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## **Oriental Family Law: Case Study within a Gendered-Citizenship/Inequality Perspective: From Concept to Analytical Status**

By Rania F. Al-Rabadi<sup>1</sup> and Anas N. Al-Rabadi<sup>2</sup>

### **Abstract**

This article presents key findings and empirical work of basic research in Bahrain in regards to active citizenship and gender equality where it analyses the claimed liberal citizenship. The article focuses on pre-existing inequality in the family code and also discusses a significant issue where there is a Sunni-Shi'ite division in Bahrain. This is relevant to citizenship and gender equality for how family codes are debated in regards to women's rights within the legislative authority. Furthermore, this article analyses the parliamentary organizational structure which attributes and influences the legislation process and decision-making particularly on gender-friendly policies, where the legal system can be used to encourage a liberal plan for all people and in particular women to have equal access to opportunities and resources.

*Keywords:* Gender Inequality, Citizenship, Family Law, Sunni--Shi'ite Split, Parliament Organizational Structure.

### **Introduction**

In Bahrain, the most serious obstacle is the existing divide between Sunni and Shi'ite groups; Bahrain has a Shi'ite majority while the ruling family is Sunni. The elected Lower House cannot block legislations, except collectively. The constitution gives for an appointed Upper House an equal numeric strength (Herb, 2005). The parliament consists of Sunni-Shi'ite groups in the Lower House both of whom are represented by conservative parties. Given that, the Bahraini legislative authority might hinder and has a negative impact on reforming the social, economic and political policies with regards to women's rights, for instance, reforming women's economic rights in the retirement law.

The representative of the Women's Union clarifies that the Lower House consists of conservative members both in the governmental block with 22 members and the oppositional

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Shi'ite Al-Wefaq block with 18 members. The Shi'ite block opposed the introduction of a codified Shi'ite family law which would have also granted Shi'ite women more rights, and rather used the issue as an instrument against the government in order to press constitutional changes that would reduce the Upper House's authority and increase the Lower House's influence (cf. Interview 5 in the End Note). According to Schwedler, religion is a source of identity providing symbols of validation and meaning for social and political existence (Schwedler et. al., 2004, p. 382).

Furthermore, the committee of CEDAW encouraged Bahrain's national parliament in line with its procedures, where suitable, to take the needed steps with regards to the implementation of these concluding observations about women's equality within convention and the government's next-reporting-process under the convention (CEDAW Blog, 2007).

After giving an introduction into the Bahraini political structure, and how it affects the policies of women's rights, it is important to mention - as a result of the constitutional reform 2002--that a constitutional court was established where the court's area of competence is to keep an eye on the constitutionality of laws and the legal status. Indeed, the constitutional court has not been used efficiently to remove legal bias in disfavour of women (cf. Interview 5 in the End Note). Furthermore, in Bahrain, the theoretical and practical situation of the constitution and laws and their negative consequences on women's rights have not changed until present; Ahmad and Ginsburg argue that many constitutions in the Muslim world including Bahrain incorporate clauses where Islamic law become supreme over the constitution. The prevalence and impact of these Islamic supremacy clauses is of immense importance for constitutional design for Muslim countries. However, to date, there has been no systematic or empirical examination of these clauses (Ahmad & Ginsburg, 2014).

### **Constitutional Provisions of Equality Before the Law: Is It a Liberal Definition of Citizenship?**

The idea of citizenship will be analysed in the context in the process of inclusion within a liberal rights framework. The main tool of inclusion is the liberal feminist mechanism of law reform to institutionalize gender equality. It is worth mentioning that written documents about Bahrain were rarely available and sometimes were unavailable, therefore, it was relied on interviewing elite members who are involved in the research area from Bahrain; the conducted interviews were performed employing the corresponding Bahraini governmental, parliament MPs, women activists, and UN personnel (Al-Rabadi, 2012).

The Bahraini constitution of 2002 in Article 1(e) 1 and Article 18 2, clearly states the principle of equality among all citizens in all political, social and economic aspects. Bahraini constitution grants equal opportunities to all citizens for the right to work and to select the kind of work. Article 13(a) (b) 3 of the Bahraini constitution grant citizens equal opportunities in obtaining public jobs with no discrimination related to origin, language, religion, faith, or others. Although women's rights in Bahrain are subject to the constitutional laws, however, it is the laws of the private sphere (family law) in Article 2 4 and Article 5(b) 5, "natural" vs. "positive" law, which makes flexibility in the legal system. Hijab argues that, articles of the family law disagree with the constitutions in the region. Constitutions in most Arab states that assure equal rights for all citizens, yet, under the family law, women have unequal rights (Hijab, 1988, p. 14). The wording of these codes permits limitations of women's rights (Zuhur, 2005, p. 10). Offenhauer explains that, the dual legal system in these states is arranged, on the one hand on a civil code but on the other hand on a personal status or family law which is mainly based on Shari'a law (Offenhauer, 2005, p. 33).

To elaborate from the field research, a Shura member from Bahrain confirms: “The equality before the law must not contradict with Shari’a law” (cf. Interview 4 in the End Note). It is also suggested by Lazerg that in most Middle Eastern countries the characteristics in the legal system are ambivalent creating a dual legal system; one reflecting codes that are internationally equal while the other representing diverse degrees of codification of Shari’a that identify women’s rights in matters of marriage, divorce, children custody and inheritance. Rights written and protected by the constitution in these countries are generally denied or subverted in various family Codes (Lazerg, 2009). Based on this, the legal situation in the Middle Eastern countries is considered a dual legal system. There are provisions and missing explications that might be considered loopholes in the constitutions regardless of the definition of equality as citizens before the law. It is the patriarchal system and the prevailing explanation of clergymen which may contradict with women’s constitutional civil rights. The citizenship is more consistent when it comes to the public sphere’s right than those of the private sphere. And that is the case even if the latter stands in direct contradiction to the civic and political rights expressed in the claimed liberal constitutions. The clergymen have always resisted liberal feminist demands; for rather than empowering women they want them under the authority of men.

Indeed, Shari’a law is integrated in the Bahraini constitution which contradicts the liberal constitutional spirit where individuals are equal before the law; this means that the gendered nature of the citizen-subject comes out from the implicit and legally encoded kin contract which rewrites patriarchal kinship with the force of state and religious institutional and practical backing. Families are ruled in turn by state and religious institutions in Middle Eastern countries, a type of mutual support that further sustains a patriarchal connectivity—the privileging of the authority of males and elders but not women in a system in which the boundaries of selves are often fluid and focused on relations (Friedman, 2005).

From analysing the data, the definition of citizenship is not considered as in a modern state. In a modern state, the citizenship definition entails that all citizens as individuals are really equal in front of the law regardless of their language, race, and religion. The social contract with regards to the rights and duties between the individuals and the state through a legal process is on equal bases. In Bahrain, the definition of citizenship contradicts Hatem when she explains that, the liberal practice and the constitution commonly outlined the rights of citizens in universal stipulations as institutional bases of representation by being recognized as a minimum standard for democratic societies (Hatem, 2000). One might argue that the constitution have to treat women as human beings equal with men in relation to their rights and duties. As mentioned by Charrad, during a symposium in Amman, 2009, feminism is not a theory about women’s oppression but a theory of human rights. These rights are fundamental rights to which individuals are simply subjected by being human beings. The woman is one of those humans.

When we talk about inequality, this carries on social consequences and this means that something is going wrong in the legal system. Normatively, the legal system has to reflect in reality equal opportunities in rights among citizens, but not to enshrine the principle of discrimination. Approximately more than one million live under traditional religious-based laws that have been quite aggressive to women’s equality. Cultural practices which stems from religious interpretations and customs often limit women’s identity, rights, and access into citizenship of equal value with men; therefore, we need to discuss these traditional laws and how these laws affect women equal opportunities and inclusion into the citizenship taking into consideration the Shi’ite - Sunni split in Bahrain.

### **Theoretical Legal Aspect of Women Citizenship**

The Bahraini constitution stipulates equality between citizens; however, this only applies as long as the Shari'a law is not breached with regards to family law (Al Awadhi, 2010). It is argued that a form of Islamic citizenship was articulated by conservative government in the constitution where the government wants to shape society's notion of the ideal Muslim women (Hafez, 2014).

To elaborate from the field work, a Shura member confirms the same assessment in response to the question, what is the role of the social practices, the conservatives, and how do they affect women's legal status in Bahrain? "We cannot exclude the clergymen, the society is influenced by the religious interpretations, and this affects women's rights" (cf. Interview 4 in the End Note). Comments a women's rights activist: "... religious ideas confirm that a woman is considered an imperfection, even her voice is considered imperfect and that she should not be in charge of supreme governance" (cf. Interview 5 in the End Note). Some religious points of view lead to a refusal of women in leadership positions in the legislative body (The Bahraini Women Union, 2007, p. 30).

Furthermore, in Article 5(b) the constitution even confirms the idea of women's role in the family. The constitution in Article 2 grants the religious judiciary of the Sunni and Shi'ite groups in Bahrain authority to participate, govern, and outline citizen's rights and duties. They have power because of the granted constitutional authority, their authority in running people family affairs such as marriage, divorce, inheritance, etc. Also, a conservative environment dominates the legislative authority and consequently laws are formed by those conservatives in the Bahraini parliament. Because of that, the reforming process and liberalizing laws in order to grant women more rights in the legislative authority will be influenced by the beliefs of conservatives.

A critic might argue that, there is interaction between the public and the private spheres in the constitution; in Article 5(b) the granted constitutional rights such as political ones are not contradict with Shari'a which governs family affairs. The chairperson of the Women's Union states: "Family affairs restrict women, even the qualified ones" (cf. Interview 5 in the End Note). Also, the constitution has reinforced the idea of women's role and her duties toward the family in Article 5(b). Therefore, the state and the views of the religious jurisdictions play a crucial role in how do they define the rights in both spheres as explained above. This hints toward a coalition between the state and the religious establishment. This coalition reinforces mutual interests such as keeping power for both sides on the expense of women's rights.

Based on that, this contradicts the principle of equality in Article 1(e) as stated by the interviewee above, and explains the conflict between constitutional granted rights and culture-based on harmful religious and traditional practices. This means, a connection between culture -- which is religiously-based - and gender inequality which aims at identifying woman as a second class citizen and men controlling women within the private and public spheres. One of the best illustrations of this connection is the conflict between the written civil rights granted for a woman in the constitution, and the exercised customary laws religiously-based such as the social rights - the family law (Personal Status Law) - which will be analysed in the next section.

#### *Family Law and Women Marginalisation*

It is within the scope of this section to study and discuss the family law rooted in the cultural, political, and economic structure of the society that marginalises women. Our focus is on the analysis of the development of the family law and its codification in Bahrain, since it helps in

the development of strategies for amendments of discriminatory laws. It concerns marriage, guardianship, polygamy, marital obedience, divorce, marriage of different religion, unequal rights in inheritance and penal code. According to Kelly, gender discrimination is most evident in the family law, which downgrades women to a secondary position within marriage and the family, establishes the husband as the head of household, and demands that the wife obey her husband (Kelly, 2009, p. 12).

In Bahrain, the individual private affairs mainly are based on Shari'a, as a member of the Shura Council illustrates: "... it is based on Shari'a, no one can argue the clergymen". She adds: "There are two courts; one is for Sunni and the other one is for Shi'ite" (cf. Interview 3 in the End Note). Another opinion confirms what has been stated above and reflects:

"Interfere with Shari'a, and Bahrain as an Islamic society and country, we have a difficulty there, but this has nothing to do with laws themselves. We have Shari'a, and we have to deal with clergymen and they interpret things." (cf. Interview 2 in the End Note)

With respect to that, we have two groups, the Sunni and Shi'ite groups. The Sunni group recently codified a family law, whereas the Shi'ite group still has not and it remains based on the jurisdiction's opinion. This is due to two things, the historical political struggle between the two groups, and the Shi'ite wants to enhance their position in the country. As for now, the development for endorsing a law concerning Sunni family affairs will be discussed.

#### *Development of Family Law with regards to Sunni Groups*

Before 2009, there was no written family law in Bahrain. Instead, there were separate Shari'a practices which were based on family courts for Sunni and Shi'ite Muslims in marital obedience, marriage, divorce, custody of children, and inheritance cases. In such family courts, judges are generally conservative religious scholars with limited formal legal training who render judgments according to their individual reading of Islamic jurisprudence (BHRWS, 2007). An activist expresses her disappointment with family court judges: "Religious scholars have consistently favoured men in their rulings and are unapologetically adverse to women's equality" (cf. Interview 5 in the End Note). They are often conservative and harsh with little legal education, which is why they make decisions based on their own interpretations of the law; their ruling is commonly unfavourable to women's rights (Ahmed, 2009, p. 16). Women still face hostile inequality with respect to the private sphere, because their identity is taken over by their husbands (BHRWS, 2008, p. 5).

The intent to push for a codification of family law was faced by strong objections from the opposition who are conservatives. This attitude provoked the Shi'ites to endorse a petition which opposed codification and extended into organised manifestations that demand constitutional guarantees to assure men's religious and paternal authorities over women. If this would not be granted, they would return to Article 2 of the Constitution that stipulates that Shari'a is the main source of legislation (BHRWS, 2008, p. 13). In response to the questions of why does the Shi'ites strongly oppose introducing a codified family law? And what is the role of the state here? a Shura member says: "The state cannot interfere, in order not to fall in a clash with religious clergymen" (cf. Interview 3 in the End Note). Cavatorta (2008: p.8) argues that, if the conservatives want to accomplish some of their objectives, they will have to play by the rules of the state; conservatives wish to be at the centre of policy-making.

Finally, the codification was accepted as a principle for the Sunni, but not for the Shi'ite group. In fact, a critic might be that recognition of customary or traditional law by the Sunni group is not enough since it is still causing a disjuncture between the local and the global levels with regards to liberal democratic rights. Law reform still has to be one of the main strategies of the government in order to ensure that women have the protection of legislations that is untraditional in spirit and to be in the sense of liberal democratic rights. However, law reform is yet one of the main plans of liberal feminist in order to give it the feminist essence and equality. According to Kelly, although the new family law hold certain provisions granting women additional rights and is looked at as a positive development, still there are many articles of the new code easily codify pre-existing inequalities (Kelly, 2009, p. 12). Therefore, the inequality in the next set of rights as they appear as a part of the social contract of the Bahraini women's citizenship will be discussed as follows.

### *Age of Marriage*

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

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

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

### *Guardianship*

Guardianship is about substantiation and authority to take action on behalf of someone else. It is aimed to be a legitimate authority which grants the marriage guardian- most frequently is the father, brother or uncle - the authority to set up a marriage contract for the minor or an incompetent person in the context of looking after his or her interests (Atawi, 2009). One might argue that it is difficult to imagine an idea of rights where authority is exercised by someone in order to make decision on someone else's behalf; it contradicts with the liberal notion of the Bahraini constitution. Therefore, the idea of liberalism in the Bahraini constitution is arguable.

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

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

### *Polygamy*

The law about polygamy contains clear discrimination between men and women. This is made clear when a Deputy expresses: “The right for a man to marry four women, but women are not, they are prohibited” (cf. Interview 2 in the End Note). In another interview, the Chairperson of the Supreme Council for Women expresses clearly: “This is a right for a man; it is based on religious interpreters’ point of view” (cf. Interview 1 in the End Note). Therefore, it might be argued that the Supreme Council for Women does not try to adopt opinions which could result in an embarrassing situation between them as a State Women’s Machineries and the clergymen’s point of view. The Supreme Council for Women represents governmental policies in regards to women’s rights in the country. However, they do provide support for women and to mention some, obtaining financial support for a divorced woman in order to accelerate her case with respect to the procedures in the court.

### *Marital Obedience*

With respect to women’s status in the private sphere, it can be observed that men are positioned in a higher rank than women in specific areas. Moreover, if a husband is delegated with guardianship and control of the family, the wife and other family members must obey his orders regarding family affairs (Atawi, 2009). Similarly, a Shura member who is a lawyer also argues:

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

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

### *Divorce*

Men have the right to a divorce that is effective immediately. Conversely, women must either look for a judicial divorce based on extremely narrow reasons and for example, abandonment, or else initiate a Kulu' divorce. Some men misuse Kulu', in certain instances requesting that the wife returns the estimated amount the husband expended on her behalf during the whole marriage, taking advantage of the fact that women make use of this form of divorce because it is faster than another. However, poor women cannot afford such an option because she cannot pay back the dowry. A judicial divorce may continue for years, during which time women may not be financially sustained, and the process is not assured to actually end in a divorce (Ahmed, 2009).

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

### *Marriage of Different Religion*

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

### *Unequal Rights in Inheritance*

Women's rights regarding inheritance are quite disadvantaged compared to men in a number of conditions, even where a man and a woman are equally affected by the deceased. A sister is entitled to half the heritage of her brother's share. This inequality is generally justified by the fact that men have greater financial responsibilities based on Shari'a and unlike women inherit any debts of the deceased. Problems start when executors, usually a male family member, do not stick to the law and refuse to even give woman the inheritance to which even she is legally entitled. As a result, women often face inequality through the real distribution of wealth (Ahmed, 2009). This argument is also reinforced by a women's rights activist, when she reports: "The family law does not include inheritance or the will and this is a weakness in the law. So, both the Sunni and Shi'ite address the religious court in such matters" (cf. Interview 5 in the End Note). Moreover, other respondent states: "... if a woman's father died and have no male in the family, she cannot inherit all of his wealth; her cousins and relatives have the right to inherit part of the father's wealth" (cf. Interview 3 in the End Note).

### *Penal Code: Violence against Women*

In fact, no laws or government policies explicitly address the issue of gender-based violence, and enforcement means are lacking for the existing legal provisions that may be put into operation. The Penal Code usually addresses violence against citizens, but this is not adequate to save women from harm by sexual harassment and domestic abuse. Furthermore, honour killings are punishable under Bahraini law, but Article 334 of the Penal Code allows a reduced penalty for

one who surprises his wife in the act of adultery and immediately assaults or takes the life of the wife or of the wife's accomplice (Ahmed, 2009).

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

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

She further confirms legal inequality:

"This article stands for a discrimination against the victim in that it does not act for an equal handling by the law of the criminal, who would employ this article to escape criminal punishment. He can also take for granted a one-sided break-up from the victim, after staying away from punishment. The suspension of criminal punishment charged against the perpetrator upon marrying the victim permits him to escape punishment, and to repeat his crime against other women, recognising that he can escape penalty once he marries his victim." (cf. Interview 5 in the End Note)

### **Past Law Reforms**

Considering this analysis, legal reforms have contributed to a slight legal shifting or extending the scope of women's legal status. Some were initiated by some government, and others pushed by feminist NGOs who play a role in the development of women's citizenship. Also, the United Nations as an international actor is a supportive one and spreads awareness with regards to gender equality. However, the debates around the legal reforms concern the private sphere is still a task that is not complete yet. Debating family law will be discussed in the next section due to its imposing challenges into the construction of citizenship regarding women's rights, and since it imposes connections between the private and public spheres.

#### *Debating Family Law within Different Groups (Shi'ite - Sunni)*

This part will illustrate how was dealt with formulating the draft of family law in order to reform it in Bahrain. There is a divide between the two religious groups of Sunnites and Shi'ites. The real debate about the codification of the family law did not happen in the parliament, but before its introduction to the parliament it was discussed in a small circle that encompassed different actors, a Shura member confirms: "Even it was not discussed; it just passed without discussion in the parliament" (cf. Interview 4 in the End Note). Also, according to the Parliament

Minutes, there was no discussion when the law was passed (Parliament Minutes, 2009). Herb argues that, the Bahraini parliament has proven more disruptive than expected (Herb, 2005, p. 179). Therefore, it was conducted an interview to find out what happened before passing the bill to the legislative authority for endorsement. It is worth mentioning that, the religious Shi'ites who attended the negotiations did not represent an important position, according to a Deputy: "Those from the Shi'ites who came to negotiate do not have an important weight in the country; their negotiations are considered informal or personal" (cf. Interview 2 in the End Note). This shows that the Shi'ite group refused from the beginning to initiate such a law and even those who attended the discussion did not represent the important Shi'ite clergymen. A women's rights activist clarifies about that:

"The Women's Union, ever since 1981 has demanded an amendment in the law, because of the different problems that face women. Members in the legal system are not efficient in applying the Shari'a law. As a result of all the efforts through these many years a social inclination developed to issue the family law. A committee of religious men of both the Sunni and the Shi'ites was formed to study and review the existing draft of both, the Shi'ite and Sunni religious men and six judges and the chairmen of the Supreme Legal Court, now this committee met weekly at the Women's Union Headquarter for fourteen months. They reviewed the Sunni draft and drafted a new one, which also had its weaknesses, particularly in discrimination against women. This draft was addressed to the Royal Cabinet and to the religious committee in October and to the parliament in October 2008. It was one code of law 2008 divided into divisions, Sunni and Shi'ite. Shi'ite members in the parliament were against this suggested law under the protection of the constitution unless they can interfere with the constitution itself, for example, they want to minimise the authority of the Shura Council of the parliament and reduce the number of members. The government withdrew this law and addressed the Sunni Part only back to the parliament, it was approved directly." (cf. Interview 5 in the End Note)

Furthermore an Upper House member informs:

"Here, Family law in Bahrain has its particularity. Bahrain has two divisions; one is the Shi'ite and the other is the Sunni. There was difficulty in codifying a united family law. Then, the idea turns to be that instead of having a unified codified law, then, turn to be to have a separated codified law. This means that every group will have its own law, but in the end we have introduced just one law, the Sunni part. This is because the religious Shi'ite men were reserved in regards to introducing a law to organize family affairs. Also, if they want to introduce a law they do not want it to be introduced through the legislative authority. They want to be the only one who is authorized because they want to implement Shari'a law. They do not want a written codified law in order to return back to them in any family problems and in order to keep the authority regarding family issues under their hands. It is kind of controlling. Then, we have introduced a codified Sunni part." (cf. Interview 3 in the End Note)

When asked why the government cannot enforce the Shi'ite group draft? A Deputy comment:

“The government does not want to cause problems in order not to cause a clash between the two groups, and the Shi'ite felt that this is interference in their own affairs, and that part of social affairs should not be regulated by anything except by Shari'a. There was disagreement about it, and it was left to them until they get recognized that it is required.” (cf. Interview 2 in the End Note)

To elaborate more, a member of the Shura council entails:

“... the Shi'ite religious authority wants also to have power in the parliament by reducing the numbers of the Shura members. Thus, they use women's rights as an instrument in order to push other interests, especially Bahraini government's care about their reputation in front of the international community as mentioned by Upper House member.” (cf. Interview 4 in the End Note)

This became evident in an interview with the Chairperson of the Women's Union. She comments: “The family law was used as an instrument by conservatives in the Lower House to press on the government for constitutional changes” (cf. Interview 5 in the End Note). She is speaking about the Shi'ite representatives who used this law as means to change matters in the Bahrain constitution in order to serve their own interests. Herb argues, Bahrain's House of Representatives does have opposition block and Bahrain has an active political life, but the constitution sharply restricts the power of the Lower House (Herb, 2005, p. 188).

Based on this, one might argue that power and religion are connected. There is a discrimination against the Shi'ite majority by the ruling Sunni minority, and there is religious tension between the Shi'ites and the Sunni. We can see here how the Shi'ite group does not want the government to interfere in their individual personal affairs. Women's rights have become part of the tensions in the group differences and of power struggle, where Shi'ites want to enhance their position in the country by using women's rights issues.

By so doing, Shi'ites seek to obtain more power and control in the public and over the individual private matters of the Shi'ites. We can see this through their disagreement with a codified Shi'ite law in the parliament in order to gain power in the Lower House by reducing the authority of the Upper House as mentioned above. This is to have control over the decision making process in the parliament. At the same time, they do not wish to undermine the influence of their own religious institution. This means, they keep their grip and control over the domestic affairs in regard to family problems such as divorce, child custody and others since there are no legal texts to relate to them but rather it is ruled according to religious jurisdictional point of view.

Indeed, the Shi'ites members in the Bahraini parliament have used the family law codification to press on the government to enhance their position. A member from the Bahraini Upper House reflects “... it was disappointing for us” (cf. Interview 3 in the End Note). She means that, introducing a family law for the Shi'ite division would organize the family affairs of Shi'ites instead to be subject to the religious judges' personal point of views. Furthermore, the religious Shi'ite men who met in a weekly basis to review the law draft are not from those influential such as those the parliament members. This rather shows the reality that Shi'ite group among themselves are also divided. This rather complicates the cooperation in regard to friendly gender policies. Laws come from the womb of the society where the culture is religion-based. Thus, family

law reinforces patriarchy system and discrimination against women, and confirms her classification as second class citizen. Real equality would change the patriarchal formation to a liberal equal society (Eisenstein, 1986). The irony here is that, instead of the legislative authority using laws as an instrument to improve justice and equality they are used in the opposite direction. According to Waylen, laws on paper need to be reformed, implemented, and enforced in social reality; and women need to be able to exercise their rights and make advantage of new policies (Waylen, 2007, p. 164).

Finally, we will see in the next part the relationship between the parliament organisation structure; lobbying, advocacy, Number of MPs and the Nature of the Parliament, and how they have consequence on introducing new or reforming laws to achieve equality between men and women. All of these points need to be considered when talking about legal discrimination or legal reforms.

### **Parliament Organisational Structure**

It is important to recognise the parliament structure in regards to the lobbying, the nature and the equality in numbers of members in the Lower House who are legitimately authorised to suggest laws. The question here is how these structural attributes and influence the legislation process and decision-making particularly on women's rights policies in Bahrain. It is worth mentioning here that, unless it is stated otherwise, all the investigations and analyses are based on the Bahraini constitution.

#### *Lobbying*

Introducing laws which favour women's rights is a rather difficult issue, especially when female representation is very low or even only symbolic in Bahrain. As a matter of fact, lobbying for law needs hard work to collect the number of MPs to agree on the proposed law. If we consider the (procedural) issue, five members are needed. The number of required members may affect the legislation process; lobbying for the introduction of a law.

Given that, lobbying for law proposals is not an effortless matter, therefore, how hard it must be to lobby for issues relating to women's rights in a patriarchal system, especially when the majority of the representatives are members in conservative parties! Karamanic supposes that, religious interpretations have always involved the exclusion of women because citizenship was always formulated based on man's image (Karamanic, 2001). Similarly, Moghadam argues that, conservative governments and the power of the Islamist movement can form an unwelcoming political legal atmosphere for women (Moghadam, 2003).

#### *Number of MPs and the Nature of the Parliament*

The legislation process with respect to women's rights is also influenced by the number and nature of the Lower and Upper Houses. From what analysed in Bahrain in the interviews with some members of both Houses, and from what was observed in a session that was attended in the Lower House, the parliament is markedly a conservative one. The observation is supported by an Upper House member who responds to the question about discriminatory laws regarding women:

“The parliament was going to introduce a bill concerning the age and early retirement, the Shura Council disapproved the law, because it is discriminative against women, which will keep women away from the labour market, they think

that women could be less productive than men at this age, I think this is wrong to retire women at an early age based on physiological nature, this is unjustified; woman could be productive regardless of their age.” (cf. Interview 4 in the End Note)

This means, that the Lower House members of a conservative majority are not motivated to introduce friendly gender policies in regards to women, they look at women through the lens of gender and biological perspective; such as when rationalising women’s retirement at early ages. Since the Lower House consists of 40 members and the Upper House also of 40 members, the resulting equality in the number of the two Houses may affect policies; especially if the Shura members - Upper House - are liberal and the Representatives are conservatives, for both Houses gather in a National Council of majority rule in case of disagreement on bills. A Deputy in the Bahraini parliament expresses: “Women’s issues in the parliament would be supported if there were more liberals deputies” (cf. Interview 2 in the End Note). The majority are Sunni-Shi’ite members who support customary values, and there is only one female Deputy and few other independent representatives. This structure might influence the balance of power in the parliament by limiting the power of the Lower House, and consequently, the process of social change policies that affects other people’s status such as women’s. Thus, the Shi’ites may use women’s rights as a wildcard to achieve other interests. In response to the question about the legislative authority and its role in regards to women’s rights - particularly the introduction of a family law - a women’s rights activist informs:

“They are using women’s rights in the parliament as an instrument to exercise pressure on the government in order to change the constitution for their interest, such as demanding an unequal number of representatives in both Houses. Further, by opposing laws in the parliament that will grant women more legal rights, they think that they could affect the government image before the international community and especially the United Nations.” (cf. Interview 5 in the End Note)

Therefore, the number of MPs explicitly influences the debate on women’s rights in the parliament. A Shura member when explaining the legislation process expresses:

“We, the Shura Council, were against it, it is not in favour of women and we stopped introducing it, we work as a security control in the council for many issues such as gender equality.” (cf. Interview 3 in the End Note)

Based on that, appointing liberal members in the Upper House by the king might results in a less conservative environment, since liberal legislators could support women’s issues in the parliament. This follows the belief of liberal feminism premise that the legal guarantees of equality in liberal regimes grant an opening for social changes.

### *Advocacy*

The lack of advocacy is an obstacle that may affect on the contract of women’s citizenship. It is one of the important categories for women in the quest to obtain more rights to achieve equality. When explaining the role of the legislative authority regarding women’s rights a Deputy in the Parliament clarifies:

“The Lower House, particularly the political parties affect gender outcome policies negatively, they are not liberal. Also, there is only one female deputy and she does not advocate and play a key role. The government and NGOs present laws to the parliament in order to debate them. In the legislative authority if there were more liberal Deputies, they would advocate women to have more rights, but as a matter of fact, the majority are conservatives and here the situation is different, women are going to obtain fewer privileges.” (cf. Interview 2 in the End Note)

Based on what is stated above, one might consider the idea of party pluralism being a way to support women friendly policies short of applicability in the practice of Bahrain. It is not really reflected on the ground, and it lacks the political conditions and structures that are required for the pluralism approach to work. Waylen argues that, the ability of political parties to engage citizens into politics has been weakened in many third wave democracies by a lack of institutionalised and firm party systems (Waylen, 2007, p. 2). In addition to that, women MPs mobilising for granting women more rights in the parliament are not there. They are not effective in the conventional political arena to support women’s issues since their belonging lies with a group from their religion or class rather than being committed to women’s issues. Also, this is due to many factors, a women’s rights activist says, “The female Deputy has no role” (cf. Interview 5 in the End Note). In order to understand the conditions in which women can be effective, a Deputy argues:

“As much as women get education, they will be able to introduce ideas, then to convince the government to change discrimination in laws, and to have more roles. Women have to be active in order to advocate. Women have to be consistent, persistent, and dynamic.” (cf. Interview 2 in the End Note)

He means that, normatively when woman are educated they will be able to argue about her rights. As we can see above, women’s presence in the parliament is crucial and central to improve outcomes. They need to be aware and dynamic about it, and know how to advocate women’s issues, especially if they carry a responsibility; such as legislators. However, who advocates and introduces laws concerning women’s rights in the parliament in Bahrain are the government and women NGOs; they are central to women’s right outcomes.

## **Conclusion**

This article aims at basic analysis of data gathered through an empirical study that was performed at the state of Bahrain in regards to gender-based analyses especially women’s right and empowerment. The data collected and analysed concluded that, the cultural practices, which stems from religious interpretations and customs, often limit women’s identity. This includes women’s rights and access into citizenship of equal value with men. Woman as a second class citizen is influenced by family law that disregards other laws and rights granted for women in the constitution. Woman has the right to work, however, under religious law - of marital obedience and freedom of movement – a woman cannot exercise her rights unless the husband agrees on that. Therefore, Bahrain did not set up distinct public and private domains between men and women as bases through the constitution and the corresponding laws, where the situation is religiously-based

until now. Indeed, Article 2 states that the Islamic Shari'a is principle source for legislations, where Article 5 reinforces the integration between the public and private spheres based on the provisions of Islamic canon Law (Shari'a). Legal change would mean that control and power in the private sphere are affected because the current legal arrangement of the Bahraini constitution mainly privileges males over females.

In addition to that, the parliament organizational structure - within which women are absent and there is a Sunni-Shi'ite division - is against women exercising an equal citizenship. Women's rights are used in the legislative authority by the Shi'ite as an instrument to press on the government for constitutional changes that favour their interest. Indeed, the opposition in the Parliament aims at restricting the jurisdiction of the Upper House and to give the Lower House more power. Therefore, it is important for a modern and liberal state to equalize the requirements of society entirely against specific interests within that country.

## Notes

1. Article 1(e) states that: "Citizens, both men and women, are entitled to participate in the public affairs and may enjoy political rights, including the right to vote and to stand for elections, in accordance with this constitution and the conditions and principles laid down by law. No citizen can be deprived of the right to vote or to nominate oneself for election except by the law" (The Bahraini Constitution, 2002).
2. Article 18 states that: "People are equal in human dignity, and citizens are equal before the law in public rights and duties. There shall be no discrimination among them on the bases of sex, origin, language, religion or creed" (The Bahrain Constitution, 2002).
3. Article 13 (a) states that: "Work is the duty of every citizen is required by personal dignity and is dedicated by the public good. Every citizen has the right to work and to choose the type of work within the bounds of public order and decency. (b) States that: "The state guarantees the provision of job opportunities for its citizens and fairness of work conditions" (The Bahrain Constitution, 2002).
4. Article 2 states that: "The religion of the state is Islam. The Islamic Shari'a is Principle source for legislation. Language is the Arabic" (The Bahrain Constitution, 2002).
5. Article 5(b) states that: "The state guarantees reconciling the duties of women towards the family with their work in the society, and their equality with men in political, social, cultural, and economic spheres without breaching the provisions of the Islamic canon law (Shari'a)" (The Bahrain constitution, 2002).
6. The list of the interviewed respondents in Bahrain was as follows:

<b>Name</b>	<b>Title and Function of Position</b>	<b>Date of the Interview</b>	<b>Time of the Interview</b>
1- Lulwa Al Awadhi	— Supreme Council for Women General Secretary — Rank of Minister — Head of Arab Women League — Women's Rights Activist	12.4.2010	1 p.m.
2- Dr. Abd Al Aziz Abul	— Member of Parliament — Academic — Member of CEDAW committee	12.4.2010	6 p.m.
3- Dr. Bahiah Al Jashi	— Member of Shura Council — Chairwoman of the Shura Council — In Charge of Women's Affairs in the Bahraini Parliament	14.4.2010	1 p.m.
4- Rabab Al Orayedh	— Member of Shura Council — Lawyer and Legal Advisor	14.4.2010	6 p.m.
5- Mariam Al Rwahi	— Chairperson of the Women's Union in Bahrain — Candidate in the last parliament election — Women's rights activist	15.4.2010	1 p.m.

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