administration, enjoyment and disposition of property; and 16(2), no legal effect on betrothal marriage as well as the marriage of the child (Lay Ean, 2003:1). Malaysia later on removed three of the Articles; 5(a), 7(b) and 16(2) in July 2010 (WAO, 2012).

This article attempts to examine the issue of the reservation on CEDAW's Articles by Muslim countries with special focus on Malaysia's implementation of CEDAW's gender equality Articles.

The study aims to focus on Malaysia's implementation through three perspectives: Malaysia constitution, legal, and policy by taking into consideration reservation made due to Islamic practices in Malaysia.

## Materials and Method

The study adopted qualitative method. It made a comparative analysis of books, articles, documents and internet sources. It also utilised content analysis method to examine CEDAW's Articles to which Muslim countries have expressed reservations. It compared Islamic and CEDAW's connotations of equality between the sexes through the study of Malaysia's implementation of CEDAW.

## Analysis and Discussion

### *Constitution*

At constitutional level, whenever Malaysia joins international associations as a member, the ratification and accession to the treaties and conventions will subsequently undergo legislative process and turn to domestic law (Lay Ean, 2003:1). As Malaysia ratified CEDAW in 1995, the government must assume the state's obligation to implement the chartered articles of gender equality.

Despite the government's efforts to implement CEDAW, Malaysia faces obstacles; till date, the Parliament of Malaysia has not approved the Act on the implementation of CEDAW's Articles as a whole. This situation urges the country to enter reservation on the Convention as admissible according to Article 2 (1)(d) of Vienna Convention on the law of treaties 1969 (Multilateral, 1960). Since the ratification of the Convention, the Malaysian government has reserved eight CEDAW Articles (see Table 2) in terms of customary practices and stereotypes; political and public life; and marriage and family (SUHAKAM, 2010: 8).

*Table 2: Malaysia's Reservation on CEDAW's Articles*

Article	Purposes
Article 5(a)	To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other 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.



Article 7(b)	To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.
Article 9(2)	States Parties shall grant women equal rights with men with respect to the nationality of their children.
Article 16(1) (a),(c), (f), (g)	(a) The same right to enter into marriage; (c) The same rights and responsibilities during marriage and at its dissolution; (f) The same rights and responsibilities with regard to guardianship, wardship, 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; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.
Article 16(2)	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.

Source: (UN Women, n.d)

On July 2010, the government of Malaysia withdrew three reservations to CEDAW’s Articles, namely Articles 5(a), 7(b) and 16(2) (Chee Wee, 2010). The main obstacle in removing CEDAW’s reservation is religious values due to the conflict of CEDAW’s articles with Islamic principles, especially in personal matters which are protected under the Malaysia’s constitution. Shari’ah law marks its place within the Constitution wherein Islam is declared as the Federation’s religion. Article 3(1) of Malaysia’s Constitution states that Islam is the religion of the Federation but other religions may be practised in peace and harmony in any part of the Federation (IBP Inc., 2014: 57).

The issue of reservations to CEDAW Articles due to perceived conflicts with Islamic principles has had mixed reactions in the international community especially within CEDAW state parties. Many state parties argued that the reservations did not comply with the objective of CEDAW such as the objection of the Netherlands and Finland concerning Malaysia's reservation, and the United Kingdom and Austria's concerns with Saudi's reservations (UN Women, n.d).

CEDAW's ratification saw Malaysia amend its constitution to reflect the obligation to eliminate gender discrimination (Mohd Awal, 2012: 210). Malaysia's amendment to Article 8(2) of the Federal Constitution of Malaysia in 2001 resulted in the inclusion of "gender" as an invalid ground for discrimination in the society alongside religion, race, descent and place of birth (Federal Constitution, Article 8(2)). The constitution further states:

Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth or **gender** in any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment (Federal Constitution, Article 8(2)).

The amendment to Article 8(2) of Federal Constitution of Malaysia is compatible with the principle of gender equality in Islam that has already been in practice since 1400 years ago. As revealed in the Qur'ān, the Islamic principle of equality stated that everyone is equal to one another:

O Mankind! We created you from a male and a female; and made you into tribes and nations that you may get to know each other and verily, most honoured before God is the most virtuous (49:13).

Prophet Muhammad (s.a.w.) in his farewell sermon stated:

All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab, nor a non-Arab has any superiority over an Arab; also a white has no superiority over black nor does a black have any superiority over white except by piety and good action. Learn that every Muslim is a brother to every Muslim and that the Muslims constitute one brotherhood (Ṣaḥīḥ al-Bukhārī, ḥadīth 1623, 1626, 6361)

The Qur'ān also exhibits a clear prohibition of discrimination which includes gender-based discrimination. Qur'ān states:

I never fail to reward any worker among you for any work you do, be you male or female - you are equal to one another. Thus, those who immigrate, and get evicted from their homes, and are persecuted because of Me, and fight and get killed, I will surely remit their sins and admit them into gardens with flowing streams (3:195).

Furthermore, Islam relinquishes women's status as an independent entity with equal rights as men in their lives, property and employment. In such a way, Malaysia's amendment of Article 8(2) is in line with CEDAW's requirements.

### *Legal*

In spite of Malaysia's reservation to several of the Convention's Article, Malaysian government's commitment to CEDAW is exhibited in the amendment of the Federal Constitution which incorporates CEDAW's Article into domestic law, Act of parliament and judiciary system. Since its accession to CEDAW in 1995, Malaysia indicates improvement in eliminating gender discrimination in several fields, including legal, where several codes of law have been approved by parliament to abolish gender discrimination and increase protection of women. However, Malaysia faces criticisms where certain codes of its law seem to protect patriarchal system especially in Muslim marriages which is protected under Shari'ah law, and stressed as oppressive against women. Thus, several issues of gender discrimination that revolve around Malaysia's codes of law can be observed through the issue of marital rape and; marriage and family.

### **Marital Rape**

Marital rape is defined as "any sexual activity by a married or cohabiting partner that is performed or caused to be performed without the consent of the other partner" (Wiehe, 1998: 76). Historically, prior to women's movement in the West, rape was never recognized as a crime except to a certain group (Sample & Rader, 2017: 83). Until the late 19th century, rape has been defined as "carnal knowledge of a woman by a man, not of her husband, by force and without consent" (Dribbs as cited in Sample & Rader, 2017: 83). Culturally, women had been viewed as a property

of husbands and fathers (Sample & Rader, 2017: 83). The early era that was ruled by common law only defined rape with regard to protecting unmarried women (Melloy & Miller as cited in Sample & Rader, 2017: 84). Therefore, many countries did not recognise rape in marriage until the emergence of women's movement that fought for domestic violence and marital rape as criminal acts, and fall under criminal code (The Lawyer Collective, 2003: 157).

To date, many countries have recognised and criminalised marital rape as connoted by international bill of women's rights (Rosen, 2006) such as the UK and US in the 1990s (Stone, 2007). However, there still remains many countries; including Malaysia whose legal codes on rape do not recognize marital rape as a criminal act (Neumann, 2012: 80).

The government of Malaysia, which has Islam as the federal religion, has not recognised marital rape as a criminal act since such criminalisation would contradict the country's religious belief and Shari'ah law (Pator APHR, 2015). Hence, with Malaysia's accession to the Convention obligation, and reluctance to recognise marital rape as criminal act, the government of Malaysia is facing several criticisms from the civil society and international community (Arc International, 2013). Consequently Malaysia in 2006 introduced rape within marriage concept in its legislation through the Penal Code amendment. However, it has been criticized as a problematic code because its definition of marital rape is "based on potential or actual physical harm, rather than the act of rape itself, moreover, the term rape is not even used" (Malaysia Non-Government Organisation Alternative Report, 2012: 193). Despite introducing rape within marriage concept, Malaysia remains an exception in its Penal Code which stated: "sexual intercourse by man with his wife by a marriage which is valid under any written law for the time being in force, or is recognised in Malaysia as valid, is not rape" (Malaysian Penal Code, No. 375).

As a country with majority Muslim population and Islam as federal religion, Islamic rulings are still practised with regards to personal matters such as family, inheritance and apostasy which are protected under Shari'ah rulings (IBP, 2014: 57). Thus, forced intercourse within marriage clearly falls under the Shari'ah rulings. In Islam, marital rape does never exist and is not recognised as a crime. One can observe the reason for this through Islamic concept of man and woman relationship.

Marriage in Islam is regarded as a sacred contract permitting intimate relations, including sexual intercourse, between a couple of the opposite sex (Sham, n.d: 11). Therefore, Islam considers sexual intercourse out of marriage as adultery, and it is considered a crime (Azman, 2009: 3). Moreover, Islam defines rape as forcible illegal sexual intercourse by a man with a woman who is not legally married to him, without her free will and consent (Azman, 2009: 2-3), and there is no rape within marriage (Kolig, 2012: 151). Rape is regarded as forced adultery which falls under crime, and its conviction leads to capital punishment (Naik, 2010: 12). Thus, one can understand that the term ‘marital rape’ is incompatible with the Islamic concept of marriage which is based on the permissibility of sexual intercourse between spouses.

However, the above discussion does not mean Islam allows husbands to treat their wives in a manner that will cause them physical or mental harm. The prohibition on causing harm to others in Islam can be seen in principle in the prophetic saying: “*lā darār wa lā dirār*” (do not cause harm or return harm) as narrated by Ibn Mājah and the principle of “harm should be removed” (Wizārat al-Awqāf wa al-Shu’ūn al-Islāmiyyah, 1994: 181). If a husband harms his wife either physically or mentally, the wife is allowed to report her husband to the authority (Susila, 2013: 329). Even with the absence of marital rape provision in the Qur’ān and *Sunnah*, we can view the matter from Islamic perspectives in relation to etiquettes (*akhlāq*). The case could fall under *ta’zīr*<sup>1</sup> rules which allow the judge to decide punishments according to the situation, but not be considered a crime under *ḥudūd*<sup>2</sup> and *qiṣās*<sup>3</sup> which are fixed punishments for specified crimes. In such a way, Malaysia, which is practising Sharī’ah rulings, recognises sexual abuse by husband as a crime, and protects the rights of individuals under the Penal Code of Malaysia 1936 where by the husband may face up to five years in prison (Corpus of Law, 2014).

### **Marriage and Family**

Many Muslim countries including Algeria, Egypt, Jordan, Lebanon, etc. (UN Women, n.d) entered reservations to CEDAW Article 16 on Marriage and Family which is incompatible with Islamic Family Law (A.S Chaudry, 2016: 27). Malaysia is not excluded from this conflict as it deems it necessary to uphold the jurisdiction of Sharī’ah law and the Federal Constitution. The reservation reads as follows:

The Government of Malaysia declares that Malaysia's accession is subject to misunderstanding that the provision of the Convention does not conflict with the provision of the Islamic Sharī'ah Law and the Federal Constitution (UN Women, Declaration, Reservation and Objection)

This is because the Federal Constitution clearly outlines that family affairs and the marriage of Muslims fall under the jurisdiction of the Sharī'ah courts which should be read together with Article 74 (Rosli & Fawza, 2016).

Reservation to the article has been highly criticised at the international level. In addition, the status quo of discrimination of women in Muslim countries aggravates the criticism. Azam Kamguian argues that demarcation of sexes regarding personal and family code surrounding countries under Islamic rule is one of the main problems that contribute to the degradation of women's status in Muslim countries. Kamguian states:

In the Middle East, North Africa and parts of Asia, family law and the Penal Code is [sic] strongly affected by Islam. Despite modernisation and reform, family law and the Penal Code have remained largely untouched. Polygamy, men's unconditional right to divorce their wives, the law regarding sex outside of marriage, men's decision making over their wives' employment and travel, and a woman's lacks of rights to custody of her children are among them (Kamguian n.d).

The rampant misrepresentation and malpractice of Islamic teachings in Muslim societies give a negative impression of Islam as a way of life despite being the first religion that liberates women from discrimination. In Islam, women's rights, including in marriage related matters, are upheld (Dreifus, 1997: 121). History demonstrates how Islam protects women's rights regarding marriage. Islam granted women their rights in terms of her consent to marriage, dowries, rights to divorce and etc. Prophet Muhammad (PBUH) annulled the wedding of Khansa' bint Khidam because the marriage was forced by her father (Ṣaḥīḥ al-Bukhārī, ḥadīth 99). The Qur'ān also mentions the rights and duties of husbands and wives in a marriage:

O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may take away part of the dower ye have given them, except

where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them, it may be that ye dislike a thing, and Allah brings about through it a great deal of good (4:19).

In Islam, as wives, women are granted rights, including physical and psychological needs, rights for divorce and inheritance of the late husband's wealth, that need to be fulfilled by their husband. A husband is required to treat his wife justly and kindly. The phrases of "keep them in good fellowship" and "treat them kindly" are mentioned repeatedly in the Qur'ān, as in the Sūrat al-Baqarah verses 229 and 231 (Ali 2015: 367). The Prophet (PBUH) exemplified just treatment of one's wife. He taught that:

The most excellent of you is he who is the best in his treatment of his wife (Sunan Ibn Mājah, ḥadīth 1977).

When 'Āishah was asked concerning the Prophet's (PBUH) manners at home, she answered:

He was helping in doing the family duties and when he hears the call of prayer he goes out (Ṣaḥīḥ al-Bukhārī, ḥadīth 65).

His important farewell sermon also reiterates the importance of a healthy relationship between husband and wife. It reads in part:

Treat women kindly, they are like captives in your hands; you do not owe anything else from them. In case they are guilty of open indecency, then do not share their beds, and beat them lightly, but if they return to obedience, do not have recourse to anything else against them. You have rights over your wives and they have their rights over you. Your right is that they shall not permit anyone you dislike to enter your home, and their right is that you should treat them well in the matter of food and clothing (Jāmi' al-Tirmidhī, ḥadīth 3087).

The above discussion shows that Islam delineates its policy regarding marriage and family matters based carefully on the Qur'ān and *Sunnah*. The husband and wife are equally granted rights to commensurate with their gender and the associated duties and rights.

### ***Policy***

Malaysia has initiated efforts to narrow the gender gap in society by focusing on strengthening the policies on women empowerment. Upon

acceding to CEDAW, Malaysia commences the action through the implementation of a Plan of Action (PoA) on women advancement alongside the first National Policy on Women formulated in 1989. Both women empowerment strategies seek to enhance the national strategies on women empowerment. The National Policy on Women 2009 was introduced to strengthen the efforts (Norliza, 2012: 1-2). The government's effort in line with CEDAW Article 2 mentioned that:

State Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women (CEDAW Art 2 UN Women).

The policy is formulated to advance and increase women's participation in the society. It focused on 13 sectors: economy, poverty, law, violence against women, health, education and training, science and technology, decision maker, mechanism, machinery and institutional development of women, media, environment, sports and culture and heritage (I Klik, Dasar Wanita Negara, 2009).

### **Economic Perspective**

The Malaysian government focuses on strengthening and advancing the economic status of the country to be a developed nation by the year 2050, and this is well known as TN50 (TN50: Demi Masa Hadapan Negara, 2017). Therefore, Malaysia recognises the importance of women's contribution to the country's economic development (United Nation, October 2011). The country is ready to assist women through economic advancement such as focusing on the enhancement of entrepreneurship programmes for women. The Prime Minister Dato' Seri Najib bin Tun Razak announced enhancing women in entrepreneurship through Pasarnita (women's market) which offers opportunities for women in business (Malaymail Online, May 31 2015).

Islam has never condemned women for participating in all economic activities except those that are against the Shari'ah. The same principle applies to men. In Islam, women have full rights to seek for wealth, employment and property independently and legally before or after marriage and she has rights in inheritance and dowry (Abū Fāris, 2000: 17-53).<sup>4</sup>

Islam has never confined women to four walls, nor asked them to focus on household matters such as rearing children and house chores.



It does highlight the significance and importance of women caring for their families. Islam allows women to seek employment within her nature, capabilities and talent in a manner that does not cause her harm. She is permitted to engage in all matters necessary for the society within the guidelines set by Islam (Abū Fāris, 2000: 22-23).

According to Islam, women are allowed to work and own property, but the duty of up-keeping the household and providing maintenance for the family falls on the husband. The wife is not obliged to do so except she chooses to do so voluntarily. A woman has full rights to her property, independently and legally. She also has the right to spend and manage her property without her husband, father or sibling's consent (Zafrullah, 2008: 23). Many prominent Muslim jurists such as Abū Hanīfah, al-Shāfi'ī, Ibn al-Mundhir agreed on the right of women to own and manage property at their own dispense. A narration from Imām Aḥmad asserted that women have rights to spend their property (Ahmad, 1994: 18). Allah (s.w.t.) says in the Qur'ān:

And test the orphans [in their abilities] until they reach marriageable age. **Then if you perceive in them sound judgement, release their property to them.** And do not consume it excessively and quickly, [anticipating] that they will grow up. And whoever [when acting as guardian] is self-sufficient should refrain [from taking a fee]; and whoever is poor - let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant (4:6).

### Social Perspective

The Malaysian government also aims to increase women's social position through the introduction of policies formulated specifically to encourage women in higher positions. For example, the Prime Minister of Malaysia announced at the "Women in the Workforce Dialogue" organised by Talent Corporation Malaysia (Talent Corp) that Malaysia's female labour participation rate (FLPR) reached 54.1% in 2015, an increase from 46.8% in 2010. He claimed that Malaysia is on the right track to meet the goal of 30% women participation in decision-making positions in the corporate sector (*The Star Online*, June 2016). Recent improvements are shown as several qualified women have been appointed as the first women judges to the Sharī'ah High Courts after 2010 (Hussain, 2011: 84).

Malaysia's efforts to increase the number of women as decision-makers is compatible with Islam's inclusion of women in public forums (Ahmed 2009: 16-20). The Islamic civilisation recorded that Islam granted women rights as decision-makers in society. Prominent historical figures in Islam such as the wives of the Prophet (s.a.w.) Khadījah bint Khuwaylid, 'Āishah bint Abū Bakr and several others actively participated in politics (Khan 12: 15). Moreover, 'Umar al-Khatāb's (RA) during his reign, appointed Samrā bint Nuḥayk al-Asadiyyah as a market inspector in Mecca (Al-Ṣafādiy, 2005: 447). The Qur'ān answered Khawlah bint Tsā'labah's marital problems (Al-Ṭabari 1999: 3-4) while indirectly shows how a women's voice is heard and her affairs are regarded in policy making. During the period of Caliphate 'Umar (RA), Khawlah bint Tsā'labah once again stood up without fear and advised the Caliph (The Ruler) and to which he listened (Abī Ḥātim, 1419H: 293).

Islam's history has shown that women and men held significant roles and contributed greatly to the society. The women empowerment policy by the Malaysian government acknowledges women's ability, and its emphasis on women's role in the society is compatible with Islamic teachings and the international treaty of women rights, i.e. CEDAW.

## Conclusion

This article has shown that the view about CEDAW 16 Articles concerning gender equality do not take religion and culture into account need to be reviewed carefully. The study on Malaysia's implementation of CEDAW has shown that CEDAW's connotation of gender equality does not entirely differ from Islam's regard for women empowerment and gender discrimination. The objective of justice is grasped by both parties; the difference is only in the interpretation of equality. The similitude of both perspectives can be found in terms of public engagement in which they both promote women participation within the society and in the country's development, including in education, economy and politics. The study also shows that the Malaysian government has attempted to harmonise Islamic and CEDAW's perspectives on gender equality through the amendment of its constitution. Any amendment of constitution will be followed by amendment in the legislation as it is being practised in Malaysia. Thus, CEDAW's committee and NGOs on women rights insisted on the amendment of the constitution with

regards to Sharī'ah law practice particularly Islamic Family Law. However, the concept of justice embraced by Islam on gender equality and justness which prevails in true Islamic teaching and practice should be studied further for a better understanding. Malpractices among Muslims therefore, shall not be taken as a common ruling at any level of Islamic practice.

## ACKNOWLEDGEMENTS

This research is supported by Ministry of Higher Education under Fundamental Research Grant Scheme (FRGS) with the title: A New Gender Equality Model based on Qur'ānic Perspective (FRGS16-031-0530), and International Islamic University Malaysia under Research Initiative Grant Scheme (RIGS) with the title: Critical Study on Gender Principles in CEDAW: An Islamic Perspective (RIGS15-116-0116).

## Endnotes

- 1 *Ta'zīr* refers to punishment for offenses at the discretion of the judge (*Qādī*) or ruler of the state. It is one of three major types of punishments or sanctions under Sharī'ah Islamic law — *Hadd*, *Qīṣās* and *Ta'zīr*.
- 2 *Hudūd* (*Ḥad*, literal meaning “limit”, or “restriction” is an Islamic concept: punishments which under Islamic law (Sharī'ah) are mandated and fixed by God.
- 3 *Qīṣās* means the right of a murder victim's nearest relative or *wali* (legal guardian) to, if the court approves, take the life of the killer. *Qīṣās* is one of several forms of punishment in Islamic Penal Law, others being *Hudūd*, *Diyah* and *Ta'zīr*.
- 4 In Islam, a dowry is a mandatory payment, in form of money or possessions paid or promised to be paid by the groom, or by the groom's father, to the bride at the time of marriage. The dowry legally becomes her property.

## References

- 1 Klik.(n.d). *National Women Policy 2009*. Retrieved November 10, 2016. <http://pmr.penerangan.gov.my/index.php/component/content/article/16-isu-nasional/4485-dasar-wanita-negara-2009.html>.

- A.S Chaudry, Ayesha. (2016). Interrogating the “Shari’a” Excuse: Religious Reasoning, International Law, and the Struggle for Gender Equality In the Middle East. Shalaby, Marwa. M. Moghadam, Valentine (eds.). *Empowering Women after the Arab Spring*. NewYork: Springer Nature.
- Abdul Ghafur Hamid. (January, 2007). *Reservation to CEDAW and the Implementation of Islamic Family Law: Issue and Challenges*. Paper Presented at International Family Law Conference, Kuala Lumpur.
- Abī Ja’far Muhammad bin Jarīr al-Ṭabarī. (1999). *Tafsīr al-Ṭabarī Musamma bi Jāmi‘ al-Bayān fi Ta’wīl al-Qur’ān*. Vol. 12, Bayrūt: Dār al-Kutub al-‘Ilmiyyah.
- Abū Fāris, Muhammad ‘Abd Qādir. (2000). *Huqūq al-Mar’ah: al-Madaniyyah wa al-Siyāsah fi al-Islām*. Jordan: Dār al-Furqān.
- Abū Muhammad ‘Abd Rahmān bin Muhammad bin Idrīs bin al-Mundhir al-Tamīmī. (1419H.). *Tafsīr al-Qur’ān al-‘Azīm li Ibn Abī Hātīm*. Vol. 10, ed. As‘ad Muhammad Tayyib. 3<sup>rd</sup> edition. Al-Mamlakah al-Arabiah al-Saudiyah.
- Ahmad, Yusuf al-Hajj. (1994). *Status of Women in Islam*. Darussalam Publisher.
- Ali, Mohammed. (2004). *The Position of Women in Islam: A Progressive View*. Albany: State University of New York Press.
- Al-Mubarakpuri, Safiur-Rahman (Trans.). (2003). *Tafsīr Ibn Kathir (Abridged)*. Vol. 9. Riyadh: Darussalam.
- Al-Ṣafādiy, Ṣalāhuddīn bin Khalīl bin Aybak. (2005). *Al-Wāfi bi al-Wafayāt*. Vol. 10. Bayrūt: Dār al-Fikr.
- Al-Suyuthi, Jalāl al-Dīn ‘Abd Rahmān bin Abī Bakr. (1983). *Al-‘Aṣbah wa al-Nadīr fi Qawā‘id wa Furū‘ Fiqh al-Shāfi‘iyyah*. Dār al-Kutub al-‘Alamiyyah.
- Altiok, Džlem. April (2015). *Muslim Family Laws and CEDAW: A Fact Sheet*. Retrieved April 4, 2016. <https://www.socwomen.org/wp-content/uploads/Muslim-Family-Laws.pdf>.
- ARC International. October, (2013). *Malaysia (2nd cycle)*. Retrieved November 30, 2016. <http://arc-international.net/global-advocacy/universal-periodic-review/m/malaysia/2nd-cycle/>.
- Azman Mohd Noor. (2009). Punishment for Rape in Islamic Law. *Malayan Journal Article*, Vol. 5, 1-3.
- Baldez, Lisa. (2014). *Defying Convention: U.S. Resistance to the UN Treaty on Women’s Rights*. USA: Cambridge University Press.
- Bano, Samia. (2012). *Muslim Women and Shari’ah Councils: Transcending the Boundaries of Community and Law*. UK: Palgrave Macmillan.

- Bernama. (May 31, 2015). *PM: Government Committed to Enhancing Women's Economic Empowerment*. Malaymail Online. Retrieved November 25, 2016. <http://www.themalaymailonline.com/money/article/pmgovernmentcommitted-to-enhancing-womens-economic-empowerment>.
- Boshell, Cynthia. (n.d.) *CEDAW and Women's Right*. Retrieved on June 4, 2016. <http://www.7genfund.org/sites/default/files/helpfulresources/CEDAW%20and%20Women%27s%20Rights%20-%20EN.pdf>.
- Bowman, Helen. (2012). *Safeguarding Women's Rights: Investigating the Effectiveness of the Convention on the Elimination All Form of Discrimination against Women CEDAW. Undercurrent Journal, Vol. 9, Issue 1*.
- Brotman, Sam. Katz, Emma. Karnes, Jessie. West, Winter. Irvine, Anne. & Diabes, Diana. (2008). *Implementing CEDAW in North Africa and the Middle East Roadblocks and Victories. Middle East and North Africa Report*. Retrieved on July 2, 2016. [http://pages.uoregon.edu/aweiss/intl421\\_521/CEDAW\\_Report\\_MENAf.pdf](http://pages.uoregon.edu/aweiss/intl421_521/CEDAW_Report_MENAf.pdf).
- Chee Wee, Lim. (8 July 2010). *Press Release: Time to Remove All Reservations and Sign the Optional Protocols*. Retrieved on July 8, 2016. [http://www.malaysianbar.org.my/press\\_statements/press\\_release\\_time\\_to\\_remove\\_all\\_reservations\\_and\\_sign\\_the\\_optional\\_protocols.html](http://www.malaysianbar.org.my/press_statements/press_release_time_to_remove_all_reservations_and_sign_the_optional_protocols.html).
- Corpus of Law. (2014). *Penal Code of Malaysia (1936 as amended 1997: Selected Provision Related to Women) -1: Offences Affecting the Human Body*. Retrieved November 30, 2016. <http://corpus.learningpartnership.org/penal-code-of-malaysia-1997-selected-provisions-related-to-women-1-offences-affecting-the-human-body>.
- Dreifus, Claudia. (1997). *Interview*. New York: Seven Stories Press.
- Hussain, Jamilah. (2011). *Islam its Law and Society*. Sydney: The Federation Press.
- IBP Inc. (2014). *Malaysia Justice System and National Police Handbook*. Vol. 1. USA: International Business Publication.
- Khan, Md. Irshad. (2012). *Rights of Women in Islam*. UK: Koros Press Limited.
- Khan, Muhammad Zafrulla. (2008). *Woman in Islam*. Islamabad: Islam International Publication Limited.
- Kolig, Erich. (2012). *Conservative Islam: A Cultural Anthropology*. Lanham: Lexington Books.
- Lay Ean, Honey Tan. (March, 2003). *Measuring Up To CEDAW: How Far Short are Malaysian Law and Policies?*. Paper Presented at the Suhakam

- Roundtable Discussion: Rights and Obligations under CEDAW, Kuala Lumpur.
- Malaysia Justice System and National Police Handbook. (2014). *Strategic Information and Regulation*. Vol. 1. USA: International Business Publication.
- Muhammad Ali, Maulana. (2015). *A Handbook of Islam: An Abridged Edition of 'The Religion of Islam*. UK: Ahmadiya Anjuman Lahore Publications.
- Multilateral No. 18232. (1960). *Vienna Convention on the Law of Treaties (with annex)*. Retrieved November 25, 2016. <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.
- Mutua, Makau. (2016). *Human Rights Standards: Hegemony, Law, and Politics*. Albany: State University of New York Press.
- Naik, Zakir Abdul Karim. (2010). *Answers to Non Muslims Common Questions about Islam*. Islamic Research Foundation.
- Neumann, Caryn E. (2010). *Sexual Crime: A Reference Handbook*. California: ABC-CLIO.
- Noor Aziah Mohd Awal. (2012). Malaysia: What lies ahead?. E. Sutherland, Elaine (ed.) *The Future of Child and Family Law: International Predictions*. UK: Cambridge University Press.
- Norliza Abdul Rahim. October, (2015). Advancement of Women of the Third Committee. 67th Session of the United Nations General Assembly New York. Retrieved on July 16, 2016. <http://www.un.org/womenwatch/daw/documents/ga67/Malaysia.pdf>.
- Patto, Kastori. (2015). *Malaysian Government's Decision to Keep Section 375 of the Penal Code is a Threat to Women*. Retrieved November 27, 2016. <http://aseanmp.org/2015/06/11/malaysian-governments-decision-to-keep-section-375-of-the-penal-code-which-does-not-criminalize-marital-rape-shows-it-is-regressive-patriarchal-and-a-threat-to-women-from-all-walks-of-life/>.
- R. Wiehe, Vernon. (1998). *Understanding Family Violence: Treating and Preventing Partner, Child, Sibling and Elder Abuse*. Thousand Oak: Sage Publication Inc.
- Rosen, Ruth. (2006). *The World Split Open: How the Modern Women's Movement Changed America*. Tantor eBook.
- Rosli Dahlan. & Fawza Sabila Faudzi. (March, 2016). *Malaysia: The Shariah Court: Its Position under the Malaysian Legal System*. Retrieved November 30, 2016. <http://www.mondaq.com/x/472794/trials+appeals+compensation/The+Syariah+Court+Its+Position+Under+The+Malaysian+Legal+System>.

- Sample, Lisa L. & Rader, Emily C. (2017). Rape and Domestic Sexual Assault. Sanders, Teela (ed.). *The Oxford Handbook of Sex Offences and Sex Offenders*. UK: Oxford University Press.
- Sham, Shahzad Iqbal. (n.d). *Some Aspects of Marriage and Divorce in Muslim Family Law*. Retrieved November 27, 2016. [http://results.pu.edu.pk/images/journal/szic/current\\_issue\\_pdf/E-Divorce\).pdf](http://results.pu.edu.pk/images/journal/szic/current_issue_pdf/E-Divorce).pdf).
- Shamsuddin Ahmed. (2009). Women's Right in Malaysia are Balanced and Praiseworthy. Khan, Maimul Ahsan (ed.). *Women's Right in Islam: Religious and Cultural Views about Secular Perception*. Bangladesh: The Nahar Light Foundation.
- Simavi, Sevi. Manuel, Clare. Blackden, Mark. (2010). *Gender Dimensions of Investment Climate Reform: A Guide for Policy Makers and Practitioners*. Washington: The World Bank.
- Stone, Alison. (2007). *An Introduction to Feminist Philosophy*. UK: Polity Press.
- SUHAKAM's Report on the Status of Women's Rights in Malaysia. (2010). Selangor: Human Right Commission of Malaysia.
- Susila, Muh Endriyo. (2013). Islamic Perspective on Marital Rape. *Jurnal Media Hukum*. Vol.20, no.2.
- The Lawyer Collective. (2003). *Legislating an Epidemic: HIV/AIDS in India*. New Delhi: Universal Law Publishing Co. Pvt. Ltd.
- UN Women.(n.d). *Declarations, Reservations and Objections to CEDAW*. Retrieved December 1, 2016. <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.
- UN Women.(n.d). *Short History of CEDAW Convention*. Retrieved December 1, 2016. <http://www.un.org/womenwatch/daw/cedaw/history.htm>.
- United Nation. (October 2011). *With Equal Rights, Empowerment, Women can be 'Agents of Change' for Sustained Socio-economic Development, Security around World, Third Committee Told*. Retrieved November 28, 2016. <http://www.un.org/press/en/2011/gashc4009.doc.htm>.
- Utusan Online. (2017). *TN50 Demi Masa Hadapan Negara*. Retrieved May 4, 2017. <http://www.utusan.com.my/rencana/tn50-demi-masa-hadapan-negara-1.431641>.
- Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah. (1994). *Al-Mawsū'ah al-Fiqhiyyah*. Vol. 28. Kuwait: Dār al-Şafwah.
- Yeranian, Edward. (May 12, 2017). *Saudi King's Order to Grant Women more Rights Gets Mixed Reaction*. Retrieved July 29, 2017. <https://www.voanews.com/a/saudi-kings-ordeer-grant-women-more-rights-gets-mixedreaction/3849432.html>.

# In This Issue

## Articles

**Elmira Akhmetov**

Al-Farabi and Said Nursi on the Civilizing Mission of the Prophets

**Hafiz Zakariya**

Colonialism, Society and Reforms in Malaya: A Comparative Evaluation of Shaykh Tahir Jalaluddin and Syed Shaykh Ahmad Al-Hady

**Mohd Abbas Abdul Razak, Maziah Bte Mustapha, and Md Yousuf Ali**

Human Nature and Motivation: A Comparative Analysis between Western and Islamic Psychologies

**Thameem Ushama**

Historical Roots of Extremist and Radical Islamist Thinking

**Jamal Badi, Salah Machouche, and Benaouda Bensaid**

Questioning Styles in the Qur'ān and Their Impact on Human Thinking a Conceptual Analysis

**Assoc. Prof Dr Mek Wok Mahmud and Siti Zulaikha binti Mokhtar**

Mafqūd and Fasakh in the Writings of Muslim Jurists and Provisions of Malaysian Federal Territory Islamic Family Law: The Case of MH 370 Missing Plane

**Wahabuddin Ra'ees and Abdol Moghst Bani Kamal**

The Islamic Republic of Iran's Networking Diplomacy: The Role of Ahl-Ul-Bayt World Assembly (ABWA)

**Nadzrah Ahmad, Rabiah Aminudin, Roslina Othman, Norzulaili Ghazali, and Nurul Syuhada Ismail**

CEDAW Implementation in Malaysia: An Overview of Reservations from and Islamic Perspective

**Tengku Siti Aisha Tengku Mohd Azzman Shariffadeen and, Aini Maznina A. Manaf**

Following Islamic Reality Show Personalities on Twitter: A Uses and Gratification Approach to Understanding Parasocial Interaction and Social Media Use

**Aishath Iffa Ashraf, Najy Faiz, and Adlina Ariffin**

Imposition of Good Samaritan Laws to Improve Professionalism among Medical Practitioners

**SM Abdul Quddus and Nisar Uddin Ahmed**

The Role of Leadership in Promoting Quality Management: A Study on the Chittagong City Corporation, Bangladesh

ISSN 0128-4878 (Print)

ISSN 2289-5639 (Online)

