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# Under the veil: women's economic and marriage rights in Palestine

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This article considers the debate relating to the implementation of the CEDAW in Palestine, particularly the issues relating to underage marriage and equal inheritance. Both of these issues have caused considerable controversy and opened a wide debate in Palestine due to the patriarchal socio-culture in Palestine, where it is considered that such rights would undermine the interests of the male elite and conflict with the dominance of men over women. Accordingly, the article provides an in-depth analysis of how the interaction of religious teachings, socio-cultural systems, and patriarchal traditions shape the Arab and Palestinian view on gender equality and women's rights in the modern day. Furthermore, the article examines the influence of religion on the patriarchal and socio-cultural system in determining the efforts that are being made to achieve equality and discusses how the Palestinian authorities, human rights activists, and liberal political parties have not been able to overcome the power of traditional religious scholars and clerics who have a much greater influence and are able to win over public opinion. Our findings reveal that more progressive interpretations of Islam are possible, which in turn allows a fuller embrace of women's rights. The findings also highlight the role of the Palestinian Authority and feminist groups in changing the mindset of Palestinian society regarding women's rights and equality, where gradual steps that include economic empowerment, education and public engagement with enlightened scholars must be taken to achieve this change.

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## Introduction

In April 2014, Palestine joined a series of international treaties and conventions, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), without any reservations in respect of its articles and clauses (UN General Assembly, 1979). This means that Palestine is committed to all the provisions, articles and texts of international conventions and charters in the field of equality and non-discrimination between men and women, and has an obligation to take all necessary measures in order to prohibit discrimination against women as well as to work to combat it.

The CEDAW is an international treaty adopted by the General Assembly of the United Nations in 1979 that came into force on 3 September 1981. Its most important output is the provision of equal rights between men and women and the commitment of its signatory states to commit themselves to undertake all appropriate measures to eliminate discrimination against women by persons, organisations or enterprises (United Nations Women, 2009). Member states should also establish tribunals and other public institutions to ensure the effective protection of women against discrimination. In addition, they should incorporate the principle of gender equality into their national legal system, which includes adopting appropriate national law that prohibits discrimination and abolishes any law that is discriminatory against women.

As a result of the Palestinian Authority becoming a signatory to the CEDAW without any reservations, debates have escalated between supporters of this trend, especially women's organisations and human rights activists who pressured the government to expedite its implementation (UN Women, 2020), and those who see the Convention as an anticipated demolition of Islamic Sharia provisions and an attack on Palestinian culture and values (PWWS, 2020). Accordingly, many opponents to the draft law, especially traditional religious scholars (*ulama*) and clerics, formed their argument on the basis that the CEDAW contains Articles and provisions that are contradictory to Islamic Sharia Law, and that seek to encourage laws and behaviour contrary to Muslim and Arab culture and values (Weiss, 2003; Ahmad, 2011).

Such arguments were initially small-scale and did not receive much attention in the Palestinian media or among the public. However, since 11 May 2020, when the Palestinian Council of Ministers approved a draft law on family protection against violence by first reading, the Palestinian social and legal debate escalated again regarding the aim and value of the CEDAW, and whether the draft law on protection against domestic violence is a requirement of the CEDAW rather than a national need (Abu Toameh, 2020).

The draft, and its review process, was opposed by an opposition campaign immediately after it was leaked to social media. Islamic political leaders, traditional Muslim scholars (*ulama*), clerics, and tribal leaders took the lead on criticising the draft, claiming that the text was derived from the CEDAW and therefore, contradicted Islamic law. The debate over the family draft law brought to the surface the debate on the CEDAW and provoked a wide public and scholarly debate about the Convention and its aims. While feminist groups and women's organisations argued that the implementation of the CEDAW was a necessity and did not conflict with religious laws (YWCA.PS, 2021), the main argument that was presented to the public by its opponents, was that the CEDAW's general aim and purpose had been to abolish Islamic rules and replace them with westernised values implemented in the CEDAW. It was argued that such values would not only destroy Arab and Palestinian customs and traditions, but, more seriously, contradict Islamic Sharia rules, disobey God, and repeal his Commandments (Robinson, 2021).

This argument had a serious effect on Palestinian society since Islamic rules and teachings still play a major spiritual and social

force among the population and, as a result, this makes the role of Muslim scholars (*ulama*) significant, due to people often turning to them for guidance (Ali et al., 2004). Hence, Palestinians still pay special attention to what Muslim scholars (*ulama*) say about controversial issues, not only issues that concern their faith or their worship practices, but also every aspect of their social, political, economic, and legal affairs (Bagader, 2003).

Nonetheless, the main provisions of the CEDAW that have been attacked and received the most criticism by Islamic religious scholars and tribal leaders in Palestine, are those relating to financial and sexual equality provided under Article (16) of the Convention; namely economic equality and the prohibition of underage marriage. This Article will focus on these two provisions in light of the modern age that we live in.

Accordingly, the purpose of this study is to examine the impact of religion on the patriarchal and socio-cultural system in determining efforts toward equality and discuss how Palestinian authorities, human rights activists, and liberal political parties have not been able to overcome traditional religious power. The article also aims to provide decision-makers in Palestine and other countries with an analytical view of the main debates surrounding the provisions, examine whether Muslim scholars have reached a consensus in rejecting or refusing the implementation of the CEDAW provisions and explore the role of governments in responding to the debate and meeting international requirements.

To achieve the objective of this study, the following questions will be examined and analysed:

1. Is the rejection of the CEDAW strictly based on adherence to Islam and Sharia law, or is there room for a progressive and modern interpretation of Islam that supports the full embrace of women's rights?
2. What is the role played by the Palestinian Authority, policymakers, and feminist organizations in driving social and political change toward achieving gender equality and empowering women?

To address these questions, the article will be divided into four main sections. The first section will provide an overview of how Arabic societies have typically viewed the CEDAW Convention, particularly with regard to women's economic empowerment and gender equality. It will examine the extent to which Sharia law, Muslim scholars, and patriarchal culture have influenced authorities and decision-makers in issues related to women's empowerment and rights. This background section will provide insight into the similarities between Palestine and the rest of the Arab world, serving as a foundation for the next section that will examine women's empowerment and gender equality in Palestine.

The second section will delve into the topic of women's economic empowerment and marriage rights in Palestine. The third section will provide a historical overview of the CEDAW and the legal debates surrounding its implementation. This section is divided into two subsections. The first subsection will explore the social and legal challenges of the CEDAW in Palestine and examine how the discourse on women's rights has created tension between international law, national law, religious practices, and cultural norms. The second subsection will examine the resistance faced by feminist movements in Palestine as they aim to reform national law, and the role of the Palestinian Authority in challenging traditional religious, tribal leaders, social and cultural norms.

The final two sections will delve into the main debates and arguments surrounding the issue of prohibiting underage marriage and promoting economic equality in Palestine. The sections will discuss how modern attempts to reform the law in these areas are met with resistance from patriarchal cultural and traditional religious norms. It will also consider effective methods for

overcoming these challenges and how the government and authorities can increase women's economic independence and promote gender equality.

### Methodology

The researcher designed this research to be open source research by using open sources of data. Researchers define open-source research as research that depends on open-source information including digital information publically available on the Internet (Boeing et al., 2022; Murray et al., 2022). The researcher found that using open-source information to achieve the purpose of the study is the best research approach because of the sensitivity of the CEDAW issue in the Palestinian context. Various open-source information was used in this research including recorded interviews on the Internet, statistical data published on the Internet, and social media websites created for the debate on CEDAW.

### The conceptual challenges of the CEDAW

As is the case in Palestine, the opposition to the CEDAW in most Arab and Muslim societies have been primarily led by Islamic parties, religious scholars, and tribal leaders who have been able to create a popular sentiment and convince the public that the CEDAW's main goal is to abolish Islamic laws and replace them with Westernized values that are embedded in the Convention (Ali et al., 2004; Kechichian, 1986; Spierings, 2014). Although the CEDAW Convention has been ratified by most Arab countries, with only Sudan and Somalia not signing the Convention (UN Treaty Collection, 2022), it still faces significant criticism, widespread disapproval, and calls for its withdrawal by many in Arab and Muslim societies (Duguri, 2020). This is why provisions in Article 16 of the CEDAW Convention have received the highest percentage of reservations from Arab countries, particularly due to the controversial provisions regarding women's equality with men in regard to marriage, family relations, and economic equity (Chaudhry, 2016; Jaffal et al., 2022).

To elaborate, Arab countries have implemented their domestic Personal Status Law or Family Law in accordance with Sharia law, which deals with personal status and domestic issues such as marriage, age of capacity, inheritance, divorce, guardianship, and child custody (Hattab, 2019; Jaffal et al., 2022). Accordingly, most Arab governments or authorities have consistently avoided making any significant changes to their Personal Status and Family Law, especially in areas where traditional Muslim scholars and religious leaders consider it inconsistent with Sharia law. This is mainly to prevent social, religious, and political panic, rather than a desire to follow Sharia law (Fenick, 2020, pp. 11–15; Jensenius and Htun, 2020). Similarly, the pervasive patriarchy in Arab society, supported by traditional interpretations of Islamic teachings and rules, has created a social and cultural assumption that women's economic rights, marriage, inheritance, and other domestic affairs should be left as purely family matters and resolved within the nuclear or, at most, extended family (Nimri, 2016; Baburajan, 2020; Souaiaia, 2019).

Consequently, the traditional views of Muslim scholars regarding women have been used by some men as a shield to cover their toxic masculinity (Pearson, 2019, pp. 1252–1259), whereas other men use these views to protect their role in the family, to keep their hierarchy of control, or to defend their share of possession over women (Alsawalqa, 2021). In contrast, the vast majority of Palestinian and Arabic women would accept the guardianship of men, and even refuse to pass any law that gives them equality regarding the above complex issues (Cherayi and Jose, 2016, p. 251), due to the influence of the traditional views of

Muslim scholars and the effect of the patriarchal culture on their education and role in society (Alexander and Welzel, 2011, pp. 250–257). Additionally, despite progress in some countries, many in the Arab region still fall short in addressing gender-based and domestic violence through their legal systems and jurisprudence. Although a few nations, such as Jordan, Saudi Arabia, Lebanon, Algeria, and Bahrain, have passed limited laws to protect women from domestic violence, much more needs to be done to ensure comprehensive protection for all women across the region (Nimri, 2016; Alsawalqa, 2021).

As will be demonstrated below, Palestine serves as an illustration of the Arab cultural and social discourse regarding women's issues, particularly in regard to underage marriage and economic empowerment. The debate around any proposed law aimed at promoting women's empowerment or gender equality is not mainly rooted in legal discourse to improve the law. Instead, the debate centers on the purpose and values of the law, and opponents, who are mainly Muslim religious scholars and leaders, utilize populist rhetoric and moral panic to shape public opinion against legal changes that are directly designed to empower women and their rights, especially when such changes concern economic equality (Englehart and Miller, 2014; Lussier and Fish, 2016). As Mernissi argued (1991, p. ix), patriarchal societies allow for the manipulation of Islamic law to generate popular opposition to laws promoting gender equality and empowering women toward economic freedom and independence. According to Alsawalqa (2021), in Arab and Muslim countries, the application of Islamic rules, which mandate male guardianship, results in women being subjected to their husbands' economic control. This is often misinterpreted as a justification for oppression and abuse, with some men exploiting it for personal gain through abusive behaviour, coercing women to surrender their resources, or denying them their right to inheritance through legal loopholes. Thus, opponents to women's empowerment and gender equality in Arab and Muslim societies often rely on moral and religious objections to present liberal ideas in a negative light and generate public sentiment against changes that challenge the patriarchal hierarchy or conflict with its ethical values (Charrad, 2011; Glas et al., 2018).

Nonetheless, not all Muslim religious scholars hold the traditional views on women's employment and rights. Some scholars, although still in the minority, advocate for an interpretation of Islam that aligns with modern human rights and gender equality principles (Abdelnour, 2020; Souaiaia, 2019). These progressive views have provided support to feminist organizations and human rights activists in advocating for legal reforms that promote gender equality and women's economic empowerment. In some Arab countries, such as Tunisia and Egypt, these progressive views have led to changes in Family Law and Personal Status Law (Glas and Alexander, 2020; Kostenko et al., 2015). For instance, Tunisia has taken a particularly progressive approach, becoming the only Arab country to ban polygamy (Porrás-Gómez, 2021) and recognise a woman's equal right to marry a non-Muslim spouse (Hayden, 2017; Booley, 2019). Meanwhile, in Egypt, women have been granted the right to divorce through a court process and a judge's approval (Mashhour, 2005), and the Egyptian government has proposed a draft bill to modify its Personal Status Law (Osama, 2019). These examples demonstrate that it is possible for Arab states to implement the Convention on the CEDAW and its articles, and the decision not to do so is a matter of political and social choice, rather than an adherence to Islamic rules.

Some feminists have argued that the main reason behind the social and religious objections toward any changes that can empower women or enhance their liberation, in the Arab and Muslim societies, is not the teaching of Islam but rather the

patriarchal society, which has established a cultural and ethical system designed to control and restrict women's power, particularly in terms of economic liberation that can directly affect the gender gap on wealth and possessions, or undermine the male elite and dominance of men over women (Mernissi, 1991). Others maintain that the liberation of women in Muslim societies must start with a reconsideration of Islamic thought and a revitalisation of Islamic jurisprudence to reflect contemporary human rights and gender equality. (Bacchetta and Power, 2013; Wadud, 1999). In our view, both perspectives are equally important. Women's liberation requires both social acceptance and economic empowerment to break free from male control. However, traditional Muslim scholars tend to resist contemporary developments in Islamic jurisprudence, instead relying on classical interpretations of Islamic texts from hundreds of years ago (Glas and Alexander, 2020; Kostenko et al., 2015).

As will be explored below, the case of Palestine is similar to that of other Arab and Muslim countries, facing implicit social and religious protests when attempting to implement laws promoting women's empowerment and gender equality (Bydoon, 2011). However, modern and progressive Muslim scholars do exist and offer support to feminist organizations, promoting legal reforms and raising public awareness of the importance of gender equality and women's economic empowerment (Souaiaia, 2019). Eventually, Arab states have the ability to promote and implement gender equality and women's economic empowerment by raising public awareness of its importance, supporting modern and progressive Muslim scholars to publicly express their views, and by gradually implementing new laws. On the other hand, the choice not to do so by Arab states stems from political and social factors rather than a restriction imposed by Islamic regulations.

### The Palestinian Dialogue on the CEDAW

Article (16) of the Convention in particular included a number of measures and aims that many Arab and Islamic countries had reserved and did not agree to fully accept. This was due to controversial issues concerning equality between men and women in matters relating to marriage, guardianship and inheritance rights (Bydoon, 2011). Hence, Palestinian tribal leaders, Muslim scholars (*ulama*), and religious clerics criticised the Palestinian Authority for ratifying the Convention without reservation, in particular Article 16, which they claim contains anti-Islamic principles that are at the heart of the Muslim faith and Muslim values (Brandt and Kaplan, 1995). One of the most notable examples of this is the equal right to the inheritance which, it is alleged, clearly opposes the instructions of the Qur'an that sets out strict rules on inheritance and how it must be divided between successors and heirs (Naik, 2021).

It was also argued by traditional Muslim scholars (*ulama*) and clerics that prohibiting child marriages contradicted Sharia law and practice and that any prohibition of child marriage was against Islam (Gausman et al., 2019). As we will explore further below, these two arguments were widely supported by tribal leaders and others who subscribe to a patriarchal masculine mentality and who find refuge in these religious views in order to maintain male dominance over women, especially in relation to economic power (Koburtay et al., 2022). Conversely, modern and enlightened Muslim scholars have proposed different approaches to the interpretation of Islamic script (see e.g. Pink, 2017; Massimo Campanini, 2010). Although the number adopting this opinion remains relatively small and unpopular in the conservative and patriarchal Islamic culture, it still provides a new and alternative approach, which can be built upon and developed further. These views will be discussed and explored below.

### The Socio-Legal Challenge of the CEDAW

In 2017, the Palestinian Supreme Constitutional Court received a constitutional challenge by referral from the Magistrate Court in relation to the international agreements ratified by the State of Palestine. This challenge requested a constitutional interpretation on whether the Palestinian Constitution accepts that international treaties and conventions ratified by the Palestinian Authority have superior authority over national legislation so that they are paramount and that, as a result, national courts are bound by such international agreements and conventions. After considering this issue, the Constitutional Court made its ruling (Interpretative Decision No. 04/2017, 2017), where it stated that all international agreements ratified by the State of Palestine have superiority over and above national laws and internal legislation, 'so that the rules of these international agreements acquire a higher status than internal legislation in a manner that is compatible with the national, religious and cultural identity of the Palestinian Arab people'. It is submitted that the statement of the court while accepting the leading authority of international law, granted religion and socio-cultural practice a rather exceptional status that seemed superior to national law and legislation. Nonetheless, the court provided that religion and cultural traditions in Palestine could transcend all international agreements that Palestine had signed or ratified. This, in our view, makes the role of religious culture not only as constitutive of law but rather, superior to it.

While legal scholars have differed regarding the right approach that should be taken when considering the relationship between the rule of law and the nation's culture in modern society, their arguments do not suggest that religion or custom should prevail over the rule of law or that custom should be permitted to overturn or undermine the morality of law and justice (Mautner, 2011). Some legal scholars have argued that the rule of law should be developed as distinct from any particular local culture or custom and should be created in light of universal dictates of human reasoning (Berkowitz, 2005, pp. 16–22). However, others have argued that the law should contribute to the constitution of culture and thereby develop and advance the socio-culture of people's relations (Mautner, 2011). It is argued that the Palestinian Constitutional Court should have taken a similar approach to these views and made it clear that the rule of law and the role of the national courts when considering the connection between law and culture, is to create and apply the rule of law as a distinct cultural system in its own right. The approach taken by the Palestinian Constitutional Court confirms our argument that religion and the socio-cultural system that exists in Palestine still has a powerful effect, not only on people's daily life but in relation to the legal system and its jurisdiction.

Nonetheless, the Palestinian Supreme Constitutional Court was faced with many criticisms over this decision, especially from religious and tribal leaders who claimed that the court, by putting international law above national law, allowed for some international provisions which were deemed to be contradictory to Sharia law and Islamic values, such as those contained in the CEDAW, to overturn some areas of Palestinian national law so as to have superiority over Islamic Sharia law. The former head of the Palestinian Bar Association (PBA) did not depart from these views and declared in a press release that the PBA rejected the CEDAW due to many of its provisions being incompatible with Islamic rules already in force; it contradicting the laws already in force in Palestine, and it's being inconsistent with Palestinian values. However, he was of the view that the decision of the Constitutional Court supported the view held by the PBA, and hence, the Convention and its implementation must be reconsidered. He further added that "the court ruling made the implementation of the CEDAW in Palestine impossible", but he



did not provide legal justification for such a view (Wattan, 2019). Remarkably, this press announcement by the head of the PBA was welcomed by the President of the Palestinian Supreme Constitutional Court, who also stated that the statement regarding the CEDAW was consistent with the decision of the Supreme Constitutional Court as well as with the constitutional principles embodied in the Interpretative Decision No. 05/2017 held by the Constitutional Court (Alwatan-Voice, 2019).

In our view, the statements made by both the former head of the PBA and the President of the Palestinian Supreme Constitutional Court are politically motivated, and not based on sound legal argument. Neither needed to nor were legally requested, to make any statements on the issue; however, both statements were clearly aimed at responding to the social pressure that religious scholars and tribal leaders had managed to encourage against the CEDAW. It is argued that these statements attempted to gain popular support at the expense of strengthening the principles of equality and women's rights.

In contrast, the Palestinian Women Civic Coalition—for the implementation of the CEDAW—considered that the announcements by the former head of the PBA were offensive to the struggle of the feminist movement in Palestine, calling upon him to apologise to all Palestinian women (Cedaw.ps, 2019). The Coalition further stated that they clearly showed that the PBA did not read the Articles contained in the CEDAW. The Coalition further stated that the position of the PBA was not surprising and that it reflected the patriarchal orientation of its leadership and its tendency to control women by excluding female lawyers from the leadership of the Bar; this was despite the fact that 30 per cent of its total members were female lawyers. The statement also criticised the PBA for not having a female lawyer to head the Women's committee of the PBA and added that, although the Women's committee was formed for women lawyers, it was still headed by a male lawyer (Cedaw.ps, 2019).

It is submitted that the above dialogue and discourse in relation to any laws or international treaties that aim to enforce women's rights and gender equality, provides a clear illustration of the different streams within Palestinian society, where fundamentalist interpretations of Islamic rules and the system of a dominant patriarchal society culture remain predominant (Himat, 2015). Consequently, the above view held by the Women's Coalition, while supported by human rights activists, did not receive much support from the general public, nor any defense by official and government bodies. In fact, the Chief Justice of the Sharia Judges of Palestine, Mahmoud Al-Habbash, who is also the President's adviser on religious and Islamic affairs, stated that Islamic Sharia law is above Positive Law and above any political obligation, including compliance with international laws or treaties (Raya, 2019).

In this context, in 2018 the Constitutional Court appeared to submit further to patriarchal social pressure and the fundamentalist religious interpretation of the CEDAW when it revised its previous decision. This amended decision was embodied in its Interpretative Decision (Interpretative Decision No. 05/2017, 2018) which stated that 'the international treaties and conventions come below the Basic Law [the constitution], followed by the various legislations in force in Palestine'. This ruling means that national law is now above international treaties and is superior to international conventions and agreements ratified by the Palestinian Authority. The decision can only be viewed as a complete withdrawal by the court of its previous decision in 2017, which gave some superiority to international and human rights treaties over the constitution and national laws of Palestine. While the decision was welcomed by traditional Muslim scholars (*ulama*), tribal leaders, and the majority of the Palestinian population, it was nonetheless criticised by women's

organisations and some international law scholars who viewed the ruling to be completely inconsistent with international law. For example, Dr. Asem Khalil, a Palestinian legal scholar, stated in a radio interview that the court's decision was ambiguous and outside its jurisdiction (Birzeit.edu, 2017). He added that the supremacy of the rules of international law over national laws was a foregone conclusion and that there was no authority for the Supreme Constitutional Court to decide on this issue. Furthermore, Dr. Mutaz M Qafisheh, an Associate Professor of International Law and university lecturer, also published a commentary article on the court's decision (Qafisheh, 2018), stating that it was not permissible to invoke any provisions of national law to derogate from the provisions of international law, as had been decided by the International Court of Justice in many of its decisions and advisory opinions and had also been confirmed by committees of the United Nations based on human rights conventions.

Against this background, official reports by the Palestinian Central Bureau of Statistics (PCBS, 2020), have confirmed that women in Palestine represent almost half of society and that children in Palestine comprise 45 per cent of the total population (42 per cent in the West Bank and 48 per cent in Gaza). Nevertheless, women's rights and gender equality in Palestine remain an issue of concern. This is confirmed in a joint report submitted by a number of human rights organisations (HRM, 2018), in advance of the 70th Session of the Committee on the Elimination of Discrimination against Women and its review of the State of Palestine's compliance with the CEDAW. The report recommends, inter alia, that the Palestinian Authority must raise the minimum age for marriage to 18 and amend the Personal Status Law currently in force in order to ensure that women have equal rights with men in relation to inheritance and other family law matters. This has also been confirmed by other reports, such as the UN Women, Palestine (UN Women et al., 2018), which conducted a Survey on Gender Equality in Palestine.

These two recommendations play a significant role in any real effort to empower women and enhance gender equality in Palestine and the Arab, and Muslim world at large. These two issues will be considered further below, but we will first consider how associating the CEDAW with any attempt or proposal to implement laws that provide equality or enhance economic empowerment for women, has been perceived by the public and popular opinion.

**Associating the CEDAW with National Laws.** The power of Muslim scholars (*ulama*) in Palestinian society remains significant due to people turning to them for guidance in most aspects of their life (Himat, 2015). This, in turn, also explains why political leaders and Palestinian authorities are ready to make legal and political compromises in order to maintain the support of Muslim scholars, or at least, to avoid their criticism, and therefore avoid social, religious, and political panic (Fenick, 2020, pp. 11–15). It was also noted that traditional Muslim scholars (*ulama*), clerics, and tribal leaders have been able to create a political and socio-cultural panic in response to any call for legal or social amendments that could improve gender equality or empower women's rights in Palestine, especially when such amendments relate to preventing underage marriage, or granting women economic empowerment. Their strategic steps to generate popular mainstream opinion against these legal attempts have, in recent years, been achieved by associating and linking any proposed law, or draft law that empowers women's rights, to the CEDAW, and, simultaneously attacking the Convention with different myths and fiction, for example, alleging that its aim is to destroy Palestinian family unity, abolish Muslim ethics and

values, and encourage immorality (Ibrahim, 2019). To elaborate, the Palestinian Authority has been subject to popular criticism since 2020 over its attempt to implement the Family Protection Law from Violence. Soon after the draft was leaked to the national press and social media, traditional Muslim scholars (*ulama*) (Abu Toameh, 2020) criticised the draft on the basis that it contained provisions that were similar to provisions in the CEDAW. Although there is no mention of the CEDAW in the draft, these scholars argued that the draft was derived from the Convention and should therefore be rejected on the basis that it was against Muslim religious values and Palestinian cultural heritage.

According to a statement issued in the name of the “Constituent Council of Sharia Lawyers” on 4 June 2020 (Quds-News, 2020), the draft law would destroy and weaken the Palestinian family. The statement added that the draft law included a clear violation of the teachings of Islam, and allowed sons and daughters to commit all types of sin that were prohibited by Sharia law and Palestinian custom. In the same context, a statement signed by a number of Islamic scholars in Palestine was published, in which they said that the law was contrary to the provisions of Islamic Sharia law and the values of Palestinian society (Hizb ut Tahrir, 2022).

The effect of these views was overwhelming and public opinion was significantly against the draft and the CEDAW for being associated with anti-Islamic provisions that supported immorality. Consequently, religious and tribal leaders managed to create a public consensus against the draft and those who supported its implementation. In contrast, the call by women activists and women’s institutions to implement the draft law due to its necessity to protect women and children from domestic violence has not been able to generate much support among the general public (Robinson, 2021), nor has it been able to overturn the greater influence that traditional Muslim scholars (*ulama*) have over Palestinian society, despite its continuing pressure and the holding of rallies (Tahhan, 2021).

While feminist movements have maintained their call for the government and the President to implement the CEDAW, and continued to organise campaigns for women’s rights, especially in light of the predominance of violence against women in Palestine (Adam, 2021), popular opinion remained loyal to the views held by religious clerics and tribal leaders, to the extent that direct threats and accusations of infidelity and blasphemy, against human rights activists and feminist groups, began to take place on social media and in other public forums (ICHR, 2020). Due to this controversy, the Independent Commission for Human Rights issued a statement on 6 August 2020, condemning the threats and the accusations of blasphemy on the basis that the law was a national demand and a societal need in order to confront the increasing levels of domestic violence and murders against women (ICHR, 2020).

Conversely, the Palestinian Authority appeared to be subdued in its reaction, pausing in its perplexity and confusion whilst not appearing to know how to deal with the cultural and religious objections. This can be seen in its weak response to the strong criticism against those who support gender equality (Ibrahim, 2019). Furthermore, Palestinian liberal and national political parties did not take any serious steps, or apparent initiatives, to respond to the attack on women’s organisations, nor did they take any steps to respond to the campaign of threats and intimidation against the support of women’s rights and equality. This provides an indication of their lack of interest in the social agenda and gender equality; it also shows a weakness to challenge traditional, conservative Islamic streams that have been able to mobilise popular support to prevent any attempts by the government to amend the legal ruling or jurisprudence in Palestine that could provide protection for women or enhance their rights.

The case of the Family Protection Bill and its association with the CEDAW is not an isolated example of how popular opinion has been manipulated in order to undermine any attempt for women’s rights and gender equality to be implemented. As will be explored next, the issue of prohibiting underage marriage has also received much debate and has been objected to by tribal leaders and traditional Muslim scholars (*ulama*), who claim that raising the minimum legal age for marriage to 18 is a total surrender to the western values implemented in the CEDAW, and is against the teachings of Islam. Similarly, the call for economic equality, especially in relation to inheritance, was faced with more objection and greater popular disapproval due to the rules on inheritance being considered by traditional Muslim scholars (*ulama*) to be fundamental Islamic rules that are at the heart of the Muslim faith. These two issues will be explored and analysed next.

### Underage marriage

Under Article (16) of the CEDAW, members are requested to illegalise and prohibit underage marriages. It stipulates that 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’ (UN General Assembly, 1979). It can be noted that Islam does not, in principle, set a specific age for men and women to be married, leaving the issue to Muslim scholars (*ulama*) and the State to determine the appropriate age (Maisarah et al., 2019). However, traditional Muslim scholars have historically taken the view that it is permissible for a father or the guardian of a child to marry him or her to someone else, with or without the child’s consent, on the basis that Islam does not have any scripture that prohibits child marriage and due to it being the practice of the prophet Mohammed and his companions (Islam Q and A., 2012). Some traditional scholars have added a condition that the child must have the physical ability to conduct the marriage (Islam Q and A., 2012).

These traditional views were rejected by modern and enlightened scholars who doubted the authenticity of the historical story that Prophet Mohammad conducted or allowed underage marriages (Spellberg, 2012). They also argued that, in all cases, custom and tradition affect the legal norm and, hence, the State and its legislative system should be the sole authority to determine the right age and maturity of parties to a marriage contract. This determination should take into account the physical and mental ability of both parties to fulfill their marriage responsibilities in accordance with the modern age (Maisarah et al., 2019). Accordingly, there is nothing within Islamic rules to prohibit the government or the State from imposing a minimum age for marriage (Gausman et al., 2019). The later view was not supported by traditional scholars in Palestine and was largely rejected by tribal leaders (Rajoub, 2019), who refused to accept any involvement by the State in the determination of the minimum age for marriage (Al-Naddaf and Al-Kurdi, 2013).

While Article (1) of the Palestinian Child Law No. (7) of 2004 sets the age of maturity at 18, the Palestinian Personal Status Law provides that a marriage contract can be formed between parties who have reached the age of 14 years for girls and 15 years for boys in the West Bank, and over the age of 17 years for girls and 18 years for boys in Gaza (UN Women et al., 2018). Nonetheless, the law in the West Bank and Gaza grants Sharia courts the right to allow the marriage of a minor under the above ages if a judge believes it would be in the best interest of the child. This position remained implemented in Palestine until 2019 when President Mahmoud Abbas issued Decree Law No. 21 of 2019, setting the minimum age for marriage for both sexes at 18, with an exception that allowed a competent court to authorise the marriage of someone who has not yet completed 18 years of age, in special and

compelling cases (Arab, 2019a). The Decree sparked strong objections by many Islamic religious parties and Palestinian tribes who considered this step to be the initiation of the beginning of the implementation of the CEDAW in Palestine. Calls were made for there to be public resistance to the Decree on the basis that it would otherwise be followed by additional steps to fully implement the Convention (Melhem, 2019). The city of Hebron was the first to respond to the Decree whereby its clans and tribal groups formed the largest rallies and protests in the West Bank against both the Decree and the CEDAW (Arab, 2019b).

However, according to official statistics that have been published by the Palestinian Central Bureau of Statistics (PCBS, 2022), one in five registered marriage contracts in the year 2018 involved females under the age of 18, where, of the total married population in Palestine, early marriages reached 20.3 per cent among females and 1.1 per cent among males. The data also showed that the highest rate of marriages involving underage females in the West Bank was in the Hebron District where the rate was 36.2 per cent of the total number of women who married below the age of 18 in the whole of the West Bank (PCBS, 2022).

The structure of Hebron's tribal kinship, which is based on strong patriarchal roles, unquestioned norms of patriarchal control and authority, and the traditional profile of patriarchal protection (Malsch and Rebenstorf, 2014), ensures that the main role for women within this tribal society is to give birth to and raise children (Moghadam, 2004). This may explain why Hebron has the highest number of underage marriages and cases of polygamy (PCBS, 2010), which, in turn, may explain why there are strong opponents to the CEDAW, and why the views of traditional Muslim scholars (*ulama*) and clerics are welcomed by the clan and tribal leaders (Adam, 2021).

Accordingly, on 21 December 2019, clans from the city of Hebron launched the largest campaign in Palestine against the law on fixing the minimum age for marriage and declared that they did not recognise the "CEDAW" agreement which they alleged to be a complete shame and contrary to Muslim rules and values. They also stated that they rejected the implementation of the CEDAW in Palestine, and called for the closure of women's organisations, making explicit threats to anyone who dealt with them. This action led to a state of controversy over the position of the Palestinian Authority in relation to these announcements (Ibrahim, 2019).

Clan and tribal leaders insisted that they spoke in the name of religion and Palestinian values and that their aim was to defend Islam and Sharia law (SadaNews, 2019). This claim found support from religious clerics and Islamic political parties, such as Hizb ut-Tahrir (Party of Liberation), an active Islamist political party in the West Bank, especially in Hebron, where it has the most support (Melhem, 2019). Accordingly, the protest against the President's Decree was not limited to clans and tribes but was widely supported by Islamic parties and traditional Islamic scholars (*ulama*) and clerics who were of the view that the Decree was inconsistent with Islamic rules and teachings (Ibrahim, 2019). Hizb ut-Tahrir issued a statement expressing its rejection of the Decree, accusing women's organisations and the Palestinian Authority of working to raise the age of marriage in response to the orders of the West, which, in its opinion, aimed to encourage all forms of moral collapse and corruption of behaviour (khilafah.com, 2019). The party also condemned the CEDAW and any attempt by the Palestinian Authority to implement it, arguing that such implementation would be a sinful crime that would only push for the moral disorder and destruction of Muslim and Palestinian families (Sawafta, 2019).

This radical view was not limited to fundamental Islamic parties but was also held by official religious and Palestinian government entities who opposed compliance with the CEDAW (Human Rights

Council, 2021). For example, the Supreme Fatwa Council in Palestine, an official religious body whose members are appointed by presidential orders to provide advice on Islamic issues, made a statement on 19 December 2019 following the Presidential Decree, to denunciate the CEDAW and any legal provisions that were inconsistent with Islamic and Sharia law, whether relating to marriage, inheritance, or other issues (HR.PS, 2019).

Consequently, leaders of Palestinian clans in Hebron have found refuge and support for their position to protest against the President's Decree from traditional religious scholars and clerics, and have expressed their opposition and rejection of the raising of the legal age for marriage to 18, claiming in a statement issued on 21 December 2019 that the decree was only issued in compliance with the CEDAW. They criticised the Palestinian Authority for committing to the CEDAW and called on it to withdraw from the Convention (Arab, 2019b). They also called for a ban on feminist groups, the closure of all feminist organisations in Palestine, including ending their lease contracts and warned media outlets against covering any news relating to feminist groups (Abu Toameh, 2019). The statement went even further and warned judges against conforming to the legal age for marriage as well as calling for protests against the CEDAW and the President's Decree (Melhem, 2019). Conversely, Palestinian feminist movements expressed outrage over the threats and accusations that were publicly made against supporters of the CEDAW and gender equality (Abu Toameh, 2020). They also said that statements by clan leaders in Hebron contained incitement to violence and murder. Nonetheless, the decision to raise the legal age for marriage was widely supported by human rights activists, modern enlightened scholars (Marzouk, 2022), as well as feminist groups and women's coalitions (Al Zaanin, 2021).

Despite the above dialogue, official data and reports (PCBS, 2021), have shown a significant fall in the percentage of underage marriages taking place in Palestine. In 2019, the percentage of underage marriages involving children under the age of 18 for both sexes was 19.3 per cent of all registered marriages in Palestine. This means that there has been a decrease of over 2 per cent in underage marriages, including in the city of Hebron, following the President's Decree to ban underage marriage contracts being issued. Significantly, in 2020, the data revealed (PCBS, 2022), that the percentage decreased further, from 19.3 per cent to 11.9 per cent, representing a decrease of over 7 per cent over the course of only one year following the Decree being enforced. While the figure is still relatively high and more steps need to be taken to ensure a complete ban on underage marriages, it is submitted that the decrease in these marriage contracts supports the argument that legal effort, as well as education and permitting the opinions of enlightened scholars to disseminate (Walker, 2015), are the most effective ways of promoting gender equality and women's rights in a reserved society such as Palestine.

### **Economic equality**

The issue of economic equality in particular creates much debate and controversy in most Arab and Muslim societies, including Palestine, due to its direct effect on the inheritance system which is set in accordance with traditional views of Sharia law. In Islamic Sharia law, as long as she has the legal capacity to do so, a woman is permitted to have independent financial disclosure, as well as the freedom and right to dispose of all her money, whether in the form of an exchange or gifted donation, without the need for consent to be given by a male (Haque et al., 2020). Further, women have an equal right with men to dispose of their money and, under Sharia law, men cannot take, withhold, or use a woman's money without her free will and consent.



Nonetheless, it has long been settled under Sharia law that inheritance rights and the shares each heir receives are regulated and set by God in Islamic script and that all Muslims must be bound by these laws. According to these regulations, both men and women are entitled to different portions of inheritance in accordance with their legal characterisation and status in the family. The most common variable in Sharia inheritance law is that sisters are not entitled to the same share as their brothers; in fact, a sister is only entitled to receive a share that is equivalent to half of what her brother receives (Naik, 2021). However, according to Moghadam (2004, p. 142) this right 'often has been circumvented by more powerful male relatives, including her brothers, uncles, or husband's agnates', which may explain the pattern of underage marriages and marriages between cousins in Palestine as a strategy for keeping property within the family lineage and to protect the economic and political interests of the male members of the family. Furthermore, the Personal Status Law in Palestine, in a similar trend to other Arab countries, is based on Sharia law and accordingly grants women the right of inheritance under the above religious regulations. However, this practice in Arab and Muslim societies permits males to have a monopoly and allows economic inequality, including an imbalance and inequality in inheritance rights (Baffoun, 1982, p. 228). This can be easily illustrated in Palestine through official data and other reports.

According to a report published by the Palestinian Central Bureau of Statistics (PCBS, 2013), a Sharia Court dealt with a total number of 82,127 cases in a single year, where inheritance disputes alone reached a total of 5938 cases (7.23 per cent of the total number of cases). In other official statistics, (PCBS, 2011, p. 14), it was revealed that, in Palestine, economic violence, which relates, *inter alia*, to issues of inheritance, was the second most common violence after psychological violence; 55.1 per cent of married or previously married women between the ages of 18 and 64 were exposed to economical violence on at least one occasion, and 3.5 per cent of women in the same age group who had never been married were exposed to economic violence.

Moreover, in a study conducted by the Women's Centre for Legal Aid and Counselling in 2014 (WCLAC, 2014), it was revealed that 56 per cent of brothers in Palestine refused their sisters' demand to their right of inheritance in accordance with applicable Sharia law; by contrast 20 per cent of brothers supported these rights. The survey also showed that 8 per cent of brothers underestimated the value of the inherited estate in order to give their sisters less than what they were entitled to receive as their rightful inheritance. Nonetheless, 45 per cent of the husbands of the women surveyed supported their wives in claiming their hereditary rights, with 3 per cent of husbands urging or placing pressure on their wives to demand their right of inheritance.

It is submitted that the survey confirms the argument that it is economic male dominance, not the obedience towards Sharia law that is the main factor controlling men's views in relation to economic equality. According to the survey, while the majority of men refused to grant their sisters their hereditary rights, most men would pressure their wives to claim their inheritance. This shows that men would pressure their wives to gain their inheritance rights, which would benefit the husband's own wealth whilst, at the same time, refusing to give the same rights to their own sisters or brothers' in law.

Accordingly, the issue of inheritance remains highly controversial due to its direct financial and economic impact on the welfare and economic status of men (Haque et al., 2020) as well as on traditional expectations of masculinity that requires economic male dominance over women; this is notwithstanding the traditional teaching and interpretation of Islamic texts that continue to dominate and refuses to open its eyes to any modern or

alternative interpretation (Çoruh, 2019; Massimo Campanini, 2010). Thus, any proposal for social or legal change that could undermine male economic and social dominance is taboo in Palestinian and other Arab societies that are traditionally centered on patriarchal customs and clannism (Haque et al., 2020). An example can be seen in the case of Dr. Mutaz Qafisheh, who was faced with death threats and demands for his expulsion from his university because of an article he published in 2014 in which he called for gender equality regarding inheritance rights (Ismail, 2014). His article caused widespread controversy, especially in Hebron, his town of birth. Eventually, Dr. Qafisheh was forced to withdraw his article due to the sharp wave of criticism, popular pressure and death threats he was subjected to. In addition, a number of Hebron Islamic and tribal leaders attended his place of work at Hebron University and demanded his dismissal from the university in order to prevent him from contributing to raising a generation with teachings that contradict the Islamic religion and its values (Ismail, 2014). The incident is an example of how opponents of economic equality rely on the view of traditional Muslim scholars (*ulama*) to generate public and social refusal of any new interpretation of Sharia law.

Nevertheless, traditional Muslim scholars (*ulama*) argue that the principles of inheritance in Islam, despite the fact that women can only receive a portion that equates to half of their equivalent male relative's inheritance, still represent a great deal of justice and fairness (Hoque et al., 2013, p. 49). Their argument is based on the view that men have more economic burdens than women, such as sponsoring the living costs and maintenance of their wives, parents, children and other close relatives, whereas women are exempt from these responsibilities (Haque et al., 2020). This argument does not stand up to scrutiny in the modern day, where women in many Arab and Muslim societies, including Palestine, have become responsible for the economic burden of their household, whilst also supporting their husbands and/or parents with their living costs and maintenance. As Souaiaia argued (2019), the fact that Muslim jurists have relied on social roles to justify the inequality of awarding females a lesser share than males in inheritance law is itself a powerful argument to reinterpret Islamic texts in light of new societal and economic changes in Arab and Muslim societies. Furthermore, modern and enlightened scholars have argued that Islamic text, especially the Quranic sections relating to inheritance, are declarations of rights, but not statements of obligation (Salameh, 2018).

Based on the latter view, the former Tunisian president, Caid Essebsi, attempted to implement a new law in 2018 that ensured equality in inheritance between men and women (Nadhif, 2017). Such an attempt sparked widespread controversy in Tunisia and abroad. While some Tunisian Islamic scholars and human rights activists supported the proposed law, others rejected it on the basis that it contradicted Sharia law (Nadhif, 2017). The draft is still being debated, especially after the current Tunisian President, Kais Saied, declared that he was rejecting the draft and managed to delay its parliamentary process (Zayat, 2020).

This confirmed the argument that any modern attempt to reform the law will be faced with the domination of the traditions and customs of Arab patriarchal culture that, in itself, is affected by traditional religious interpretation. To overcome such challenges, it is argued that there must be a fundamental social change in Arab society, brought about by systematic education, public engagement with enlightened scholars, and an increase in the empowerment of women's economic independence.

## Conclusion

Gender inequality, violence and discrimination against women in Palestine are, according to official reports, still alarming, especially regarding the issues of marriage and inheritance rights. The



struggle to implement the CEDAW or to pass legal changes and legislation enhancing women's rights, still faces many challenges in Palestine, most notably the traditional view of religious scholars regarding gender equality and the patriarchal culture and tribal traditions within Palestinian society, with both elements affecting and influencing one another. Nonetheless, controversial issues that are at the heart of the male economic and masculine elite, such as guardianship, the marriage contract, and equal inheritance rights, not only face the challenge of being rejected by traditional religious scholars but also because of its direct effect on the masculinity and patriarchal society where wealth and power are still considered to be a male privilege.

Notwithstanding that, almost all religious scholars have historically been males, interpretations of Islamic scripts, in light of modern society and social globalisation, have resulted in radically different views regarding women's rights and gender equality. Where traditional Muslim scholars have maintained their rejection of the full implementation of the CEDAW and any attempt to modernise, enlightened scholars have taken different views and argued that Islamic texts can follow a modern interpretation that allows for gender equality in all aspects, including, inter alia, inheritance rights and the same rights in all matters relating to marriage and family relations. While the latter view is still in the minority and of limited influence, its presence provides the grassroots for further development and growth.

Conversely, the Palestinian Authority, political leaders, and official bodies, while being part of the above socio-cultural system, have also been hesitant to support modern reforms and have preferred to maintain the support of Muslim scholars and tribal leaders at the expense of gender equality, in order to gain public support or to prevent social and religious panic. Accordingly, inequality has always persisted for socio-political reasons, and hence, the time may not be ripe for secularism or a secular system in Palestine, whereby Personal Status and Family laws are fully separated from religious teaching and law.

It is therefore submitted that a forced change may not be effective nor guarantee political and social stability. To secure women's empowerment and gender equality in Palestinian society, there must be gradual steps by women and feminist groups, as well as a genuine effort by authorities, towards implementing social and political change. These steps must include, inter alia, public education and public engagement with enlightened scholars so as to gradually introduce gender equality into the Palestinian socio-political and legal system. Further, women must rely on enlightened Muslim scholars to argue for their rights and involve those scholars in the process of attaining gender equality. The government must be persuaded or pressured into steadily introducing enlightened religious and feminist views into the education system and media, whilst gradually replacing the longstanding traditional views of Muslim scholars (*ulama*). Furthermore, the enhancement of women's employability and economic independence must be encouraged by the government and feminist groups.

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### Competing interests

The authors declare no competing interests.

### Ethical approval

This research did not involve human participants.

### Informed consent

This research did not involve human participants.

### Additional information

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