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## Legal Mechanisms Employed in Modernising Islamic Family Law -The Case Study of Jordan-

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## Legal Mechanisms Employed in Modernising Islamic Family Law -The Case Study of Jordan-

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### Abstract

This study aims to examine legal mechanisms that have been employed to modernise Jordan's family law No 36 of 2010. It can be noted that Jordan's family law has been amended frequently and noticeably in last 80 years. Many new amendments to this law have been taken place with the aim of addressing issues of the family life and marital relationship as well as protecting and supporting rights of women and children in particular. The researcher seeks to investigate the extent to which legal amendments to Jordan's family law have made a real progress in promoting the application of this law as well as dealing with issues of the family life in line with the guideline of Islamic law.

### ملخص

تتأولت الدراسة الموسومة: (الآليات القانونية التي وظفت في عصرنه قانون الأحوال الشخصية الإسلامية - الأردن أنموذجاً للدراسة-) أهم الإشكاليات التي نثار حول تحديث هذا القانون والتجاذبات بين التيارات الإسلامية التي تحاول المحافظة على الصبغة الشرعية لهذا القانون، ومنظمات حقوق الإنسان التي تحاول ممارسة الضغوطات على الدول الإسلامية؛ لتعديل القانون بما ينسجم مع بعض الأنماط الغربية البعيدة عن مبادئ الشريعة الإسلامية. وأشار الباحث إلى بعض هذه الضغوطات في ثنايا البحث التي تحاول المنظمات الدولية إدخالها على قانون الأحوال الشخصية. واختار الباحث قانون الأحوال الشخصية الأردني والتطورات التي مر بها منذ تأسيس الأردن إلى التعديل الأخير الذي ألغى بموجبه القانون السابق وأصدر القانون المعدل رقم ٣٦ لعام ٢٠١٠. وناقش الباحث أهم الآليات القانونية التي وظفت في تعديل القانون الجديد كالاعتماد على المدارس الفقهية الأربعة وغيرها، وعدم الاقتصار على المدرسة الحنفية التي كانت المصدر الأساسي للقانون السابق. وأثر هذه الآليات على تحقيق تقدم في تطوير القانون في معالجة مسائل الأحوال الشخصية. وختتم الباحث الدراسة بجملة من النتائج والتوصيات.

### Introduction:

In fact, the modification of Islamic family law in Arab countries has generated a strong wave of controversy and dispute amongst scholars and researchers as well as human rights organisations and various other similar quarters. Referring to this, Bassam Al-Muslimani has asserted that one cannot consider the wave of amendments to the personal status laws, which have been pervading a number of Islamic countries such as Morocco, Algeria, Jordan, Yemen, Iraq, Chad, and Egypt, in isolation from the increasingly widespread international pressures. These pressures have also been exerted even further by international organisations, associations and women's global and local

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secular elites associated with foreign agendas. Many Muslim scholars believe that such international pressures been exerted to impose Western lifestyles on their respective societies, particularly with regard to women's issues, or as it is called “the issue of gender”<sup>(1)</sup>.

From other perspective, each country has its own aims and used different legal methods to reform its family law, but the common factor among these countries is that their family laws are still based on Islamic law and its Fiqh principles. Therefore, it is apposite to conceive of the wave of amendments to the family law as a remarkable legal phenomenon in Muslim countries that needs to be analysed. Jordan's family law has been amended several times since the establishment of Jordan as an independent state. This study has been designed to examine the extent to which such legal amendments to Jordan's family law have made it more applicable in addressing marital and family issues in Jordan.

### Research Objectives and Aims:

The issue of reforming Islamic family law has its social, cultural, historical and religious dimensions. John Dewar pointed out that “at an international level, the universalising tendencies of human rights frequently brush up against local cultural or religious norms and pose the question of which is to prevail. At the same time, within each legal system, the constitutional norms of the state, or the assumption underlying state family law itself, may sit uneasily with the practices of religious or ethnic group”<sup>(2)</sup>. One may conceive that the latest reforms have been implemented to address only some controversial family issues such as placing restrictions on husbands' rights, supporting women's and children's rights, extending mothers' rights to child custody and to be compensated for it by her ex-husband, raising the minimum age of marriage, expanding a wife's ability to get a divorce upon her request, requiring a husband to compensate his wife if he arbitrarily divorces her and finally limiting a wife's duty of obedience towards her husband. These reforms must also focus on highlighting the central role of Islam in promoting and enhancing the position of women in society as well as strengthening family ties and relationships. As Haifaa Jawad emphasises:

“...contrary to the general misconceptions, women in Islam – at least theoretically speaking – are entitled to full rights as citizens. These rights were put into practice during the Prophet's time and in the period of early Caliphate, during which women enjoyed the privilege of fulfilling their private as well as their public duties .... In other words, it was a healthy society, primarily because women were highly revered and honoured, for they realised that spiritual, material and intellectual progress of a society is closely linked with the position of its women, and that no society which enslaves its women would ever prosper”<sup>(3)</sup>.

As a result, the reforming initiatives of the Islamic family law face a lot of criticism from various trends regarding Fiqh mechanisms used to modify such law. The fundamental question that needs to be discussed is about the extent to which these amendments to Jordan's family law are in harmony with Islamic law and its purposes. Moreover, it has become essential to examine the extent to which these criticisms raised about Islamic family law can be considered as reasonable and rational.

### Research Questions:

This study has been designed to discuss the following questions:

1. How has Jordan's family law been evolved in last 60 years?
2. To what extent have legal amendments to Jordan's family law made a real progress in addressing issues of family life and marital relations?
3. What are legal mechanisms employed in amending Jordan's family law?
4. What are the most prominent criticisms raised about amendments to the amended Jordan's family law No 36 of 2010?
5. To what extent are the family law amendments in Jordan in harmony with the Fiqh rulings of Islamic law?
6. Compared to the previous family law in Jordan, to what extent is family law No 36 of 2010 considered an advancement or lack thereof?
7. In the light of the identified objections to the 2010 amended family law in Jordan, what are the main prospects for improving it with regard to furthering women's rights within the framework of the Sharia?

### Research Methods:

Islamic studies aim to focus on how Islam as a divine religion deals with religious, economic, family and political issues related to the life of Muslims according to the guidance of the Holy Quran and the Sunnah. Thus, the discussion of the methodologies of academic research in Islamic studies should concentrate on Quranic and Hadith methods as well as Usul al Fiqh methods. The researcher asserts that any academic research in Islamic domain should take into account how these methods can be used to discuss Islamic issues. Morris Berman and Kurt Hubner have pointed out that the methodology of science in Islam is based on an epistemology that is fundamentally different from the dominant epistemology of modern science, which so far has remained largely unaffected by this new intellectual development, although an increasing number of scientists, historians and philosophers of science have spoken of the need for a new epistemological paradigm that can provide a coherent view of the world revealed by modern science <sup>(4)</sup>. The researcher who is a specialist in Islamic sciences must be skilled at using Usul al Fiqh tools in dealing with the sources of Islamic knowledge in terms of how the data and information should be collected and analysed accordingly. Moreover, the Fiqh researcher should master how to make meaningful Fiqh comparison among Islamic schools of thought and their Usul al Fiqh methods used by their scholars to extract Fiqh rulings from their original sources.

The analytical approach is one of the central methods that can be used to analyse some new amendments to Jordan's family law. Such method is concerned with making complicated things understandable and making complex social processes understandable by drawing a picture of what happened, or of how things are proceeding, or of what a situation or a person or an event is like. Briefly, description focuses on what is the case <sup>(5)</sup>.

**Research Plan:**

- Introduction.
- Research Objectives and Aims.
- Research Questions.
- Research Methodologies.
  1. Historical Stages of Evolution of Jordan's Family Law.
  2. Jordan's Supreme Judge Department Development.
  3. Conflicting Points of View Regarding Reformation of Islamic Family Law.
  4. Main Reasons behind the Continuity of the Application of Fiqh of Personal Status as a Formal Code.
  5. The Moot Point Regarding the Modernising Family Law in Islamic Context.
  6. Examining Legal Mechanisms Used in Reforming Jordan's Family Law No 36 of 2010 .
  7. Conclusion.

**1. Historical Stages of Evolution of Jordan's Family Law:**

To begin with, it can be claimed that Jordan family law has gradually evolved over the years in line with the development of Jordan. Indeed, it has emerged with the appearance of Jordan as an independent state and has passed several different phases of growth and progress in conformity with the evolution of sociological, political and economic life in Jordan. However, it can be summed up that the major phases of the evolution of Jordan family law in Jordan are as follows:

In general, Jordan remained a part of the Ottoman Empire until World War I and was then placed under an indirect form of British mandate rule. As a consequence, Jordan was subjected to the Ottoman Empire's laws that were in force until 1927, including family law. Subsequently, Prince Abdullah Ibn Al Hussein has established the Jordan state on April 11<sup>th</sup> 1921 and formed the first civil government. Next, he appointed Mohammed Khader Shanqeeti as Supreme Judge “*Qadi al-Qudat*”<sup>(6)</sup>.

The Jordanian legal system draws upon civil traditions as well as Islamic law and custom. Article 99 of the Constitution divides the courts into three categories: civil, religious and special<sup>(7)</sup>. A new phase has commenced when the Jordanian regime decided to separate between civil law, which has been dedicated to treat the civil cases and criminal matters in accordance with the law, and family law that has been devoted to deal with the personal status<sup>(8)</sup>. In other words, there were two major types of courts: civil courts which were directly under the supervision of the Justice Ministry and religious courts which were directly under the supervision of the Supreme Judge Department which was overseeing both *Awqaf* and personal status in the Kingdom until 1968. Then, the Jordanian regime decided to found the Ministry of Religious Endowments which was separated from the Supreme Judge Department<sup>(9)</sup>. The Sharia Courts have jurisdiction over personal status for Muslims, including issues related to marriage, divorce, and inheritance.

In 1927, Prince Abdullah Ibn Al Hussein issued the first family law which was known as the “Family Rights Law” and promulgated in the official gazette on April 15<sup>th</sup> 1927. This law was in

force until Transjordan became a kingdom in 1947 when King Abdullah Ibn Al Hussein issued a new family law which was referred to as the “interim Family Rights Law” and was published in the official newspaper. But this law was soon altered on August 16<sup>th</sup> 1951 when a new law was issued by King Abdullah and was then ratified by both the parliament and the House of Lords. This law was known as the Family Rights Law that was nullified by a new law that was referred to as the Personal Status Law in 1976. This law was applied for more than 30 years. The Law of Personal Status, as amended No. 61 of 1976, is the law that is considered as the most addressing of women issues and protecting their rights. This is due to the fact that the law is intended to govern the relationship and effects of marital rights, and clarifies the rights of both husband and wife under the marriage contract<sup>(10)</sup>.

A new provisional law was introduced in 2001 during parliamentary recess but it was rejected in June 2003 by a new parliament. Eventually, a new version of the personal status draft law was prepared in 2010 by the Chief Islamic Justice Department. On September 26<sup>th</sup> 2010, this law has been approved by parliament and has become in force in lieu of the previous law<sup>(11)</sup>. The amended law for 2010 includes new clauses and amendments to the current law of 1976, which according to the department are in favour of women<sup>(12)</sup>.

Moreover, The National Council for Family Affairs (NCFA) was established in 2001 with the aim of supporting and coordinating the efforts at the national level of all actors involved in the affairs of the family, children and women, including civil society institutions. The Council developed the National Strategy for the Jordanian Family in consultation with relevant ministries, public institutions and civil society organizations (September 2005). The strategy addresses the various aspects of family life and comprises eight modules, one for each aspect of the family life<sup>(13)</sup>.

The Jordanian National Commission for Women (JNCM) was established in 1992 after the ratification of CEDAW. The creation of the JNCW was seen as an advance towards the position women deserve in society and called for progressive reform in legislation, politics, economics, social life, education and health. Since, it has been at the origin of the main initiatives for reform. In policy terms, it is at the onset of the design and implementation of the National Strategy for Women in Jordan<sup>(14)</sup>.

The Supreme Judge has pointed out that there is a big development and an obvious growth that have occurred in the conditions and circumstances of living in Jordan. There are also a large number of family events, domestic incidents, conjugal issues and social cases which require and necessitate to urgently formulate and prepare a new law which is distinguished and characterized by comprehensiveness and reality in the handling of personal status<sup>(15)</sup>.

In 2010, the Nur Al Hussein Foundation’s Institute of Family Health (IFH) launched the “Training Manual for Private Health Care Providers in Management of Victims of Violence against Women”, to help health providers in the country in the detection, diagnosis and referral of victims to support services. Established in 1986, the IFH aims to provide comprehensive family healthcare services and training for professionals and caretakers in family healthcare, childhood disabilities,

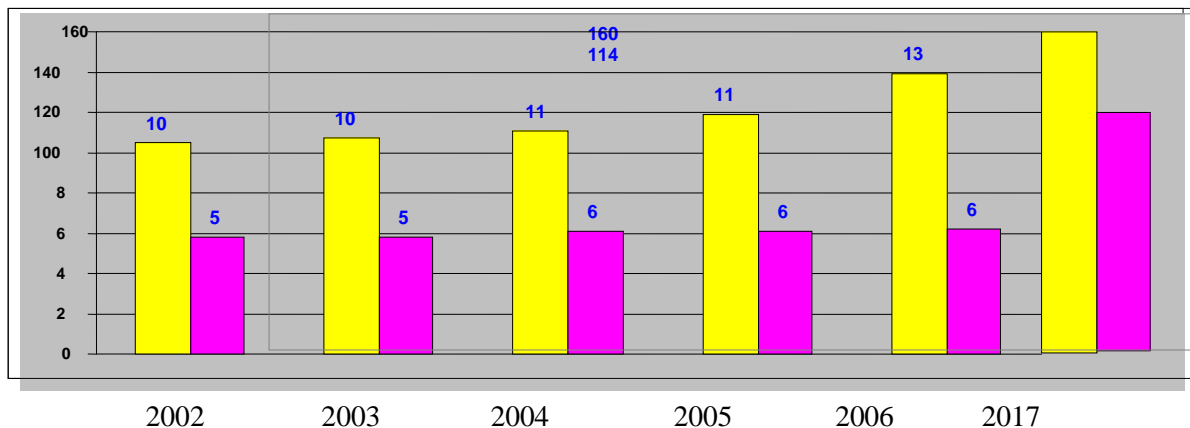
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gender based violence, physical support and social work. Some 115 medical cadres at nine private hospitals in the Kingdom have already started using the training manual, the first Arabic guide of its kind in the region, according to the IFH. The guide was compiled using practitioner expertise from the legal, social, psychological and medical fields, as well as from medical records, research and interaction with support service providers, according to the IFH<sup>(16)</sup>.

### 2. Jordan's Supreme Judge Department Development:

With regard to the Supreme Judge Department, it can be pointed out that it was founded as early as the establishment of the first Jordanian government in 1921. The Supreme Judge Department (SJD) is officially linked to the prime minister who has the right to supervise and oversee its functions. At first, there were seven Shari'a courts in the East Bank; "Jordan": Amman, *Ma'an, Irbid, Karak, Salt, Jerash, and Tafilah*. But today, there are more than sixty-seven Sharia courts throughout the Hashemite Kingdom of Jordan<sup>(17)</sup>.

The following chart shows the number of courts and judges in Jordan from 2002 until 2017. It could be noted that the number of courts and judges has slowly grown during this period because there are only four new courts and 34 judges who have been appointed during this period. In addition, it can be observed that the majority of the new judges have been nominated in 2006 and 2017<sup>(18)</sup>:



Supreme Judge Department carries out a number of administrative and judicial functions that aims to ensure the course of justice in addressing legal proceedings of family problems, marital disputes and conjugal relations according to Fiqh rulings and Sharia law. For example, Supreme Judge Department is responsible for the administrative supervision of Sharia Courts by providing them with the material and human resources such as judges, staff, buildings, implements and stuffs. Moreover, Supreme Judge Department is in charge of inspecting the juridical issues, records and archives which have been returned from Sharia courts in order to verify that those issues and matters have been handled appropriately. Finally, Supreme Judge Department oversees the care of orphans and meets their needs as well as superintends the affairs of the Sharia lawyers and those who are authorised to compose and write the marriage contract.

With regard to judicial functions, it is significant to refer to Judicial Council at Supreme Judge Department which includes five members:

1. President of the Sharia Court of Appeal / Chairman.
2. Director of the Sharia Courts / member.
3. The earliest two judges at the Sharia Court of Appeal as members.
4. Inspector of Sharia Courts.

This Judicial Council is in charge of the following functions:

1. The appointment, transfer and upgrade of Sharia judges.
2. The dismissal of Sharia judges.
3. The secondment of judges if period of the secondment is more than three months.
4. The acceptance of the judges resignations
5. To retire the judges from their position.

Eventually, the functions of Sharia Courts in Jordan, Article II of Sharia Trials Procedure Law have stated that Sharia Courts arbitrate in the following issues:

1. The administration and supervision of Islamic endowment “*Waqf*”<sup>(19)</sup> and its affairs and lawsuits.
2. Guardianship, custody and inheritance matters.
3. Marriage issues and divorce such as dowry, kinship, child support, spousal maintenance and trousseau.
4. The affirmation and removal of juridical interdiction “*Al-hajar*”<sup>(20)</sup>.
5. Cases of blood money “*Diyya*”<sup>(21)</sup>.

It is obvious to perceive that the above information and data have showed that the nature of legal system of family law in Jordan. Jordan family law has been amended several times from 1927 to 2011. Those amendments were in line with the political changes, social developments and economic growth which Jordan has witnessed since its founding. For example, Jordan applied the Ottoman Family Rights Law when it was still under the Ottoman rule. But after that, the Jordanian regime issued the first Jordanian family law in 1947. Welchman has pointed out that “[t]he process of legislative change was slow and uncertain still, some reforms were completed, as in Jordan and Algeria, but even in this case, the recent adoption of new codes may not introduced significant breaks with previous legislation”<sup>(22)</sup>.

### **3. Conflicting Points of View Regarding Reformation of Islamic Family Law:**

Islamic family law is intended to regulate and guide the Muslim family in matters such as engagement, marriage, divorce, inheritance, custody and maintenance. This law also deals with deeper and wider family relationships amongst the members of the family such as the responsibilities of spouses towards each other, their children and relatives, on the one hand, and the duties of children towards their parents and relatives, on the other. As Murphy and Jonathan put it, “family law is usually seen as the law governing the relationships between children and parents and between adults in close emotional relationships”<sup>(23)</sup>. Consequently, it is true to portray the family law that deals with these tangled family relationships and their legal impacts upon the members of the family



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and the society as “the most fascinating of all areas of law because of its multi-faceted nature”<sup>(24)</sup>.

Moreover, Islamic family law is perceived to be a disputed ground among conservative and fundamental forces as well as modernist and liberal ones; each one attempts to understand this law in conformity with its convictions beliefs, and adapts it according to its agendas and interests. In addition, children’s and women’s rights organisations along with human rights and other international organisations attempt to exert pressure on Islamic countries to reconcile Islamic family law with human rights law<sup>(25)</sup>. Despite the fact that Islamic family law includes a large number of general and identical Sharia principles that apply to a numerous variety of issues, this does not mean that these convergent principles are implemented in every context in the same manner, using the same mechanism.

Obvious variations are to be expected, not only because of significant customary practices, manifold cultural patterns, contrasting sociological trends and political stability, but also because of theological legal differences amongst and within Muslim societies<sup>(26)</sup>. As John Dewar puts it, “the environment in which family systems operate around the world is, it seems, becoming more complex. At the same time, people’s lives change-family life is lived in more diverse than ever before”<sup>(27)</sup>. Bradley has also asserted that there is a consistent and systematic pattern of difference in family law that is compatible with variations in social and economic policy and, in addition, reflects differences in political culture and processes<sup>(28)</sup>.

As a result, there are clearly major differences in terms of the implementation of the Islamic family law from one country or community to another which are in conformity with the aforementioned vital factors and essential elements. In this context, Ahmed Fayeze has ascribed variations in the application of Islamic family law to the fact that the individual living within society has conventions, customs and ethics<sup>(29)</sup>. Therefore, the laws that regulate family affairs must take into consideration the foregoing elements and, accordingly, these causes clarify a variety of Islamic family laws which are implemented within Islamic societies and states.

From a practical point of view, Sharia<sup>(30)</sup>, as the main aspect of family law, has successfully resisted displacement by European codes which occurred during the colonial period that led to several Islamic laws being replaced by secular ones in most of the Islamic countries<sup>(31)</sup>. It is by far the major domain where the Sharia and Fiqh are still obvious<sup>(32)</sup>. As a result, the Islamic law of personal status has become the symbol of Islamic identity for most Muslims and adherence to it an absolute and inviolable core belongings to Muslim religious community. In this vein, Mahameed pointed out that family law received attention in terms of its continuous application and seems to be, in principle, the main applicable law according to the Qur’an and Sunnah. Meanwhile, whilst Islamic rulings have been replaced by non-Islamic laws in other areas of life, this law has evolved and developed in addressing Muslim family issues and marital matters<sup>(33)</sup>. Indeed, until 1980, personal status was systematically considered as the last realm of Sharia; in contrast to criminal, civil, economic and constitutional laws wherein, it was acknowledged, Sharia had a little role to play<sup>(34)</sup>.

However, it is probable that the modification and reformation of the Islamic family law has

have become an urgent exigencies in light of the circumstances produced by tangled / modern lifestyles and of ongoing social and economic changes and complex family issues and matters. But it is also true that the maintenance and conservation of the Islamic family law as 'Islamic law' is a religious commitment and a responsibility. It is noteworthy that there are a number of conflicting orientations concerning reforming Islamic family law.

Firstly, international human rights organizations which put pressure on Islamic countries and societies to reform family law according to international criteria and norms of human rights because, in Europe, Islamic family law as a whole is clearly perceived as threat. Modern states, when promulgating their laws, have developed an almost automatic aversion to argument based on religious consideration<sup>(35)</sup>.

Secondly, traditional religious norms and trends which are suspicious of reforming and modernising Islamic family law because of the social changes affecting the contemporary lifestyle of the Muslim family and have, consequently, become part and parcel of the current reality of Arab and / or Muslim societies. As a result, local regimes attempt to accommodate between international demands and local trends, in particular, religious ones. Dembour has pointed out that

“according to a standard definition, human rights are those rights one has by virtue of being human. This definition suggests that human rights belong to every human being in every human society: all human beings have them, equally and in equal measure.... Many people, especially but not exclusively in the west, believe that human rights exist irrespective of social recognition, although they often acknowledge that the plurality of religious traditions and value systems from which they can be derived make their foundation controversial”<sup>(36)</sup>.

What is more important here is that the right to freedom guarantees the individual's scope to practice and experience a whole range of different cultures, and it is this freedom which provides life choice with their cultural dimension<sup>(37)</sup>. Therefore, it is obvious that there is a clear conflict between the international criteria of human rights, religious norms and local traditions and culture. This conflict is highly visible in realm of family law that is closely related to family issues amongst the members of the family and their relations, rights and duties. Hence, cultural and religious identity and family law are interrelated in a number of ways and raise various complex issues<sup>(38)</sup>. The Supreme Judge asserted that the Supreme Judge Department has firmly adhered to the fundamentals and principles of Sharia law while amending the current family law. At the same time, it has also taken into account scientific and medical evolutions, cultural developments as well as social and economic changes in order to reconcile between the requirements of Jordan's society and modern family life in addition to the Islamic law and its principles and purposes<sup>(39)</sup>.

#### **4. Main Reasons behind the Continuity of the Application of Fiqh of Personal Status as a Formal Code:**

In fact, there are four main reasons for clear appearance of Fiqh aspects in family law. They can be summed up as follows:

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Firstly, there are close links and strong relationships between the matters of family law and religious belief in terms of the principles of legality, ‘*Halal*’, and prohibition, ‘*Haram*’, especially since family life and religious conviction are closely linked. Besides having religious dimensions in the life of Muslims, they govern the behaviours and actions of Muslim, in particular, the issues of marriage, divorce, inheritance and kinship. For this reason, the replacement of family law has been strongly denied by Muslim society. To placate the scholars, the government kept the Sharia courts running but restricted them to handling family-law matters.

Secondly, Islamic family law is an integrated and a comprehensive system that includes the individual's entire life, from before birth until after death. To believing Muslims, family law is based on the Sharia<sup>(40)</sup> which is considered not only a religion but also a complete code for living, combining the spiritual and the temporal and seeking to regulate not only the individual's relationship with God but also all human social relationships<sup>(41)</sup>. In addition, a large number of Quranic verses and Hadiths<sup>(42)</sup>, which clarified family matters in fine detail, provide family law with two major aspects, namely sacred and secular aspects. Thus, the interplay between both aspects in the context of family law is obvious and effective and the differentiation between the sacred and secular aspects is, therefore, unattainable because Muslims believe that their deeds and behaviours will be rewarded or punished in the afterlife and they must consequently follow the teachings and commandments of God in regulating their family life

Thirdly, Islamic family law is the first part of Sharia that has been codified according to modern legal criteria and through formal and contemporary process of legislation in the majority of Islamic countries. Therefore, the process of codifying the rulings of the family matters is one of the main reasons that has led to the continuity of application of the family law. The aim of the codification is to put the Fiqh into action and to fit the contemporary legal system of Islamic states and facilitate judges' functions in terms of adjudicating on lawsuits according to specific codified legal clauses and removing conflict in judicial rulings due to disagreement of Islamic schools by selecting the preferable rulings depending on strength of the evidence and the needs of the society<sup>(43)</sup>.

Fourthly, the availability of Islamic manuscripts and integrated codes facilitated the study of Islamic rules and methods in the field of family law<sup>(44)</sup>. Andrea Buchler attributed the continuity of application of the family law to it being “the reason for its relevance up to the present day is that it is the part of Sharia law which was successfully protected against encroachment by European codes during the late Ottoman Empire and colonial era, and has also remained untouched by the various degrees of secularisation which have occurred in Arab and Islamic countries”<sup>(45)</sup>.

**5. The Moot Point Regarding the Modernising Family Law in Islamic Context:**

The renewal of Islamic family law is in itself a moot point according to some views because the majority of family rulings are explained and clarified in detail in the Quran and Sunnah<sup>(46)</sup>. On this point, Ibn Al- Kojja demonstrated that “there are more than seventy verses of the Qur'an and hundreds of Hadiths which clarified and demonstrated family issues in great detail and elaborately”<sup>(47)</sup>.

In the light of this view, the question here is: what type of renewal and modification is valid and legitimate in the context of the family law?

For example, polygamy is deemed as one of the hard and fast Fiqh rulings in the Quran and Sunnah. Thus, if the aim of renewal and modification is to change such firm and unalterable Fiqh rulings to be legally prohibited, in this case, this kind of renewal is unacceptable and illegitimate in the context of Islamic law<sup>(48)</sup>. Other critics also argue that this kind of modification is acceptable and legitimate even within the framework of the Sharia if the verses of the Qur'an were examined and given novel interpretation in order to effect what was felt to be a much-needed reform. For example, Tunisia became the first country which abolished polygamy within the framework of the Sharia. The question that needs to be discussed here is: how such legal reform can be reconciled with the Sharia despite the fact that this ruling, 'polygamy', is one of the most clear-cut rulings in the Quran and Sunnah?

Dowoud El Alami and Doreen Hinchcliffe have pointed out that "in the Memorandum accompanying the law of Personal Status of 1956, it is stated that the juristic basis for this reform is the Quranic verse concerning polygamy itself. This verse permits polygamy only where a man has no fear that he may not be able to treat more than one wife equally. That, say the reformers, would be impossible for all but a prophet, so that in fact the Quran itself effectively forbids polygamy"<sup>(49)</sup>. However, such an interpretation of the verse on polygamy can be debunked with proof that the majority of Islamic countries refused it and polygamy is still permissible under the Islamic family law in all Islamic countries, with the single exception of Tunisia.

Therefore, the question is still open because this kind of reform aims to abolish firm and unalterable family rulings in the Quran and Sunnah by depending on a highly controversial interpretation and denying that polygamy has been practiced by the Prophet and his companions and followers. In addition, what is worth underlining is that claiming that "the Quran itself effectively forbids polygamy" is unfounded and baseless even according to the most influential classical and modern Muslim scholars. Unlike the civil and common laws, Islamic family law and its resources have two distinguishing aspects that must be taken into account. Firstly, Islamic law is a worldly code which means that it addresses and deals with day-to-day events and frequent occurrences of Muslim life. Secondly, Islamic family law is also an otherworldly, that is, it has religious dimensions to the Muslim family life in terms of the reward and punishment in the afterlife.

Muslims are bound to follow the precepts of Sharia in terms of organising their family lives because they believe that they will be rewarded or punished in the Day of Judgment in light of their behaviour and deeds. As Mir-Hosseini puts it, "the boundaries between the sacred and the temporal are particularly blurred in the case of family law, where divine revelations are most abundant"<sup>(50)</sup>. Within this context, it has become complicated to deal with initiatives which call for reforming Islamic family law in terms of its legality, objective and legal criteria. Therefore, depending on the foregoing points, it is noteworthy to note that there are two major conflicting views concerning the modification of Islamic family law. The first view claims that modernising Islamic family law has

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become urgent in the light of the requirements of contemporary life and modern family, in particular, the issues concerning polygamy, gender, women's and children's rights, femininity and marriageable age etc... Conversely, the second view claims that the modification of Islamic family law is very limited in the light of a large number of Quranic texts and Hadith that have explained in detail family-related matters and domestic relations.

Based on this, it would be inaccurate to categorise the debate about family law reform as one that only revolves around what the true interpretations of Sharia injunctions on family relations should be and how they are to be best reflected in modern family laws. It is generally agreed that the injunctions contained in the Quran and Hadith must not be changed though there is room for change whenever circumstances change on condition that such change can be interpreted only by those who are qualified to do so<sup>(51)</sup>. As Yasmine Hoh'd Ridha puts it, "in the current global climate, it is also important to show that Islam is not the enemy of women or the cause of the oppression, but rather the political and social structures which seek to reproduce themselves through patriarchal interpretations of Islam<sup>(52)</sup>". The process of reforming the Islamic family law must also begin with understanding the issue of the codification of Fiqh or Islamic jurisprudence which is seen as an unprecedented step in the context of Islamic modern legislation. It is also one of the necessary tools for the revival of Islamic law and the cornerstone of any project that aims at the application of Sharia<sup>(53)</sup>. It is remarkable that the family law is deemed as the first section of Sharia that has been codified according to modern legal criteria in order to facilitate its application and make it practicable<sup>(54)</sup>. Therefore, this legal process deserves a further consideration due to its significant influence on family law and its formulation and application. As stated earlier, the amended law has been formulated and codified according to the four Islamic schools of thought, namely "*Hanafi, Maliki, Shafi'i and Hanbali*". This is seen as a new legal method to amend the Jordanian family law in order to select appropriate rulings that meet the needs of Jordanian society.

### **6. Examining Legal Mechanisms Used in Reforming Jordan's Family Law No 36 of 2010:**

It can be acknowledged that the process of amending family law is recognised as a thorny and multifaceted issue which includes a large number of controversial matters. However, the amended family law has also provoked a great controversy concerning its effectiveness in meeting the family and social needs, addressing family issues in order to reduce family problems<sup>(55)</sup> as well as achieving family welfare and social reform. For example, Yasmine Hoh'd Ridha claims that "as this thesis will demonstrate, social welfare provisions for Jordanian women remain underdeveloped. Despite formal and constitutional commitments to providing for women's social welfare needs (especially in education, health, employment, and legal status)... Islamic institutions such as the Personal Status laws reinforce and reproduce this social conservatism in both the public and private areas"<sup>(56)</sup>. Another view claims that "[w]hile Tunisian legislative reform appears to represent the most liberal approach, Jordan and Egypt are located in the middle and are examples of countries that enacted what can be characterized as centrist reforms<sup>(57)</sup>".

A new Jordanian family law has recently been passed and approved by parliament before being ratified by the Council of Ministers. This occurred in a meeting held on 26/Sept/2010 to repeal the previous family law that had been in place for more than thirty years. The Supreme Judge stated that the Supreme Department has made proper and thorough preparations for formulating and amending the family law to be integrated and comprehensive so that it can handle and address issues of the personal status without referring to any particular jurisprudential school and narrow as much as possible the circle of disagreements among scholars affiliated to these schools. It has become necessary to add some additional legal chapters and clauses that did not exist in the previous family law such as hindrances of the legal capacity, wills, inheritance<sup>(58)</sup> and legal guardianship<sup>(59)</sup> over a minor, property, education and the marriage of the ward<sup>(60)</sup>.

The Supreme Judge also pointed out that this law equally contains a number of typical and objective issues which are considered as a qualitative and positive development compared to the former family law and, in particular, such crucial issues facing Jordanian families and children as child custody, the travelling of women with their infants and the right of both women and men to see their child (ren) during the period of divorce etc... Eventually, this law has taken into consideration the modern lifestyle, the contemporary social and economic developments along with the recent scientific technologies which will be adopted and used in order to prove such matters as the authenticity of child descent in some controversial cases and show congenital abnormalities which are sometimes considered as the root causes for the separation between the spouses<sup>(61)</sup>.

Generally, there are two major differences between the previous personal status law and the amended law: firstly, while the previous personal status law consisted of 187 legal clauses, the amended family law includes 328 legal clauses. Hence, there are 141 new legal clauses comprised in the amended law which make up a rich research area that can be examined and discussed in terms of the different viewpoints towards their objectives, impacts on Jordanian society, along with their effectiveness in addressing familial and societal problems. It can be pointed out that Jordan's Family Law No. 61 of 1976 was gave the Sharia judges the legal right to adjudicate on matrimonial cases and family disputes that were not stipulated in this law according to *Hanafi* School of thought. In the case of some lawsuits are not stipulated in this law or *Hanafi* School, the Sharia judges were given broad powers to consider family lawsuits in conformity with their personal *Ijtihad*<sup>(62)</sup> namely (sophisticated capacity for legal reasoning) to adjudicate on them. This can lead to different judicial decisions and *Ijtihad* regarding the selfsame case form one Sharia judge to another. However, Jordan's Family Law No. 36 of 2010 has limited the legal powers of the Sharia judges to be diligent in outstanding legal cases in case of such cases are not stipulated in this law. This amended family law No. 36 of 2010 has added a large number of legal articles that were not present in the previous family law No 61 of 1976. Therefore, it can be maintained Jordan's Family Law No. 36 of 2010 can be seen as more comprehensive than the previous family law No. 61 of 1976 in addressing family issues and marital disputes.

Secondly, unlike the previous family law that was based only on one of the Islamic jurisprudential schools of thought - the "*Hanafi*" school, the amended law is based on four Islamic schools of thought in order to select preferable legal opinions that are more agreeable and appropriate in terms

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of meeting the requirements and needs of the Jordanian family and society<sup>(63)</sup>. That the newly - formulated family law is based on the four Sunni schools of thought is considered as a new legal mechanism or method. As the Supreme Judge justified it<sup>(64)</sup>, the aim of relying on the aforementioned four schools in formulating the amended law is to narrow the circle of jurisprudential disagreements among these schools and to choose the more proper juristic opinions that meet the requirements of the family and society. It is worth stressing this is considered as a new legal method to formulate the amended law and becomes a highly controversial issue that needs to be examined in depth. In other words, is it legally feasible to select one jurisprudential ruling out of the four schools of thought to adjudicate a particular contentious issue? Is it acceptable to impose a particular jurisprudential school's ruling on the judge to adjudicate on lawsuits regardless of the school he is affiliated to? If so, what are the legal criteria that must be applied?

To answer such question, it can be stated that Fiqh schools of thought provide Islamic jurisprudence flexibility in dealing with everyday life issues of Muslim. This Fiqh flexibility can make Islamic legislation and its legal mechanisms more applicable for addressing diversity of cultures, different social habits, community traditions as well as recent developments in our contemporary life. As Muhammad Khalid Masud puts it " In Islamic jurisprudence, *ikhtilaf al-fuqaha* (disagreement among the jurists) is one of the most frequently discussed subjects, yet current studies of Islamic law generally ignore its implications for the development of Fiqh and its relevance for law reform in the modern context"<sup>(65)</sup>. Thus, depending on the Four Islamic Schools of thought in amending family law can be described as a new legal mechanism can make quantum leap in modernising Islamic family law. Jordan's Family Law No. 36 of 2010 can effectively handle recent social developments and family changes as well as interference in marital relations and transformations in everyday lifestyles by employing the most proper Fiqh opinions selected carefully by Fiqh experts. According to *Al-Majma al-Fiqh* in Mecca, annual convention in April 30, 2010, Furthermore, these differences are a blessing and a juristic treasure, providing room for the Muslim community in its religious and legal affairs such that it is not restricted to a single opinion when faced with a particular legal issue without any alternatives. Instead, if at any time or for any issue, the opinion of a particular *imam* becomes difficult for the Muslim community to follow, it is able to find relief, leniency, and ease in another opinion, according to (its own) legal evidences<sup>(66)</sup>.

According to Freedom House report<sup>(67)</sup>, the Jordanian government has initiated over the past five years dialogues with the women's rights movement to discuss the 2001 law that discriminates against women and the statutes that prevent Jordanian women from passing their citizenship to their spouses and children as well as the laws that are lenient towards the perpetrators of the so-called 'honor crimes'. While these laws remain in place, criminal courts have begun to issue stricter sentences for honor killings and a new specialized tribunal was created in 2009 to deal specifically with cases involving honor crimes.

From different points of view, the reports issued by Freedom House<sup>(68)</sup>, the National Situation Analysis<sup>(69)</sup>, the Human Right Watch<sup>(70)</sup> the Bureau of Democracy, Human Rights, and Labor<sup>(71)</sup> and UNICEF<sup>(72)</sup> have analysed the status of women and children incorporated in the family law in

Jordan through the prism of international standards as embodied in the Universal Declaration of Human Rights. These reports have referred to a number of negative indicators with regard to women's and children's rights under the family law. They can be summed up as follows:

Firstly, according to the legal system in Jordan, women cannot give their Jordanian citizenship to their spouses and children. Secondly, the Personal Status Law allows husbands, should they want to, to prevent their wives from travelling abroad with their children. Thirdly, although Islamic legal principles allow women to be the legal guardians of their children, the Personal Status Law in Jordan only allows men to act in this capacity. Fourthly, concerning domestic violence<sup>(73)</sup>, according to a study conducted in 2008 by the Department of Statistics, around 20 percent of Jordanian women are reported beaten by their husbands to discipline them. Fifthly, the other negative indicator is that Article 308 allows rape charges to be dropped if the perpetrator agrees to marry the victim. In practice, this provision is applied to "honor killings<sup>(74)</sup>" whereby a woman is murdered by a relative for suspected extramarital sex or some other behaviour that is deemed shameful to the family's honour. Sixthly, the most common form of divorce is commonly known as *talaq*, arbitrary divorce, which permits a husband to divorce his wife without providing any legal reason. Moreover, divorced women, particularly the elderly, are most likely to experience poverty and deprivation as they are often forced to depend on relatives, friends, or state welfare support. Eventually, a woman seeking a divorce in Jordan has two options. She may file for a judicial divorce at the Sharia court, but on the condition that she can cite one valid reason which requires strong evidence and the testimony of a mentally sound witness. While domestic abuse is a valid reason for initiating such a divorce, it is often very difficult for a woman to prove her case because Sharia courts require the testimony of two male witnesses and the testimony of the wife alone is not accepted as sufficient evidence.

It is significant to note that these reports were released in 2010 and 2011, namely prior to or during the formal approval of the amended family law that was held on September 26<sup>th</sup>, 2010. However, the key point here, which must be warily taken, is that some negative indicators that make up the central criticism directed to the Personal Status Law conflict with Islamic law and its resources and principles. For example, according to the reports by Human Right Watch and Freedom House, Jordan's personal status code remains discriminatory despite the 2010 amendment. According to Islamic marriage law, Muslim women are prohibited from marrying men affiliated to other religions unless the spouse agrees to convert to Islam while Muslim men are permitted to marry Christian and Jewish wives<sup>(75)</sup>. Therefore, this study recommends that such a highly - important points need to be examined and they must be given a serious consideration in order to examine the possibility of these negative indicators and Sharia rulings / the principles of Islamic law being reconciled within the context of Islamic law and international human rights law.

## Conclusion:

The researcher has come to the conclusion that:

- 1- Jordan's family law has gradually evolved over the years in line with the development of Jordan.



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Indeed, it has emerged with the appearance of Jordan as an independent state and has passed several different phases of growth and progress in conformity with the evolution of sociological, political and economic life in Jordan. Jordan's family law has been amended several times from 1927 to 2011. Those amendments were in line with the political changes, social developments and economic growth which Jordan has witnessed since its founding

- 2- Islamic family law is perceived to be a disputed ground among conservative and fundamental forces as well as modernist and liberal ones; each one attempts to understand this law in conformity with its convictions beliefs, and adapts it according to its agendas and interests. However, it is probable that the modification and reformation of the Islamic family law has become an urgent exigencies in light of the circumstances produced by tangled / modern lifestyles and of ongoing social and economic changes and complex family issues and matters. But it is also true that the maintenance and conservation of the Islamic family law as 'Islamic law' is a religious commitment and a responsibility.
- 3- While the previous personal status law consisted of 187 legal clauses, the amended family law includes 328 legal clauses. Hence, there are 141 new legal clauses comprised in the amended law which make up a rich research area that can be examined and discussed in terms of the different viewpoints towards their objectives, impacts on Jordanian society, along with their effectiveness in addressing familial and societal problems
- 4- Jordan's Family Law No. 61 of 1976 was gave the Sharia judges the legal right to adjudicate on matrimonial cases and family disputes that were not stipulated in this law according to *Hanafi* School of thought. In the case of some lawsuits are not stipulated in this law or *Hanafi* School, the Sharia judges were given broad powers to consider family lawsuits in conformity with their personal *Ijtihad* namely (sophisticated capacity for legal reasoning) to adjudicate on them.
- 5- Jordan's Family Law No. 36 of 2010 has limited the legal powers of the Sharia judges to be diligent in outstanding legal cases in case of such cases are not stipulated in this law.
- 6- Unlike the previous family law that was based only on one of the Islamic jurisprudential schools of thought - the "*Hanafi*" school, the amended law is based on four Islamic schools of thought in order to select preferable legal opinions that are more agreeable and appropriate in terms of meeting the requirements and needs of the Jordanian family and society.
- 7- The aim of relying on the aforementioned four schools in formulating the amended law is to narrow the circle of jurisprudential disagreements among these schools and to choose the more proper juristic opinions that meet the requirements of the family and society
- 8- Depending on the Four Islamic Schools of thought in amending family law can be described as a new legal mechanism can make quantum leap in modernising Islamic family law. Jordan's Family Law No. 36 of 2010 can effectively handle recent social developments and family changes as well as interference in marital relations and transformations in everyday lifestyles by employing the most proper Fiqh opinions selected carefully by Fiqh experts.

- 9- Fiqh schools of thought provide Islamic jurisprudence flexibility in dealing with everyday life issues of Muslim. This Fiqh flexibility can make Islamic legislation and its legal mechanisms more applicable for addressing diversity of cultures, different social habits, community traditions as well as recent developments in our contemporary life
- 10- Therefore, this study recommends that such a highly - important points need to be examined and they must be given a serious consideration in order to examine the possibility of these negative indicators and Sharia rulings / the principles of Islamic law being reconciled within the context of Islamic law and international human rights law.

### Footnotes:

- (1) Al Muslimani, B. *Al- Tadilaat ila Qanon al- Ahwal al- Shaksiya fi Masir Li Mada, (Amendment to Personal Status Laws in Egypt.....Why?)* (2015). <http://www.lahaonline.com>. 20/4/2011. (Self-Translation)
- (2) Dewar, J and Parker, S. *Family Law Processes, Practices and Pressures*. (2003), Hart Publishing. p.7.
- (3) Jawad, H. *The Rights of Women in Islam: An Authentic Approach*. (1998) Basingstoke, Macmillan Press Ltd. p.97
- (4) Berman, M. *The Reenchantment of the World*. (1983). (Cornell University Press, 1981, Hubner, Kurt, *Critique of Scientific Reason*, The University of Chicago Press. (1993).
- (5) Punch. K. *Introduction to Social Research, Quantitative & Qualitative Approaches*. Third Edition, SAGE Publications Ltd, p.15.
- (6) Al – Tatawir al- Tariqi li Qanon al- Isra al- Ordoni (*Historical Perspective on Jordanian family law*), (2015). <http://www.sjd.gov.jo>. 20-10-2016. Al Ashkar, O. *Al - wadiah in explanation Jordanian family law*. p.13. Melhem, A. *Applied Explanation of Jordanian Personal Status Law*. p. 13. (Self-Translation)
- (7) *National Situation, Analysis Report: Women’s Human Rights and Gender Equality. Jordan*. (2010). Enhancing Equality between Men and Women in the Euromed Region (2008-2011) Programme financed by the European Union. 12/02/2013. p.16.
- (8) Nathan J. Brown pointed out that “the legal reforms that began in the late 19<sup>th</sup> century led to the new legal arrangements that assigned most civil and criminal cases to European-style courts; personal status cases, and occasionally matters in a few other categories, were assigned to unreconstructed sharia-based court”. Brown, N. *Islamic Law Critical Concepts in Islamic Studies*. (2011). London: Routledge Taylor & Francis Group. Volume IV. P.32.
- (9) It will refer to those functions later.
- (10) *National Situation, Analysis Report: Women’s Human Rights and Gender Equality. Jordan*. (2010). Enhancing Equality between Men and Women in the Euromed Region (2008-2011) Programme financed by the European Union 12/02/2013. p.17.
- (11) Al – Tatawir al- Tariqi li Qanon al- Isra al- Ordoni, (*Historical Perspective on Jordanian family law*), (2015). <http://www.sjd.gov.jo>. 20- 10- 2016. Al Ashkar, O. *Al - wadiah in explanation Jordanian family law*. p.13. Melhem, A. *Applied Explanation of Jordanian Personal Status Law*. p. 13. (Self-Translation)
- (12) *National Situation, Analysis Report: Women’s Human Rights and Gender Equality. Jordan*. (2010). Enhancing Equality between Men and Women in the Euromed Region (2008-2011) Programme financed by the European Union 12/02/2013. p.17.
- (13) *National Situation, Analysis Report: Women’s Human Rights and Gender Equality. Jordan*. (2010). Enhancing Equality between Men and Women in the Euromed Region (2008-2011) Programme financed by the European Union. 12/02/2013. p.17.

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- (14) *National Situation, Analysis Report: Women's Human Rights and Gender Equality*. Jordan. (2010). Enhancing Equality between Men and Women in the Euromed Region (2008-2011) Programme financed by the European Union. 12/02/2013. p.17.
- (15) Hillel, A. *The Most Prominent Themes of Personal Status Law*. <http://www.sjd.gov.jo/sjd.pdf>. 22/7/2010.
- (16) *National Situation, Analysis Report: Women's Human Rights and Gender Equality*. Jordan. (2010). Enhancing Equality between Men and Women in the Euromed Region (2008-2011) Programme financed by the European Union. 12/02/2013. p.17.
- (17) Al – Tatawir al- Tariki li Qanon al- Isra al- Ordoni, (*Historical Perspective on Jordanian family law*), (2015). <http://www.sjd.gov.jo>. 20- 10-2016. (Self-Translation)
- (18) Al – Tatawir al- Tariki li Qanon al- Isra al- Ordoni (*Historical Perspective on Jordanian family law*), (2015). <http://www.sjd.gov.jo>. 20- 10-2016. (Self-Translation)
- (19) The meaning of *Wakf* “الوقف” is to stop and remain motionless and confined, or to grant or dedicate of property in a trust for a pious purpose that tends to the good of mankind, or is used to perform humanitarian service, or to resolve the problems of people and regulate and organize their material and spiritual conditions. In other words, *Awqaf* is an inalienable religious endowment in Islamic law, typically denoting a building or plot of land for Muslim religious or charitable purposes. Under Islamic Law “Sharia”, Islamic trust “*Wakf*” is the dedication of properties by a Muslim through a will or any means recognized by Islamic law toward a pious or religious or heritable cause, and the ownership is transferred to Allah. The dedicator is called the benefactor “الواقف أو المتبرع” the person who is creating the wakf], and the person appointed to manage the property or wealth and to ensure its the purpose is fulfilled is called the trustee or administrator “*Mutawall*” “المتولي”. Amer A. AL-Zubaidi. *Endowment: Al Wakf* “الوقف”. Kufa Center of Islamic Knowledge (KCIK).
- (20) The juridical interdiction “*al-hajar*”, According to Islamic law, if someone is a foolish or crazy or idiot and cannot control his/her behaviour, treatment and conversation in accepted and reasonable way. In this case, it must nominate one on behalf of him/her to act in his/her money and properties. Qalaji, M and Qunalbi, H. *Mujam Lughat al-Fuqaha (Dictionary of Islamic legal terminology)*.(1996). Beirut: DAR AN-NAFAES. p.p.154.
- (21) Blood money “*Diyya*” is compensation paid to the heirs of a victim. In Arabic, the word means both blood money and ransom. In other words, *Diyya* is money paid to the next of kin of a murder victim as a fine. Qalaji, M and Qunalbi, H. *Mujam Lughat al-Fuqaha (Dictionary of Islamic legal terminology)*. p.p.188.
- (22) Welchman, L. *Family Law Under Occupation: Islamic Law and the Shari'a Courts in The West Bank*, (1998). p.p. 868-886.
- (23) Murphy and B. Stark. *On the Growing Significance of International Family Law*.(2005). Herring, J. *Family Law*. (2015). London: Pearson Education limited. p.14.
- (24) *Introduction To the Family Law*. [http://fds.oup.com/www.oup.com/pdf/13/9780199586158\\_chapter1.pdf](http://fds.oup.com/www.oup.com/pdf/13/9780199586158_chapter1.pdf). 28/01/2013. Aquino, T. *Q & A Series Family Law*. (2001). London: Cavendish Publishing Limited. Preface.
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- (26) A. *Islamic Family Law in a Changing World: A Global Resource Book*.(1988). London: Zed Books Ltd.
- (27) Dewar, J and Parker, S. *Family Law Processes, Practices and Pressures*. (2003). Oxford: Hart Publishing. P.1.
- (28) Bradley, D. *Comparative Family Law and the Political Process: Regulation of Sexual Morality in Finland*. <http://ouclf.iuscomp.org/articles/bradley2.shtml#fn79sym>. 07/03/2012.
- (29) Fayez, A. *Distor Al- Osra fi Dilal al- Quran, (Constitution of the Family in the Shadows of the Qur'an)*. Beirut: Foundation letter. (1992) p.105. (Translated by me).

- (30) Muslim scholars believe that Sharia, as a generic term for Islamic law, is a highly sophisticated system of rules, covering the whole field of what the contemporary world perceives as 'law'. Baqer as-sader, Muhammad. *The Renewal of Islamic law*. (1993). Cambridge University Press. p.3
- (31) Abdullahi, A. *Islamic Family Law in a Changing World: A Global Resource Book*. (1988). London: Zed Books Ltd. xii.
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- (33) Mahameed, S. *Tahdeeth Qanon al-Osra al – Islam (Modernizing the Islamic Family Law) (pdf)*. ArabLawInfo. www. Algeriedroit.bz. 3/5/2011. p.4. (Self-Translation).
- (34) Mallat, C. *Introduction-Islamic Family Law: Variation on State Identity and Community Rights*. (1993). p.4.
- (35) Buchler, A. *Islamic Law in Europe? Legal Pluralism and its Limits in European Family Laws*. P.11.
- (36) Dembour, M. *Who Believes in Human Rights? Reflection on the European Convention*. (2006). Cambridge University Press. p.1.
- (37) Buchler, A. Islamic Law in Europe? Legal Pluralism and its Limits in European Family Laws. (2011). England: Ashgate Publishing Limited. p.13.
- (38) Buchler, A. Islamic Law in Europe? Legal Pluralism and its Limits in European Family Laws. (2011). England: Ashgate Publishing Limited. p.2.
- (39) Supreme judge Department. <http://www.sj000d.gov.jo/sjd.pdf>. 11/01/2013.
- (40) For Muslims, the Sharia is the law of God. God alone is the giver of law; the function of man is to comprehend the law and to obey its divine provision. El-Alami, Dawoud, Doreen Hinchcliffe. *Islamic Marriage and divorce laws of the Arab World*. (1996). London: Kluwer law international. p.3
- (41) Nasir, J. *The Islamic Law of Personal Status*. (1990). London: Sterling House. p.1.
- (42) Ibn Al- Kojja pointed out that “there are more than seventy verses of the Qur’an and hundreds of Hadiths which clarified and demonstrated family issues in great detail and elaborately. Ibn Al- Kojja. M. Al- Fiqh al Islami wa Qadaya al – Isor (*Islamic Fiqh and Issues of the Day*). Academic Journal: Morocco. (1993). p.17.
- (43) More details will come later on the issue of codification.
- (44) Ibrahim, M. *Nidam al - Osra fi al – Islam (Family System in Islam)*. (1983). Amman: Al-message. Part I, pp. 15-16. Saponee, R. *Al – Nidam al – Osra wa Hal – Moshkilat fi Doah al – Islam (Family System and Solve of Problems in the Light of Islam)*. (1983). Wahba Library: Cairo. pp. 29-30. (Translated by me)
- (45) Buchler, A. *Legal Pluralism and its Limits in European Family Laws*. (2011). England: Ashgate Publishing Limited. p.11
- (46) Mahameed, S. *Tahdeeth Qanon al-Osra al – Islam Modernizing the Islamic Family Law(pdf)*. (pdf). ArabLawInfo. www. Algeriedroit.bz. 3/5/2011. p.4. (Self-Translation)
- (47) Ibn Al- Kojja. M. *Islamic Fiqh and Issues of the Day*. Academic Journal: Morocco. (1993). p.17.
- (48) Mahameed, S. *Tahdeeth Qanon al-Osra al – Islam (Modernizing the Islamic Family Law(pdf)*. ArabLawInfo. www. Algeriedroit.bz. 3/5/2011. p.5. (Self-Translation)
- (49) El-Alami, Dawoud, Doreen Hinchcliffe. *Islamic Marriage and divorce laws of the Arab World*. p.4.
- (50) Mir-Hosseini, Z. *Marriage On Trial: A Study of Islamic Family Law*. (2000). New York: I.B.Tauris. p.1.
- (51) Hussain, J. *Islamic Law and Society –An Introduction-*. (1999). The Federation Press. p. 28
- (52) Jawad, Y. *The Provision of Women’s Social Welfare Needs in Jordan: Why the State has failed*. p.11.
- (53) Codification & the Renewal of Contemporary Islamic Fiqh, an International Seminar. Al-Halawani, Ali. <http://www.oanislam.net/english/shariah/contemporary-issues/interviews->. 19/2/2012.
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- (55) Dr. Amal Alawaod, professor of sociology at Balqa Applied University, pointed out that the divorce rate in Jordan for the year 2011 exceeded 25%, which considered the highest rate comparing to previous years. AL Oduan, H. Al Ghad newspaper. <http://alghad.com/index.php/article2/>.
- (56) Jawad, Y. The Provision of Women's Social Welfare Needs in Jordan: Why the State has failed. (2010). Durham University. <http://etheses.dur.ac.uk>. p.10.
- (57) Abu-Odeh, L. *Modernizing Muslim Family Law: The Case of Egypt*. (2004). <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1031&context=facpub>. 16/02/2013. P.1049.
- (58) The capacity of both natural and legal persons determines whether they may make binding amendments to their rights, duties and obligations, such as getting married or merging, entering into contracts, making gifts, or writing a valid will. Capacity is an aspect of status and both are defined by a person's personal law. [http://en.wikipedia.org/wiki/Capacity\\_\(law\)](http://en.wikipedia.org/wiki/Capacity_(law)). 11/01/2013.
- (59) Guardianship laws assume that some people do not have the capacity to make legally binding decisions and put in place substitute decision making provisions. <http://www.inclusion-international.org/wp-content/uploads/Position-Paper-Legal-Capacity-June-20101.pdf>. 14/02/2013.
- (60) Supreme judge Department. <http://www.sj000d.gov.jo/sjd.pdf>. 11/01/2013.
- (61) Supreme judge Department. <http://www.sj000d.gov.jo/sjd.pdf>. 11/01/2013.
- (62) Islamic legal term meaning "independent reasoning," as opposed to taqlid (imitation). One of four sources of Sunni law. Utilized where the Quran and Sunnah (the first two sources) are silent. It requires a thorough knowledge of theology, revealed texts, and legal theory (usul al-fiqh); a sophisticated capacity for legal reasoning; and a thorough knowledge of Arabic. It is considered a required religious duty for those qualified to perform it. It should be practiced by means of analogical or syllogistic reasoning (qiyas). Its results may not contradict the Quran, and it may not be used in cases where consensus (ijma) has been reached, according to many scholars. Sunnis believe ijthad is fallible since more than one interpretation of a legal issue is possible. Islamic reformers call for a revitalization of ijthad in the modern world. Oxford Islamic Studies Online <http://www.oxfordislamicstudies.com/article/opr/t125/e990>. 27-10-2017.
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- (73) Violence against women is defined as any act that falls on women and results in a physical, sexual or psychological harm, or any other form of suffering, such as threats of violence, coercion or use of force or the deprivation of all rights, whether they occurred within the context of family, social or professional relationships. This definition includes violence against women and girls within the family and outside. violence is not limited to physical violence, psychological and sexual, but other forms such as social violence, economic violence, and political violence. National Situation, Analysis Report: Women's Human Rights and Gender Equality. Jordan.(2010) Enhancing Equality between Men and Women in the Euromed Region (2008-2011) Programme financed by the European Union. p.23.
- (74) An honour killing also called a customary killing is the murder of a "female" family or clan member by one or more fellow "mostly male" family members, where the murderers (and potentially the wider community) believe the victim to have brought dishonour upon the family, clan, or community. There are an estimated 20 such murders each year. In Jordan, "honour" killings are sanctioned by law. Yet, according to Article 340 of the Criminal Code: "a husband or a close blood relative who kills a woman caught in a situation highly suspicious of adultery will be totally exempt from sentence." Article 98, meanwhile, guarantees a lighter sentence for male killers of female relatives who have committed an "act which is illicit in the eyes of the perpetrator." It is estimated that, every year, between 20 and 25 women are reported killed in Jordan in the name of family honour. Reports indicate that most killers receive as little as six months in prison because they are deemed by the courts to have committed their crimes while in a rage and because their families dropped charges against them.
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