
Title: Aspects of Supporting the Legal Status of Women in Algerian Family Law

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Abstract

Through Ordinance No. 05-02, which amends and supplements Family Law No. 84-11, the Algerian legislator intended to strengthen the legal status of women. This is manifested on several levels, notably the provisions relating to the conclusion and dissolution of marriage. The legislator enhanced the woman's role in concluding the marriage contract by amending rules regarding legal capacity, guardianship, and other related provisions, in addition to financial and non-financial consequences of marriage. The legal status of women was also reinforced in cases of marital dissolution, whether by divorce or khula (unilateral divorce initiated by the wife), including the resulting rights such as custody and guardianship of children.

Keywords: Family Law, Women, Ordinance 05-02 Amending Family Law, Women's Rights.

1. Introduction

The family constitutes the fundamental unit of society and the pivotal element in its development, cohesion, and integrity. It is currently undergoing transformations on social, political, cultural, and economic levels both nationally and globally. These shifts have compelled the legislator to seek legal solutions that reconcile, as far as possible, the directives of Islamic Sharia with the legal treatment of these new conditions.

The Algerian family, in its early formation and organization before colonization, was characterized by its Islamic nature. However, following the French colonization of Algeria, there was an unsuccessful attempt to replace Islamic values with Western ones alien to Algerian society and traditions. After independence, the Algerian family continued to follow the Islamic framework in its organization. However, certain factions within Algeria opposed this, especially given the societal developments of that

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period, which revealed that some rights were being violated due to the absence of specific legal provisions regulating family relations—particularly those concerning women, who were perceived as needing more protection than men. Another challenge was the lack of judicial experts well-versed in the complex principles of Islamic law, which demands precision, wisdom, and an aversion to error.

Among the most significant laws affecting women are those related to their status within the family. The Algerian legislator has consistently worked to strengthen the legal position of women in this area by adopting a comparative legal approach and adhering to the commitments arising from various international conventions, particularly those concerning the elimination of all forms of discrimination against women. The most prominent of these is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Algeria has acceded. This accession has influenced numerous legislative amendments, most notably in family law.

The Algerian Family Law previously contained several provisions criticized by organizations defending women's rights, arguing that these provisions violated the principle of equality between men and women in terms of rights and duties. Thus, in the amendment introduced through Ordinance No. 05-02 of 27 February 2005, the legislator aimed to rectify these imbalances and, in doing so, enhanced the legal status of women.

Through this study, we aim to examine the position of women in the amended Family Law by addressing the following central question:

What are the aspects of strengthening the legal status of women under the amended Family Law No. 05-02?

To answer this question, the study will be divided into the following two sections:

Section One: Strengthening the Legal Status of Women at the Conclusion of Marriage.

Section Two: Strengthening the Legal Status of Women upon Dissolution of Marriage.

Section One: Strengthening the Legal Status of Women at the Conclusion of Marriage

The Algerian legislator accorded significant attention to the marital bond. Article 4 of the amended Family Law provides:

“Marriage is a consensual contract concluded between a man and a woman in accordance with Sharia. Its objectives include the formation of a family founded on affection, mercy, and cooperation, the safeguarding of the spouses, and the preservation of lineage.”

This provision highlights the prominent role of the woman in the marriage contract, with no distinction between her and the man in establishing the marital bond.

Accordingly, the legislator strengthened the woman's legal status at the conclusion of marriage through several provisions concerning the formation of the marriage contract and its effects. These will be detailed in the following two requirements:

Requirement One: Instances of Strengthening the Legal Status of Women at the Conclusion of Marriage

The legislator emphasized several points during the establishment of the marriage contract and its legal effects. These are presented in the following two branches:

Branch One: Manifestations of the Algerian Legislator's Support for Women's Legal Status in the Provisions Governing the Marriage Contract

There are several manifestations reflecting the legislator's support for women's legal status in the provisions relating to the formation of the marriage contract:

First: Stipulating Legal Capacity in Marriage

Legal capacity in general refers to a person's ability to acquire rights, bear duties, and engage in legal transactions. In marriage, it means that both the man and the woman must reach the age of majority to contract marriage. Article 40 of the Algerian Civil Code states:

"Any person who has reached the age of majority, is of sound mind, and is not under guardianship, has full legal capacity to exercise their civil rights. The age of majority is nineteen (19) full years." (75/58, 1976)

Prior to the amendment, Family Law set the minimum marriage age at 18 for women and 21 for men. However, Ordinance No. 05-02 amended this by unifying the age for both sexes at 19:

"Marriage capacity is attained by both men and women upon reaching the age of 19." (05-02, 2005.)

This change is favorable to women, recognizing their autonomy over both their person and property by aligning the marriage age with the legal age of majority. This contrasts with Law No. 84-11, which allowed minors to marry but not to manage property, even though personal autonomy is a higher-order interest than property in Islamic law. (Malika, p. 276)

An exception to this general rule remains, as the same provision allows:

"The judge may authorize marriage before that age in case of necessity or interest, provided that the parties are capable of marriage. The underage spouse shall acquire legal standing to litigate in matters related to the rights and obligations arising from the marriage contract." (05-02, 2005.)

Second: Stipulations within the Marriage Contract

One of the most important safeguards introduced by the amended Family Law (Ordinance No. 05-02) is Article 19:

"The spouses may stipulate in the marriage contract or in an official subsequent document any conditions they deem necessary, particularly regarding the prohibition of polygamy and the wife's employment, provided that these conditions do not contradict the provisions of this law."

The legislator allowed the spouses to make binding stipulations either within the marriage contract or in an official subsequent agreement, reinforcing the duty to uphold such terms. This is facilitated either during the marriage ceremony—attended by the two required witnesses as per the amendment under Ordinance No. 05-02 dated 07/02/2005—or through a later official act. (Ahmed, 2010, p. 34)

Moreover, Article 32 of the same law states that a marriage shall be nullified if it includes an impediment or a condition contrary to the essence of the contract. A condition that contradicts the contract renders the condition void, but the contract remains valid. (05-02, 2005.)

Third: Conditions for Permitting Polygamy by the Husband

Article 8 of Ordinance No. 05-02 of 27 February 2005 provides:

"Marriage to more than one wife is permitted under Islamic Sharia, provided there is a legitimate justification and the conditions of fairness and necessity are met.

The husband must inform both the existing wife and the prospective wife and must submit a request for authorization to the President of the Court where the marital home is located.

The court president may authorize the new marriage if he verifies the reasons, the husband's ability to be just, and the availability of the required conditions for marital life.”

Previously, Article 8 of the Family Law stated that the husband needed only to inform the previous and new wives, who could sue him in case of deceit or demand divorce in case of objection.

Additionally, Article 8 bis (added by Ordinance No. 05-02) states:

“In cases of deceit, either wife may file for divorce.”

If the husband fails to obtain judicial authorization, the new marriage shall be annulled if consummation has not occurred. (05-02, 2005.)

Fourth: The Woman’s Position Regarding Guardianship in Marriage

Before the 2005 amendment, the Family Law required that a woman, whether minor or adult, be married by her guardian. Article 11 (prior to amendment) stated:

“A woman’s marriage shall be concluded by her guardian—her father or one of her close relatives. The judge shall act as guardian for those who lack one.”

Article 13 (pre-amendment) added:

“No guardian, whether father or otherwise, may compel a woman under his guardianship to marry, nor may he marry her off without her consent.”

These provisions were widely criticized for enabling guardians to exercise undue authority over women's marriage decisions.)Kadiri(147 صفحة، 2017 ،

The amended provision rectified this by stipulating:

“An adult woman may conclude her own marriage in the presence of her guardian, who may be her father, a close relative, or anyone she chooses.”

Amended Article 13 also provides:

“No guardian, whether father or otherwise, may compel a minor under his guardianship to marry, nor marry her off without her consent.”

The legislator here seems to have responded to demands from women’s advocacy groups to remove what they viewed as legal incapacitation of women in marital matters. The law now affirms the adult woman's full autonomy in choosing her spouse, while retaining guardianship only for minors—first to the father, then to close relatives, or ultimately to the judge in their absence. This approach balances women's autonomy with protective guardianship for minors, in line with legal norms in other systems. (Issa, 2006, p. 142)

Branch Two: Strengthening the Woman’s Status in the Effects of the Marriage Contract

The Algerian legislator reinforced the legal status of women by ensuring equality between the two spouses—male and female—in the legal effects resulting from the marriage contract, both in terms of non-financial and financial rights. [22]

First: Non-Financial Rights of Marriage

Under the original Family Law, Article 36 outlined mutual rights of the spouses, while Article 37 specified the wife's duties toward her husband. Article 39 granted the husband headship over the family, requiring the wife’s obedience and respect. This structure portrayed the man as the superior authority and the woman as subordinate, based on the principle of *qiwāma* (male guardianship).

These articles—particularly Article 39 of Law No. 84-11—were heavily criticized for perpetuating male dominance and violating gender equality. Critics argued that such provisions undermined human rights and the foundational principles of marital partnership.

The 2005 amendment rectified this imbalance. Article 36, as amended, now states that spouses must:

- Preserve marital bonds and the duties of shared life,
- Coexist with kindness, mutual respect, affection, and mercy,
- Cooperate in raising children and managing family affairs,
- Engage in joint decision-making on birth spacing,
- Treat each other's families with kindness and hospitality,
- Maintain and respect family ties.

Additionally, the amendment abolished Article 39 of the old law, which had required the wife's obedience on the basis that the husband was the head of the household.

This legal reform enshrined gender equality within the family structure and affirmed that both spouses share mutual duties and responsibilities. The

Second: Financial Rights of Marriage

The legislator explicitly affirmed financial independence for each spouse in Article 37 of the amended law, which reads:

“Each spouse shall have a financial patrimony independent of the other.

However, the spouses may agree in the marriage contract, or in an official subsequent document, on jointly owned property acquired during the marriage, and on how such property shall be divided.”

This article highlights a foundational principle of Islamic jurisprudence—namely, that the wife retains ownership and full control over her assets, whether acquired before or during marriage.

According to this legal framework, the wife is not obliged to contribute to the household or child-rearing expenses from her personal wealth. The husband remains solely responsible for financial maintenance. She is not liable for the husband's debts and maintains absolute control over her movable and immovable property. (Souleiman, 1994, p. 64)

Section Two: Strengthening the Legal Status of Women upon Dissolution of Marriage

In this section, we examine the legal mechanisms by which the Algerian legislator reinforced the legal status of women in both the methods of dissolving the marital bond and the resulting consequences. This is discussed in the following two requirements:

Requirement One: Supporting the Woman's Status in the Methods of Marital Dissolution

The Algerian legislator empowered women to end harmful marital relationships through several legal reforms that widened the scope of divorce rights and provided new options such as *khula*'. [32]

First: Expansion of the Cases of Judicial Divorce (Tafriq)

Judicial divorce, or *tafriq*, is a woman's legal pathway to dissolve a marriage, in contrast to *talaq*, which is traditionally a male prerogative. Through this measure, the wife may petition the court to end the marriage due to harm or abuse. (Chtawan, p. 238)

Prior to the amendment, Article 53 of Family Law listed only seven grounds for judicial divorce. However, Ordinance No. 05-02 expanded this to include ten grounds, including:

- Failure to provide maintenance,
- Serious defects that prevent achieving marital objectives,

- Marital abandonment,
- Conviction for crimes affecting family honor,
- Unjustified absence,
- Violation of polygamy conditions,
- Immorality,
- Ongoing discord,
- Breach of marriage contract terms,
- Any harm recognized under Sharia.

This expansion reflects a more protective and equitable approach to women's rights within marriage.

Second: The Woman's Right to Initiate Khula' without the Husband's Consent

Islamic jurisprudence varies on whether khula' constitutes a form of talaq or an independent contractual dissolution. Regardless, the Algerian legislator legitimized this right without requiring the husband's consent. [(Abdullah, 2008, p. 14)

According to Article 54 of the amended law:

"The wife may seek khula' without the husband's approval in return for financial compensation. If they do not agree on the amount, the judge shall determine it, provided it does not exceed the customary dowry (mahr al-mithl) at the time of judgment."

This provision affirms the woman's autonomy and legal capacity to unilaterally end the marriage if she no longer wishes to continue the relationship—subject only to a fair financial settlement. [38]

Requirement Two: Supporting the Woman's Status in the Effects of Marital Dissolution

Upon the dissolution of marriage, the Algerian Family Law ensures that women retain vital rights, particularly regarding child custody and guardianship.

First: Employment of the Woman Is Not a Valid Reason for Loss of Custody

Article 62 defines custody as:

"Caring for the child, educating him, raising him according to his father's religion, and safeguarding his health and morals."

Article 67 adds that custody is only forfeited if eligibility conditions are violated and explicitly provides:

"A woman's employment is not in itself a reason to revoke her right to custody. In all cases, the child's best interest must be taken into consideration."

This principle was upheld by the Algerian Supreme Court in its ruling of July 18, 2000, which stated that a working mother's employment does not disqualify her from custody. Any ruling otherwise would be considered a legal error.

Second: Affirmation of the Woman's Right to Guardianship over Her Children

Guardianship is a legal mandate authorizing someone to manage a minor's affairs. Under the original law, the mother could only assume guardianship if the father had died. (Al-Zarqa, 2004, pp. 243-245)

However, Article 87 of the amended Family Law now provides:

- The father is the default guardian.
- Upon his death, the mother replaces him.
- In his absence or incapacity, the mother handles urgent matters.

- After divorce, the custodial parent is granted guardianship. [44]

This amendment represents a major step in recognizing the mother as an active and responsible legal figure in her children's lives, even when the father is still alive but absent. [45]

Conclusion

In conclusion, it can be said that through the Family Law and its latest amendment, the Algerian legislator has strengthened the legal status of women through multiple provisions highlighted in this study.

By virtue of the new provisions, the legislator enhanced the woman's role in the marriage contract by unifying the legal age for marriage, restricting the husband's right to polygamy, granting women the right to stipulate conditions within the marriage contract, and affirming their right to act on their own behalf provided they are legally competent. At the same time, he reinforced their financial rights by enshrining the principle of financial independence for each spouse, and non-financial rights through provisions mandating mutual duties and responsibilities between the spouses.

Since the marriage contract is subject to dissolution for various reasons, the legislator also supported the woman's position in the context of marital dissolution and its consequences. He granted her the right to seek judicial divorce (tafriq), expanded its grounds, and affirmed that the husband's consent is irrelevant in cases of khula'.

In the event of separation, the legislator entrusted the custody of children to the mother and held that her employment does not preclude her from exercising this right. Furthermore, her custodial rights entail her right to legal guardianship over the children.

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