



## Women's Rights in Post-2011 Morocco: The Divergences Between Institutions and Values

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### **Abstract**

In Morocco, the Arab Spring has resulted in the promulgation of a « progressive » constitution which was capable of calming down the turmoil spread all over the country. Despite the national and international praises, the constitution incarnates textual and executive inconsistencies regarding gender issues. Article 19 insists on gender parity and at the same time on the respect of the country's constants (*thawabit*) which hinder the complete realization of women's rights. Due to this binarism, women in Morocco still suffer from institutional economic and social inequalities that can be traced, for instance, in the inheritance law and in the 2004 Family Code which endorse their "subalternity" in post- 2011 Morocco. The 2015 CNDH report confirmed that women's rights have regressed. This paper, thus, addresses the incongruence between the political system, aiming at effecting gender equality through democratic laws, and the Moroccan value system which asserts its attachment to the constants. Hence, women's rights, after 2011, desperately vacillate between the divergences of the political and the value systems.

*Key words:* gender equality, constitution, value system, political system, constants.

### **Introduction**

To discuss women's status in post-2011 Morocco, we need to shed light first on the historical advancement of these rights. The different stations whereby struggles for gender equality have settled throughout the history of post-colonial Morocco help understand the interactions between women and the state, women and the conservatives and also the state and the conservatives.

After Morocco's independence, the 1975 Personal Status Code further emphasized the domesticity and obedience of Moroccan women. The highly patriarchal code was not disappointing only to women -who, at that time, called for the abolition of polygamy and for

more visibility in the public sphere<sup>1</sup> - but also to male feminists who wanted to include women within the country's broader social and national project like Allal al-Fassi (1910-1974), a nationalist reformist, and Mohamed Belhassan Ouazzani (1910-1978) a politician and journalist.

The access of women to education and later to the job market has paved the way for more presence in the public life. They joined the Progressive Union of Moroccan Women (Union Progressiste des Femmes Marocaine) in 1962 and the National Union of Moroccan Women (Union Nationale des Femmes Marocaine) in 1969.<sup>2</sup> These were remarkable attempts for women to start voicing their demands. In the 1980s, Women's voice started to gain an increasing resonance thanks to journalistic writings in the magazines of *March 8<sup>th</sup>* and *Kalima* (word).<sup>3</sup>

Of course, these voices culminated in the establishment of women's NGOs such as the Association Démocratique Des Femmes du Maroc (The Democratic Association of Moroccan Women) and the Union de l'Action Féministe (The Union of Feminist Action). Women's activism at this period revolved around their disappointment with the 1957 Mudawana. In trying to bring women's issues to the mainstream debate, the UAF (the Feminine Union Action) played a crucial role. It launched a petition in March 1992 in which it called for the suppression of the male guardian (*wali*), institutional equality between men and women in the family; equal guardianship over children; abolishment of repudiation; equal access to the right of divorce; and reforming the *Maliki* jurisprudence which is the school of interpretation followed in Morocco and considering it only one possible interpretation among others.<sup>4</sup> The Mudawana was, indeed, reformed in 1993. However, it was again a huge disappointment as no crucial changes were issued.

This brief contextualization leads us to conclude that women's status has started to catch the attention of the state only after the crowning of king Mohamed VI. This is partly because the king's modernizing project encompassed the question of women's rights. In a quick reaction, the quota system reserved thirty seats for women in the parliament in 2002. Then, a major shift in women's rights came with the 2004 Personal Status Code (the Mudawana). This was the inception of a new phase of reforms as a number of laws in favor of women followed.

This article addresses mainly the gains and the failures of women's rights in Morocco based on an analysis of two main historical junctures, namely the 2004 Mudawana and the 2011 constitution and mainly article 19. These two historical junctures marked the history of women's rights advancement in Morocco. Discussing both the gains and the failures departs from the conviction that the reforms are neither to be discussed with an exaggerated optimism nor with a deadly nihilism. The aftermath of the two junctures definitely responded to a number of fundamental demands but the inconsistencies between the secular modernizing orientation of the state and the conservative values in Moroccan laws hinder the full establishment of a democratic environment for women at the social, cultural, economic and political level.

This article, thus, argues that women's rights in Morocco vacillate between the political system which aims at modernizing the country and the conservative value system which endorses the patriarchal status-quo. The vacillation between two divergent value systems is

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<sup>1</sup>Women at this period started to unify their voices under groups like that of *Akhawat as-Safae* (sisters of purity).

<sup>2</sup> Fatima Sadiqi, "The Central Role of the Family Law in the Moroccan Feminist Movement," *British Journal of Middle Eastern Studies* (2008), p 326.

<sup>3</sup> The magazines were both founded in 1983.

<sup>4</sup> Zakia Salime, *Between Feminism and Islam: Human Rights and Sharia Law in Morocco*, Minnesota: University of Minnesota Press, 2011, p 33.

responsible for the inconsistencies in the laws that postpone a serious and effective shift to more gender democracy. To tackle the continuity between the first and the second junctures and the inconsistencies they are subject to, I conceptualize the issue of “women and revolution” considering the context of the 2011 constitution to be the result of social unrest. A Comparative approach helps study the gains and failures of women during and after moments of crisis with a special attention to the case of Morocco. Equally important, a discussion of the duality of secularism and conservatism is important in discussion how women’s rights in Moroccan laws are shaped.

## I. The 2004 Mudawana: Institutional Rights and Conservatives Values

In 1999, the socialist government, in the person of Mohamed Said Saadi, suggested the National Plan for the Integration of Women in Development (the PNIFD). The plan called for the following reforms: raising the age of women’s marriage to eighteen instead of fifteen; abolishing the role of the *wali* or the matrimonial tutor, a male relative, whose presence is obligatory to conclude the marriage of a major girl; abolishing repudiation and polygamy; giving custody to the mother in case of her remarriage; granting Moroccan citizenship to children born to a Moroccan mother; sharing properties in case of divorce upon prior agreement between the spouses; etc.

The Plan of Saadi was a sufficient reason to stir debate in the conservative Morocco. In 2000, two marches took place at the same time. The Islamists, mainly the banned group of *al-Adl wa al-Ihsan* (Charity and Justice) and the Justice and Development Party, headed to Casablanca to protest against the plan, raising slogans like “Against the Westernised elite” and “For the respect of Islamic values.”<sup>5</sup> The Islamists, following their convictions, made sure women and men protest separately.

On the other hand, another march was organized in Rabat in support for the long-awaited reforms. Government members, women’s NGOs, human rights associations and couples with their children participated in the march. Side by side men and women chanted “we are all Muslims, and we all support the plan,” insisting on their religiosity to avoid the reiterated accusation of following western dictations.<sup>6</sup> The arm wrestling between the conservatives and the modernists, as illustrated in the 2000 marches, vindicates further that women’s rights’ slow motion is the aftermath of the polarization of Moroccan society.

Not so long after the reaction to the PNIFD, the king uncovered, in the royal speech of October 2003, his intention to reform the Mudawana as he said:

“In addition to our decisions and initiatives that have a strong significance, we did not hesitate to spare the society the trouble of strife on this issue by appointing a multidisciplinary committee to propose a fundamental revision of the Code of Personal Status, providing it with our consistent directives [...]”<sup>7</sup>

Capitalizing on his title “Commander of the Faithful” and his political and religious status as the supreme religious authority in the kingdom, he proceeded confidently with the announcement of the *Mudawana* reforms despite the sensitivity of the issue, reassuring the population that the family code is still under the sharia law. The reforms were unanimously

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<sup>5</sup> José Garçon. « Les Islamistes Defilent à Casablanca, les modernistes à Rabat ». [https://www.liberation.fr/planete/2000/03/13/les-islamistes-defilent-a-casablanca-les-modernistes-a-rabat-au-maroc-les-femmes-reveillent-la-rue-l\\_318528](https://www.liberation.fr/planete/2000/03/13/les-islamistes-defilent-a-casablanca-les-modernistes-a-rabat-au-maroc-les-femmes-reveillent-la-rue-l_318528). Accessed 14 September 2019.

<sup>6</sup> Abdessamad Djalmy. *Le Féminisme au Maroc*. (Casablanca: Les Editions Toubkal, 2008), p 193.

<sup>7</sup> “Khitab Sahib al-Jalala al-malik Mohamed as-Sadiss Nassarahulah Bi Munassabati Iftitah as-Sana al-Tashri’ya 2003-2004” (The Speech of his Majesty King Mohamed VI on the occasion of the opening of the 2003-2004 Legislative year), Al-Barlamane, 2003, [www.parlement.ma](http://www.parlement.ma), Accessed 14 September 2019.

accepted by the parliament in 2004.<sup>8</sup> The Mudawana's main objective was to seek modernization through balancing international and local laws, including the sharia law which is central to any reform that could impact women's or family laws.<sup>9</sup> The family code confirms its adherence to the Maliki jurisprudence while the rest of the legal system remains mostly secular.

Indeed, the Mudawana comprises some of the most progressive reforms compared to other areas in the region. While in the old Mudawana of 1993 there was a clear insistence on women's obedience and their role of procreation, the new one stresses "the equitable partnership" of wives and husbands alike to overcome the subjugation of women. The age of girls' marriage was raised from fifteen to eighteen years old. Also, polygamy, a bone of contention between the conservatives and women's rights activists, is restricted and needs the consent of the first wife and the judicial authorization after justifying the "necessity" of remarriage. Before, polygamy was discretely practiced. Another important reform touched upon divorce. Repudiation (or the unilateral decision of divorce taken by the husband) was abolished and substituted with judicial divorce. Also, women can easily initiate the divorce procedure compared to the old complicated procedure. Unlike in the past, women can keep the custody of children even in case of remarriage. These reforms marked the first historical juncture of women's rights in Morocco and embellished the national and the international image of Morocco as a modernizing country.

The reforms introduced by the king include more similarities than differences with the PNIFD. Ironically, no fierce attack happened against the Mudawana. The PJD which participated in the 2000 march against the PNIFD accepted and praised the reforms. Not only this, it "praised the efforts of adapting reform to the precepts of the Islamic law".<sup>10</sup> *Al-Adl wa al-Ihsan*, however, expressed its disagreement with the reforms but silently this time. The silence of the "guards of conservative values" is due to many reasons. First, the king insisted on the religious tone throughout the whole speech. He endorsed his speech by Qur'anic verses or prophetic hadith justifying almost every single reform. As a case in point, he justified the restriction of polygamy by quoting the Quranic verse which says "and you will not be just to your wives even when you are careful". He also refers to the prophet Mohamed by "my grandfather the prophet peace be upon him" to remind the population that he is a descendant of the prophet Mohamed. "My grandfather the prophet" has a strong subtle connotation that places the king as the sole the religious reformer downsizing the conservative/Islamist forces that stood up to the PNIFD before. The royal speech, which reminded of the religious legitimacy of the king to open the gate of *ijtihad*<sup>11</sup>, made sure that the religious emotions of the Moroccan population are ready to accept the code. In Morocco, a highly conservative society, there is always an urgent need to religiously justify the reforms that can impact women's role in society to make sure they still safeguard their Islamic identity.

The second reason behind the success of the code is the smart idea of presenting it as "project of society". It is true that it ameliorated the status of women and granted her more rights but it was presented as a project which does not solely serve women but society in general. Its insistence of the axe of the protection of children was also fundamental. It deals with the issue of "illegal" children and by extension single mothers could also benefit from a legal consideration.<sup>12</sup>

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<sup>8</sup> Mounira M. Charrad, "Family Law Reforms in the Arab World: Tunisia and Morocco," (New York: UNDESA, 2012), p 7.

<sup>9</sup> Ibid.

<sup>10</sup> Josep Louis Mateo, "Demonstrating Islam: The Conflict of Text and the Mudawwana Reform in Morocco," *The Muslim World* 99.1 (2009) p. 148.

<sup>11</sup> *Ijtihad* refers to the intellectual efforts to reinterpret a religious text.

<sup>12</sup> Sadiqi, *Op.Cit*, p 336.

The reform of the family code was introduced at a critical historical moment in the country. In March 2003, Casablanca witnessed some terrorist attacks. The state felt the need to modernize Morocco as a way to combat fundamentalism. At this juncture, the Islamists, who rallied in Casablanca to denounce the PNIFD in 2000, were muffled because of the terrorist attacks. Any reaction from their side would have counted as extremism. Otherwise, they would not have spared any effort to delegitimize women's rights' reforms as alien to Islam. On the other hand, liberal feminists benefited from the diminution of the Islamists' power to lobby for gender-positive reforms.

This specific and unprecedented juncture marked the history of women's rights in Morocco. The reforms responded to a number of aspirations and were a step towards modernizing the country through women who started to have access for the first time in Moroccan history to some of the most essential rights such as the ones mentioned before. However, the *Mudawana* should have been considered an initial step towards more democratization for women to be sustained by workable mechanisms of efficient implementations and guaranteed access to justice as dictated by the texts.

To conclude, progress at the level of women's institutional rights is undeniable. However, any reform in women's rights has to be processed at moments of crisis. First, the *Mudawana* coincided with the crowning of a new king who already held the vision of modernizing the country. Therefore, this gender-based reform was top-down and was part of a general political strategy. Second, the reforms happened at the critical moment of the 2003 terrorist attacks when the Islamists had no power to reject the changes they earlier deemed alien to the Islamic religion. The context of the *Mudawana* reforms raises many questions: Is there any future for the advancement of women's rights as a separate political issue – not as part of a broader political strategy? Are women's rights doomed to be incumbent on critical historical moments to mitigate the opposition of the patriarchal conservative values? These questions will lead us to analyze article 19 of the 2011 constitution which marked the second historical juncture of women's rights.

## II. The Constitution, Gender Equality, Revolutions and Polarization

### 1. Women in revolutions: A historical / comparative approach

Perhaps, if there is one reason why revolutions erupt it should be the desire to embrace liberation in its different forms regardless of the revolutionaries' gender. Samuel Huntington defines revolutions as "a rapid fundamental and violent domestic change in the dominant values and myths of a society, in its political institutions, social structure, leadership, government activity, and policies."<sup>13</sup> Bush and Mumme conceptualise revolutions as "a process whereby traditionally subordinate groups attempt to transform the culture and structure of power relations within a society."<sup>14</sup> However, revolutions tend to have another opinion especially when playing the inclusion/exclusion game based on gender patriarchal divisions. Revolutions tend to be a space where rebelling against "the dominant values and myths" puts patriarchy outside of the revolution's objectives and where the "attempt to transform the culture and structure of power relations" does not aim at reshuffling gender imbalances as an example of social subordination. Women as a subordinate group are doubly excluded first by the hegemonic power of state apparatuses that people revolt against and second by the male subordinate group that initiate the revolution. We can

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<sup>13</sup>Valentine Moghadam, *Modernising Women: Gender and Social Change in the Middle East*, (Colorado: Lynne Rienner, 1993), p 72.

<sup>14</sup>Cheris Kramarae and Dale Spender, *Routledge international encyclopedia of women: Global women's issues and knowledge*, London: Routledge, 2004, p 1763.

understand the patriarchal exclusionist vision of revolutions against women in light of Sheila Rowbotham's conceptualization of women in revolutions. In this regard, she states that Women have come to revolutionary consciousness by means of ideas, actions and organizations which have been made predominantly by men. We only know ourselves in societies in which masculine power and masculine culture dominate, and can only aspire to an alternative in a revolutionary movement which is male defined. We are obscured in 'brotherhood' and the liberation of 'mankind'. The language which makes us invisible to 'history' is not coincidence.<sup>15</sup>

Revolutions are, thus, made up by and defined through male norms and perspectives. The latter eclipses women's demands in moments of crisis which are said not to fit the patriarchal norms. Male-defined revolutionary moments, as Rowbotham puts it, cannot embrace feminist quests for liberation either by claiming that their quests do not rhyme with those of the revolution or by pretending that women's oppression does not exist.<sup>16</sup> Shedding a quick glimpse at history, we deduce that revolutions, in general, exclude women's demands. In the French revolution, for instance, women's active involvement did not dispense them with being domesticized. Rousseau affirms: "The education of women should always be relative to that of men. To please, to be useful to us, to make us love and esteem them[...] These are the duties of women at all times".<sup>17</sup> Similarly, Robespierre limited the involvement of women to the revolution to childbearing and described those who participated in the public sphere as "unnatural."<sup>18</sup>

Marxism, another example, identified the nineteenth century. The dissolution of capitalism as a way to end the exploitation of the working force was at the center of the Marxist liberation. However, in this crucial moment, women's specific case has never been closely approached. Karl Marx and Frederic Engels defined their revolution from the male prism. Their being men affected how Marxism interacted with gender and working class women.<sup>19</sup> Away from the Western context, women in the Algerian resistance against the French colonizer participated as warriors in the Armée de Liberation Nationale (ALN). They served colonial Algeria either as war nurses, cooks or bombs transporter. A number of distinguished women resistants marked the history of Algeria like Djamilia Bouhired, Djamilia Bouazza, Zahia Khalfallah, Baya Hocine and others.<sup>20</sup> Right after the independence, the new FLN general secretary Mohamed Khider stated that "the way of life of European women is incompatible with our traditions and our culture... We can only live by the Islamic morality."<sup>21</sup> The problems did not lie with the Islamic morality but with their understanding of it which meant that women return to the private domestic life. 97.5% of women had no paid jobs and fertility reached 6.5 children per woman.<sup>22</sup>

The same can be said about the Moroccan case during the resistance against colonialism as a moment of unrest. It is also about "the disappointment of the doubly subordinate". While men were rebelling against the French colonizer, Moroccan women faced what Michael Hall calls "a double rebellion" or as Rowbotham terms it "colony within colony."<sup>23</sup> They rebelled against the French and against the traditional oppressive society.

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<sup>15</sup>Sheila Rowbotham, *Women, Resistance and Revolution: A History of Women and Revolution in the Modern World*, (London: Verso, 2014), p 11.

<sup>16</sup>Ibid, p 12.

<sup>17</sup>Ibid, p 36.

<sup>18</sup>Moghadam, Op.Cit, p 76.

<sup>19</sup>Rowbotham, Op.Cit, p 60.

<sup>20</sup>Moghadam, Op.Cit, p 83.

<sup>21</sup>Ibid, p 84.

<sup>22</sup>Ibid, p 85.

<sup>23</sup> Alison Baker, *Voices of Resistance: Oral Histories of Moroccan Women*. SUNY Press, 1998.p 1.



One year after the independence, the personal status code of 1957 was an example of how men intended to reestablish power. The code, to which no woman has contributed, stipulated the following: Women shall get married only with the presence of a guardian (*wali*) no matter how old she is; men have the right of repudiation; women shall obey their husbands, nurse their children and take care of their houses; women do not enjoy legal guardianship over their children even in cases of divorce or widowhood; women can get the passport or travel abroad only with the authorization of their male relatives.<sup>24</sup>

After the independence, political parties of the left did not pay women's status any attention. They were busy empowering their parties at the detriment of women and also of other classes to which women of the armed resistance belonged. They thought addressing women's affairs would bring them nothing but divisions that could weaken them.<sup>25</sup>

Rowbotham peculiarly inquires "how the revolution could dissolve the subordination of the humblest and the most downtrodden, including black slaves, but leave millions of women still under the yoke of their men."

Objectively, alongside the endorsement of subordination, women's involvement in the nationalist movement and the anti-colonial resistance earned them access to the public space, education and later access to the job market. In addition to women's involvement, male feminists also played a crucial role in this. In Morocco, as in many other revolutionary countries like Tunisia under the reign of Habib Bourguiba and Egypt under the Nasserism, the integration of women in development was an objective for male reformers. This is what Moghadam comments on as "the strategic role of the woman question in sociopolitical change processes".<sup>26</sup> This strategic role serves as a means to reinforce the state's general objective which can be modernization or traditionalisation.<sup>27</sup>

## 2. Moroccan Women in Article 19: Institutionalised Inconsistencies

Like the crowning of a new king, the 2011 Arab Spring has also marked a new historical juncture in the parcours of women's rights in Morocco. Reacting back to the demonstrations that broke out throughout the country resulted in the promulgation of a new constitution that was hailed nationally and internationally considering it progressive given worse scenarios in the MENA region. Fortunately, women had their share of the reforms in article 19 which states that:

Men and women enjoy equal rights and freedom of civic, political, economic, social, cultural nature, enounced in this Title and in the other provisions of the constitution as well as in the international conventions and pacts duly ratified by Morocco and this, in accordance with the provisions of the Constitution, of the constants of the Kingdom and of its laws.<sup>28</sup> Constitutionally women enjoy equal rights with men at the political, social, cultural and economic levels. On the surface, women seem triumphant under article 19 as it is the first time that a Moroccan constitution explicitly states full equality between the sexes. However, the seemingly progressive language exhibits underlying ambiguities and contradictions which hinder the establishment of efficient equality.

To understand how the 2011 social unrest conversed with women's issues and vice-versa, it is crucial to situate this discuss within the larger scope of "women in revolution". I argue that there is generally a common point/fate between women survivals of revolutions

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<sup>24</sup>Ibid, p 30.

<sup>25</sup>Ibid, p 39.

<sup>26</sup>Moghadam, Op.Cit, p 72.

<sup>27</sup>Ibid, p 94.

<sup>28</sup>Morocco's Constitution of 2011", [Constituteproject.org](https://www.constituteproject.org), [https://www.constituteproject.org/constitution/Morocco\\_2011.pdf](https://www.constituteproject.org/constitution/Morocco_2011.pdf), Accessed 14 September 2019, p 8.

and moments of crisis regardless of their geographical, cultural or religious belonging. I label this “the disappointment of the doubly subordinate.”

Based on the comparative approach of different transitional and crisis moments and on the historical approach of the Moroccan case of the resistance against colonialism, we can now address the impact of the Moroccan Arab Spring on women. This analysis will be done in light of the ambiguities binding article 19, the role of the religious legacy and *Ijtihad* in reforming women’s status and the overlapping dichotomy between secularism and conservatism. Indeed, the inconsistencies binding article 19, and other laws, are not but a reflection of the overlapping dichotomies of secularism and conservatism/religion, the old and the new, the fixed and the changing, tradition and modernity in the structure of the Moroccan society.

Contrary to what should have happened, women’s demands were not treated as a particular case by the 20 February Movement- the leaderless movement which led the 2011 mass demonstrations- despite the remarkable participation of women. A considerable number of them contributed to the creation of the movement, its organization, protests and the formulation of slogans. Female militants could have well expressed feminist demands but they believed that the call for democracy would bring rights to women too.<sup>29</sup> The participation of women and their free access to this movement was a great opportunity to ask for fundamental feminist reforms. The Moroccan Arab Spring is no different from all the moments of crisis which aspire to the creation of change and which, as a characteristic trait, ignore the question of women’s rights under the pretext that it is encompassed within the general calls for democracy. The 20 February movement ignored the fact that women are doubly subordinated and, therefore, their rights should be addressed with separate and particular attention.

Because of the absence of addressing the woman question by the 20 February Movement, article 19 of the 2011 constitution is considered a milestone in women’s rights. It is the first time that the Moroccan state acknowledges in clear language full equality between the sexes in different fields. However, the adoption of full equality in the new historical phase is a “dream deferred”. Article 19, progressive as it looks, is impregnate with controversy and ambiguity due to its textual inconsistencies. Article 19 stresses parity between the sexes; however, in the same text it gives prominence to the respect of the “constants” of the country among which is religion. The state, however, does not provide any explanation on how it envisages dealing with this “unhappy marriage” between gender parity and the constants especially that a number of laws deemed gender biased are based on Islamic texts like the inheritance law. Article 19 represents the polarity between temporariness - laws that can change depending on political, social, and economic situations- and permanence –religion which is meant to be static and valid for all times and places.

Highlighting the sacredness of the constants and the respect of the Islamic values is primordial despite the dissonance they create in issues related to gender equality. To further understand this, we have to remind of the liaison between the position of the constants in Morocco and the monarchy in Morocco. The latter gains its legitimacy from religion; the Moroccan monarch constitutionally enjoys the Islamic title “*Amiru al-Muminin*” (Commander of the Faithful) and is the descendant of the prophet Muhammed (peace be upon him). Therefore, insisting on the eminence of the Islamic values reinforces the monarchy’s power. Deflating the importance of the constants, especially religion, would downsize the legitimacy of the monarchy. Thus, headlining to the constants in the constitution is highly political and discursive.

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<sup>29</sup>Osire Glacier, *Femmes Politiques au Maroc d’Hier à Aujourd’hui: la Résistance et le Pouvoir au Féminin*, Tarik Editions, 2016, p 172.



The inconsistencies of article 19 extended to the international conventions ratified by Morocco like CEDAW. Despite Morocco's ratification of these "time-changing" conventions, it still insists on the idea that the conventions should not oppose the fixed Islamic values. Katja Zfan Elliott argues that such a statement empties conventions like CEDAW from their objectives in the Moroccan context.<sup>30</sup> Maintaining these inconsistencies in the name of the constants of the country makes the state's true will to ameliorate women's situation doubtful.<sup>31</sup> Also doubting the state's true intentions to meet the equality demands becomes legitimate especially that it withdrew its reservations to CEDAW in the Arab Spring amid the predictions of the PJD's victory in the elections that followed the mass demonstrations of the Arab Spring in Morocco (the Party of Justice and Development which works within an Islamic framework). The temporality of the withdrawal endorses the claim that Morocco wanted to preserve its image as a progressive Muslim country above anything else.<sup>32</sup>

### 3. Secularism and Conservative Values: The Art of Making Inconsistent laws

Moroccan society has been polarized. Secularism and conservatism have been fighting to take the lead. It might be misleading to define secularism or even to ascribe one to it because, as Zuckerman and Shook say, it has different contexts and different purposes.<sup>33</sup> However, according to them secularism raises these questions: "why should religious conviction relax its grip on the mentalities of people and why should religious institutions surrender control over the workings of society?"<sup>34</sup> Like any standard definition, these questions lead to the inference that secularism aims at separating religion and politics. Identifying the objective of secularism, Hurd argues the following:

The objective of secularism is to create a neutral public space in which religious belief, practices, and institutions have lost their political significance, fallen below the threshold of political contestation, or been pushed into the private sphere [...]. For modernization to take hold, religion must be separate from politics. In order to democratize, it is essential to secularize.<sup>35</sup>

While delineating the objective of secularism, Hurd integrates other interrelated concepts like modernisation and democracy. The existence and triumph of these concepts are contingent upon how religion is successfully separate from politics. This is closer to how Holyoake defines secularism as "worldly approach to life, and life's opportunities and challenges, unencumbered by anything religious."<sup>36</sup>

As stated in the beginning of this conceptualization, it is misleading to ascribe one definition to secularism because the contexts of its emergence and development vary greatly. In the Western context, secularism emerged with the Enlightenment "against the dark forces of religion" to quote Steven Smith.<sup>37</sup> In Muslim countries, on the other hand, a lot of critics argue that the emergence of secularism dates back to the colonial period, a

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<sup>30</sup>Katja Zfan Elliott, « Morocco and its Women's Rights Struggle : A Failure to Live up to its Progressive Image », *Journal of Middle East Women's Studies*, 10, no. 2 (2014): 1-30 (p. 19)

<sup>31</sup> *Ibid.*, 25

<sup>32</sup> *Ibid.*, 21

<sup>33</sup>Phil Zuckerman, and John R. Shook, eds. *The Oxford handbook of secularism*, (Oxford: Oxford University Press, 2017), p 6.

<sup>34</sup>*Ibid.*, p6.

<sup>35</sup>Elizabeth Shakman Hurd, *The politics of Secularism in International Relations*, (Princeton: Princeton University Press, 2009), p 5.

<sup>36</sup>Zuckerman & Shook, *Op.Cit.*, p4.

<sup>37</sup>Steven Douglas Smith, *The Disenchantment of Secular Discourse*, (London: Harvard University Press, 2010), p 18.

historical context different from that of the Enlightenment. During the colonial period, religion played a central role to reinforce nationalist movements and national identities; it also served as a legitimating force. However, the encroachment to religion did not spare Muslim countries from being influenced by the models of Western secularism. The Muslim interaction with secularism was different from the Western one in the sense that the separation between religion and politics was not clear-cut.<sup>38</sup> Religion could not be renounced or confined to the private life only. Islam and secularism were unevenly espoused.

In Morocco, the polarization between secularism and conservatism is a colonial and post-colonial phenomenon. Fatima Sadiqi affirms that the polarization of secularism and conservatism and Islam in Morocco dates back to the colonial period and exactly to the promulgation of the berber *dahir* (decree) in 1930. The latter aimed at dividing Moroccans by positioning berbers under the jurisdiction of French courts. Since then, Moroccans revolved around the ideas of nationalism, Moroccan identity and the Amazigh issue to reinforce their unity and sense of belonging against the colonizer.

However, despite the growth of awareness regarding the issue of identity, division made it that the conservatives were anti-West while the modernists did not see any harm in following the Western model as long as it does not contradict the Arab-Muslim identity. The Arab-Muslim identity became Morocco's official identity while the Western model was appealing especially to the elite.

Polarization was further deepened with the eruption of the Iranian revolution in 1979 and the increasing influence of political Islam which stood against the rise of secularism insisting on the centrality of Islam in the nation-building process.<sup>39</sup> Since then, the main point of contention between the secularists and the conservatives and Islamists has been "theocracy." Secularists consider theocracy a source of backwardness and a return to the past. The Islamists, on the other hand, consider secularism a threat to the role of Islam.<sup>40</sup> Norris and Inglehart believe that "that the importance of religiosity persists most strongly among vulnerable populations, especially those living in poorer nations, facing personal survival-threatening risks."<sup>41</sup> They can be right although there exists some exceptions to this general assumption. In the Moroccan case Islam is not used only because the population is vulnerable or the nation is - to a certain degree - poor but also because Islam is a powerful source of legitimizing the monarchy as a ruling institution. Equally, the monarchy, based on its religious symbolism, has the power to unite the Moroccan nation regardless of its different ethnicities.<sup>42</sup>

Despite the growth of awareness regarding the issue of identity, division made it that the conservatives were anti-West while the modernists did not see any harm in following the Western model as long as it does not contradict the Arab-Muslim identity. The Arab-Muslim identity became Morocco's official identity while the Western model was appealing especially to the elite. Moroccans have never fully adopted or fully relinquished the Islamic values as secularism and secularist laws were always lurking and tempting them. Trying to find a happy medium to join Islam and secularism, especially in gender, has not resulted in smooth laws.

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<sup>38</sup>Azzam Tamimi, and John L. Esposito, eds. *Islam and Secularism in the Middle East*. (New York: NYU Press, 2000).p 1-2.

<sup>39</sup>Ibid.

<sup>40</sup>Fatima Sadiqi, ed. *Women's Movements in Post-"Arab Spring" North Africa*. (Springer, 2016).p 21.

<sup>41</sup>Ronald Inglehart, and Pippa Norris. *Sacred and secular: Religion and Politics Worldwide*, (Cambridge: Cambridge University Press, 2004), p 4.

<sup>42</sup>Mohamed El Mansour, "Salafis and Modernists in the Moroccan Nationalist Movement," *Islamism and Secularism in North Africa*, (New York: Palgrave Macmillan, 1996), p53.

After the Arab Spring, women's rights have become characterized with plurality as Fatima Sadiqi argues (p15). She is right because in the past women's issues have been exclusively advocated by secular women NGOs, opposed by conservatives and Islamist voices and as a final step arbitrated by the king. Now, the rise of Islamic feminists has reshuffled the dynamics of effecting change. A concrete example would be the 2018 petition to reforms the inheritance law. The petition was signed by one hundred Moroccan personalities adhering to both the secular and the conservative ideologies. The petitioners demanded that the inheritance law be reformed based on the principles of gender equality and the provisions of the 2011 constitution which stated clearly the economic equality between the sexes.<sup>43</sup> Analysing the situation after the 2011 social unrest, Fatima Sadiqi refers to what she calls "the center" which is a space of diversity created by the 20 February movement. She defines it as "an ideological middle-ground space between secularism and Islamism".<sup>44</sup> Sadiqi argues that with the emergence of "the center", polarization between the secularist/liberalist and the conservatives/Islamists on the interference of theocracy in laws has dissolved thanks to the plurality of identities –the Islamist/conservative, the secular, the ethnic, the feminist, etc- in the new space.<sup>45</sup> Before Sadiqi, Zakia Salime in her book *Islam and Feminism* (2009) has also talked about the idea of going beyond conservatism and secularism as the line between them has become blurred.

Given the long history of secularism and conservatism in Morocco, it is too hasty to conclude that polarization has dissolved while it makes itself obvious through laws - like article 19 – and their implementations. I do debunk this argument as the space in the post-revolutionary phase has become more diversified with the persistence of the two antagonistic poles, secularism and conservatism, without annulling the polarization of the Moroccan society; it rather coexists alongside this diversification.

### III. Gender and the Inconsistencies of the Laws: From Textual to Executive Inconsistencies

It is true that the reforms are progressive if we compare them to worse situations in the region. Inconsistencies and paradoxes are a central characteristic of these laws. The 2011 constitution which was supposed to be an extension to the *Mudawana* in terms of gender equality turned to be an extension of the inconsistencies already initiated by the *Mudawana*. In both texts, there is a persistent conflict between the fixed and the changing, values which are permanent need and institutional rights prone to change to answer contemporary questions.

In its report of 2015 "L'Etat de l'Egalité et de la Parité au Maroc », the National Council of Human Rights in Morocco traced a number of violations in regard to women's rights : **1-** Underrage marriages approximately doubled passing from 7% in 2004 to 12% in 2013. **2-** 43.41% of polygamous marriages were accepted by judges. **3-** inequality in regards to women's access to communal lands. **4-** the strong prevalence of violence against women (62.8%). **5-** the high rate of illiteracy among urban women (37%) and rural women (55%). **6-** hierarchy between women victims of rape in terms of social status as it makes a difference whether she is married, non-married, virgin or not virgin. This study reveals the disaccord between the 2011 constitution, the family code and the international conventions. While shedding light on the decadence of women's rights, the CNDH report leads us to question the nature of reforms which lead to these paradoxical results.

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<sup>43</sup> The inheritance law in Morocco is based on the Islamic law which grants the sons of the deceased a double share of what the daughters inherit. There are other cases in the inheritance law which attests to gender inequality.

<sup>44</sup> Sadiqi, 2016, Op.Cit, p 15.

<sup>45</sup> Ibid, p 28

To address the inconsistencies, it is important to invoke the judiciary's role in implementing these rights. For instance, while women's legal age of marriage is 18 years old, underage marriages can still take place in Morocco based on the judge's justifiable authorization. In this, we can say that the success of the family code depends greatly on the judge's convictions and arbitration in cases of polygamy, underage marriages, custody and other issues since ambiguity is binding the code.<sup>46</sup> Talking about convictions, judges received a training based on the Maliki jurisprudence which is why they find themselves hesitant to fully adhere to the reforms.<sup>47</sup> The rate of underage marriages approximately doubled passing from 7% in 2004 to 12% in 2013 and similarly 43.41% of polygamous marriages were accepted by judges according to the 2015 CNDH report.

Article two of CEDAW, an international convention ratified by Morocco, stresses that the state institutions and public authorities shall refrain from any discriminatory act against women.<sup>48</sup> Leila Hanafi states that "ratifying CEDAW does not have a concrete impact on the situation of women when it has not been accompanied by the harmonization of national legislation with the spirit CEDAW provisions."<sup>49</sup> Internal laws are in disaccord with international ones recognized by Morocco. Judges are given the freedom to decide on the marriage of minor girls even if the Mudawana's legal text is clear-cut. Approving minor's marriages, which is just an example, is a legal violation of a legal text. Faced to this inconsistency, one needs to question the state's ambivalent attitude towards women's institutional rights. According to the UNDP, discrimination against women prevails because of "the inadequacies in existing laws which fail to protect women (de jure) or through limitation in judicial remedies provided in practice (de facto)."<sup>50</sup> In addition to its adherence to the old training, the judiciary is also a reflection of the society's values among which we find conservatism and patriarchy which have been halting, in many occasions, attempts at liberalising Moroccan women. Aborting these attempts is partly because society internalizes the patriarchal and conservative values which place women under the control of men regardless of the development of laws which turn out to be molded according to these same values.

The judiciary remains a male space and thus it is highly patriarchal and this is an obstacle for the family code. The feminization of the judiciary is primordial to its democratization as it would bring diversity. Based on her fieldwork in Oujda court, Soumia Boutkhil concludes that female judges are not likely to make any difference regarding crimes like sexual assaults, rape, underage marriages and gender-based violence for various reasons. First, training in the judiciary is based on traditional religious schools, the Maliki jurisprudence. Second, the environment in which female judges work is highly patriarchal. Third, there is an ignorance of the importance of the gender perspective. The female presence in the judiciary system have to know that "their different experience of life is in fact an asset that they have to bring to the bench, not something that they should be ashamed to put forward."<sup>51</sup> The Arab spring which was supposed to endorse and develop women's rights betrayed Moroccan women. The gender issue was less important compared to the general demands of both men and women. Nonetheless, the new constitution clearly mentions gender parity at all the level. Article 19, progressive as it looks, is impregnate with controversy and

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<sup>46</sup>Mounira M.Charrad, "Family Law Reforms in the Arab World: Tunisia and Morocco," *New York* (2012), p 9.

<sup>47</sup> *Ibid*, p 9.

<sup>48</sup> Leila Hanafi. "Moudawana and Women's Rights in Morocco: Balancing National and International Law," *ILSAJ. Int'l&Comp. L.* 18 (2011): 515. p 8.

<sup>49</sup> *Ibid*.

<sup>50</sup> *Ibid*, p 10.

<sup>51</sup>Soumia Boutkhil. "Who's Under the Robe? On Women in the Judicial System in Morocco", *North African Women after the Arab Spring*, Palgrave Macmillan, Cham, 2017, p 137.

ambiguity due to its textual inconsistencies. Article 19 stresses parity between the sexes; however, in the same text it gives prominence to the respect of the “constants” of the country among which is religion. The state, then, is bound to explain how it plans to achieve gender parity which is clearly stipulated in the constitution while respecting the Islamic law. In other words, Morocco needs to explain its strategy in dealing with the conflictual relation between the “constants” and “the inconsistencies” of the Moroccan law.

With all the inconsistencies surrounding the implementation of laws, one wonders if the enactment of laws is all that women need for a genuine and sincere enhancement of rights in a country where religious, social, and cultural constants have the last word. Laws that are endorsed by the culture of equality have to be protected from the engraved constants and the inconsistent implementations.

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