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Amendments to the provisions of marriage and divorce in Syria in light of the Syrian government's obligations towards the CEDAW Convention

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ABSTRACT

This thesis aims to explore whether the Syrian government fulfils its obligations towards the CEDAW agreement. To investigate this arena, the thesis chooses new laws that were issued in Syria. The thesis examines the amendments introduced by the Syrian Arab Republic to the marriage and divorce provisions in the Personal Status Law in Law No. 4 of 2019. The data was analysed using the standard dogmatic legal method. The findings indicate that the Syrian government had entered reservations to Articles (02) and (16) of the CEDAW Convention. The two articles are considered essential in CEDAW. The article 28 of CEDAW forbids any reservations against the object and purpose of the convention. therefore, the Syrian's reservations are impermissible legally. Analysis of legal materials showed that the Syrian government did not honour its pledges to CEDAW. On the contrary, the new amendments strengthen the masculine superiority and support social hierarchy. The thesis recommends amending the Syrian Personal Status Law to comply with the provisions of the CEDAW Treaty fully.

Key words: gender equality, discriminatory laws, Syrian Laws, humanitarian action

Abbreviations:

Convention on the Elimination of All Forms of Discrimination Against Women
(CEDAW)

Syrian Personal Statues Law (SPSL)

Vienna Convention on the Law of Treaties (VCLT)

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1- Introduction:

The human rights issue is no longer just a domestic question that states deal with as if it is an internal matter, but it has become an international issue. In international issues, states have responsibilities and shoulder obligations that they must implement. Therefore, international treaties are essential global instruments that regulate the requirements of countries and monitor their implementation of these obligations. Accordingly, states have signed several treaties to guarantee human rights, in addition to, of course, the Universal Declaration of Human Rights (UDHR). Unfortunately, all these treaties were not sufficient to achieve women's rights and implement full equality with men. Therefore, most states of the world have signed the Convention on Elimination of All Forms of Discrimination against Women, known as CEDAW.

CEDAW has positive benefits for women's rights that are not available in other international agreements. For example, the CEDAW treaty, as mentioned in the introduction to the Convention, is a binding international legal mechanism that is based on gender; in other words, women's rights are the core and target of this agreement and not as an aside of other rights (CEDAW, introduction). Moreover, CEDAW is a comprehensive convention with many legal aspects. Unlike other international treaties, the CEDAW Convention is not satisfied with general wording to urge women's rights. CEDAW covered several legal aspects. Many of its provisions include urging countries to refrain from all kinds of legal discrimination against women and asking states to

implement strategies to prohibit all discriminatory laws against women in all areas of political, family, economic and constitutional life (CEDAW, Articles (2), (9), (16).

The provisions of CEDAW are not limited to the legislative changes of countries. It urges the signatory states to remove any form of discrimination, whether in real actions or in legal texts. Phrases like "the effective protection of women against any act of discrimination", "to refrain from engaging in any act or practice of discrimination against women", and "to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise" reflects the intention of the signatory states to end all forms of discrimination against women in law, society, and anywhere or anytime (CEDAW, article (2) paragraphs c, d, and e).

Paragraph (1) Article (28) of CEDAW gives countries the right to enter reservations to the convention. CEDAW did not define the meaning of a reservation. Still, according to the Vienna Convention, a reservation can be understood as a statement that states take to marginalize or weaken the legal effect of an article or articles of a treaty. However, to achieve CEDAW the above benefits, Paragraph (2) Article 28, prohibited any reservation that contradict with "the object and purpose of the present Convention" (CEDAW, A (28), P, (2). Even though Paragraph (2) Article 28 exists a lot of states have expressed many reservations about the convention. The result of the described reservations renders CEDAW without any value because they obstruct the convention's implementation.

Some argue that humanitarian work exists to save lives and thus raise the issue of gender equality in humanitarian action may be a useless process that wastes time and effort (Sida, 2015, s. 2). However, attention to gender equality within humanitarian action is essential to achieve better results and greater effectiveness of humanitarian assistance. For example, communication with local gender experts helps provide more accurate data on the community in emergency humanitarian aid situations and contributes to a more quality needs assessment (Mazurana, D., Benelli, P., Gupta, H., and Walker, P., 2011, s. 63). In addition, gender equality reinforces the link between humanitarian action and long-term development. Humanitarian aid can be provided in a way that contributes to laying the foundation for gender equality, mitigates risks and builds high resilience against humanitarian crises by mainstreaming gender equality. In other words, the humanitarian response becomes more effective by recruiting and engaging women and girls. Experience has shown that a higher participation of women

in the job market leads to a recovery in societies and an increase in social welfare (Sida, 2015, p. 2).

Moreover, reports and research show that women are more affected during natural disasters and wars. For example, reports showed that the number of women victims of the natural tsunami was three to four times higher than that of men because men were far from the field or because the women could not swim or climb trees (Sida, 2015, p. 1). The gender equality perspective is crucial to understanding the disparities in social power and shifts in social roles. During armed conflict, boys and men are compulsorily recruited to fight in battles; Consequently, many women are left alone bearing the brunt of the family and the consequences of catastrophic wars. Women and children account for most refugees the world due to many factors. The most important of these factors is gender discrimination in access and ability to access resources, work, reproduction and health care. Therefore, refugees and internally displaced women are one of the most vulnerable groups in the world (Sida, 2015, p. 1). Therefore, the international community emphasized at the 2016 World Humanitarian Summit (WHS) in Istanbul that issues of gender equality, women's empowerment and women's rights should be at the core of international humanitarian work (UN-Women-news, 2016) In addition, the Deputy Secretary-General of the United Nations stressed in his speech at the Istanbul summit that empowering women should lead all aspects of humanitarian efforts (Deputy, 2016) .

The study of this thesis is very important in the field of gender studies, local law, international law, and Islamic law. Also, the study will be useful in studies and reports aimed at developing women's rights and improving the status of women in the Middle East and Islamic countries.

Syria is one of the states who have signed the CEDAW convention, and Syrian President Bashar al-Assad ratified it by the presidential decree 330 of 2002, and the ratification was registered on March 28, 2003 (Members-of-CEDAW.). Based on the convention's articles, the Syrian government is obligated to implement the CEDAW convention. The Syrian government commitment stems from the responsibility of states towards the international conventions, and the object and purpose of the treaties. Despite the Syrian ratification of CEDAW, it reserves many articles in the convention. Syria reserves full article / 2 / which obliges states to include their constitutions in full respect for equality between men and women and to take all measures to embody gender equality. Also, Article 2 obliges states to repeal all discriminatory legislation

against women, and that states should refrain from any behaviour that includes discrimination against women. In 2017, the Syrian President issued Decree No. 230, which withdraws the reservation to Article 2; the withdrawal provided that it does not violate the provisions of Islamic Sharia. As well as, Syria reserves on the article "9, paragraph 2, concerning the grant of a woman's nationality to her children; article 15, paragraph 4, concerning freedom of movement and of residence and domicile; article 16, paragraph 1 (c), (d), (f) and (g), concerning equal rights and responsibilities during marriage and at its dissolution with regard to guardianship, the right to choose a family name, maintenance and adoption; article 16, paragraph 2, concerning the legal effect of the betrothal and the marriage of a child, as much as this provision is incompatible with the provisions of the Islamic Shariah; and article 29, paragraph 1, concerning arbitration between States in the event of a dispute" (Members-of-CEDAW.).

In 2019, the Syrian government amended the Syrian Personal Status Law (SPSL) by the law No. 4 of 2019. The amendments included and dealt with almost 69 articles related to the provisions of marriage, divorce, descent, and inheritance. Some adjustments have replaced legal terms, and others modified rights and duties. Considering that the Syrian government has cancelled the reservation from the second article of the CEDAW agreement, the Syrian government is obligated to apply this article in its legal and constitutional amendments. However, the cancelling of the Syrian reservation is conditional that the second article should not violate the provisions of Islamic Sharia. Accordingly, this thesis will study the amendments of the Syrian Personal Status Law related to marriage and divorce that took place in 2019 based on the obligations of the Syrian state towards the CEDAW convention. Article 28 of the agreement prohibits any reservation that void the convention. The thesis will follow a descriptive and analytical approach in describing and critically analyzing Articles (2), (16) and (28) of the CEDAW Agreement as well as studying the legal amendments that affect the provisions of marriage and divorce in the Syrian Personal Status Law in 2019.

2- The Thesis's Method and Design

A- The thesis's Design

The design which is used in this thesis is the single case-study to describe and analyse the Syrian government's adjustments of the Syrian personal law. The definition of the case study is that it "investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not

clearly evident” (Yin, 1994, p. 13). The thesis will study the adjustments to find out the extent of the Syrian government's commitment to its obligations according to the CEDAW convention. Moreover, the design will help the thesis to go into great depth in the legal amendments that the Syrian government has made regarding divorce and marriage. The single-case study design was chosen because it involves a detailed and intensive analysis of a single case; hence it is suitable with the complexity and nature of the thesis's research question (Bryman, 2012, p. 66). Also, it is usually linked to a location, such as a community or organization, where the case study examines the case in-depth and intensively. Therefore, the case study is usually linked to qualitative studies (Bryman, 2012, p. 67). The case study design is a way to study this thesis because there is an assumption that the Syrian government did not implement its obligations based on CEDAW. While the single-case study does not enable us to generalize the results, it has an extensive internal validity. The extensive internal validity allows us to generalize the results to similar cases. As well, it can help to discover deep information in the case which is studied (Halperin, S., & Heath, O., 2017, p. 154).

B- The Thesis's Method

To answer the thesis's question, I will use the standard legal dogmatic method. This method is used to study normative legal materials. The importance of this method is that it clarifies the meaning and significance of the law based on its content; In other words, the method seeks to expose the dogma of law. Although the method is restricted to application cases, it has great benefits in developing and absorbing the law. Dogma's study of law analyzes laws regardless of the economic, social, or political factors surrounding them. In short, Dogma's style of law is concerned with studying law in “its pure form, its conceptual apparatus, structure, models, legal technique.” (Petrov, A, V. and Zyryanov, A, V., 2018, pp. 968-969). This method is used to study legal positive law in written or unwritten European, national or international rules. Also, this method of study looks at legal “principles, concepts, doctrines, case law and annotations in the literature.” (Vranken, 2012 , pp. 42-43).

Based on this method, the thesis will study the legal articles related to the provisions of marriage and divorce that were modified in 2019 in Syria in light of the Syrian government's obligations towards the articles (2) and (16) of CEDAW.

The study will be both descriptive and involve critical analysis. To achieve the goal of the thesis, I will explain the reservations regime to articles in international treaties in

general and the reservations regime within the CEDAW. The study of the reservations system is essential because the Syrian government has reservations about articles (2) and (16) of CEDAW that this thesis will consider. Subsequently, the thesis will explore the relationship between the Syrian government and the CEDAW agreement. Then, the thesis will briefly explain the Syrian personal status law, its intellectual background, and the amendments that affected it in 2019. The analysis will focus on the extent to which the Syrian government applies its obligations to the amended articles in the Syrian Personal Status Law relating to divorce and marriage. Finally, the result will include recommendations and suggestions regarding the implementation by the Syrian government of the terms of CEDAW.

3- Reliability and validity

Reliability means that scientific research in social sciences is replicable. This, in turn, means that the procedures which are followed in scientific research are consistent. While the validity is concerned with the integrity of the results which are reached by the scientific researcher (Bryman, 2012, p. 46/48). This thesis undertakes the validity of all the data that will be used in the study and that any other researcher who will use the same method and approach to study the same data will conclude the same result that this thesis will reach.

4- Specified aim and research question

This thesis aims to study the legal amendments made to the articles on marriage and divorce in the Syrian Personal Status Law No. 4 of 2019 in order to understand whether the Syrian government has fulfilled its commitment to implement the CEDAW agreement on the articles of the amended laws. Rather than focusing on the legal materials prior to the amendments or the evolution of the Syrian government's position or laws on CEDAW this thesis focuses in on the articles after the amendments to determine their compatibility with the CEDAW agreement. Further, if it is found that the current draft of the amendments to the Syrian Personal Status Law no. 4 is not compatible with the Syrian government's obligations under the CEDAW agreement, this thesis aims to provide recommendations on legal texts to harmonize the incompatible amendments. Accordingly, the thesis will answer the following research

question: **Did the Syrian government fulfil its legal obligations towards CEDAW when it amended the articles on marriage and divorce in Law no. 4 of 2019?**

5- Literature review

To answer the thesis research question, it is necessary to review the literature in two main areas. First the literature on the issue of the effect of personal status laws derived from Islamic law on the implementation of CEDAW must be reviewed. Second, research related to the reservations system in international treaties must be analyzed. Accordingly, the first section of the literature review examines the legal experience of Singapore with the CEDAW agreement and the effect of Islamic personal status law there on the implementation of the agreement. The second section examines the system of reservations in international treaties.

A- The effect of laws derived from Islamic law on the implementation of CEDAW

Binte and Rahman in their article "Convention on the Elimination of Discrimination Against Women and the Prospect of Development of Muslim Personal Law in Singapore" treats the relationship between the personal law of Muslim minority in Singapore and the CEDAW convention.

Based on the authors, in Singapore, there are two legal systems. The common law issued in 1960. The common law is applicable for non-Muslim citizens. However, the Muslims in Singapore have a special act named the Administration of Muslim Law Act (AMLA) issued in 1966 (Rahman, A. & Binte, N, A. , 2014 , p. 45).

The authors explain that AMLA law is derived from the provisions of Islamic law, especially the Shafi'i school, which is the doctrine of the majority of Muslims in Singapore. The law covers several legal aspects for Muslims in Singapore such as issues " marriages (including all matters incidental thereto), divorce and matters ancillary such as custody and maintenance of children, division of matrimonial property, consolatory gift (mutaah) and maintenance of wives. The Act also administers declarations of inheritance and waqf (endowments)." (Rahman, A. & Binte, N, A. , 2014 , p. 46). Although Singapore is a secular country, AMLA is mandatory for Muslims unless they renounce Islam. The law provides for the existence of a committee to issue Islamic legal opinions which have the force of law (fatwa). In addition, there are Sharia courts for Muslims (SYC) (Rahman, A. & Binte, N, A. , 2014 , p. 46).

According to Binte and Rahman, CEDAW provides a stimulus and framework for developing the status of women's rights within Muslim Singapore's personal status law. However, the prevailing traditional thought in Islamic law seriously impedes any development of the Muslim personal status law. The authors elaborate on the impact of the Islamic Council of Singapore 1 (MUIS) and the provisions of Islamic law on the implementation of CEDAW. Singapore has signed the CEDAW Agreement, but it has entered comprehensive reservations to Articles 16 and 2 of the Agreement. In 2016, Singapore canceled blanket reservations and kept partial reservations to Article 16 1(a), (c) and (h) and 16 (2). The authors assert that the reservation to Article 16 of CEDAW impedes the implementation of reforms in favor of women by the Singaporean authorities. The Islamic personal status law in Singapore permits polygamy, the woman gets half of the man's share of the inheritance, and the man has the right to divorce separately, while the woman must justify the request for divorce (Rahman, A. & Binte, N, A. , 2014 , p. 50).

B- Reservations regime in the international treaties

Article (2) of Vienna Convention on the Law of Treaties, which will be abbreviated with (VCLT), defines the reservations on the treaties as a " unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State;" (VCLT, 1969).

Dörr and Schmalenbach, in their commentary book, explain that the purpose of adopting the regime of reservations in international agreements is to establish a flexible system of international treaties. The flexible system guarantees the participation of many countries in international treaties. However, the authors argue that mitigating the states' obligations may lead to a dilemma, especially "in cases of objective regimes". For instance, the mitigating of commitments in human rights treaties may lead to adverse outcomes, and this can be described as " a collision between universality (of the parties) and integrity (of the obligations)." (Dörr, O. & Schmalenbach, K., 2018, p. 264).

Daniel W. Hill, Jr in his article (Avoiding Obligation: Reservations to Human Rights Treaties) argues that states are partially bound by their commitment to international human rights treaties through using of "reservations, understandings, or

declarations (RUDs)". In other words, many legal and political scholars ask why countries sacrifice some of their sovereignty to sign international treaties? Hill, Jr thinks that states do not sacrifice anything since they use RUDs to evade their obligations if the obligations do not apply to their domestic courts. The author believes that states wish, by signing human rights agreements, to achieve expressive benefits where the countries receive praise and approval from other countries for signing human rights conventions. However, at the same time, governments want to not completely restrict themselves by these agreements. In short, Hill, Jr supposes that states, through reservations, can express support for human rights conventions without being obligated to implement the conventions' obligations formally (Daniel W. Hill, 2016, p. 1130). In any case, Hill, Jr explains that states are not entirely free to enter reservations, whereas the Vienna Convention sets conditions for entering reservations. The most important of these conditions is firstly, that the provisions of a treaty do not prevent the entry of reservations and secondly, that the reservations do not violate the object and purpose of the treaty texts (Daniel W. Hill, 2016, p. 1132).

Also, Müller, in his article (Reservations and Time: Is There Only One Right Moment to Formulate and to React to Reservations?) discusses another condition for the validity of the reservation. The author demonstrates that the reservations on articles in international treaties must be made at a specific time according to Article 2(1)(d) of the 1969 and 1986 VCLT Conventions, as well as in Article 2(1)(j) 1978 VCLT Conventions. Müller adds that the International Law Commission determines that there are certain times that states must abide by if they wanted to make reservations to international treaties (Müller, 2013, p. 1113). Müller notes that, although Article 19 has clarified the time limit for making reservations. However, the work of the International Legal Commission in recent years has shown that states are not committed to these specific times. Instead, according to Mueller, the data collected showed that there were adjustments in the ideal acceptance times for reservations. As a result, the regime of reservations to articles of international treaties has become vague and unclear (Müller, 2013, p. 1114).

McCall-Smith argues about the ambiguity and lack of clarity of the object or purpose of the treaties. In his article (Mind the Gaps: The ILC Guide to Practice on Reservations to Human Rights Treaties) McCall-Smith explains that the initial problem with the VCLT convention is that it requires testing if a reservation opposes the object or purpose of a treaty. However, regardless of the type of treaty, countries usually differ

in interpreting the purpose and object of the treaty. Consequently, during the practical applications of treaties or reservations, states have different results from other states (McCall-Smith, 2014, p. 268). McCall-Smith explains that, from the beginning, there was no clear definition of what the object and purpose of treaties mean. Many academic opinions attempted to clarify the meaning but to no avail. The Convention on the Criminalization of Genocide defined the sense of the object and purpose of the international conventions. However, the definition was not sufficient because the aim and object of the Genocide convention could be appointed easily; Also, the VCLT Convention did not clearly explain a clear and true meaning of the object and purpose of treaties. Accordingly, McCall-Smith believes that states have implicitly agreed to adopt vague interpretations to explain the purpose and object of agreements (McCall-Smith, 2014, p. 269).

6- Theoretical and conceptual framework

The Syrian government enters reservations to Articles 2 and 16 of CEDAW. Therefore, to answer the research question of this thesis, a deep understanding of the nature of impermissible or permissible reservations in the CEDAW Agreement is required. The CEDAW Convention adopted some articles contained in VCLT 1969 about reservations, whereby CEDAW gives the right to states to make reservations (CEDAW, Article 28, p 1). However, states are not wholly free to make reservations. In many cases, the reservations are considered impermissible (Reservations, n.d.) and (Keller, 2014, p. 314). Accordingly, the theoretical and conceptual framework will study, the reservations system in CEDAW, the purpose and object matter of CEDAW, Articles 2 and 16, and the obligations of the Syrian government towards CEDAW.

A- CEDAW Convention's reservations regime "impermissible and permissible reservations"

In Article 28, paragraphs 1 and 2, CEDAW restricts the states wishing to reserve in several conditions. Countries must hand over their reservations to the Secretary-General of the United Nations during the time of accession or ratification of the treaty (CEDAW, A 28). Consequently, states are not entitled to make reservations beyond these deadlines (CEDAW, A 28, P 1). Accordingly, the time for making a reservation is essential to the validity of the reservations contained in the provisions of the CEDAW,

and this is consistent with A 2, p D, and A 19 of the VCLT 1969 (VCLT, 1969). As well, Article 28 P 2 of CEDAW stipulates that reservations shall not be incompatible with the object and purpose of the treaty (CEDAW). Thus, when entering reservations, states must abide by the formal requirement (time limit) and in the substantive condition (commitment to the object and purpose of the treaty). It is worth noting that CEDAW stipulates the prohibition of a reservation to Article 28, paragraph 2, by any country (Reservations, n.d.). The next chapter of the thesis will further study the purpose and object of the CEDAW Convention broadly to assess whether the reservations of the Syrian government are impermissible or permissible.

For reasons of culture, religion, custom, tradition, or national law, the states enter reservations to CEDAW. Some states have reservations about Article 2, although their constitutions prohibit discrimination between the sexes. However, there is a collision between the core of their constitutions and CEDAW (Reservations, n.d.). Despite the conditions set out in the CEDAW for entering reservations, the reservations system has created a dilemma for implementing the terms of the convention (Keller, 2014, pp. 310-311).

The countries' reservations on the provisions of the CEDAW reflect the explicit intentions of not abiding by the terms of the agreement. States practices and experiences with CEDAW implementation since the Convention entered into force in 1981 demonstrate that ratification alone is not sufficient to implement the state's obligations (Id, 311). These reservations make a lot of countries members of the CEDAW in name only, as these countries do nothing to change the reality of women at the local level, legally or socially (Id, 311). Most reservations are to Article 29 on resolving disputes over the interpretation or application of the CEDAW. However, the notoriety of the reservation's regime in the CEDAW Convention does not seem justified.

Although the VCLT does not allow reservations to part or all the treaty, some countries have announced blanket reservations to CEDAW (Keller, 2014, p. 316). For example, Saudi Arabia has reservations about any text that violates Islamic law. Likewise, the country of Mauritania declared that it is bound by all the provisions of the agreement, as long as it does not conflict with Islamic laws or the provisions of the constitution of Mauritania. The committee called for the abolition of all forms of reservations that contradict the goal and theme of CEDAW and called on states to review the reservations that hinder the application of human rights principles (Report-11, 1993, p. 7). Blanket reservations are not limited to religious reasons but are also

based on customs and traditions. For instance, the state of Malawi. Malawi has declared that it is not bound by any text in CEDAW that contradicts the customs and traditions of the Malawian people. Fortunately, Malawi withdrew its reservation after Mexico's objection, which it said that the Malawi's reservation violates the purpose and object of CEDAW. Blanket reservations are a useful tool for states that wish to escape their obligations under the CEDAW Treaty, but such reservations are harmful because they leave the states free to implement or interpret the terms of the agreement that are appropriate to its customs, traditions, religious or legal provisions (McCall-Smith, 2014, pp. 280-281).

The CEDAW object and purpose and the states' obligations under articles (2), and (16)

The CEDAW Convention is an essential part of the normative human rights framework enshrined in the United Nations Charter of 1945. The CEDAW Convention has distinctive features because it aims to eliminate all forms of discrimination against women in all areas, whether legislative, political, economic, marital, or social. Moreover, CEDAW obliges states to improve the status of women and their empowerment by imposing special measures that reduce the historical gap between men and women as the quota system. (Flinterman, 2011, p. 4).

CEDAW has defined discrimination against women in article (1) as

“For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” (CEDAW).

Article 2

Given that this thesis concentrates on the obligations of the Syrian government based on Articles (2), (16), taking into consideration Article (28), the explanation and analysis will focus on these three articles.

Article 2 of CEDAW includes the legal and constitutional procedures, policies, and obligations that states must take to eliminate all forms of discrimination against women. Where the second article states:

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women” (CEDAW)

Article (2) obliges states to take all appropriate legal amendments to eliminate any discrimination against women; Likewise, the measures must be supported by deterrent penal laws that guarantee their implementation. Also, the states should refrain from any practice of discrimination against women and prevent any person, institution or body from practising discrimination against women (Keller, 2014, p. 313). The Committee has made clear in its general recommendations for 2010 that the CEDAW Treaty is a dynamic convention that considers the significant development in international law. The Committee through these recommendations seeks to interpret Article 2 of CEDAW. Besides the UN Charter, the Universal Declaration of Human Rights and other international instruments, CEDAW is a part of a global legal framework aimed at eliminating all forms of sexual and gender discrimination. Although CEDAW refers

explicitly only to sex-based discrimination, the interpretation of Article 1 of CEDAW in parallel with Articles 2 and 5 indicates that CEDAW covers gender-based discrimination against women. In other words, CEDAW calls on countries to adopt flexible plans that can be measured by assessing discrimination against women according to the changing realities for political, economic or social reasons (Recommendation-No-28, 2010, pp. 1-2).

General Recommendations No. 28 expanded to explain the obligations of states, meaning and purpose, of Article 2 of CEDAW. The article 2 constitutes critical importance for the implementation of CEDAW because it sets the general legal obligations of the signatory states and is fully linked to all the provisions contained in the agreement. Therefore, the states are obliged to implement them at the national level (Recommendation-No-28, 2010, pp. 1-3). Also, the committee called for reading the second article in parallel with the third, fifth, fourth, and twenty-fifth articles. Besides, Article 2 prohibits states from issuing any laws, administrative procedures, plans, or any form of regulation that may include discrimination against women; Rather, countries should consider the gap between men and women in all areas. Therefore, states should put in place development plans and necessary measures to eliminate all forms of discrimination to allow women to catch up with men in all fields (Recommendation-No-28, 2010, p. 3). The recommendations also included creative articles, as article (2) should be applied in wartime or peace; regular or emergency times; on citizens or foreigners; on women citizens or refugees; and on actions resulting from the state or the private sector. As well, the recommendations obligate states to implement the policies and procedures involved under Article 2, whether or not they appear in the provisions of the CEDAW. In other words, states should pay attention to their initiative to all that may include discrimination against women, regardless of the provisions contained in the CEDAW Treaty. Also, the phrase "without delay" in the body of Article 2 means that states must take these measures, plans, and strategies immediately. The "Without Delay" formula is not preserved, and no justification for the delay in its application is accepted, whether political, economic or otherwise (Recommendation-No-28, 2010, pp. 7-9).

Article 16

The thesis focuses on the amendments of the provisions of marriage and divorce in Syria for the year 2019. Therefore, to answer the research questions of this thesis, it is necessary to study Article 16 of the CEDAW Treaty. Article 16 states:

“Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.” (CEDAW).

Article 16 obliges states to achieve full equality between men and women within the family, and that regardless of region, state, customs, laws, or societies, women in the family must be treated equally with men. Besides, CEDAW draws the signatory countries' attention to refer to the social and cultural aspects that limit women's freedom within the family. Historically, women have been treated in private as inferior to men.

Unfortunately, this treatment still prevails in many of the signatory countries of CEDAW. Accordingly, Article 16 obliges the signatory states to abolish every habit, law or custom that prevents women from freely accessing resources. As well, it works to ensure that women in the family are treated equally with men (Recommendations-no-21, 1994).

In addition, polygamy is still practised and legal in many signatory countries. Article 16 (1) (a) and (b) obliges states to eliminate this phenomenon, as it contradicts the legal and constitutional rights of women, which guarantee equality with men. Women have the absolute right to choose the person from whom they want to marry without interference from either, under the pretext of kinship or otherwise. Moreover, family planning laws in many countries are derived from religion, custom or the general rule of the state. Regulating laws in this method affects the position of women, as men usually have the keys to decision-making and women bear the greatest responsibilities. Therefore, Article 16 (1) (c) obliges the signatory to repeal these laws and apply CEDAW rules instead. Also, the reality of the situation in many of the CEDAW signatory states shows that women are not adequately protected. Therefore, states are obligated to protect women and give them the right to share income and property to ensure child care and provide for the family (Recommendations-no-21, 1994).

Parents' participation in childcare is firmly established in the international human rights standards, especially as it relates to the interest of the child, which is subject to the principle that "the best interests of the child shall be the paramount consideration". The principle is embedded in the International Convention on the Rights of the Child. Many reports show that women are usually held accountable to children, especially in cases of divorce or children outside of marriage. Accordingly, states are obligated by Article 16 (1) (d) and (f) to monitor the equal sharing of responsibilities within the family and for both parents to participate in childcare. Ensuring shared responsibility for children must be codified within the laws of guardianship, wardship, care and adoption. Countries are obligated to provide within their statutes that they bear equal burdens within the family, regardless of the marital status of women, or whether they live with children or not (Recommendations-no-21, 1994). Also, given that having children affects a woman's ability to learn or find work; Also, childbearing affects her physical and mental condition. Therefore, women have the right to choose whether or not to have children and to select the number of children they want to have. Also, many reports

have shown coercive practices against women such as coercion of pregnancy, abortion or sterilization, and states are obligated according to Article 16 (1) (e) to communicate all information regarding pregnancy, childbirth, abortion and other sexual safety measures to women (Recommendations-no-21, 1994).

According to Article 16 (1) (h), states must guarantee the right of women to own property, work and have a personal income. Many countries are in the process of agrarian reform, dividing lands based on ethnic or religious lines. These countries should ensure equality between men and women in the distribution process. Also, women, primarily single or divorced women in many countries, bear the burden of spending on their families. Therefore, it is not permissible in any way to discriminate against women in the right to equal property. All these rights must be protected regardless of the marital status of the woman. In addition, states should ensure that women have the freedom to participate in the administration of marital property; likewise, providing the right of women to equal inheritance and disposal thereof. (Recommendations-no-21, 1994). Article 16 (2) of CEDAW emphasises the need to implement what was stated in the 1994 Vienna Declaration and Program of Action that states are obligated to amend all laws and regulations and to abolish all practices and customs that discriminate against women and cause harm to female children. Besides, CEDAW stresses the need to respect Article 16, Paragraph 2 of the International Convention on the Rights of the Child, which obliges states to prohibit any marriage before the child reaches the age of majority, which is 18 years of age. The World Health Organization confirms that early marriage, especially for girls, can harm their health and decrease their level of education. As a result, their economic level decreased. Also, it affects the development of women in society and their skills, Consequently, women's employment opportunities are affected (Recommendations-no-21, 1994).

Moreover, some countries have a different age for marriage between men and women. This distinction stems from the idea that women are less intelligent than men or that mental or physical development of women is not essential. In other countries, men in the family marry girls or make pledges without the girls' permission. The practices mentioned above not only violate the essence of the CEDAW agreement, but rather the woman's free choice in choosing her partner. Also, states must ensure that all marriage contracts are registered, whether the marriage is civil, religious, or customary. In any case, states must ensure that the CEDAW provisions are applied in terms of equality

between men and women, the minimum age for marriage, the prevention of polygamy, and the protection of children's rights (Recommendations-no-21, 1994).

Articles (2), (16) and the purpose and object of CEDAW

Based on the previous explanation, articles (2), and (16) in all of their paragraphs of the CEDAW convention are considered "core articles" (Report-18-19, 1998, pp. 47-48). Especially the second article, which is the centre of the object and purpose of CEDAW (Id, pp.47-48). According to the Committee, the countries that ratify CEDAW realize that they must eliminate all forms of discrimination against women by developing strategies, amending laws and repealing provisions. Therefore, the second article should be applied in any case. Also, reservations to Article 16 of CEDAW are reservations which contradict the object and purpose of the treaty. Hence, the reservations are impermissible. However, the large number of reservations to Article 16 indicates that many states have ratified CEDAW without real faith in the substance, object, and purpose of it (Id, p. 49). The commission expressly stated this when it said: **“Reservations to articles 2 and 16 perpetuate the myth of women’s inferiority and reinforce the inequalities in the lives of millions of women throughout the world. They continue to be treated in both public and private life as inferior to men, and to suffer greater violations of their rights in every sphere of their lives.”** (Report-18-19, 1998, p. 49).

The Syrian government's behavior and obligations towards CEDAW

The Syrian constitution includes many articles that are considered consistent with the purpose and object of CEDAW, such as Article (19), which states: "Society in the Syrian Arab Republic shall be based on the basis of solidarity, symbiosis and respect for the principles of social justice, freedom, equality and maintenance of human dignity of every individual." (Syrian-Constitution, 2012). Also, Article (20) of the Syrian constitution recognises the necessity of caring for the family, motherhood and child. As for Article 23, affirmed that "The state shall provide women with all opportunities enabling them to effectively and fully contribute to the political, economic, social and cultural life, and the state shall work on removing the restrictions that prevent their development and participation in building society.". As

for Article 33, paragraph 3, it stipulates an explicit and unambiguous provision that "Citizens shall be equal in rights and duties without discrimination among them on grounds of sex, origin, language, religion or creed". (Syrian-Constitution, 2012). Despite all the aforementioned constitutional articles, the Syrian government has reservations about Articles 2, 9, 16, and 29 of CEDAW. Likewise, the Syrian constitution itself include in its third article that Islam is an essential source of legislation. Therefore, the Syrian regime favoured Islamic law when it withdrew the reservation of Article (2) by the Republican Decree 230 of 2017 on the condition that it did not violate Islamic law.

Despite all the Syrian constitutional provisions that consistent with human rights standers and CEDAW rules, the Syrian government has not taken adequate measures to implement its obligations under CEDAW according to the CEDAW Committee. The Committee added that the biggest obstacle facing equality between men and women in Syria is the Personal Status Law. The Syrian Personal Status Law limits the freedom of women to marry and divorce, while men are granted the right to polygamy and separation with a separate will. Also, inheritance and property laws in the Syrian Personal Status Law derived from Islamic law are discriminatory laws, as women inherit half of what men inherit (Report-58, 2014 , p. 42).

The Committee has also noted that the Syrian laws are still discriminatory against women in many aspects, and the Syrian government has not taken any serious steps to change these laws. The Committee recommended that the Syrian government change the penal code concerning the definition of the crime of rape and demanded that the Syrian government criminalize assault and violence against wives, especially as the Syrian Penal Code does not criminalize rape of the wife. The Committee also recommended that the Syrian government repeal the Honor Kill Law, which gives the criminal a reduced sentence in honour cases; Also, the rapist is exempt from punishment if he marries the victim (Report-58, 2014 , pp. 34-35).

Also, CEDAW called on the Syrian government to combat the phenomenon of coercion of girls into marriage and that the government must combat the phenomenon of early marriage. The Committee added that despite the provision, the phenomenon of early marriage in Syria is common. It should be noted however, that early marriage is more broadly happening due to economic and social insecurity during the conflict in Syria (Report-58, 2014 , pp. 38-39).

The Syrian government has responded to the Committee's criticism that the Syrian Personal Status Law requires the girl's consent to the marriage. Also, the Syrian government said that it is committed to criminalizing early marriage as the Personal Status Law sets the age for marriage at 16 for a girl and 18 for a male (this article was modified after the report date). However, the Syrian government has admitted that, for reasons related to customs and traditions, girls are already getting married early (Report-58, 2014 , p. 40). Currently, the Syrian government has made some amendments to discriminatory laws, such as abolishing the criminal exemption in cases of (honour killing) from punishment (Enabbaladi, 2020). Also, it has made some amendments to the Personal Status which are looked at below in order to determine to what extent they adhere to the CEDAW agreement.

Bearing in mind that countries' reservations to Articles 2 and 16 of CEDAW are impermissible, as we saw in the previous chapter, the Syrian government is obligated to implement all its obligations under the articles (2) and (16) of CEDAW without delay. In the next chapter, we will get acquainted with the Syrian personal status law, its historical background and the recent amendments made to it.

7- The Syrian Personal Status Law and the amendments made in 2019

A- Historical Background

The Syrian Personal Status Law is based on Resolution No. 60 of 1936, which was issued by the French High Commissioner during the French mandate of Syria under the name e «system of religious sects.» (Mousa, 2018, p. 2). After Syria gained independence from France, The Syrian Personal Status Law was issued under the name Legislative Decree No. 59 in 1953 by the Muslim judicial courts. Article 306 of the law stipulated that all Syrians are excluded except for what is excluded by Articles 307 relating to the Druze community and Article 308 which remained for Christian denominations provisions relating to engagement, marriage, follow-up, marital maintenance, child support, conditions for marriage, dissolution and dissolution (SPSL, 1953). The Syrian Personal Status Law derives its provisions from all doctrines of Islamic law without being bound by a certain doctrine, but Article 305 notes that everything that is not stipulated in this law is due to the most likely saying in the Hanafi school, “The Hanafi School is one of the four major schools of Sunni Islamic legal

reasoning and repositories of positive law. It was built upon the teachings of Abu Hanifa (d. 767),” (Warren, 2013). This article was amended in 2019 and it became / 325 / bis where the amendment stated that the branches of each legal matter stipulated in this law be referred to the most likely saying in the Islamic jurisprudence, noting that this issue was derived from (SPSL, 1953). This thesis focuses on the amendments made to the provisions of marriage and divorce in the Syrian law in Laws 4 of 2019 considering the Syrian government's obligations towards CEDAW.

B- The Amendments of SPSL 2019

The amendments to the SPSL under Laws No. 4 of 2019 included nearly 69 articles related to the provisions of marriage, divorce, descent, and inheritance. Also, the amendments included linguistic changes, some of which were replaced by some terms taken from Islamic law such as "Nikah" to be replaced by legal terms. The amendments also affected rights and duties in some articles (LAW-4. 2019).

Because the legal articles that have been modified are so many and taking into consideration the limited time and space of this study, the thesis will study the texts of legal articles related to marriage and divorce after the amendment. The thesis is not concerned with the content of the old texts because it does not compare the old and the new texts but rather examines the compatibility of the new texts with the Syrian government's obligations towards CEDAW.

8- Analysis

Law No. 4 of 2019 made many administrative amendments to the provisions of marriage and divorce. The thesis does not aim to study the procedural requirements for confirming marriage and divorce; instead it examines the substantive rules that may include discrimination between men and women. Therefore, some articles or paragraphs such as Articles (22) and (23) have been neglected. Likewise, there are some provisions close to divorce, such as Mukhala'ah and Tafriq (Separation). These provisions, even if they include the termination of the marital relationship, accept that they are different from divorce. There are some articles related to the wife's dowry or divorce compensation, such as articles 54 and 62. The thesis will not study these articles because it is interested in the legal items that regulate the primary legal centres for men and women in marriage contracts and provisions for divorce. Thus, for answering the thesis's research question: **Did the Syrian government fulfil its legal obligations**

towards CEDAW when it amended the articles on marriage and divorce in Law no. 4 of 2019? The thesis will study Articles 01, 08, 12, 14, 16, 18, 20, 21, 40, 70, 87, 117, and 118 of Law No. 4 of 2019 to amend SPSL issued in the year 1953.

[Article \(1\): The marriage's contracts definition](#)

The first article defines the marriage's contract as a contract between a man and a woman who are permitted to marry each other according to the provisions of Sharia Law, to create a bond for common life and offspring (Law-4, 2019). On the surface, the first article seems to make no distinction between men and women in terms of the marriage contract. However, a Muslim man in Syrian law is entitled to marry a non-Muslim woman while a Muslim woman is not permitted to marry a non-Muslim man Article (SPSL, 1953, A. 48 paragraph 2).

Accordingly, the first article of the act granted legal rights to men higher than women, and this contravenes the provisions of Articles 2 and 16 of the CEDAW Agreement. According to CEDAW, the Syrian government must equate women and men with this law and repeal the provisions of the second paragraph of Article 48 of SPSL. Besides, the Syrian government must commit, under paragraphs A and B of Article 16, to grant the husband and wife the same right to enter into marriage, and for women to have the absolute right to choose their husbands (CEDAW).

[Article \(8\) The power of attorney in the marriage's contract](#)

Paragraph (1) of Article (8) allows a principal to give a power of attorney to a proxy in a marriage contract, whether a restricted or unrestricted power of attorney. The proxy has the right to use the power of attorney to give the principal in marriage himself, one of his children, or even his father or someone else provided this is explicitly mentioned in the authorization. In other words, a woman can give a power of attorney to a person to give her in marriage; then, he can marry her personally or give her in marriage to anyone he wants. In a society, such as the Syrian society, where coerced marriage is common, especially for minors, this article is considered a catastrophic instrument for those who want to exploit women. Primarily since the law did not impose any special conditions for a power of attorney, but people are accustomed to the oral delegation in marriage contracts. Article 8 is inconsistent with paragraphs g and f of Article 2 of CEDAW. Likewise, it contradicts the entire

paragraph of Article 16. Also, Article 8 loses a woman any ability to choose her partner freely, and may even find herself married to a person she does not know him before. Accordingly, I recommend that the right to delegate marriage contracts to be wholly abolished. The woman must come to the official employee herself to explicitly state that she is willing to marry. Moreover, laws must be passed that gives the official employee the right to make sure that the woman chooses her husband with complete freedom. I think that the freedom to choose a husband is not sufficient with public permission, but the official must make sure that women have the ability and knowledge to choose freely.

Articles 12 and 20: The witnesses and the permission of the guardian of the girl in the marriage's contract

The first paragraph of Article 12 requires witness's presence to the marriage contract for the validity of the contract (Law-4, 2019). The witnesses must be two men or one man and two women. This means that witnesses cannot be women only, but that if there are women, the testimony of one man equals that of two women. No doubt, this article contradicts all the provisions of Article (2) of CEDAW. The Syrian government has stated that it is committed to removing any discrimination between women and men in its laws. Also, the Syrian government must guarantee full equality between men and women in the constitution and laws. However, Article 12 includes a preference for men over women, as the testimony of women is unacceptable and, if accepted, is considered half the value of the testimony of men. In addition, the second paragraph of Article 12 discusses testimony to the marriage contract if (the woman's father is present at the contract session). The text says that the father is entitled to marry off his daughter with her consent and command, that is, despite the presence of the woman, it is the father who signs the marriage contract. In other words, it is the father who represents the woman in marriage despite the presence of the woman personally.

To understand the intention of the Syrian legislator in paragraph (2) of Article 12, we must study Article (20) of the same law (Law-4, 2019). Article 20 obliges the judge to request the permission of the guardian of the girl. The guardian here may be the father, grandfather, uncle or male brother. If the guardian does not object to the marriage, it is (not worthy of consideration) and the judge will conclude the

marriage. Here we note that the consent of the guardian of the girl is essential to accepting the marriage contract, that is, the woman cannot marry by her will alone. Article (20) cited a sentence (not worthy of consideration), and this is a loose, inexplicable sentence. Thus, an adult girl's will is restricted by the consent of the guardian and the interpretation of the judge. Therefore, if the father attends the contract session, then he is the one who talks and holds the marriage contract because his approval is considered one of the main conditions for the contract. This Article contradicts the essence of the paragraph (b) of Article 16 of CEDAW, which obliges states to give women the right to freely choose a husband and not to marry a girl except with her consent. Likewise, this Article contradicts paragraph (A) of Article 16, which grants women equal rights to men in marriage contracts, whereas, in Syrian law, men are entitled to marry whatever they want alone without the consent of anyone. In contrast, women are always bound by the authority of the guardian or judge.

Accordingly, I recommend amending Paragraph (1) Article (12) of SPSL so that the testimony of a woman in marriage contracts becomes exactly equal to that of a man in value. Likewise, I recommend that marriage contracts which are written outside the court must be considered invalid contracts, as the marriage must be concluded in front of a competent employee and the presence of the woman who wants to marry exclusively. Paragraph b of article 12 must be adjusted to be (No person has any right to talk instead of the woman who wants to marry). Furthermore, I recommend that the conditions in Article 20 of the consent of a woman's marriage be cancelled. A woman of 18 years of age must have the right to marry by her own will without the permission of a guardian or judge.

[Article 14 The special conditions in the marriage's contract](#)

The first paragraph of Article (14) allows parties of the marriage's contract to impose special conditions in the marital agreement. However, section (2) of the same article stipulates that the terms should not violate Islamic Sharia or the Syrian law. As for the third paragraph, it includes provisions that should a condition that contravenes Islamic law or the Syrian law exist, that condition become void, while the contract remains valid (Law-4, 2019). Based on the previous provision then, any terms that women enter in the agreement which are contrary to Islamic law have no value at all. Therefore, women cannot obtain any additional rights for them in the

marriage contract. For example, if a woman stipulates that her husband cannot marry another woman during the term of their marital life, the condition set by the woman becomes invalid, and the contract remains valid. Thus, lawmakers who drafted the new text tried to trick people by giving both spouses the right to set conditions in the contract. However, restricting the set of terms by the provisions of the law and Islamic law means that the wife cannot put any term that violates the discriminatory laws contained in Islamic law or the law. Accordingly, this article contradicts the obligations of the Syrian government based on Articles 2 and 16 of CEDAW. I recommend cancelling the second and third paragraph of Article 14 and putting in place a new article that guarantees the right of the wife and husband to set conditions that guarantee complete equality between the spouses during married life.

Articles (16) and (18): The age that the law permits to marry

Article 16 sets the age of marriage at 18, i.e., the age of majority (Law-4, 2019). However, Article (18) allows the female adolescent and the male adolescent, who are over 15, to request marriage to the judge, but on conditions. First, they have to call out that they are pubertal, and secondly, the judge must ensure that the adolescents are pubertal, that their bodies are able, and that they know marital rights (Law-4, 2019).

Although the text of Article 18 does not specify precisely what the legislator means in the sense of (pubertal), we can simply understand the intention of the lawmaker. Article 16 explicitly stated that the marriage age is 18; as well, sentences such as (the ability of bodies) and (knowledge of marital rights) clarify the intention of the legislator. Therefore, I used the word "pubertal" instead of "adult" in the English text. Article 18 is a legal scandal for a country that has ratified the CEDAW Convention. The second paragraph of Article 16 of CEDAW expressly stated that states are obligated to prohibit child marriage, and that child marriage does not have any legal effects. However, the Syrian government, in its amendments to the Personal Status Law in 2019, permitted child marriage if their bodies can operate sexually, as if marriage is a sexual burden only. Thus, at a time when the Syrian government is amending Article 16 to make the marriage age 18, the Syrian lawmaker again defrauds and produces, through Article 18, a loophole which justifies child marriages. Therefore, I recommend that Article 18 of SPSL be wholly abolished.

Article 21: The guardian authority in the marriage's contract

Article 21 states that the guardian of a woman in marriage must be a male from whom the woman is unable to marry, such as the father or the brother. Also, paragraph 2 of Article 21 states that if the guardian gives a girl in marriage without her knowledge, then the validity of the marriage contract depends on her consent (Law-4, 2019). Initially, the CEDAW Convention prohibits the authority of a guardian over women's marriage. Nevertheless, Syrian law restricted the guardianship to males. Moreover, in masculine societies, when the guardian gives a girl in marriage, it is challenging and dangerous for the girl to reject the guardian's decision. Accordingly, the text stipulating the approval of the girl has no value because the girl does not dare refuse. Article 21 is inconsistent with Articles 2 and 16 of the CEDAW Convention. Therefore, I recommend that Article 21 be amended to become "Prevent the imposition of a guardian on girls in marriage".

Article 40: Formal marriage conditions

Article 40 prohibits the confirmation of the marriage contract which is written outside the competent court which the legal conditions are not met. However, in the case of pregnancy, the judge is obligated to confirm the marriage (Law-4, 2019). Unfortunately, there is a widespread phenomenon in Syria of compelling girls to marry, and the Syrian government has recognized this (Report-58, 2014 , p. 40). Pregnancy has become a way to force the Syrian judicial departments to accept the marriage of minors who are pregnant at a very early age. Although Article 40 established that there is a legal penalty for marriage outside the court, the punishment is very absurd. The penalty for a marriage contract outside the court without the guardian's permission is a prison sentence of one to six months and a fine of \$ 30. But if the marriage was with the permission of the guardian, the punishment is a fine not to exceed fifty dollars (Law-24, 2018). By adopting Article 40, the Syrian government violated Articles 2 and 16 of CEDAW, especially the second paragraph of Article 16, which prohibits the marriage of minors completely. I recommend that Article 40 be amended to become (it is strictly forbidden to marry outside the competent court).

Article 70: The wife's right to travel

Article 70 obliges the wife to travel with her husband unless there is a condition in the marriage contract gives the woman the right to refuse to travel with her husband. Also, the judge can give the woman a permission to refuse to travel if he finds that there is an obstacle in traveling (Law-4, 2019). Article 70 makes a woman dependent on her husband, as she is obliged to move with him to any place he deems appropriate without having any say in it. As for the possibility of inserting a clause in the contract that gives the wife the right not to travel with her husband, it is not permissible. The right to move or not is a fundamental right of the wife, organized by the CEDAW Convention in the fourth paragraph of Article 15, where women have the same power as men to choose the place of residence. Likewise, article 16, paragraph A, which obliges States to give women the same right as men in marriage contracts. Consequently, a woman must have the right to choose whether or not to travel. The right must be rooted in the law and not a condition that may be added to the contract. Accordingly, I recommend that the Syrian government implement its obligations under Article 2 of the CEDAW Agreement and completely repeal Article 70 or replace it with an article that gives women the right to travel or not freely.

Article 87: Conditions of divorce

Article 87 clarifies the right to divorce by granting the husband the right to divorce his wife in writing, orally or by any clear indication. In contrast, the wife has no right to divorce. The article permits a husband to authorize his wife to divorce herself (Law-4, 2019). Article 87 is a clear example of the male mentality of the Syrian lawmaker. When the lawmaker wanted to give the woman the right to divorce, he made this right linked to the husband authorizing the wife to divorce herself. An extraordinary text, if a woman can divorce herself, then why is it not a firm right for women in law? Article 87 violates Articles 2 and 16 of CEDAW, which impose on the Syrian government to amend any law that discriminates against women and to establish rules that maintain equality between men and women. However, the Syrian lawmaker has created a divorce law that only men can take advantage of it. I recommend amending Article 87 as divorce becomes a right for every man and woman.

Article 117: Divorce by a man without a reasonable cause

Article 117 enshrines a man's power over women in divorce laws. Article 117 states that if a man divorces his wife (without reasonable cause), he must pay compensation to the woman (according to his condition) (Law-4, 2019). This article appears as if a man gives a woman the right to stay with him and that the issue is purely financial so that the husband has to pay monetary compensation to the woman in the event of divorce. But the article states that if the divorce was (for a reasonable reason), this sentence is loose and not specific. What are reasonable or unreasonable reasons for a man to divorce his wife? Besides, a sentence (according to his condition) means that the compensation is linked to the man's financial situation and is never interested in the woman's financial position. In short, the article transforms the relationship between a man and a woman into a purely business relationship. Without a doubt, the Syrian government had to amend the provisions of the law in a way that would achieve equality between men and women. On the contrary, Article 87 enshrines a man's legal superiority over women. I recommend that this article be abolished entirely and replaced by a law guaranteeing the right of women to obtain half of the property owned by the family at the moment of separation.

Article 118: The authority of the husband to return his wife whenever he wants

If a man divorces his wife, Article 118 grants the man the right to return his wife, in word or in actions. In other words, the husband has the right to expel his wife whenever he wants and return her whenever he wants. It is sufficient for a man to say to his wife: I return you, in order to become his wife again (Al-Bagha, H., and Al-Bagha M, 2018, p. 232). Article 118 did not explain the acts that cause a man to return his wife, but the acts mean that if a man does sexual relation with his wife. Thus, according to the text of Article 118, a man who divorces his wife has the right to have sex with her even without her will, and this is considered a return to his wife and an end to divorce (Al-Bagha, H., and Al-Bagha M, 2018, p. 232). The thesis does not study all the pillars of divorce in the Syrian law, as it suffices to study the amendments of the Personal Status Law in 2019. Therefore, the thesis will not explain all the pillars and conditions of divorce in Syrian law. However, Article 118 conflicts with Article 16 of CEDAW. The Syrian government has not complied with its obligations under Article 2 of CEDAW, which obliges the Syrian government to end any discrimination between men

and women in its legislation. Therefore, I recommend that the notion of termination of divorce be abolished by the husband's sole will, as divorce must be a decision emanating from a conscious will considering gender equality.

Conclusion

The thesis has concluded that the Vienna Convention on the law of treaties (VCLT) allows countries to enter reservations to some of the articles of the multilateral treaties. However, the reservations' regime is not absolute since there are permissible and impermissible reservations. The impermissible reservations include situations where the agreement prohibits entering reservations or where reservations are incompatible with the object and purpose of treaties. The thesis found that CEDAW in Article 28 allows countries to enter reservations to some of its articles; However, the reservations should not contradict the object and purpose of CEDAW. The thesis has dealt with the ratification of the CEDAW agreement by the Syrian Arab Republic and has found that the Syrian government had entered impermissible reservations to Articles 2 and 16. Articles 2 and 16 are essential to the CEDAW. Therefore, the states cannot put reservations on them.

To answer the research questions, this thesis has analyzed the articles of the Syrian Personal Status Law that were amended by the Syrian government in Law No. 4 of 2019. The legal provisions which were analyzed determined the legal positions of the husband and wife in marriage or divorce contracts. The thesis has concluded that the Syrian government did not fulfil its obligations under Articles 02 and 16 of the CEDAW. In contrary, the Syrian government reproduced discriminatory laws. The legal texts studied indicate the perpetuation of male legal superiority against women in Syrian law. The male husband is granted rights that were not given to the wife while woman shoulder burdens that were not imposed on the man. For example, the men have the right to marry several wives, or to marry a non-Muslim woman. While at the same time, men are, not to be forced to travel with their wives, and the husband has the right to divorce his wife with a separate will. However, the women have no right to divorce without the authorization of her husband, and they are obliged to travel with their husband.

In short, the thesis has concluded that the Syrian government is not serious or concerned with developing women's rights in Syria and eliminating discrimination against them. The thesis recommends amending some laws and enacting new laws. This thesis calls for the application of full equality between men and women in marriage and divorce laws. As well, this thesis recommends that the Syrian government should implement its international obligations to give women the right to choose a husband freely. Moreover, the women should have the rights to select the place of residence, the right to divorce and all rights stipulated in the provisions of the CEDAW Treaty, international treaties, the UN Charter and the general recommendations of the CEDAW Committee.

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