

# ISLAMIC FAMILY LAW IN MOROCCO: HISTORICAL DEVELOPMENTS AND REFORMS

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## Abstract

This research examines the historical trajectory and codification of Islamic family law in Morocco and analyses its transformation from indigenous and Islamic customs to a formalized legal framework shaped by colonial and postcolonial reforms. Moroccan family law was initially rooted in local customs and Mālikī *fiqh*. During the French protectorate (1912-1956), colonial authorities restricted Shari'ah courts, prompting nationalist resistance that ultimately led to Morocco's independence and calls for legal reform. After Morocco gained independence, the first codified Islamic family law, Mudawwanat al-aḥwāl al-shakhṣiyyah (1957), reflected conservative Islamic principles and ignited opposition from women's rights groups due to gender inequalities. Incremental reforms in 1993 adjusted some marriage and guardianship rules but fell short of achieving gender equality, prompting ongoing activism. Finally, under King Mohammed VI, significant changes culminated in the 2004 Mudawwanat al-usrah, an

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Islamic family law that improved women's rights by increasing the age for marriage, improving divorce rights, and requiring mutual responsibility in family leadership. However, Islamic family law retained aspects such as polygamy and unequal inheritance, blending traditional values with progressive reforms. Islamic family law marked a milestone in Morocco's legal and social modernization within an Islamic framework. This study highlights Morocco's approach to balancing Islamic heritage with social modernization and illustrates the complexities of integrating religious tradition with contemporary legal frameworks.

*Key Words:* Islamic family law, Mālikī *fiqh*, Morocco, Mudawwanat al-aḥwāl al-shakhṣiyyah

## Introduction

The 19<sup>th</sup> century was a historical period of many developments and rapid changes in the Islamic world. The fall of Andalusia in the 15<sup>th</sup> century and the negative developments faced by Muslims in the Iberian Peninsula led to the Western domination of these lands. Subsequently, with the acceleration of colonial movements, Islamic states in North Africa faced increasing adversity. One of the countries that was most affected by these developments was Morocco.<sup>1</sup>

In the first quarter of the 19<sup>th</sup> century, Morocco wanted to protect itself by closing its doors to the outside world. However, after the armed conflict with the French (1844), Morocco became the scene of the struggle for influence of Britain, France, Spain, and Germany in the second half of the 19<sup>th</sup> century. This struggle was followed by the occupation activities of France and Spain starting in 1907. The second wave of invasion took place in 1911. Morocco was eventually divided and colonized by France and Spain. Although the legal system of Morocco underwent significant changes during the French occupation

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<sup>1</sup> Stephen Cory, "Sharīfian Rule in Morocco (Tenth-Twelfth/Sixteenth-Eighteenth Centuries)", *The New Cambridge History of Islam*, ed. Maribel Fierro (Cambridge: Cambridge University Press, 2010), 453.

(1912-1956),<sup>2</sup> the colonizers did not interfere much with the application of Islamic family law in Morocco.<sup>3</sup>

Before colonization, Morocco had two judicial systems: Shari'ah and the Makhzen courts. The judges in the Shari'ah courts applied Islamic jurisprudence, and the *qādis* adhered to the Mālikī *madhhab*. The Makhzen courts, which were initially limited to handling penal cases, gradually expanded their authority to include civil and commercial cases.<sup>4</sup>

After the French protectorate over Morocco was established in 1912,<sup>5</sup> a judicial vizierate was instituted to supervise the courts and consolidate all the powers of the *qādis*. The Makhzen and the Shari'ah courts were retained, but the French limited the jurisdiction of the Shari'ah courts to cases of family law and property rights. Moreover, the procedures of the Shari'ah courts underwent reforms.<sup>6</sup>

Under French rule, with the implementation of two important royal decrees (*Ḍabīr*)<sup>7</sup> in the Moroccan legal system (1914, 1930), jurisdiction over the majority of Berber tribes was transferred to customary courts.

<sup>2</sup> Katherine E. Hoffman, "Berber Law by French Means: Customary Courts in the Moroccan Hinterlands, 1930-1956", *Comparative Studies in Society and History* 52/4 (2010), 853.

<sup>3</sup> Davut Dursun, "Fas (Himaye Dönemi ve Bağımsızlık)", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: TDV Yayınları, 1995), 12/192-196; Muannif Ridwan et al., "Islamic Law in Morocco: Study on the Government System and the Development of Islamic Law", *ARRUS Journal of Social Sciences and Humanities* 1/1 (2021), 17; Richard Pennell, *Morocco Since 1830: A History* (London: Hurst & Company, 2000), 16-20, 103, 136, 141, 352.

<sup>4</sup> Baudouin Dupret et al., "Filling Gaps in Legislation: The Use of *Fiqh* by Contemporary Courts in Morocco, Egypt, and Indonesia", *Islamic Law and Society* 26/4 (December 2019), 5.

<sup>5</sup> The Treaty of Fez, concluded on March 30, 1912, declared Morocco a French protectorate via an agreement between Morocco and France. This treaty ensured the king's religious authority and supremacy while conferring all executive power to the French. Richard Pennell, *Morocco: From Empire to Independence* (Oxford: Oneworld Publications, 2003), 136.

<sup>6</sup> Dörthe Engelcke, *Reforming Family Law: Social and Political Change in Jordan and Morocco* (Cambridge: Cambridge University Press, 2019), 53-54.

<sup>7</sup> A *Ḍabīr* or royal *Ḍabīr* is a decree issued by the king of Morocco in his capacity as a supreme authority and a supreme representative of the nation. See Wikipedia, "Ḍahīr (al-Maghrib)" (Accessed February 26, 2023). A royal *Marsūm* is a royal decree issued by the king regarding state issues, including appointments and decisions. See Almaany, "Ḍahīr Sharīf" (Accessed October 26, 2023).

Therefore, the Berbers were deprived of the jurisdiction of the Sharī'ah courts. These decisions are seen as a significant turning point.<sup>8</sup>

As a result, during the colonial period, Islamic family law remained in effect. After the end of French colonialism and the independence of Morocco (1956),<sup>9</sup> legal reforms were emphasized.<sup>10</sup>

## 1. The Stages of Development of Islamic Family Law in Morocco

After independence, the need to establish a national legal identity and system became crucial, which led to the enactment of *Mudawwanat al-aḥwāl al-shakhṣiyyah*, or the Family Code (first enactment in 1957, repeated enactment in 1958). This was Morocco's first attempt to codify Islamic family law and was based on the rulings and jurisprudence (*ahkām* and *ijtihāds*) of the Mālikī *madhhab*.<sup>11</sup>

This law, which was based on traditional interpretations of Islamic principles, soon came under criticism from women's rights groups, which argued that it institutionalized gender inequality. Over the years, demands for gender equality and family law reform by women's rights groups have led to amendments and reforms.

### 1.1. Mudawwanat al-aḥwāl al-shakhṣiyyah (1957 Moroccan Islamic Family Law)

The first phase in the historical development of the *Mudawwanah* commenced on August 19, 1957,<sup>12</sup> shortly after Morocco gained independence. On this date, King Mohammed V established the first Royal Committee with the mandate to draft a comprehensive legal code to govern family matters. The King consulted with '*ulamā*' (Islamic scholars) and grounded al-*Mudawwanah* firmly in the

<sup>8</sup> Dupret et al., "Filling Gaps in Legislation", 5.

<sup>9</sup> Ridwan et al., "Islamic Law in Morocco", 17.

<sup>10</sup> Engelcke, *Reforming Family Law*, 59-60.

<sup>11</sup> Muḥammad al-Qāsimī, "Maẓāhir al-thābit wa-l-mutaghayyir wa-l-khuṣūṣiyyah wa-l-ʿumūmiyyah fī taqnīn al-aḥwāl al-shakhṣiyyah al-Maghribiyyah", *Majallat al-bābiṭh li-l-dirāsāt al-qānūniyyah wa-l-qaḍā'iyyah* 8 (October 2018), 65.

<sup>12</sup> Some researchers claim that the first family law in Morocco was enacted in 1957, while others point to 1958. The reason for this contradiction is that the repealed family law was promulgated on the day of Morocco's independence in five royal *Zahirs*, the first on November 22, 1957, and the last on April 3, 1958. See Muḥammad al-Kashbūr, *al-Wasīf fī sharḥ Mudawwanat al-usrah* (al-Dār al-Bayḍā': Maṭba'at al-Najāh al-Jadīdah, 2009), 11.

principles of Mālikī jurisprudence,<sup>13</sup> reflecting both Morocco's Islamic heritage and its commitment to structuring the legal framework within an Islamic context.

Like people in every esteemed nation, Moroccans refused to adopt a system that was contrary to their values. In this environment, it made sense to recodify the laws in all spheres of life in line with the nation's identity and the country's characteristics.<sup>14</sup>

Al-Mudawwanah was the earliest of three regulations. Initially, family law in Morocco was largely analogous to that of other Islamic nations and was heavily influenced by the paradigms established by classical *fiqh*.<sup>15</sup>

In general, the provisions of the Mudawwanah were based on the jurisprudence of the Mālikī *madhhab*. For issues that were not addressed in the text of the Mudawwanah and for which the law could not offer a solution, it was stipulated that the books of the Mālikī *madhhab* should be consulted. Notably, the title of the new law explicitly referenced the classical *fiqh* tradition. Indeed, a book entitled *al-Mudawwanah al-kubrā* by Ṣaḥnūn (d. 240/854), one of the leading scholars of the Mālikī *madhhab*, meant almost the same thing: "collection or code of laws", i.e., *mudawwanah*.<sup>16</sup>

The first Mudawwanah regulates multiple facets of family law, including marriage, divorce, inheritance, and custody. According to the Mudawwanah, men had the right to practice polygamy without their wives' consent. Married women, however, had to adhere to their husbands' directives.<sup>17</sup>

The law incorporated most of the distinctive characteristics of the traditional Mālikī *madhhab*. The *wilāyat al-nikāḥ*, which comprises fathers' and grandfathers' guardianship and their authority to compel a daughter into marriage, was incorporated in a modified version of the

<sup>13</sup> Rachel Salia, *Reflections on a Reform: Inside the Moroccan Family Code* (New York: Columbia University, Department of History, Senior's Thesis, 2011), 24.

<sup>14</sup> Aḥmad Kāfī, "al-Aḥwāl wa-l-usrah: al-ṣiyāqāt wa-l-madhhabīyyah", *al-Furqān: Islāmiyyah thaqāfiyyah* 50 (2004), 44.

<sup>15</sup> Sheila Fakhria - Siti Marpuah, "A Discourse of Mudawwanah al-Usrah; Guaranteeing Women's Rights in Family Law Morocco's", *Tribakti: Jurnal Pemikiran Keislaman* 33/2 (August 2022), 309.

<sup>16</sup> Léon Buskens, "Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere", *Islamic Law and Society* 10/1 (February 2003), 73.

<sup>17</sup> Fakhria - Marpuah, "A Discourse of Mudawwanah al-Usrah", 311.

law. According to the law, even adult women could not consummate a marriage themselves; they had to rely on a male guardian (*wali*) for the marriage process. A judge's consent was required under the law before a father could compel a daughter to marry. First, the Mudawwanah established the minimum age for marriage to be eighteen for males and fifteen for females. Mudawwanah recognized only the Sunnah form of divorce as legally valid. Although polygamy was legally recognized, it could be harmful to the woman and, therefore, was justifiable grounds for a court-ordered divorce.<sup>18</sup> Furthermore, a woman could not initiate a divorce without her husband's consent, although a man did not require the court's approval to divorce his wife and possessed the exclusive authority to initiate the process.<sup>19</sup>

Following the enactment of the law, feminist organizations petitioned the government for amendments, arguing that the law had violated the principle of gender equality since its implementation. Indeed, Fatima Sadiqi asserts that the women's movement was profoundly disappointed with the first Mudawwanah.<sup>20</sup>

Since the promulgation of the code, proposals for amendments to the law have remained unaddressed for many years. For instance, neither the revised draft of the "Committee of Court Presidents" submitted four years after the date of publication nor the new law proposal submitted after the "Law on Unification of Jurisprudence" came into force (26.01.1965) was evaluated. In 1974, a "Ministerial Committee" was established within the Ministry of Justice but failed to amend the law. The appointed Royal Commission was similarly unsuccessful (05.05.1981).

The recurrent failures may stem from the lack of a national consensus among the diverse elements of the political landscape and legal affairs in Morocco coupled with the marginalization of civil society's role in the reforms of the women's movement. This situation can be interpreted as a failure of the women's movement and

<sup>18</sup> Buskens, "Recent Debates on Family Law Reform in Morocco", 74.

<sup>19</sup> Fakhria - Marpuah, "A Discourse of Mudawwanah al-Usrah", 313.

<sup>20</sup> Fatima Sadiki, "Morocco", *Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, ed. Sanja Kelly - Julia Breslin (New York: Rowman & Littlefield Publishers, 2010), 311.

ultimately resulted in the amendment of Islamic family law (10.09.1993).<sup>21</sup>

## 1.2. Mudawwanat al-aḥwāl al-shakḥīyyah al-Maghribiyyah (1993 Moroccan Islamic Family Law)

Since its codification, the first Mudawwanah faced demands for reform. The government failed in three previous attempts. In particular, the shortcomings of the regulations on marriage guardianship, polygamy, and alimony were emphasized, and methods were sought to change them. The most important step in the reform movement began in 1982, but these demands did not evolve into a contested discourse until the 1990s.<sup>22</sup>

In the context of revising the Family Code, Moroccan women's rights organizations began articulating their perspectives on a reinterpretation of the Qur'ān and ḥadīth with the rise of Islamism in the 1980s and 1990s. The One Million Signatures campaign, a petition advocating amendments to the Family Code, was initiated in 1992 by the Union de l'Action Féminine (UAF).<sup>23</sup> Islamic organizations condemned this initiative and perceived it as a danger to Islam in Morocco. The Jamā'at al-iṣlāḥ wa-l-tajdīd issued a *fatwā* regarding this campaign and criticized it severely.<sup>24</sup> Even with the opposition of the 'ulamā' and some Muslim groups, women's movements managed to raise public discourse on the issue. In response to this public pressure, King Hassan II established a commission that comprised male judges and religious authorities to evaluate the Family Code.<sup>25</sup>

The 1990s were regarded as a pivotal time in the evolution of the Mudawwanah, ending with the promulgation of Islamic family law. In

<sup>21</sup> Fāṭimah Malūl, "Masār ṣiyāghat wa-ta'dīl Mudawwanat al-usrah al-Maghribiyyah", *Majallat al-manārah li-l-dirāsāt al-qānūniyyah wa-l-idāriyyah: Special Issue on Family Law* (2019), 12-13.

<sup>22</sup> Leila Hanafi, "Moudawana and Women's Rights in Morocco: Balancing National and International Law", *ILSA Journal of International & Comparative Law* 18/2 (2012), 517.

<sup>23</sup> Rachel Olick-Gibson, *From the Ulama to the Legislature: Hermeneutics & Morocco's Family Code* (St. Louis, MO: Washington University, School for International Training, Unpublished Paper, 2020), 7.

<sup>24</sup> Fatima Harrak, "The History and Significance of the New Moroccan Family Code", *Institute for the Study of Islamic Thought in Africa (ISITA) Working Paper Series* 9/2 (March 2009), 3.

<sup>25</sup> Olick-Gibson, *From the Ulama to the Legislature*, 8.

1993, the Moroccan monarchy enacted a reform that sought to resolve disagreements between groups.<sup>26</sup>

This legislation addresses child guardianship rights, divorce, polygamy, arbitration, conciliation (*muṣālaḥah*), and alimony.<sup>27</sup>

The abolition of guardians' authority over girls' marriages and the requirement that girls publicly express their agreement to marriage contracts were the two most notable changes added to the *Mudawwanah*.<sup>28</sup> Polygamy and the husband's unilateral right to divorce required judicial consent, and stricter financial compensation protocols for divorce were implemented. Legal guardianship of children was now conferred on the mother, and custody statutes were enacted in her favor.<sup>29</sup>

Nonetheless, these measures failed to meet the expectations of women's associations and, in fact, intensified their demands.<sup>30</sup> Moreover, while these revisions were initially applauded, they soon became the target of severe criticism. Critics dismissed them as superficial distractions and deceptive tactics, arguing that they were ineffective and inadequate and maintaining that a comprehensive reevaluation of the family law was necessary to eliminate women's subordination in their relationships with husbands or men in general. For these women's associations, the modification nevertheless yielded one positive outcome: it eliminated the exemption for the Mālikī provisions from alteration and repudiation.<sup>31</sup>

This phase, which spanned the 1970s to the early 1990s, marked a period in which the women's movement increasingly called for substantial revisions to specific provisions in family law, particularly with regard to inheritance, the abolition of polygamy, and

<sup>26</sup> Emanuela Dalmasso - Francesco Cavatorta, "Reforming the Family Code in Tunisia and Morocco – The Struggle between Religion, Globalisation and Democracy", *Totalitarian Movements and Political Religions* 11/2 (2010), 18.

<sup>27</sup> Muḥammad al-Azhar, *Sharḥ Mudawwanat al-usrah: al-Zawāj, inḥilāl mīthāq al-zawjiyyah wa-āthāruhū, al-wilādah wa-natā'ijuhā* (al-Dār al-Bayḍā': n.p., 7<sup>th</sup> edition, 2015), 9.

<sup>28</sup> Dalmasso - Cavatorta, "Reforming the Family Code in Tunisia and Morocco", 18.

<sup>29</sup> Harrak, "The History and Significance of the New Moroccan Family Code", 3.

<sup>30</sup> al-ʿAshī Nuwārah, "Taḥnīn aḥkām al-usrah fi l-Jazā'ir wa-bāqī duwal al-Maghrib al-ʿArabī", *Dirāsāt wa-abḥāth* 11/2 (June 2019), 306.

<sup>31</sup> Muḥammad al-Kashbūr, *al-Wāḍiḥ fī sharḥ Mudawwanat al-usrah: Inḥilāl mīthāq al-zawjiyyah* (al-Dār al-Bayḍā': Maṭbaʿat al-Najāh al-Jadīdah, 3<sup>rd</sup> edition, 2015), 1/12.

guardianship rights. These demands prompted strong and, at times, intense reactions, especially when they challenged provisions that were central to the distinctive legislative principles of the Islamic legal framework.<sup>32</sup> Consequently, the intended objective was not achieved.

The influence of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>33</sup> on women's movements and legalization efforts is noteworthy and significantly impacted subsequent developments in women's rights and legal reforms.

Morocco ratified the agreement in June 1993, but it was never published in the Official Gazette.<sup>34</sup> In response, Morocco pledged to integrate the principle of gender equality into its constitution and legislative framework in accordance with Article 2 of the Convention. This commitment involved amending or abolishing existing laws, regulations, customs, and practices that discriminate against women. Additionally, the country committed to eliminating practices rooted in notions of gender superiority or inferiority, as stipulated in the first paragraph of Article 5 of the CEDAW.<sup>35</sup> Nevertheless, Morocco maintained a few objections regarding the Convention, which hindered its complete ratification.<sup>36</sup>

External reform pressures on Muslim countries and advocacy from internal women's movements resulted in a third wave of reform. However, scholars opposed these changes, contending that regulations should remain grounded in Islamic principles and reflect societal values. Their opposition did not imply that the family's

<sup>32</sup> Khadijah Mufid, "Mudawwanat al-usrah: Ayyu jadid?", *al-Furqan: Islamiyyah thaqaifiyyah* 50 (2004), 13.

<sup>33</sup> CEDAW is an international legal instrument that requires governments to eliminate all forms of discrimination against women and girls and uphold gender equality. Adopted by the United Nations General Assembly on December 18, 1979, CEDAW became an international convention on September 3, 1981, following ratification by twenty countries. The Office of the High Commissioner for Human Rights (OHCHR), "Convention on the Elimination of All Forms of Discrimination against Women" (Accessed October 30, 2023).

<sup>34</sup> Salia, *Reflections on a Reform*, 10; Olick-Gibson, *From the Ulama to the Legislature*, 8.

<sup>35</sup> Hay'at al-Taḥrīr, *Taṭawwur al-waḍ' al-ḥuqūq li-l-mar'ab al-Maghribiyyah min Mudawwanat al-aḥwāl al-shakhṣiyyah li-sanat 1957 ilā Mudawwanat al-usrah li-sanat 2004: Mudākbalah fi-l-nadwah al-duwaliyyah al-munazzamah min ṭaraf Mu'assasat al-Bayt al-'Arabī bi-Mādrīd fi Isbāniyā yawm 4/11/2009* (Maghrib: Mukhtabar al-Baḥth fi Qānūn al-Usrah wa-l-Hijrah, 2008), 291.

<sup>36</sup> Salia, *Reflections on a Reform*, 10.

circumstances did not require reform; instead, they emphasized that family, politics, economy, society, culture, and intellectual life required thoughtful, rational reforms aligned with the nation's reference for identity and constitution, which is Islam.<sup>37</sup>

### 1.3. Mudawwanat al-usrah (2004 Moroccan Islamic Family Law)

In 1999, King Mohammed VI pledged to improve gender equality within Moroccan society.<sup>38</sup> There were strong public expectations that the government would promote human rights and women's rights. 'Abd al-Rahmān al-Yūsufī, the prime minister of the rotational administration led by the Socialist Union of Popular Forces (UNFP), prioritized gender equality during his tenure. In this context, women's nongovernmental organizations (NGOs) initiated a significant campaign to promote women's participation in public life and development, which was supported by World Bank funding.<sup>39</sup> In a government statement issued on April 17, 1998, by al-Yūsufī, a progressive reform of Islamic family law was pledged to ensure adherence to the principles of true Islamic values.<sup>40</sup>

In 1999, a draft was initiated to incorporate women into the development process.<sup>41</sup> This action intensified the discussion and commenced tangible actions in education, reproductive health, and economic empowerment.<sup>42</sup> Without delving into the specifics of the draft, which was intended, according to its authors, to improve women's social and economic status, it is notable that the section on personal status sparked a substantial uproar within Moroccan society. Strongly divergent views emerged, with some groups firmly supporting the reforms and others opposing them. This project represented a critical turning point, both materially and psychologically, in preparing for the eventual adoption of the

<sup>37</sup> Kāfī, "al-Aḥwāl wa-l-usrah", 44-45.

<sup>38</sup> Olick-Gibson, *From the Ulama to the Legislature*, 8.

<sup>39</sup> Harrak, "The History and Significance of the New Moroccan Family Code", 4. Because the initiative was backed by the World Bank, Islamists claimed that the changes were a neocolonial endeavor to secularize Moroccan society. Thousands of women marched with Islamists in Casablanca. See Olick-Gibson, *From the Ulama to the Legislature*, 8.

<sup>40</sup> Al-Kashbūr, *al-Wasīf fī sharḥ Mudawwanat al-usrah*, 12.

<sup>41</sup> Harrak, "The History and Significance of the New Moroccan Family Code", 4.

<sup>42</sup> Fakhria - Marpuah, "A Discourse of Mudawwanah al-Usrah", 314.

Mudawwanah. Furthermore, this policy led to the resolution of the dispute immediately after the royal announcement.

Perhaps the most debated topic is what was stated in the French version of the draft: citing Islamic legal traditions was deemed unacceptable unless these traditions demonstrated the capacity to address social transformations, economic development conditions, and democratic requirements.<sup>43</sup>

It was no secret that the dispute about family was part of the global pressure on Islamic countries, including Morocco, as evidenced by the violent confrontations at the Cairo Population Conference and the Beijing Conference, as well as other international conferences and agreements. Importantly, no one dared to call for reform of the Jewish Code of Status in Morocco, which was not subjected to the same treatment as Muslim law.<sup>44</sup>

In response to these criticisms, King Muḥammad VI subsequently established a commission to amend the Mudawwanat al-aḥwāl al-shakhṣiyyah one year after the 2001 protests in Casablanca and Rabat. The commission comprised politicians, judges, clergy, women's activists, intellectuals, and academics.<sup>45</sup> The King elevated the public status of women by appointing ten women to key governmental positions.<sup>46</sup> The terrorist attacks in Casablanca in May 2003 mobilized the reformers again.<sup>47</sup> On October 10, 2003, the remainder of Parliament declared essential modifications to the Family Code.

The final form of the new Mudawwanat al-usrah received approval in January 2004 and became effective on February 3, 2004.<sup>48</sup> It established several essential rights for women, including self-

<sup>43</sup> Al-Kashbūr, *al-Wasīf fī sharḥ Mudawwanat al-usrah*, 13.

<sup>44</sup> Kāfī, "al-Aḥwāl wa-l-usrah", 44.

<sup>45</sup> The Royal Commission's activities were segmented into three phases. Initially, it heard presentations from civil society representatives across several industries. Subsequently, it analyzed the family law of other Muslim-majority countries. The Royal Commission ultimately deliberated on the foundation of the legislation. Certain members proposed that the new code be founded on international human rights agreements, while others emphasized the need to ground the new code in Shari'ah. After these conversations, the Royal Commission proffered suggestions to the king. Rather than enacting the modifications through royal decree, as prior monarchs had done, King Muḥammad VI presented the amendments to Parliament in October 2003. See Olick-Gibson, *From the Ulama to the Legislature*, 9.

<sup>46</sup> Fakhria - Marpuah, "A Discourse of Mudawwanah al-Usrah", 314.

<sup>47</sup> Sadiki, "Morocco", 312.

<sup>48</sup> Al-Kashbūr, *al-Wasīf fī sharḥ Mudawwanat al-usrah*, 21.

guardianship, divorce, and child custody. It additionally imposed more restrictions on polygamy, increased the legal marriage age from 15 to 18, and criminalized sexual harassment. However, the new legislation did not wholly abolish polygamy, unilateral divorce by the husband, separation through *khul'*, or disparities in inheritance laws.<sup>49</sup>

The amendments abolished the legal requirement for a wife's submission to her husband, established that both spouses are joint leaders of the family, and acknowledged their common responsibility for child-rearing. Nonetheless, the husband was legally obligated to support his wife financially under *fiqb*.<sup>50</sup>

Women's movements, which have long advocated reform, welcomed the Moroccan Family Code, which was published in 2004. According to these movements, women's access to their rights has been limited since independence.<sup>51</sup>

Moroccan society endorsed the implementation of the Mudawwanat al-usrah. After extensive discussion and vigorous debate on differing opinions and societal trends, a partial consensus was reached on this family law. The King had a pivotal role in resolving this situation.

## Conclusion

The development of Islamic family law in Morocco, along with Islamization, was generally based on the Mālikī *madhhab*. This distinctive feature was consistently reflected in Morocco's codification efforts throughout the 20<sup>th</sup> century.

Even during the colonial period (1912-1956), Islamic family law remained in effect. Although the French intervened in the Moroccan legal system during this time, they mostly refrained from altering regulations governing Islamic family law. Concurrently, two significant

<sup>49</sup> Sadiki, "Morocco", 313.

<sup>50</sup> Hanafi, "Moudawana and Women's Rights in Morocco", 518-519; al-Qāsimī, "Maẓāhir al-thābit wa-l-mutaghayyir wa-l-khuṣūṣiyyah wa-l-'umūmiyyah", 70.

<sup>51</sup> Fakhria - Marpuah, "A Discourse of Mudawwanah al-Usrah", 315. Morocco's new family law is undoubtedly a positive legislative measure for Moroccan women. This is attributable to two distinguishing elements of the law. First, it acknowledges gender equality by reevaluating the notion of power inside the family in an Islamic framework. Second, the reforms were initiated after decades of effort by Moroccan women for increased access to justice. See Hanafi, "Moudawana and Women's Rights in Morocco", 515.

royal decrees were enacted in the Moroccan legal system that transferred jurisdiction over the majority of Berber tribes to customary courts. The Berbers were therefore deprived of the jurisdiction of the Sharī'ah courts. These decisions can be seen as an important turning point in Moroccan history.

Following the independence of Morocco (1956), the first Islamic family law, *Mudawwanat al-aḥwāl al-shakhṣiyyah* (1957), was published, which was drafted according to the rulings and jurisprudence of the Mālikī *madhhab*. However, the commissions established by the government from the early 1960s through the 1980s failed to address the demands of women's rights advocates, who argued that the law institutionalized gender inequality. Increasing pressure for amendments and reforms eventually overwhelmed the resistance of the administration.

The most criticized aspects of the *Mudawwanah* included issues such as polygamy, guardianship, the legal age of marriage, inheritance distribution, and the exclusive right of men to initiate divorce. The steps taken in the early 1980s under increasing internal and external pressure began to clearly show effects by the early 1990s. As a result, the second *Mudawwanah* was enacted in 1993. The new *Mudawwanah* introduced revised regulations on child custody rights, divorce, polygamy, arbitration, reconciliation, and alimony.

In its reformed form, the new *Mudawwanah* also failed to fulfill the expectations of the women's movement. Critics described the changes as deceptive tactics and called for more comprehensive reforms.

Notably, Morocco's ratification of the CEDAW convention adopted by the United Nations (UN) coincided with the promulgation of the reformed *Mudawwanah* (1993).

Morocco experienced a third wave of reforms in Islamic family law. Objections raised by academics and groups with Islamic sensitivities proved insufficient, resulting in the promulgation of the latest and most updated *Mudawwanah*, which remains in effect today (2004). The amendments to the law addressed several issues, including marriage guardianship, divorce, child custody, restrictions on polygamy, the establishment of a legal marriage age for both men and women, and the criminalization of sexual harassment. Additionally, the law introduced provisions for shared responsibility between spouses for family leadership. This reform was positively received by the

Moroccan women's movement and is considered a result of the struggle that Moroccan women have pursued since independence.

According to some perspectives, the new law reflects an effort to balance reform with respect for Morocco's cultural and religious heritage by maintaining at least some provisions of Islamic law.

As exemplified by Morocco, the Islamic world has attempted to codify Islamic family law based on principles of a particular *madhhab*. However, in the context of the global rise of the women's movement, the growing discourse of gender equality, and the CEDAW convention supported by the UN and similar initiatives, it faces difficulties in reflecting its own core values in legalization studies. Today's Islamic legal scholars have a duty to overcome these points of disagreement in the future codification of Islamic law.

This ongoing reform process serves as a significant example of how codification efforts in Morocco can be conducted without neglecting the fundamental principles of Islamic law by considering the dynamic relationships among law, society, and cultural norms. Important conclusions can be drawn from this experience by the Islamic world and Islamic jurists.

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