

# Between State and Women's Rights: Bahraini Dual Legal System in Focus

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## Abstract

Key findings within basic field research in Bahrain for the actual application and exercising of gender equality and citizenship are presented in this paper. The pre-existing inequality within civil and family laws in the corresponding Bahraini Dual legal system is also discussed. This article discusses significant issues in Bahrain which are based on the Sunni-Shi'ite division which has a direct and significant effect on implementing reforms for the existing discriminatory laws. This is relevant to the important issues of gender equality and citizenship for how they debate family codes with regards to women's rights within the corresponding legislative authority. The practical implementation and exercising of this right in Bahrain is analysed, and the political participation as women's constitutional rights is also investigated.

## Keywords

Gender Inequality, Citizenship, Discriminative Laws, Family Law, Political Rights

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## 1. Introduction

Bahrain is a constitutional hereditary authoritarian monarchy, and the legislative authority is vested in the king and the parliament, which consists of an upper house, the Senate (Shura Council) with 40 members, and a lower house, the Chamber of Deputies (or Council of Representatives) with also 40 members. The executive authority is solely vested in the king, who exercises his powers through his ministers according to the provisions of the present constitution. The judicial authority is exercised by the courts of law in their varying types, and degrees. All judgments shall be given in line with the law and announced in the name of the king. Furthermore, it is stated in Article 106 that, the members of the constitu-

tional court shall be assigned by Royal Order (*The Constitution of the Kingdom of Bahrain, 2002*). Given that, the king is the head of the state and reserves political power above various institution of the government. Moreover, there is tension between the Sunni-led government and the largely Shi'ite opposition (*Alsabeehg, 2021: 1, ff*). Democracy is difficult to achieve when it concerns the surrender of power by a minority in the situation of Sunni-Shi'ite polarization (*Herb, 2005: 179*). Over the years, there have been claims of an Iranian supported plan to remove the Sunni-controlled government from power (*Schwedler & Deborah, 2004: 114*).

Indeed, the most serious obstacle in Bahrain is a divide between Sunni and Shi'ite groups. Bahrain has a Shi'ite majority, while the ruling family is Sunni. The elected lower house cannot block legislation, except collectively. The constitution gives for an appointive upper house of equal numeric strength (*Herb, 2005: 178*). The parliament consists of Sunni-Shi'ite groups in the Lower House; both of whom are represented by conservative parties. Given that, the Bahraini legislative authority might hinder, and has a negative direct impact on, reforming the social, economic and political polices with regards to women's rights, for instance reforming women's economic rights such as within the retirement law (*Al-Rabadi & Al-Rabadi, 2017: 199, ff*), where similar discriminative laws occur in many forms within several other Arab countries in the wider MENA region (*Al-Rabadi & Al-Rabadi, 2018*).

To further elaborate, the Lower House wanted to introduce a law to lower woman age of retirement due to her biological role as stated by a lawyer and Upper House member (interview 4). Furthermore, the representative of the Women's Union clarifies that the Lower House consists of conservative members both in the governmental block with 22 and the oppositional Shi'ite Al-Wefaq block with 18 members. The Shi'ite block opposed the introduction of a codified Shi'ite family law which would have also granted Shi'ite women more rights, and rather used the issue as an instrument against the government in order to press constitutional changes that would reduce the Upper House's authority and increase the Lower House's influence (Interview 5). We can see above how the Sunni-Shi'ite groups tension affect introducing polices regarding women rights which were used as an instrument by the Shi'ite group to change the constitution. According to Schwedler, religion is a source of identity as well as signification, providing symbols of validation and meaning for social and political existence (*Schwedler & Deborah, 2004: 382*).

The Bahraini constitution of 2002 in Article 1(e)<sup>1</sup> and Article 18<sup>2</sup> clearly states the principle of equality among all citizens in all political, social, and economic

<sup>1</sup>Article 1(e) states that: "Citizens, both men and women, are entitled to participate in the public affairs and may enjoy political rights, including the right to vote and to stand for elections, in accordance with this constitution and the conditions and principles laid down by law. No citizen can be deprived of the right to vote or to nominate oneself for election except by the law." (*The Bahraini Constitution, 2002: 4*).

<sup>2</sup>Article 18 states that: "People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the bases of sex, origin, language, religion or creed." (*The Constitution of the Kingdom of Bahrain, 2002: 11*).

aspects. The Bahraini constitutions grant equal opportunities to all citizens, the right to work, and to select the kind of work. Article 13(a)-(b)<sup>3</sup> of the Bahraini constitution grant citizens equal opportunities in obtaining public jobs, with no discrimination related to origin, language, religion, faith, or others. Moreover, Bahrain gives women equal opportunities to enjoy their legal rights such as the laws that bestow women the right to make contracts of their own and to administer their own property. Although women's rights in Bahrain are subject to the constitutional laws, it is the laws of the private sphere—i.e., the family law—in Article 2<sup>4</sup> and Article 5(b)<sup>5</sup> in Bahrain—“natural” vs. “positive” law—which poses flexibility in the legal systems.

Hijab argues that, articles of the family law disagree with the constitutions in the region where constitutions in most Arab states that have them assure equal rights for all citizens, but under the family law women have unequal rights (Hijab, 1988: 14) and (Hijab, 2002). Moreover, according to Zuhur, the wording of these codes permits limitations of women's rights (Zuhur, 2005: 10). To elaborate more, Offenhauer explains that the dual legal system in these states is arranged in one hand on a civil code and in the other hand on a family law mainly based on Shari'a law (Offenhauer, 2005: 33).

From the field research a Shura member from Bahrain confirms “The equality before the law must not contradict with Shari'a law” (cf. Interview 4). Based on this, the legal situation in the country is considered as a dual legal system, as it is also suggested by Lazerg that in most Middle Eastern countries the characteristics in the legal system are ambivalent creating a dual legal system; one reflecting codes that are internationally equal and the other representing diverse degrees of codification of Shari'a that identify women's rights in matters of marriage, divorce, children custody and inheritance. Rights written and protected by the constitution in these countries are generally denied or subverted in various family codes (Lazerg, 2009).

There are provisions and missing explications that might be considered loopholes in the constitutions regardless of the definition of equality as citizens before the law. In theory and practice, Bahrain is affected by the patriarchal system and by the prevailing explanation of clergymen which may contradict women's personal status issues such as freedom of movement (Atawi, 2009). The citizenship is more consistent in the public sphere's right than in the individual private sphere. This is the case even if the latter stands in direct contradiction to the

<sup>3</sup>Article 13 (a) states that: “Work is the duty of every citizen, is required by personal dignity and is dedicated by the public good. Every citizen has the right to work and to choose the type of work within the bounds of public order and decency. (b) States that: “The state guarantees the provision of job opportunities for its citizens and fairness of work conditions.” (The Constitution of the Kingdom of Bahrain, 2002: 9).

<sup>4</sup>Article 2 states that: “The religion of the state is Islam. The Islamic Shari'a is a principle source for legislation. Language is the Arabic.” (The Constitution of the Kingdom of Bahrain, 2002: 5).

<sup>5</sup>Article 5(b) states that: “The state guarantee reconciling the duties of women towards the family with their work in the society, and their equality with men in political, social, cultural, and economic spheres without breaching the provisions of the Islamic canon law (Shar'a).” (The Constitution of the Kingdom of Bahrain, 2002: 6).

civic and political rights expressed in the claimed liberal constitutions. The clergymen have always resisted liberal feminist demands; they always classify women as second class citizens under the authority of men.

By analysing data from country, the definition of citizenship in Bahrain conforms in some extent to the model of a modern liberal state, but it is not considered as modern states. In a modern state, the citizenship definition entails that all citizens as individuals are equal in front of the law regardless of their language, race and religion. Furthermore, the social contract with regards to the rights and duties between the individuals and the state (through a legal process) occurs on equal bases.

From what has been stated above, one might argue that Bahraini constitutions have to treat woman as a human being equal with man in relation to their rights and duties. As mentioned by Charrad, feminism is not a theory about women's oppression but a theory of human rights (Charrad, 2009). These rights are fundamental rights to which individuals are simply subjected by being human beings.

Moreover, the definition of citizenship in Bahrain contradicts Hatem and the international treaty of Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Hatem explains that the liberal practice and the constitution commonly outlined the rights of citizens in universal stipulations where these rights are reflected in an institutional base of representation. This is the minimum standard for democratic societies (Hatem, 2000). At this point, it is important to consider the values themselves rather than focusing on the label as coming from the West. These values are fundamental for democracy and for any human being. This was also confirmed when we had the chance to interview the Director of the United Nations in Bahrain (Media Centre for the Arabian Gulf Countries) with regards to the interpretation of CEDAW by the Bahraini conservative actors by asking him the question "Why are they commenting like this about it?" where he answered:

"Of course, there are some readings about CEDAW that according to some believes are binding, but the CEDAW itself, and the United Nations with regards to CEDAW, was drafted and signed by all Arab countries. These countries presented their contribution in terms of law and women's empowerment. They are inspired by their beliefs. CEDAW has nothing to do with Islam in the eyes of those who are not convinced of CEDAW. I think they should read the Islam again." (Interview 6)

In addition, with regards to the international CEDAW convention—which is important for women's rights since it stipulates equality between men and women before the law in all rights and duties—Bahrain endorsed it where these endorsements have to be actualized in reality. Gender inequality indicates that something is going wrong in the legal system in Bahrain. Normatively, the legal system has to reflect equal opportunity in rights among citizens, but not to enshrine the principle of discrimination. Cultural practices which stem from religious interpretations and customs often limit woman's rights and their access into citizenship with equal value with man, particularly for the corresponding

woman political rights (Al-Rabadi & Al-Rabadi, 2016). Therefore, we need to discuss these civil codes and the traditional one and how these codes affect women's equal opportunity and their inclusion into the citizenship taking in consideration the Shi'ite—Sunni split in Bahrain.

Indeed, until now there is a widespread call for the implementation of Islamic law in many Muslim countries until now. In terms of constitutional design, while a number of constitutions in older times had a state religion clause, constitutions in current Muslim-majority countries privileged religion more robustly. Many Muslim countries, including Saudi Arabia, Kuwait, Bahrain, Yemen, Jordan and the United Arab Emirates took on constitutions that entrenched Islam or Islamic law (Sharia) as (1) a source, (2) a primary source or (3) the primary source for legislation (Ahmed & Ginsburg, 2014). This means, that this situation will have an effect on women political participation, since some religious interpretations might lead to a refusal of women in leadership positions in the legislative body because the religious authority—through the family law—is authorized to govern the personal status issues such as women's obedience and freedom of movement. In the next Section, the discriminative laws and women citizenship inequality will be further detailed and discussed.

## **2. Discriminative Legislative Statements that Disregard Women's Citizenship**

For the time being, Bahrain has looked towards administrative and legal reforms by issuing legislations that suited the economic, social and administrative evolution of the country, in particular women's rights. Here, we will analyse the discriminatory laws with respect to civil and political rights, economical, and social rights. The following analysis mainly relies on the field research, since documents and interviewee opinions are rarely found in the literature. Then, the social rights particularly the family law will be analysed in-depth which implies insights into important issues that are relative to the surrounding circumstances.

### **2.1. Civil and Political Rights**

This sub-section discusses issues of concern to women's citizenship rights. These are the Nationality Law, the Passport Law, and the Election Law.

#### *Nationality Law*

One of the main discriminations disregarding women's rights is the nationality right. As a matter of fact, and in response to the question "What are the discriminations regarding women's political and civil rights?," a Member of Parliament shares with us: "The Nationality Law, it is a right obtained from the father side but not the mother. This is still a discriminatory law, Bahrain needs to handle it and deal with it, since there is convention around that, it will be amended, but it takes some time" (Interview 2). Another respondent alludes to discrimination with respect to that law:

"The Nationality Law which was introduced in 1963 is still in action, and has not been reformed, it does not entitle a woman to give the nationality either to

her children or to her husband, so she suffers a lot in getting residence and guarantee for the husband. Therefore, certain measures were taken by women to help call some changes in this law so the Women's Union addressed the Upper House Shura, parliament and the Human Rights Council to take measures and change these laws, but no real action has been taken until now." (Interview 5)

There is more inequality here, when a Shura member tells us:

"If a Bahraini woman is married to a foreigner and gets the foreign nationality, in the Bahraini law she will lose her Bahraini citizenship, a woman is not allowed to have more than one nationality. While a man has much less restriction with respect to that, he could lose his citizenship if the king decided that, but not by the law as for woman." (Interview 4)

Here, in this situation, one can notice the contradiction between the constitutional rights that are granted in the Bahraini constitution and the legislations which are applied. Women are excluded and cannot enjoy equal rights with men. They cannot pass the nationality to their children, which means that their children are neglected all their citizenship rights, including political participation, healthcare, higher education, land ownership, and employment. This is inconsistent with Constitution Article 4, which stipulates the principle of equality. It is worth mentioning here that some children of Bahraini women have been able to obtain the Bahraini nationality, as a Shura member says, "But it was a case by case issue" (Interview 3).

With regards to Bahraini citizenship laws, Alsabeehg states (Alsabeehg, 2021: 22, ff) that NGOs play an essential role with respect to women's rights such as in the Nationality Law. Over the last ten years, Bahraini NGOs have continuously lobbied for amendments to the Nationality Law that would allow women to give their citizenship to their husband and children. Women's rights organisations in Bahrain have taken up citizenship inequality as one of their main causes and have actively lobbied the government for reform. Still, it is believed that if these laws were changed, foreign men would easily seduce national women in order to obtain citizenship and receive the substantial social benefits that it confers (Kelly, 2009: 12). This is clear when the Chairperson of the Women's Union states that the Women's Union as an active NGOs suggested amending this law in the following way:

"The Women's Union suggested amending Article 4 of the constitution, so that a born baby to either a Bahraini man or a woman should acquire the Bahrain nationality whether he is born in Bahrain or abroad. This suggestion has not been accepted yet. The Supreme Council introduced another suggestion, which gives women to get the nationality by naturalisation, rather than entitling women to this full right whereby the minister of foreign affairs can deal with such matters." (Interview 5)

However, the achievements of the women's rights organisations in Bahrain have so far been limited. Bahraini women remain unable to pass their citizenship to their non-Bahraini husbands (Ahmed, 2009: 15).

In order to know what is behind this legal discrimination regarding women, we should consider a Shura member interviewee, who illustrates: “I believe that it might be a sovereignty issue. Woman to pass their nationality to her husband needs 15 years if he is an Arab, and 25 years if he is a foreigner or did a useful service for the country, that is why the nationality issue is a matter of sovereignty” (Interview 4). Sovereignty in her opinion is attached with country loyalty. So only if the foreign husband proves loyalty during the years of living in Bahrain, he should get Bahraini nationality. In order to overcome such men-centred thinking, it is imperative for women to play a role in the decision-making, such as in the legislative authority. They can advocate their rights as qualified representatives, using the rules, changing the rules and liberating them.

#### *Passport Law*

Concerning the Passport Law, it is made clear when the Chair Person of the Women’s Union says: “The children of Bahraini women are not entitled to get a Bahraini passport. They are considered foreigners. The Women’s Union also tries to amend this law, so that the children of a Bahraini woman will have equal rights like children of Bahraini men” (Interview 5). Another respondent who is a Deputy says: “The passport law stipulates that the children of a Bahraini woman under the age of 18 cannot obtain a separate passport without the husband’s written permission if those children are to be included in their mother’s passport” (Interview 2). Further discrimination is revealed by a lawyer: “A born child has the right to obtain a passport if the father wants, but not the mother” (Interview 4). But, there are exceptions, “if a woman is divorced, or a head of the family, just in that case their children will be able to obtain a separate passport” (Interview 2). As far as we can see from what is stated above, the role of the mother is a minor one, the superiority lies with the husband because he is considered the guardian of the family. This shows the patriarchy texture of the society which also shows that the patriarchal system exists in the Bahraini legal system. This is regarded as a major further legal inequality regarding women and their rights.

#### *Election Law*

Election stipulations of the Election Law affect Bahraini women’s citizenship. They affect the advocacy policies where decisions and political power are concerned. The argument here is that the constitution has granted women universal suffrage since 2002, however, in practice, it is not exercised. To illustrate, a women’s rights activist says: “The circumstances are not ready for that, therefore the government has to take measures to change the stereotype image by the parliament so that the people will get used to that and at the same time women can prove their efficiency” (Interview 5). As a matter of fact, even though women have been granted the right to run for office and vote in theory, when it comes to the practice, the law faces challenges, as a Deputy from the Bahraini Parliament clarifies:

“The election law states equality between men and women, this is not practiced. Also, this equality in the constitution it is just new and it is since 2002



when the new King did the legal constitutional reform, established the legislative institutions, and the election process in the country, before women could not have their own elected body.” (Interview 2)

While women have been granted constitutional rights as stated above, their image in the society by being in charge for the domestic task in the private sphere affects and limits their political opportunities. To elaborate from the field research in Bahrain, we have asked a Bahraini deputy and a member in CEDAW committee “What do you think about the argument that the private sphere is limiting women’s exercise of their rights in the public sphere?” Deputy: “I totally agree with you, the mentality of clergymen feeds women’s stereotype, the relationship between the private and public sphere is a reciprocal one in any dynamic society” (Interview 2). He means that women role and her duties toward the family are reinforced by the clergymen interpretations. This is further confirmed by the chairperson of the Women’s Union when she says that “women stereotype is a result of religious ideas. She is considered as imperfect and that she should not be in charge of supreme governance” (interview 5). Moreover, the democratic process is relatively new in Bahrain. It started in 2002. Liberal ideas and women participation need time to be tangible in the society. It might perhaps be possible to tackle this through a quota system, but opinions may differ with respect to that. The Chairperson of the Women’s Union reflects her opinion:

“The quota is considered by the public sector such as the Supreme Council unconstitutional, where we as a Women’s Union consider it a first step to the elected councils, according to the provision of Article 4 of CEDAW. I believe that even the government is against quota and the opposition who is conservative does not understand the concept of quota. When the Women’s Union visited the representatives and discussed the matter with them in 2004, the opposition who are conservatives such as the Al-Wefaq Party demanded from us a full study on the subject. The conservatives are against women’s representation, because they consider such issues male issues, since they interpret the citizen as a male but not a female.” (Interview 5)

A second perspective appears from the field research, the Chairperson of the Supreme Council for Women says in response to the question, “To what extent is Bahrain with respect to women’s right in agreement with international agreements such as CEDAW”, reflecting her own opinion about the quota:

“What does it mean temporary measures with respect to the quota in the agreement of CEDAW? Article 4 in the agreement was a declaration concerning temporary measurements; it did say a legitimate quota. Having a legitimate quota is a demand of the civil society organisation. I want you to tell me, does the international agreement interfere in reforming the Arabic constitutions? This means that the quota system is against equality between men and women, also it is impossible to integrate a temporary measurement with the country’s legislations, this is the base. I believe as the Chairperson of the Supreme Council



for Women, that the quota system is unconstitutional.” (Interview 1)

It might be that her opinion is influenced by a governmental perspective, that she does not want to embarrass the Council in light of the conservative majority in the parliament, and that is why she rejects the idea of quota strongly. This seems clear when she expresses that she is against the temporary measurement, she considers it unconstitutional. As for the third perspective regarding the quota, a member of the Shura Council says, “I think having a quota in Bahrain needs time until the state recognises that women cannot reach the legislative institution by themselves” (Interview 4).

From what has been stated above, three actors in the discussion about a possible quota instrument have been quoted, the Chairperson of the Women’s Union, the Chairperson of the Supreme Council for Women that peruses the country’s policies, and a Shura member. The three do not agree with each other regarding the quota in Bahrain. However, there is a misrepresentation with respect to women in the legislative authority. One might wish to argue that the first and third actors are closer to the reality. Using quota could help in changing the image about women in Bahrain, as it has been especially recommended by the United Nations, since Bahrain has ratified the CEDAW convention and is a State Party to the agreement. Momentary special measures would mean at speedup in actual equality between men and women and shall not be regarded as bias as defined in the current convention, but shall in no way involve an upholding of unequal or separate standards; these measures shall be withdrawn when the aims of equality of opportunity have been achieved. To put it in another way, there is no problem with implementing policies to transfer a patriarchal society to a liberal one, as long as it brings about a positive outcome, and it is temporary.

## **2.2. Economic Rights**

Recently, Adel and Alqatan: argues, that there is discrimination in the employment rights within the private sector (Adel & Alqatan, 2019). As the Asian Centre for Human Rights reports (ACHR, 2007: 2), gender bias in public life and employment has been visible. According to a 2006 report of the government, Bahraini women occupy only 9% of senior civil services posts although they represent 11% of the private sector workforce. Gender distinction is still strong in the workplace. True economic equality between men and women has been difficult to realise in Bahrain, where society is likely to view formal employment and business as issues for men. Women have found it difficult to run their own businesses because social norms entail that they employ men to authorise their work or manage all government documents, such as customs forms and work permits, but this image has begun to change positively, to give an example, liberal, educated, middle class women have started to run independent businesses (Ahmed, 2009: 22).

The Freedom House reports that, in view of certain conservative scholars, a woman’s responsibility is to look after her home, husband and children, while a

man's responsibility is to behave towards women in a fair manner and to carry his family's financial responsibilities. Furthermore, these expectations have an effect on the corresponding gender roles for many households, but some take on less traditional arrangements, and women have been gradually becoming financially more independent through employment. As a matter of fact, in the Labour Law, however, there is still gender discrimination (Freedom House, 2005: 22). Economic rights equality is critical for citizen identity and nations, and organisations have to envision a workplace where everyone has an equal chance (Mordi et al., 2022).

#### *The Diplomatic Code Law*

In response to the question about discriminative laws with regards to women's economic rights, a women's rights activist reports: "The law of the Diplomatic Code does not give women the same rights as men, for example, a cultural attaché is given the right to accompany his wife and all his family and is given many privileges, while a cultural attaché woman is divided from these rights and privileges" (Interview 5). This further explains that some laws are legally masculine oriented, and the patriarchal structure in the legal system legalises women's inequality.

#### *Labour Law*

The Labour Law regulates labourers' matters in the public and private sector in Bahrain. In Article 12, the Bahraini Constitution grants equal rights and opportunities to all labourers. Recently, the Freedom House describes that men as a group are paid more than women. The average monthly earnings for women employed in the public sector are 643 BHD (\$1705.80) while on the other hand men earn 706 BHD (\$1872.93). Further, the gender gap in the private sector pay is even more evident; women earn average monthly earnings of 307 BHD (\$814.43) while men earn 454 BHD (\$1204) (Ahmed, 2009: 23). In the Gulf area, Women's citizenship is also affected by gender-based restrictions in labour law, such as that women can legally be deprived of employment in certain occupations, and are negatively distinguished in labour benefits and pension laws (Kelly, 2009: 12). It might be due to the relation of women to care providers of the family, which influences women's enjoyment of their economic rights outside the family sphere. This is due to the social upbringing. The society discriminates and looks at women as followers of men. The society as a whole is gender-biased in favour of men.

In the conducted field research, another respondent illustrates discrimination in the economic rights and clarifies:

"Women are entitled to work in both public and private sectors. In the private sector women do not have the same rights given in the public sectors, such as hours for breast feeding which is two hours a day for two years. Whereas in the private sector is one hour for one year only. Maternity paid holiday, in the public sector 60 days, whereas in the private sector it is 45 days. This shows great labour discrimination in the private sector, women working in the kindergartens

is not protected by labour law; they get low salaries although they are around 3000 in number, because there is no specific minimum of salary.” (Interview 5)

Furthermore, she reports:

“The law did not guarantee women or working couples the right for a leave without sponsor a period more than one year, in order to look after children without having the right to go back to work. Also, it did not provide women the right for a two year permit to accompany her husband who is assigned to work abroad without dropping her job. At the level of special area as a day-care centre for the children of female employees whose age is below 4 years, the law did not oblige the employer in a formation for day-care, as some sort of a safety for the working woman and to sustain her socially to apply Article 5(b) of the Constitution, which assured fitting between a woman’s job and her family responsibilities.” (Interview 5)

Thus, discriminations can be noticed in payments within the private and public sectors. Also, as could be noticed above, governmental policies with respect to women’s inequality, economic support and empowerment are absent.

#### *Retirement Law*

Further disregard for women’s citizenship is encompassed within laws such as the Retirement Law. A women’s rights activist explains this situation: “This law concerns the public and private sector with respect to the retirement. The retirement age in the private sector is 55 for women and 66 for men. Whereas it is 60 for men and 55 for women in the public sector” (Interview 5). More precisely, a respondent from the Shura Council adds: “Discrimination can be found with respect to the retirement in the private sector, a widowed woman could lose her husband’s retirement, if she marries for the second time. Also, if a widow becomes for the third time a widow, they will consider for her the highest salary of her deceased husbands” (Interview 4).

Furthermore, the legislative authority had the idea to reform the Retirement Law in order for women to retire in early age. A member from the Shura Council informs about that: “We, the Shura Council were against it, because it is not in favour of women and we stopped introducing it, we work as a security control in the Council for many issues such as gender equality” (Interview 3). Another voice from the Shura Council puts it like this: “They think that women could be less productive than man in late ages”. She reflects her opinion and comments: “I think this is wrong that women retire in early age based on physiological nature, it is unjustified; women could be productive regardless of their age”. She continues: “This will keep women far away from the labour market” (Interview 4).

Here, of course, a lot will depend on who is behind the legislation process. From what has been illustrated above, the structure of the Parliament might influence the reform process. Having non-conservative, pro-feminist members oriented towards granting women more rights is an important step since they could provide for a balance in the Parliament.

*Civil Service Law*

Further analysis of discriminatory laws reveals misgivings in the Civil Service Law which concerns the public sector. A women's rights activist explains:

"Bahraini women is not treated equally with man according to the civil service law which concerns the public sector, regarding women pension is discriminated. The pension of the deceased wife is not given to the husband unless he is disabled. If she is the only supporter to her children and family, they will be entitled to the pension." (Interview 4)

Another inequality in the Civil Service Law regards the social reward, as Deputy points out:

"Women can obtain a social reward, but if she marries, she will lose this right, and the husband will have this social reward. The husband is the responsible one for the family expenses. The Shura Council is trying to remove this discrimination, and make it a right for a woman. Also, within certain public departments, a promotion of a woman is more difficult than a man, and thus women are discriminated against." (Interview 2)

*Social Security Law*

The Social Security Law is concerned with matters that are related to the employees and labourers both in the private and public sectors. The Bahraini Social Security Law implies discrimination. From the perspective of a women's rights activist:

"The pension of the deceased wife is not given to the husband unless he is disabled. If she is the only supporter of her children and family, they well be entitled to her pension. Even though the Social Security Law at some points favours women, such as a woman is also entitled to her own salary and what she deserves from the husband's salary, or her own salary and what she deserves from her son's salary." (Interview 5)

*Housing Law*

In regards to the Housing law, a women's rights activist clarifies in response to the question about discriminative laws with regards to women's economic rights:

"It is a law concerning the housing service which the government provides for its citizens in the public sector. The Housing Law provides that a married man only can get an apartment and register it, while a woman cannot, but this law won't come with the woman married with a non Bahraini husband, not in a similar way as for the man." (Interview 5)

It is difficult to imagine rights that accord no great importance to overcoming clear gender biases. Some governments through their policies explicitly exercise gender discrimination policies and thus legalise gender discrimination as illustrated above.

### **3. Investigative Analysis Debating Women's Social Rights**

In this Section, we will study and discuss the cultural-rooted social rights. Understanding the social rights will help in the development of strategies for amendments of discriminatory laws. Social rights and identity politics are cen-

tral to the discussion around the codification of the personal status law for the conservative society in Bahrain (Hashem, 2018). Our focus is on the analysis of the development of the family law (Personal Status Law) and its codification in Bahrain. It concerns polygamy, marriage, marital obedience, guardianship, penal code, and inheritance. According to Kelly, gender discrimination is most evident in the family law, which downgrades women to a secondary position within marriage and the family, establishes the husband as the head of household, and demands that the wife obeys her husband (Kelly, 2009: 12). In Bahrain, social affairs are mainly based on Shari'a as a member of the Shura Council illustrates: "it is based on Shari'a, no one can argue the clergymen." She adds: "There are two courts; one is for Sunni and the other one is for Shi'ite" (Interview 3). Another opinion confirms what has been stated above and reflects: "Interfere with Shari'a, and as Bahrain is an Islamic society and country, we have a difficulty there, but this has nothing to do with laws themselves. We have Shari'a, and we have to deal with clergymen as they interrupt things" (Interview 2).

Both respondents refer to Shari'a as a main source of legislation, and the clergymen are authorised to govern these rights. This is to show that there is another authority which is legalised by the country's constitution. With respect to that, we have two groups, the Sunni and Shi'ite groups. The Sunni group recently had codified a family law, whereas the Shi'ite group still has not and it remains based on the jurisdiction's opinion.

#### *Sunni Group's Family Affairs: Towards Improvement*

The following study analyses the development of family law until its codification in 2009 with respect to the Sunni group. Before the year 2009, there was no written family law in Bahrain. Instead, there were separate Shari'a practices which were based on family courts for Sunni and Shi'ite Muslims in marriage, divorce, custody and inheritance cases. In such family courts, judges—who are generally conservative religious scholars with limited formal legal training—render judgments according to their individual readings of the corresponding Islamic jurisprudence (BHRWS, 2007).

An activist expresses her disappointment with family court judges: "Religious scholars have consistently favoured men in their rulings and are unapologetically adverse to women's equality" (Interview 5). They are often conservative with little legal education, which is why they make decisions based on their own interpretations of the law; their ruling is commonly unfavourable to women's rights (Ahmed, 2009: 16). The jurisprudence regarding marriage favoured men and women remained at the receiving end, preventing women from exercising their rights at the personal level. Women still face inequality with respect to the private sphere, because their identity is taken over by their husbands (BHRWS, 2008: 5). For example, a recent study co-sponsored by the Asian Centre for Human Rights reports that there have been numerous instances in which victims went through humiliation, inequitable treatment and injustice at the hands of the Shari'a Court judges, but they still have to endure simply because there is no

codified family law to adjudicate their disputes or grievances on the basis of established principle justice (ACHR, 2007: 2).

Yet, the Bahrain Human Rights Watch Society (BHRWS) reports that the impact of not having a codified law for organizing marriage issues such as divorce has created an alarming image, which has been imposed on the state of marriages in Bahrain. For example, in 2007 over 464 couples filed their papers for divorce in the first four months. These figures are based on statistics registered by the Ministry of Justice and Islamic Affairs. Those figures included couples from both groups, which have raised alarm, since it means an average of three cases every day for both groups. Law codification is imperative for organising marriage problems in Bahrain (BHRWS; 2008: 5).

There are different actors playing a part here. The Bahraini leadership has supported the issuing of a law to organise family social issues (UNIFEM, 2008: 94). Also, women NGOs have been pushing to introduce the family law since the 1980s, women associations and unionist established a strong lobby group to force the government and religious men to pass the family law (BHRWS, 2008: 5).

As a matter of fact, women's rights continue to be pushed by women's NGOs such as the Women's Union. When analysing an interview and in response to a question about the role that the NGOs play with respect to women's rights, a Deputy explains:

"The Women's Union has worked with religious leaders and legal experts in drafting the law, which was presented to the government in December 2008. Also, National NGOs, such as the Women's Union, play an important role by offering lawyers and counsellors to assist the wives." (Interview 2)

However, a survey sponsored by women's NGOs states that religious men continue to oppose the family law codification; they argue that, no one has the authority to draft a family law because they fear it could abuse Shari'a principles (The Bahraini Women's Union, 2007a, 2007b). The clerics have stopped the implementation of the family law for Shari'a (BHRWS, 2008: 5). In fact, those who stay in such fixed and strict opposition of the family law use it as a bargaining chip with the State, unconcerned with the damage they are inflicting upon Bahraini families, women and children (BHRWS, 2008: 14). What is the aim of that? A respondent from the Women's Union says: "Their only aim is to keep their power and to have authority and control" (Interview 5). What is meant by that? Cavatorta (Cavatorta, 2008: 8) argues that if the conservatives want to accomplish some of their objectives, they will have to play by the rules of the state. It could be argued, that conservatives wish to be at the centre of policy-making. To illustrate, by not codifying the family law like other Arab countries, they have turned the Bahraini women into hostages, since the legal structure lacks a family law to define the rights and obligations of husbands and wives, especially with respect to marital rights and their responsibilities towards each other and towards their children (BHRWS, 2008: 11). This leads to more violation of the personal rights, and it would be difficult to enforce any kind of control over the

implementation of these rights due to the variety of groups and Shari'a references with respect to that. The State has assured its desire "to codify the family law, as a response to the proclamation of Bahraini women...a proclamation that has passed through cycles of ebb and flow" (BHRWS, 2008: 13, ff).

The intent to push for a codification of family law was faced by strong objections from the opposition of the conservatives. This attitude provoked the Shi'ites to endorse a petition which opposed codification and extended into organised manifestations that demand constitutional guarantees to assure men's religious and paternal authorities over women. If this would not be granted, they would return to Article 2 of the Constitution that stipulates that Shari'a is the main source of legislation (BHRWS, 2008: 13). As a matter of fact, in response to the questions: "Why do the Shi'ites strongly oppose introducing a codified family law? What is the role of the state here?", a Shura member says: "The state cannot interfere, in order not to fall in a clash with religious clergymen" (Interview 3). Given the fact that the constitution grants religious clergymen this right in Article 2, reforming gender policies which are related to the private sphere are affected. Also, they are influenced by the continuous battle between the conservatives and the state.

Finally, the codification was accepted as a principle for the Sunni, but not for the Shi'ite group; "this was disappointing", as a Shura member expresses (Interview 3). Although the new family laws hold certain provisions granting women additional rights and are looked at as a positive development, many articles of the new codex easily codify pre-existing inequalities (Kelly, 2009: 12).

#### *Age of Marriage*

The age of marriage is considered an inequitable law according to the international agreement CEDAW. A women's rights activist elaborates:

"Stipulating a marriage age, a decision was made by the Minister of Justice and Islamic Affairs, under number 45 for the year 2007 concerning an official list of marriage officials, Article 10 stipulated that no marriage contract may be done or endorsed unless the age of the wife is 15 years and the age of the husband 18 years at the time of doing the contract, unless an imperative necessity exists, clarifying marriage for people less than this age." (Interview 5)

The decision made by the minister shows clear favouritism for the early marriage, by determining fifteen years as appropriate age of marriage for women. Besides, this decision goes against the Agreement on the International Rights of Children, to which Bahrain is a party, where that agreement determines the age of infancy to last until the age of 18 years.

#### *Polygamy*

The law about polygamy contains clear discrimination between men and women. This is made clear when a Deputy expresses: "The right for a man to marry four women, but women are not, they are prohibited" (Interview 2). In another interview, the Chairperson of the Supreme Council for Women expresses clearly: "This is a right for a man; it is based on religious interpreters' point of view" (Interview 1). Therefore, it might be argued that the Supreme



Council for Women does not try to adopt opinions which could result in an embarrassing situation between theirs and the clergymen's point of view. The Supreme Council for Women represents governmental policies in regard to women's rights in the country. However, they do provide support for women like, to mention some, obtaining financial support for a divorced woman in order to accelerate her case with respect to the procedures in the court.

#### *Marriage of a Different Religion*

Marriage from different religions is a right given to a man but not to the woman, and here men are encouraged to get married within the faith, but unlike women, Muslim men may choose a Christian or Jewish wife (Ahmed, 2009: 19). Another example, Atawi (Atawi, 2009: 145) reports that Sunni Muslim women are strictly forbidden by the consensus of the jurists to marry a non-Muslim man. The role of the religious jury is central in running social rights matters, and the society is influenced directly by what the religious jury interprets.

#### *Guardianship*

Guardianship is about substantiation and authority to take action on behalf of someone else. It is aimed to be a legitimate authority which grants the marriage guardian, who most frequently is the father, brother or uncle, the authority to setup a marriage contract for the minor or an incompetent person, in the context of looking after his or her interests (Atawi, 2009: 142). One supposes it is difficult to imagine an idea of rights where authority is exercised by someone in order to make decision on someone else's behalf. Such is the case in Bahrain.

Men and women do not enjoy equal marriage rights. Unlike men, a Sunni woman is requested to have a marriage guardian who will speak for her during the marriage proceedings. If a woman does not have a marriage guardian, a judge will speak for her in completing the marriage formalities. On the other hand, most Shi'ite women endorse their own marriage contracts, although practically this does not provide them more independence in choosing their marriage partner. In all cases, the agreement of the family is essential, and it is not socially acceptable to get married without the family's consent (Ahmed, 2009: 19).

A Shura member comments on guardianship:

"According to Bahrain Sunni Shari'a courts, the father consent on his daughter marriage, is considered a precondition in order for this marriage to occur. Even in the Shi'ite court, the guardian could be the father, or the brother. We cannot exceed Shari'a law. But marriage cannot be run if the daughter does not agree on this marriage. Still, this is a restriction of women's rights. It is because of Shari'a matters, Bahrain has no civil marriage contracts, and people are sometimes obliged to go outside Bahrain to sign a marriage contract in case the guardian did not agree to the marriage." (Interview 4)

#### *Marital Obedience*

With respect to women's status in the private sphere, it can be observed that men are positioned in a higher rank than women in specific areas. Moreover, if a husband is delegated with guardianship and control of the family, the wife and

other family members must obey his orders regarding family affairs (Atawi, 2009: 144). Similarly, a Shura member and lawyer argues:

“This is based on religious interpretation if woman wants to work, and her husband is not allowing her to exercise this right, she could lose her dowry, but at the same time, the national law does not prevent her from working. Women’s freedom of movement and decision-making influence her political participation in the three authorities. These issues are religious issues and we cannot exceed religious matters.” (Interview 4)

It is traditionally men who are viewed as the providers and protectors of their families and are part of the public sphere, while women are seen as caretakers of the family, and are delegated to care giving for the home and children and are related to the private sphere (Jalalzai & Hankinson, 2008: 398). One does not have to look far to discover evidence that these gendered expectations are channelled into different legal statuses for men and women. Rights granted to women are influenced by her social rights. So, the relationship is a mutual one. For example, Atawi argues, if a husband is delegated with guardianship and control over the family, the wife and other family members must comply with his orders regarding family matters. Among the most essential forms of a wife’s obedience to her husband is staying at home, and not moving out without his knowledge and permission; taking care of the affairs of the matrimonial home is the main mission that a wife should devote herself to (Atawi, 2009: 157, f).

#### *Divorce*

Men have the right to a divorce that is effective immediately. Conversely, women must either look for a judicial divorce based on extremely narrow reasons, for example, abandonment, or else initiate a Kulu’ divorce. Some men misuse Kulu’, in certain instances requesting that the wife return the estimated amount the husband expended on her behalf during the whole marriage, taking advantage of the fact that women make use of this form of divorce because it is faster than other forms. A judicial divorce may continue for years, during which time women may not be financially sustained, and the process is not assured to actually end in a divorce (Ahmed, 2009: 16).

We have been informed in Bahrain that the Supreme Council for Women plays a supportive role here, as they provide women with a financial support in order to obtain her rights. Before this, “women used to suffer”, as a Shura member comments (Interview 3). However, unlike men, women confront significant legal, financial, and societal obstacles if they pursue a divorce.

#### *Unequal Rights in Inheritance*

Women’s rights regarding inheritance are quite disadvantaged compared to men in a number of conditions, even where a man and a woman are equally affected by the deceased. A sister is entitled half the heritage of her brother’s share. This inequality is generally rationalised by the fact that men have greater financial responsibilities based on Shari’a, and unlike women, inherit any debts of the deceased. Problems start when executors, usually a male family member, do not stick to the law and refuse to even give women the inheritance to which they are

legally entitled. As a result, women often face inequality through the real distribution of wealth (Ahmed, 2009: 22). This argument is also reinforced by a women's rights activist, when she reports: "The family law does not include inheritance or the will and this is a weakness in the law. So, both the Sunni and Shi'ite address the religious court in such matters" (Interview 5). Moreover, another respondent states "If a woman's father died, she cannot inherit all of his wealth; her cousins and relatives have the right to inherit part of the father's wealth" (Interview 3).

*Penal Code: Violence against Women*

Recently, a study done by the Supreme Council for Women demonstrates domestic violence as the behaviour or an act originated by an individual of a family against another, especially from the husband against his wife, within an unequal power relationship between them, where the more powerful individual believes that he owns the right to exercise violence against his wife. This is socially acceptable in that social norms permit him to repress and control his wife, when she does not obey his dictates, using any forms of violence (Supreme Council for Women, 2009: 5).

In fact, no laws or government policies explicitly address the issue of gender-based violence, and enforcement means are lacking for the existing legal provisions that may be put into operation. The Penal Code usually addresses violence against citizens, but this is not adequate to save women from harm by sexual harassment and domestic abuse. Furthermore, honour killings are punishable under Bahraini law, but Article 334 of the Penal Code allows a reduced penalty for one who surprises his wife in the act of adultery and immediately assaults or takes the life of the wife or of the wife's accomplice (Ahmed, 2009: 16, f).

Even though there is legal discrimination regarding Article 334, the reality is that in the practice such provisions to mitigate punishment of honour killing are not exercised in Bahrain, as a Deputy clarifies: "In practice honour killing is not acceptable in Bahrain, manslaughter or murder regardless of the condition; this mentality does not exist in Bahrain" (Interview 2).

The Chairperson of the Women's Union comments:

"There is no honour killing in Bahrain, but they demand a law that eliminates violence against women. The Penal Code deals with family violence in two articles; one concerns bodily harm which is applied against both women and men. The other article relates to raping a minor even with her consent, penalty should strengthen whereas if he accepts to marry her, and then there will be no penalties. Many cases happened were the man marries the victim for a month or so, and then he divorces her. In this way, he will avoid penalty and the victim will be considered divorced." (Interview 5)

She further confirms legal inequality:

"This article stands for a discrimination against the victim in that it does not act for an equal handling by the law of the criminal, who would employ this article to escape criminal punishment. He can also take for granted a one-sided

break-up from the victim, after staying away from punishment. The suspension of criminal punishment charged against the perpetrator upon marrying the victim permits him to escape punishment, and to repeat his crime against other women, recognising that he can escape penalty once he marries his victim.” (Interview 5)

#### **4. Conclusion and Future Work**

As was discussed and presented in this article, the notion of equality in the constitution of Bahrain does not sustain women’s legal status before the law. The laws that rule the rights and duties of citizens fall short of actualising the constitutional equality by permitting discriminatory laws and practices to exist. This shows the relationship between the definition of citizenship, discriminatory laws and the personal code. The social contract of citizenship is not yet complete because of legal inequality. The irony here is that instead of using laws as an instrument to improve justice and equality, they are used in the opposite direction. The legislators who introduce laws are mainly men, therefore once we know how the patriarchy idea operates then we can perceive the liberal feminist reforms. It became apparent from the performed field research that the legal system shows equality at the international level, while locally traditional religious interpretations still govern the lives of women. The United Nations Development Programme reports also discrimination against women which is evident in the Personal Status Law (family law), and it is only when this code is reformed that discrimination against women can be successfully eradicated. To visualize more, family law represents women’s subordination and consequently this undermines other rights in the public sphere. It has regulations that enshrine male privilege and an extended family system that grants power to kin over individuals and particularly over women. This situation has created a distinct form of women’s subordination. Furthermore, it grants power over women not only to the husbands, but also to male members of the extended kin group. In some Arab countries, such as in Bahrain, the social affairs that concern the private sphere are governed by the family law through religious courts and jurisdiction, but not through a civil court. There is another point to be considered that more inequality still faces more than 60% of the Shi’ite women who are denied legal protection, where they completely fall under the jurisdiction of the religious Shari’a court.

One might say that any discrimination in the laws is considered unconstitutional, because it contradicts with the idea of equal opportunities in the constitution in Bahrain. Legal reform might adjust this contradiction, by granting woman more equality in the public sphere and then in the private. In Bahrain, women are excluded from the public life because of the personal status code which restricts their movement and freedom. They are restricted to childbearing and other issues which belong to the domestic sphere. This led to the framing of the state and the establishment of a distinct public and private sphere at the political

level. Real equality would change the patriarchal formation, which is embedded in the personal code, into a liberal political community.

Future work will include items such as further investigative comparison for the exercising of citizenship and gender equality within states in the wider MENA region including other Gulf States, where corresponding inequalities within civil laws and family laws will be further analysed.

## Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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## Appendix: The List of the Conducted Interview Respondents in Bahrain

Name	Title and Function of Position	Date of the Interview	Time of the Interview
1-Lulwa Al-Awadhi	<ul style="list-style-type: none"> <li>– Supreme Council for Women General Secretary</li> <li>– Rank of Minister</li> <li>– Head of Arab Women League</li> <li>– Women’s Rights Activist</li> </ul>	12.4.2015	1 p.m.
2-Dr. Abd Al-Aziz Abul	<ul style="list-style-type: none"> <li>– Member of Parliament</li> <li>– Academic</li> <li>– Member of CEDAW committee</li> </ul>	12.4.2015	6 p.m.
3-Dr. Bahia Al-Jashi	<ul style="list-style-type: none"> <li>– Member of Shura Council</li> <li>– Chairwoman of the Shura Council</li> <li>– In Charge of Women’s Affairs in the Bahraini Parliament</li> </ul>	14.4.2015	1 p.m.
4-Rabab Al-Orayedh	<ul style="list-style-type: none"> <li>– Member of Shura Council</li> <li>– Lawyer and Legal Advisor</li> </ul>	14.4.2015	6 p.m.
5-Mariam Al-Rwahi	<ul style="list-style-type: none"> <li>– Chairperson of the Women’s Union in Bahrain</li> <li>– Candidate in the Parliament Election</li> <li>– Women’s Rights Activist</li> </ul>	15.4.2015	1 p.m.
6-Najib Friji	<ul style="list-style-type: none"> <li>– Director of the United Nations Media Centre for the Arabian Gulf Countries</li> </ul>	15.4.2015	4 p.m.