

A Comparative Study of the Status of the Prohibition of Violence against Women in Hanafi Jurisprudence and International Instruments

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Violence against women is one of the most significant human rights challenges in contemporary societies and assumes complex dimensions in Islamic societies, particularly in regions influenced by Hanafi jurisprudence. As the most widely followed school of Islamic jurisprudence, Hanafi fiqh forms the basis of the legal systems of numerous countries, and its position on violence against women has a direct impact on policymaking and legislation in these countries. The central problem of this study is to examine the position of Hanafi jurisprudence regarding the principal manifestations of violence against women and to determine the extent to which these positions are consistent with, or divergent from, the standards of international human rights instruments. This study was conducted using a descriptive-analytical method and a comparative approach, with reference to authoritative Hanafi jurisprudential texts and international instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the International Labour Organization Violence and Harassment Convention, 2019 (No. 190), the Beijing Declaration and Platform for Action, and the Istanbul Convention (Convention on the Elimination of All Forms of Discrimination against Women [CEDAW], 1979; Council of Europe, 2011; International Labour Organization [ILO], 2019; United Nations, 1948, 1989, 1995). The findings of the study indicate that Hanafi jurisprudence adopts positions in important cases such as the prohibition of forced marriage, the prohibition of the buying and selling of women, the unlawfulness of baad-dadan, the prohibition of forced labor, women's financial independence, and the prohibition of unlawful interference with women's inheritance, which fully overlap with international instruments. Conversely, in matters such as child marriage, polygyny, and certain restrictions based on the institution of guardianship, differences can be observed between the two systems; these differences arise from divergences in definitions and approaches rather than from a conflict in fundamental objectives. The conclusion is that the internal capacities of Hanafi jurisprudence, including the principles of negating harm, removing hardship, and requiring consent, provide a broad possibility for alignment with international standards concerning the prohibition of violence against women.

Keywords: *violence against women, Hanafi jurisprudence, international human rights instruments, comparative law*

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1. Introduction

Violence against women is one of the most widespread and deeply rooted human rights

crises in the contemporary world, affecting millions of women across the globe irrespective of geographical, cultural, and religious boundaries. This phenomenon, which appears in various forms such as physical,



psychological, sexual, and economic violence, not only threatens women's dignity and personal security but also destabilizes the foundations of the family, society, and the legal order. In Islamic societies, particularly in regions where the Hanafi jurisprudential tradition has enjoyed historical and legal influence, this issue assumes more complex dimensions; in these societies, religious and jurisprudential sources function not merely as historical texts but as living normative authorities within legal, judicial, and social systems. Hanafi jurisprudence, as the most widely followed school of Islamic jurisprudence and as the foundation of legal systems in countries such as Afghanistan, Pakistan, Turkey, Egypt, and large parts of Central and South Asia, faces the fundamental question of whether the internal capacities of this school of jurisprudence are compatible with global requirements concerning the prohibition of violence against women. Answering this question is not only theoretically significant but also has direct practical implications for policymaking, legislation, and the enforcement of women's rights in these societies. At the same time, over recent decades, the international community has developed a body of binding and guiding standards on the prohibition of violence against women through the drafting and adoption of numerous instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Universal Declaration of Human Rights (UDHR), the Convention on the Rights of the Child (CRC), the International Labour Organization Violence and Harassment Convention, 2019 (No. 190), the Beijing Declaration and Platform for Action, and the Istanbul Convention; Islamic states have also largely participated in the drafting processes of these instruments or have signed them.

The necessity of addressing this subject may be considered from several perspectives. First, in contemporary legal and jurisprudential literature, the dominant discourse on the relationship between Islamic jurisprudence and international human rights law has often fallen into two extreme approaches: either an absolute and irreconcilable conflict between the two systems is portrayed, or their complete unity and identity are asserted. However, as this study will demonstrate, the reality is far more precise and complex than either of these poles. Second, many manifestations of violence against women in Muslim societies do not

arise from authoritative jurisprudential teachings but from the blending of ethnic and customary traditions with religious rulings; this phenomenon cannot be identified without precise jurisprudential analysis. Third, a new wave of Muslim scholars has shown that readings can be offered from within the sources of Islamic jurisprudence that are not only not in conflict with human rights standards but, in some cases, even surpass them. Relying on the works of prominent Hanafi jurists such as al-Sarakhsi, al-Kasani, Ibn Abidin, Ibn al-Humam, and al-Mawsili al-Hanafi, this study examines major manifestations of violence against women in the two domains of marriage and economic affairs from the perspective of this school and carefully extracts the position of Hanafi jurisprudence on each of these manifestations, including denial of inheritance, forced labor, forced marriage, *baad-dadan*, and obstruction of education and employment. This necessity becomes even more significant when one considers that, in many countries with legal systems based on Hanafi jurisprudence, legislators are in the process of harmonizing domestic laws with international obligations, and the need for an authoritative and well-reasoned jurisprudential guide in this process is clearly felt.

The main question of this study is: What position does Hanafi jurisprudence adopt regarding the principal manifestations of violence against women, and to what extent are these positions consistent or in conflict with the standards of international human rights instruments? This main question also contains several subsidiary questions: Are manifestations such as forced marriage, forced labor, and denial of inheritance explicitly prohibited in Hanafi jurisprudence? Where are the points of convergence and divergence between this school of jurisprudence and international instruments? And, in cases where conflict exists, are adaptive solutions available? To answer these questions, this study employs a descriptive-analytical research method with a comparative approach. In the first stage, by directly consulting authoritative Hanafi jurisprudential texts, the positions of the jurists of this school regarding manifestations of violence against women are extracted and analyzed. In the second stage, relevant international instruments, including CEDAW, UDHR, CRC, ILO Convention No. 190, the Beijing Declaration, the Cairo Declaration, and the Istanbul Convention, are examined.

In the third stage, using the method of comparative law, the two normative systems are placed alongside one another, and their points of commonality, difference, and conflict are systematically identified and assessed through comparative tables.

2. Violence against Women in Hanafi Jurisprudence

2.1. Violence within the Framework of Marriage

Marriage, as one of the most important social institutions, can under certain conditions become a context for the perpetration of violence against women. In Hanafi jurisprudence, certain forms and conditions of marriage, particularly when concluded without the woman's full consent or by disregarding her rights, may constitute manifestations of violence. This section examines the forms of violence related to marriage in Hanafi jurisprudence.

2.1.1. Buying and Selling Women under the Pretext of Marriage

One of the most severe forms of violence against women is their buying and selling under the pretext of marriage. This phenomenon, which exists in some traditional societies, deprives women of their human status and turns them into tradable commodities. In such transactions, the woman, without her own will and consent, becomes the subject of a financial contract. In Hanafi jurisprudence, an adult and legally competent woman, whether virgin or previously married, has the right to marry by her own consent and choice, and no one has guardianship over her affairs (Al-Sarakhsi, 1993; Ibn Abidin, 1992). Therefore, if any guardian, such as parents, grandfathers, brothers, or paternal uncles, sells a woman without her consent under the pretext of marriage, such a marriage lacks legal-religious legitimacy (Al-Mawsili al-Hanafi, 1937). Regarding a minor girl, although the guardian has authority over matters such as marriage, education, upbringing, and financial affairs and may conclude a marriage contract for her, he has no authority to sell her. In other words, sale falls outside the scope of the guardian's authority, and such an act has no jurisprudential legitimacy.

2.1.2. Giving Girls as Baad

Baad-dadan is one of the destructive customs in some traditional societies, in which girls are used as instruments for resolving family or tribal disputes. In this custom, women are the primary victims of personal, familial, and social violence and are given to the opposing family in order to settle disputes (Welchman, 2007). Baad-dadan usually occurs in several cases:

- a) Baad-dadan in exchange for murder: When a murder is committed, the murderer's family, based on the decision of local elders, gives one or more girls from the family to the victim's family. This act is indirectly treated as payment of blood money.
- b) Baad-dadan in exchange for sexual assault: When sexual assault occurs, the family of the offender gives a girl in marriage to one of the relatives of the victim's family as a girl of baad.

The practical implementation of this custom is such that, to settle a dispute between two ethnic groups, tribes, or even two families, a girl from the side of the aggressor and offender is handed over to the injured party and the victim's family. For example, whenever a brother or father commits murder, the tribal jirga, in order to resolve the dispute peacefully between the two families, often gives the murderer's daughter or sister in marriage to one of the members of the victim's family. A girl who is given as baad is not only deprived of all her human rights, but the family that receives her treats her as a criminal. This girl is oppressed as a servant of the family until the end of her life and is forced to perform hard labor. Baad-dadan is imposed on girls coercively and without regard to their age, social status, or consent.

From the perspective of Hanafi jurisprudence, the marriage of a girl given as baad has no religious validity. As stated, an adult and legally competent woman, whether virgin or previously married, is not under the guardianship or authority of anyone in such a way that another person may exercise control over her marriage and marry her to someone else. With regard to a minor girl, although the guardian's authority over her marriage is established, such a contract is illegitimate in view of the requirement to observe her best interests. Some Hanafi jurists have raised a legal issue that may be related to this discussion: if a woman intentionally cuts off a man's hand or injures him, and then marries that man on account of those matters and the man recovers,

the woman's dower will be the compensation and blood money for that injury and harm (Al-Shaybani, 2012). The essential difference is that, in baad-dadan, the girl is not the offender and has committed no wrong, yet she is made the subject of settlement and is married to one of the victim's relatives in order to reduce anger and prevent retaliation. In the issue raised by al-Shaybani, however, the woman herself is the offender and, in response to the offense committed against the man and the compensation and blood money imposed upon her, marries him, with her dower being that same compensation. In Hanafi jurisprudence, the punishment for giving a woman as baad is discretionary punishment, or ta'zir (Al-Hilli, 1993).

2.1.3. *Forced Marriage*

In Hanafi jurisprudence, a marriage contract in which the woman's consent is absent is more commonly referred to as forced marriage. In some Hanafi jurisprudential sources, however, it is also described as coerced marriage. In al-Mabsut, al-Sarakhsi defines coercion as follows: "Coercion is the name of an act that a person commits against another in order to negate his consent or deprive him of choice, without removing his legal capacity to act or to be addressed by legal obligations" (Al-Sarakhsi, 1993). Other definitions have also been discussed in Islamic criminal jurisprudence. According to one definition, coercion is an act imposed upon a person in such a manner that it removes consent and corrupts choice. According to another, coercion is an act by which a person creates in another a condition that automatically drives that person toward performing the intended act (Al-Sarakhsi, 1993).

In a more comprehensive definition, coercion is the threat by one person against another to impose physical or psychological torture or harm, in such a way that a rational person, in order to avert that torture or harm from himself or herself, undertakes the act desired by the threatening party, provided that the coerced person has a strong presumption that, in the event of refusal or resistance, he or she will be exposed to the torture or harm with which he or she has been threatened. Hanafi jurists do not permit forced marriage with respect to an adult virgin woman. Ibn al-Humam writes in this regard: "It is not permissible for the guardian to compel an adult virgin woman to marry. The meaning of compulsion is that the guardian independently contracts the girl's

marriage without her consent and that the contract is effective, whether the girl wishes and consents or rejects it" (Al-Quduri, 2006; Ibn al-Humam, 2000).

Al-Shaybani writes: "The hadiths indicate that the father has no right to compel his adult virgin daughter to marry; the reason is that the Messenger of God considered the girl's consent in marriage to be important and essential, although her silence substitutes for an express declaration of consent" (Al-Shaybani, 2012). Nevertheless, if the father marries off his adult virgin daughter to someone, the marriage contract is concluded but remains dependent on the girl's authorization. In this statement, while discussing the impermissibility of forced marriage with respect to an adult virgin woman, the basis of this ruling is also stated, namely the narrations, and it is further argued that the Prophet of Islam did not regard the girl's consent in marriage as null or meaningless.

The author of al-Binayah fi Sharh al-Hidayah states: "It is not permissible for the guardian to compel an adult virgin woman to marry ... because she is free and is addressed by divine rulings; therefore, no one has coercive guardianship over her. What is meant is that no one has the right to marry her off without her consent" (Al-Ayni, 2009). Assuming that the guardian forcibly and without consent contracts her marriage to someone, according to Hanafi scholars, the validity of the marriage depends on the girl's authorization and consent. If she does not consent and rejects it, the contract is void. If she remains silent when the guardian seeks her permission, this silence is deemed permission. This view has been accepted by scholars such as al-Awza'i, al-Sha'bi, Tawus, Hasan ibn Hayy, Abu Ubaydah, al-Thawri, Abu Thawr, and Ahmad. It has also been adopted by the Zahiris and Ibn al-Mundhir.

In the Hanafi school, various classifications of contracts have been offered. Some jurists, in a general classification, divide contracts into valid and invalid contracts and treat void, defective, and suspended contracts as invalid contracts (Ibn al-Humam, 2000). From the perspective of contemporary writers, a contract is generally divided into valid and invalid contracts. Void and defective contracts fall within invalid contracts, while suspended, non-binding, effective, and binding contracts fall within valid contracts. Ibn Nujaym writes in al-Ashbah wa al-Naza'ir: "According to us Hanafis, void and defective contracts are distinct. A void

contract is one that is unlawful in both its essence and its attribute, whereas a defective contract is lawful in its essence but unlawful in its attribute. The sanction for the absence of the essence is nullity, and the sanction for the absence of the attribute is defectiveness" (Ibn Nujaym al-Hanafi al-Misri).

Al-Kasani states that whenever the pillar or subject matter of a transaction is impaired, the contract is void, such as when the legal capacity of the contracting parties or their offer and acceptance are defective. However, if there is no defect in the pillars of the contract but the contract is accompanied by an attribute whose existence prevents legal effects from attaching to the transaction, the contract is defective (Al-Kasani al-Hanafi, 1986). In Hanafi jurisprudence, the punishment of the person who coerces another is also ta'zir.

2.1.4. Obstruction of Marriage

In Hanafi jurisprudence, matters such as Islam, lineage, financial capacity, and the suitability of occupation and profession are considered elements of kafa'ah, or suitability and equivalence, and are treated as conditions for the validity of marriage. Many Hanafi jurists have also regarded freedom as one of the instances of suitability (Al-Sarakhsi, 1993). According to Imam Abu Hanifah and Abu Yusuf, if a woman from a righteous family marries an immoral man, her guardians have the right to object. This is because pride in religiosity is more important than pride in lineage, freedom, and wealth, and immorality is a greater disgrace. Muhammad, however, does not consider religious suitability a condition, because he regards religiosity as a matter of the afterlife and suitability as a worldly matter and sees no connection between the two (Al-Sarakhsi, 1993).

Some contemporary Hanafi jurists maintain that Islam is one of the valid principles among non-Arabs. Among Arabs, Islam is not considered in the same manner. Therefore, a person whose father alone was Muslim is deemed Muslim among Arabs and suitable for someone whose fathers and grandfathers were all Muslims, because Arabs take pride in lineage and family rather than religion. Non-Arabs, however, have lost their lineages; hence their pride lies in religion (Al-Haskafi, 2002).

Suitability, or kafa'ah, in lineage means that the man is equal or superior to the woman in terms of bloodline, family, and race. Suitability in lineage and family is more

important and valuable than other instances of suitability for almost all Hanafi jurists; some of them, such as Muhammad, do not regard religiosity as a valid condition in suitability at all (Al-Kasani al-Hanafi, 1986; Al-Sarakhsi, 1993). The principal proof of the Hanafis regarding suitability and equivalence in lineage is a statement attributed to the Messenger of God: "The Quraysh are equivalent to one another, the Arabs are equivalent to one another, clan to clan and tribe to tribe, and the mawali are equivalent to one another; a man is equal to a man" (Al-Suyuti, 1993).

From the perspective of Hanafi jurists, a poor man is not suitable for a wealthy woman, because superiority and pride in wealth and positive financial capacity are usually more significant than pride in other matters. Another reason for the necessity of suitability in wealth and property is that marriage has a special and necessary connection with dower and maintenance. The necessary standard for suitability is the person's ability to pay the proper dower and provide maintenance (Al-Kasani al-Hanafi, 1986; Al-Sarakhsi, 1993). The author of Bada'i' al-Sana'i', quoting al-Jami' al-Saghir, states that suitability in occupation and profession is necessary according to Abu Hanifah; however, according to his student Abu Yusuf, occupational suitability is not valid unless there is a substantial and significant difference (Al-Kasani al-Hanafi, 1986). Al-Sarakhsi, however, states in al-Mabsut that Abu Hanifah does not consider occupational suitability necessary, whereas Abu Yusuf considers it valid and necessary (Al-Sarakhsi, 1993).

In marriage, the man must be suitable to his wife in terms of being free or enslaved, because the deficiency involved in enslavement is greater than the deficiency involved in lineage (Al-Haskafi, 2002; Al-Shaybani, 2012). Some Hanafi jurists consider suitability to be the right of the guardian only, such that if a woman marries someone and it later becomes clear that he was not equivalent or suitable in one of the aforementioned respects, the woman herself does not have the option to rescind the marriage; rather, her guardians have this right. If the woman and her guardians, by mutual consent, marry her to a man and it later becomes clear that he was not suitable, neither the wife nor the guardians have the option of rescission, unless suitability had been stipulated as a condition.

Some later Hanafi jurists also regard the woman herself as having a right with respect to suitability: "Suitability is

considered on the part of the husband, not on the part of the wife; therefore, it is permissible for the woman to be lower than the man in conditions such as lineage, wealth, occupation, and others. Suitability is the right of both the guardian and the woman, and its consideration is at the beginning of the contract. Therefore, the disappearance of suitability after the contract does not create a problem" (Al-Haskafi, 2002). Hanafi jurists believe that 'adl, or unjust obstruction, occurs when an adult and rational girl chooses a suitable and equivalent man, and her guardian prevents her from marrying that man. In such circumstances, 'adl is realized; therefore, it is obligatory upon the guardian to marry the girl to her suitable and equivalent match (Al-Kasani al-Hanafi, 1986). Their proof for establishing 'adl is the verse "Do not prevent them from marrying their husbands" (al-Baqarah, verse 232). Of course, in the event of the guardian's obstruction, guardianship in the matter of marriage rests with the judge, and the judge must marry the girl to her suitable match.

Whenever a guardian prevents a girl from marriage, if this obstruction has an apparent reason, such as lack of suitability, a dower lower than the proper dower, or the existence of another suitor with greater advantages, it is not considered obstruction, and in this case guardianship will be transferred to another. However, if the guardian refuses to conclude the marriage contract without a justified reason, he is regarded as an obstructing guardian. If the girl seeks to marry a man and claims his suitability, while the guardian denies suitability, the matter is referred to the judge. If the girl proves the man's suitability, the judge compels the guardian to marry her to him, even if the guardian does not consent to the marriage. However, if the girl cannot prove suitability, 'adl is not realized and the guardian's refusal is valid.

If the girl marries someone who is not suitable, according to Hanafi jurists, her guardians have the right to rescind the marriage. This right of rescission is intended to protect the rights of the family and prevent social disgrace or shame that may befall the family (Al-Kasani al-Hanafi, 1986; Al-Sarakhsi, 1993).

2.1.5. *Marriage before the Legal Age*

Another manifestation of violence within the framework of marriage is the marriage of girls before reaching the legal age. This issue is connected with the question of

guardianship over the marriage of a minor girl. In Hanafi jurisprudence, the father and paternal grandfather have guardianship over a minor girl and may marry her off. This guardianship is conditioned upon observing the girl's best interests. Al-Sarakhsi writes in this regard: "The father and paternal grandfather have the right to marry off a minor girl, because they have compassion for her and consider her best interests" (Al-Sarakhsi, 1993). Nevertheless, some contemporary Hanafi jurists believe that the marriage of a minor girl must be approached with greater caution and that this right may be used only if the girl's best interests require it. Otherwise, it is preferable to wait until she reaches puberty and maturity.

One of the protective guarantees that Hanafi jurisprudence provides for minor girls who have been married is the option of puberty. According to this right, a girl who was married before puberty may rescind the marriage after reaching puberty, provided that she has not yet had marital intercourse with her husband (Al-Kasani al-Hanafi, 1986; Ibn Abidin, 1992). This option demonstrates Hanafi jurisprudence's attention to the importance of the woman's consent in marriage, even in cases where the guardian had the right to marry her off. Marriage before the legal age may cause serious physical, psychological, and social harms to girls:

- Physical harms: Pregnancy at an early age may create serious risks to the health of the mother and the child.
- Psychological harms: Deprivation of childhood and adolescence, and psychological pressures arising from marital responsibilities.
- Social harms: Deprivation of education and restriction of social and personal development.

2.1.6. *Marriage to More than One Woman (Polygyny)*

In Hanafi jurisprudence, as in other Islamic schools, marriage to more than one woman, up to four wives, is permissible, provided that the man is able to observe justice among his wives. This ruling is based on the verse: "Marry such women as seem good to you, two, three, or four; but if you fear that you will not be just, then one" (al-Nisa', verse 3). The essential condition in polygyny is the observance of justice among wives. This justice includes the following:

- Justice in maintenance: Providing the living expenses of wives equally and in proportion to financial capacity.
- Justice in housing: Providing suitable housing for each wife.
- Justice in companionship: Dividing time and attention fairly among wives.

Hanafi jurists emphasize that if a man cannot observe justice, it is not permissible for him to marry more than one woman (Al-Kasani al-Hanafi, 1986; Al-Sarakhsi, 1993). One of the ways to protect women's rights in Hanafi jurisprudence is the possibility of inserting a condition in the marriage contract. A woman may stipulate in the marriage contract that her husband shall not marry another woman. If this condition is breached, the woman will have the right to rescind the marriage (Ibn Abidin, 1992).

Polygyny, when its conditions are not observed, may lead to violence against women:

1. Economic violence: Failure to provide sufficient maintenance for wives due to financial limitations.
2. Psychological violence: Feelings of humiliation, jealousy, and unhealthy rivalry among wives.
3. Social violence: Reduction of the woman's social status and limitation of access to family resources.

Therefore, although polygyny is permissible in Hanafi jurisprudence, it is accompanied by strict conditions whose purpose is to protect women's rights and prevent violence against them.

2.2. Violence Related to Financial Affairs, Work, and Education in Hanafi Jurisprudence

Women's financial, occupational, and educational rights are among the fundamental issues in legal and jurisprudential systems, and their violation may constitute clear manifestations of violence against women. In Hanafi jurisprudence, as in other Islamic schools, women's economic and social rights have received attention, and specific rulings have been established to protect these rights. This section examines forms of violence related to women's financial affairs, work, and education from the perspective of Hanafi jurisprudence and analyzes the rulings concerning denial of inheritance, financial restrictions, obstruction of employment and education, and forced labor.

Economic violence against women includes a wide range of behaviors, from preventing women from exercising control over inheritance and personal property to obstructing work, education, and access to health and medical services. This type of violence not only threatens women's economic independence but also violates their human dignity and fundamental rights.

2.2.1. Preventing Women from Exercising Control over Inheritance

One of the most common forms of economic violence against women in Islamic societies is depriving them of their right to inheritance. This often occurs on the basis of non-shar'i customs and traditions that conflict with explicit jurisprudential rulings.

During the Age of Ignorance, women and children were deprived of inheritance, and only adult men capable of fighting could inherit from the deceased. With the revelation of the inheritance verses in Surat al-Nisa', Islam abolished this discrimination and recognized women's right to inheritance (al-Nisa', verses 7, 11, and 12). The Noble Qur'an explicitly declares: "For men there is a share of what parents and close relatives leave, and for women there is a share of what parents and close relatives leave, whether it is little or much, as an ordained share"; that is, men have a share of what parents and relatives leave, and women also have a share of what parents and relatives leave, whether little or much, and this is a determined share (Al-Suyuti, 1993).

On the basis of these verses, Hanafi jurists summarize the causes of inheritance in three matters: (1) kinship and lineage in its broad sense, which includes every blood relation, whether male or female, adult or child; (2) marriage and cause, which includes relations arising from marriage; and (3) wala', which includes wala' al-ni'mah and wala' al-muwalat (Al-Sarakhsi, 1993).

From the perspective of Hanafi jurisprudence, preventing a woman from exercising control over her share of inheritance, whether accompanied by usurpation and unlawful possession or not, is unlawful and sinful. The authorities for this ruling are as follows:

- a) Qur'anic verses: Verses 10 and 29 of Surat al-Nisa' and verses 1 to 3 of Surat al-Mutaffifin, which emphasize the prohibition of disposing of another person's property.
- b) Prophetic hadiths: Several narrations from the Prophet have been transmitted in this regard:

“The property of a Muslim is not lawful except with his willing consent”; disposition of a Muslim’s property is not lawful except with his consent (Al-Sarakhsi, 1993).

“The sanctity of his property is like the sanctity of his life” (Al-Mawsili al-Hanafi, 1937).

“Indeed, your blood, your honor, and your property are sacred among you, like the sanctity of this day, in this month, in this city” (Al-Sarakhsi, 1993). After citing these proofs, al-Sarakhsi concludes that usurpation of property, like usurpation of the person, is an aggressive and unlawful act (Al-Sarakhsi, 1993).

Hanafi jurists believe that, if the usurped property remains, the usurper must return it to its owner, and if it is destroyed or defective, he is liable for its value if it is fungible by value, or for its equivalent if it is fungible by kind. The basis of this ruling is the Prophetic hadith: “The hand is liable for what it has taken until it returns it,” which states that what the hand has taken remains its responsibility until it is returned (Al-Shaybani, 2012). Regarding liability for benefits, however, Abu Hanifah has a different view. Based on the hadith “benefit follows liability,” he maintains that the usurper is not liable for benefits and that, in return for liability for the object itself, the benefits during the period of possession belong to him (Al-Kasani al-Hanafi, 1986). Nevertheless, Hanafi jurists distinguish between separable increments, such as the fruit of a garden or the offspring of an animal, and attached benefits. With regard to separable increments, if they are destroyed through transgression or negligence, or if the owner demands them and the usurper refuses to pay, the usurper is liable (Al-Mawsili al-Hanafi, 1937).

Since preventing a woman from exercising control over her share of inheritance is unlawful and sinful, the perpetrator of such an offense must be punished. The punishment for this act in Hanafi jurisprudence is ta’zir, the type and extent of which are determined by the Islamic judge. Some Hanafi jurists have divided usurpation into two types: one that does not involve sin, such as usurpation out of ignorance, and one that involves sin, in which sin is realized merely by taking possession (Al-Mawsili al-Hanafi, 1937).

2.2.2. Denial of Kinship in Order to Deprive a Woman of Inheritance

Another form of economic violence against women is the denial of their lineage and kinship with the deceased in

order to deprive them of their share of inheritance. This act is also religiously unlawful and entails discretionary punishment. Denial of lineage not only violates a woman’s financial right but also harms her dignity and personality. Hanafi jurists believe that if a woman’s kinship with the deceased is established through the court, the person who denied the relationship must, in addition to being required to pay the woman’s share of inheritance, be sentenced to discretionary punishment. This ruling is based on the general principles of Hanafi jurisprudence concerning the preservation of rights and the prevention of oppression and transgression.

2.2.3. Preventing Women from Exercising Control over Personal Property

Beyond the issue of inheritance, preventing a woman from exercising control over her own personal property is also considered a manifestation of economic violence. In Hanafi jurisprudence, a woman has complete financial independence and may own and dispose of property. This right is recognized on the basis of verse 32 of Surat al-Nisa’, which states: “For men is a share of what they have earned, and for women is a share of what they have earned.” Therefore, unlawful possession of a woman’s property or preventing her from exercising control over her own property is unlawful and sinful. The rulings concerning liability and civil responsibility mentioned in the previous section also apply here. The perpetrator of such an act must, in addition to compensating the loss, be sentenced to discretionary punishment.

2.2.4. Obstruction of Education

In Hanafi jurisprudence, as in other Islamic schools, the pursuit of knowledge and education is a ruling shared by men and women. Islam never regards gender as an obstacle to acquiring knowledge. All verses and narrations concerning the pursuit of knowledge are general and include both men and women.

The Noble Qur’an describes knowledge as light and sight, and ignorance as darkness and blindness: “Say: Are the blind and the seeing equal? Or are darkness and light equal?” (al-Ra’d, verse 16). Another verse states: “Say: Are those who know equal to those who do not know? Only those endowed with understanding take heed” (al-Zumar, verse 9). The Prophet also stated: “The pursuit of knowledge is an obligation upon every Muslim man and

Muslim woman”; this hadith explicitly emphasizes the obligation of education for women (Al-Hurr al-Amili, 1988).

In Tadhkirat al-Fuqaha, al-Hilli divides sciences, in terms of the ruling on their acquisition, into four categories: a) individually obligatory sciences, including knowledge of the proof of God, His attributes, prophethood, imamate, and resurrection, which must be acquired through evidence and demonstration rather than imitation (Al-Hilli, 1993); b) collectively obligatory sciences, such as jurisprudence, principles of jurisprudence, medicine, mathematics, and other sciences needed by society; c) recommended sciences, meaning sciences in which there are already sufficient specialists; and d) prohibited sciences, such as sorcery, divination, and physiognomy, which the Lawgiver has prohibited from being learned.

Despite the principle of permissibility and even obligation of women’s education, Hanafi jurisprudence raises certain restrictions in this regard that arise from two main factors:

- a) The guardian’s authority over the daughter: In Hanafi jurisprudence, the guardian, namely the father or paternal grandfather, has authority over the daughter’s person, including supervision over her personal affairs such as marriage, education, discipline, and medical treatment (Al-Haskafi, 2002). Therefore, the daughter does not have complete independence in pursuing education and requires the consent and permission of her guardians.

- b) The husband’s permission for leaving the home: A married woman needs her husband’s consent and permission to leave the home. If she leaves without his permission, she is considered disobedient and her maintenance is forfeited (Al-Kasani al-Hanafi, 1986; Al-Sarakhsi, 1993). This ruling affects the education of married women when it requires leaving the home.

Nevertheless, these restrictions are not absolute. In cases where acquiring knowledge is an individual obligation or where leaving the home is necessary and urgent, the consent and permission of the guardian or husband are waived. Some Hanafi jurists have also qualified a woman’s leaving the home without her husband’s permission by the phrase “without right,” meaning that a woman may leave without the husband’s permission for necessary matters (Ibn Nujaym al-Hanafi al-Misri).

In light of the foregoing, absolute and unconditional prevention of a woman’s education is not compatible

with the principles of Hanafi jurisprudence. If the guardian or husband prevents a woman from studying sciences that are individually obligatory under Islamic law, he acts contrary to the Sharia and has no right to prevent her. In such cases, a law that criminalizes such obstruction is consistent with Hanafi jurisprudence. However, with respect to permissible, recommended, and even collectively obligatory sciences in relation to which the guardian or husband has a right of prevention, legislation that absolutely criminalizes every form of obstruction conflicts with Hanafi jurisprudence. In such cases, a balance must be established between the woman’s right to education and the rights of the guardian or husband.

2.2.5. Obstruction of Work and Employment

Contrary to some assumptions, the principle of women’s employment is not prohibited in Hanafi jurisprudence. Verse 32 of Surat al-Nisa’, mentioned earlier, explicitly affirms women’s right to earn and to own their income. Likewise, the Prophetic hadith “Seeking lawful livelihood is an obligation upon every Muslim man and Muslim woman” indicates the permissibility and even recommendation of women’s employment (Al-Majlisi, 1983).

The Prophetic practice also indicates the permissibility of women’s work. During the Prophet’s era, women were employed in various occupations, such as handicrafts, spinning, weaving, trade, selling, nursing, baking, and shepherding, and the Prophet approved these activities within the framework of Islamic rulings (Tabatabaei, 1996). Despite the principle of permissibility, Hanafi jurists have raised restrictions and conditions for women’s employment:

- a) Priority of the family role: Some Hanafi jurists hold that a woman’s employment must not conflict with her family duties. Abu Hanifah states that if a woman has work outside the home and the man wants her to remain at home but she does not comply, her maintenance is forfeited (Al-Haddadi al-Abadi al-Zabidi al-Yamani al-Hanafi, 2006).

- b) The husband’s permission: As in the issue of education, a woman’s leaving the home for work requires the husband’s permission. Leaving without his permission entails disobedience and forfeiture of maintenance (Al-Kasani al-Hanafi, 1986; Al-Sarakhsi, 1993).

• c) Type of occupation: The author of Bada'i' al-Sana'i' makes an explicit statement about the limitation of women's employment. He writes: "It is plainly known that women cannot easily engage in business. Ordering women to engage in business brings about temptation and corruption" (Al-Kasani al-Hanafi, 1986). This perspective reflects the social and cultural concerns of the period in which Hanafi jurisprudence was formulated.

• d) Provision of maintenance by the guardian or husband: Hanafi jurists believe that if the father or husband provides all of the woman's financial needs, there is no religious justification for the woman to work. In this case, the father's guardianship and the condition of the husband's permission imply that they may prevent the woman from working (Al-Sarakhsi, 1993).

Despite the above restrictions, Hanafi jurisprudence permits a woman's employment without the permission of the guardian or husband in cases of necessity and urgency. If the woman's financial needs are not provided by the guardian and she has no way to secure her livelihood except through work, she may work by virtue of necessity, and the guardian or husband has no right to prevent her. This ruling is based on general jurisprudential principles such as the negation of harm and the negation of hardship.

In light of the above analysis, absolute prevention of women's employment is not accepted in Hanafi jurisprudence, although the right of prevention is recognized for the guardian or husband in specific circumstances, such as when maintenance is provided by the guardian or husband and there is no economic necessity. Therefore, a law that absolutely criminalizes every form of obstruction of employment conflicts with Hanafi jurisprudence in some cases. Nevertheless, it must be noted that in the contemporary era, many Muslim jurists and thinkers, in view of social and economic transformations, offer a more flexible interpretation of these rulings and emphasize women's right to employment and economic independence.

2.2.6. Obstruction of Access to Health and Medical Services

From the perspective of Hanafi jurisprudence, preserving physical and psychological life and health is obligatory for every human being, and no one has the right knowingly to harm his or her own health or that of

others. This principle is based on the jurisprudential rule "Everything harmful is unlawful" (Ibn Nujaym al-Hanafi al-Misri). The Noble Qur'an also emphasizes the preservation of life and prohibits suicide and self-harm. In addition, numerous hadiths emphasize the importance of preserving health and treating illnesses. The Prophet stated: "Seek treatment, for God has not created a disease without also creating a cure for it" (Al-Majlisi, 1983).

In cases involving health and medical services where failure to receive them causes serious physical or psychological harm to a woman, Hanafi jurisprudence removes the guardian's or husband's right of prevention. In such cases, the woman may receive medical services without the permission of the guardian or husband, and no one has the right to prevent her. This ruling is based on the jurisprudential principles of negating harm and negating hardship. The principle of negating harm, derived from the Prophetic hadith "There shall be neither harm nor reciprocal harm," is one of the most important jurisprudential principles and is applied in numerous cases. According to this principle, any ruling that results in harm is removed.

Therefore, a law that criminalizes obstruction of women's access to necessary health and medical services is fully consistent with Hanafi jurisprudence. In such cases, preservation of life and health takes precedence over other rulings, and the guardian or husband may not rely on the right of guardianship or permission to prevent a woman from accessing medical services. However, with respect to non-essential health and medical services whose absence does not cause serious harm, such as some cosmetic services or elective treatments, Hanafi jurisprudence recognizes a right of prevention for the father and husband. In such cases, because access to services requires leaving the home and leaving the home requires the husband's permission, the husband may prevent the woman from leaving. In these cases, a law that absolutely criminalizes every form of obstruction of access to health services conflicts with Hanafi jurisprudence. Of course, it should be noted that distinguishing between essential and non-essential services is not always easy and requires the opinion of medical specialists.

2.2.7. *Forced Labor*

One of the clearest manifestations of economic violence against women is compelling them to work. From the perspective of Hanafi jurisprudence, no one, whether husband, guardian, or stranger, has the right to force a woman to work. This ruling is based on fundamental jurisprudential principles, including the following:

- a) The principle of human freedom and inviolability: Islam regards the human being as free and dignified and prohibits any form of compulsion or coercion that conflicts with this dignity. The Noble Qur'an states: "And We have certainly honored the children of Adam" (al-Isra', verse 70).
- b) The prohibition of disposing of another person's body and labor power: Just as disposition of another person's property without consent is unlawful, disposition of another person's body and labor power without consent is also unlawful. The Prophetic hadith "The property of a Muslim is not lawful except with his willing consent," mentioned earlier, also includes labor power.
- c) The negation of coercion in the Sharia: Verse 256 of Surat al-Baqarah states: "There is no compulsion in religion." This general principle operates in all chapters of jurisprudence and also includes economic and social matters.

Some may assume that because of the authority the husband has over the wife, he may compel her to work. However, Hanafi jurists explicitly state that the husband has no right to compel the woman to perform household work or work outside the home. Al-Sarakhsi writes in *al-Mabsut*: "A woman is not obligated to serve in her husband's house, because she was married for sexual enjoyment, not for service" (Al-Sarakhsi, 1993). This ruling is based on the nature of the marriage contract. The marriage contract is a contract under which the woman, in exchange for receiving dower and maintenance, transfers the right of sexual enjoyment to the husband, not a contract under which she places herself at his disposal as a servant or worker. Therefore, the husband cannot force the woman to perform household work or work outside the home.

Some Hanafi jurists believe that, as a recommended act and as part of good marital relations, a woman may help her husband with household work, but this is not obligatory and the husband has no right to compel her

(Al-Kasani al-Hanafi, 1986). Likewise, the father or other guardians have no right to compel the girl to work. Although the guardian has authority over the person of the daughter, this authority is limited to matters that are in the girl's interest and does not include compelling her to work. Compulsion to work not only conflicts with human dignity but may also lead to exploitation, which Islamic law opposes.

The perpetrator of the offense of forced labor, whether husband, guardian, or stranger, must be sentenced to discretionary punishment. The severity of the punishment depends on the circumstances and characteristics of the offense. If forced labor is accompanied by physical violence or threats, the punishment will be more severe. In addition to criminal punishment, the perpetrator must pay the equivalent wage for the work the woman was compelled to perform. This ruling is based on the jurisprudential principle that "whoever performs work for another is entitled to its wage." A legal provision that criminalizes forced labor and prescribes punishment for it is fully consistent with Hanafi jurisprudence. Such a provision is enacted to protect women's human dignity and prevent their exploitation and is compatible with the principles and foundations of Hanafi jurisprudence in this area.

3. The Alignment of Hanafi Jurisprudence with International Instruments in the Field of Prohibiting Violence against Women

3.1. *The Theoretical Framework for Aligning Hanafi Jurisprudence with International Instruments*

Before entering the comparative discussion, it is necessary to explain the theoretical framework of this comparison. The relationship between international human rights law and Islamic jurisprudence, particularly Hanafi jurisprudence, is one of the most complex debates in contemporary comparative law. This relationship cannot be described in terms of absolute conflict or absolute agreement. Rather, the reality is that in some areas there is considerable overlap between the two legal systems, in some areas minor differences can be observed, and in a limited number of cases fundamental conflicts are apparent. International human rights instruments, especially those devoted to women's rights, are the product of several decades of negotiations among the world's states. Islamic countries also participated in this process, and many of them have signed and ratified

these instruments, although in some cases with reservations. This reality shows that Islamic states, including those whose legal systems are based on Hanafi jurisprudence, have accepted that bridges can be built between Islamic values and human rights principles. In the literature of international law, some thinkers, such as An-Na'im, believe that Islam can be made compatible with international human rights standards through reinterpretation of religious texts (An-Na'im, 1990). By contrast, others, such as Mayer, believe that fundamental differences exist between these two systems that cannot easily be overlooked (Mayer, 2012). The approach of this article is a moderate and realistic one that seeks to identify points of commonality and difference accurately and without prejudice.

3.2. *The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Hanafi Jurisprudence*

3.2.1. *Introduction to the Convention and Its Status*

The Convention on the Elimination of All Forms of Discrimination against Women, abbreviated as CEDAW, was adopted by the United Nations General Assembly in 1979 and entered into force in 1981. This Convention, sometimes described as the "international bill of rights for women," is the most comprehensive international instrument on women's rights and has so far been ratified by more than 189 countries (Freeman et al., 2012). CEDAW is based on the principle of equality and non-discrimination and obliges States Parties to eliminate all forms of discrimination against women in civil, political, economic, social, and cultural spheres. Article 1 of the Convention defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex" whose purpose or effect is to impair or nullify the recognition, enjoyment, or exercise by women of human rights and fundamental freedoms, irrespective of marital status, in political, economic, social, cultural, civil, or any other field on a basis of equality between men and women (Cook, 1994).

3.2.2. *Article 16 of CEDAW and the Rulings on Marriage in Hanafi Jurisprudence*

Article 16 of CEDAW, which concerns women's rights in marriage and family relations, has been one of the most controversial provisions of the Convention for Islamic

countries. This article emphasizes, among other matters, equal rights in freely choosing a spouse and entering marriage only with free and full consent, equal rights in divorce, equal parental responsibilities, and the prohibition of child marriage (Charlesworth & Chinkin, 2000).

a) Consent in Marriage

As discussed in detail in the second section of this article, Hanafi jurisprudence has a clear position on consent in marriage: an adult and legally competent woman, whether virgin or previously married, has the right to marry by her own consent and choice. This position has considerable harmony with Article 16(1)(b) of the Convention, which emphasizes the "same right freely to choose a spouse and to enter into marriage only with free and full consent" (Tomasevski, 1993). Therefore, forced marriage, which was discussed in section 2.1.3 of this article, is rejected both from the perspective of Hanafi jurisprudence and from the perspective of CEDAW, although their argumentative foundations differ. Nevertheless, it should be noted that, regarding a minor girl, Hanafi jurisprudence grants the father and paternal grandfather guardianship over marriage, whereas Article 16(2) of CEDAW absolutely prohibits "child marriage" and requires the determination of a minimum age for marriage. This is a point of difference between the two systems, and it has also manifested itself in the positive laws of Islamic countries, many of which have established a minimum age for marriage in their legislation (Welchman, 2007).

b) Polygyny

Another area of apparent conflict between CEDAW and Hanafi jurisprudence is the issue of polygyny. The CEDAW Committee has stated in General Recommendation No. 21 that polygyny is contrary to the principle of equality and non-discrimination against women and that States Parties should prohibit it. By contrast, Hanafi jurisprudence permits polygyny up to four wives, provided that justice is observed. Here, it is necessary to distinguish between two levels of analysis. At the first level, if polygyny is accompanied by the violation of women's economic, psychological, or social rights, it is prohibited both from the perspective of CEDAW and from the perspective of Hanafi jurisprudence because of the condition of justice. At the second level, this conflict returns to the most

fundamental questions concerning the relationship between religious law and human rights (Mayer, 2012).

c) Baad-Dadan

Regarding the custom of baad-dadan, which was examined in detail in section 2.1.2 of this article, both Hanafi jurisprudence and CEDAW adopt the same position: this custom is not only prohibited but also punishable. Article 16 of CEDAW emphasizes the prohibition of every form of forced marriage, and Article 5 obliges states to modify social and cultural patterns that are based on the inferiority of women (Freeman et al., 2012).

3.2.3. *The Economic Provisions of CEDAW and Hanafi Jurisprudence*

Article 11 of CEDAW guarantees women's right to employment, equal employment opportunities, equal pay, and social protections. Article 13 also addresses women's economic and social rights, including the right to obtain bank loans and participate in recreational activities (Tomasevski, 1993). As shown in the preceding section of this study, Hanafi jurisprudence recognizes the principle of women's financial independence and prohibits absolute obstruction of work and education. In this area, there is significant overlap between Hanafi jurisprudence and CEDAW, because both systems affirm women's right to property and independent income. However, differences also exist, mainly arising from the institution of guardianship in Hanafi jurisprudence. CEDAW treats any restriction based on sex as discrimination, whereas Hanafi jurisprudence justifies some restrictions on the basis of family roles (Baderin, 2003).

3.3. *The Universal Declaration of Human Rights (UDHR) and Hanafi Jurisprudence*

3.3.1. *Background and Content*

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly in 1948 and, as the first global human rights instrument, marked a turning point in the history of international law. Although the Declaration is not inherently binding, many international lawyers regard it as part of customary international law (Morsink, 1999). During the drafting of the Declaration, some Muslim-majority countries, including Saudi Arabia, abstained from voting because of

concerns about possible conflict between certain articles and Islamic rulings, although they did not formally oppose it (Waltz, 2004). This historical fact shows that the debate over the alignment of international human rights and Islamic rulings is not a subject that can be addressed through simple answers.

3.3.2. *Article 1 and Human Dignity*

Article 1 of the Universal Declaration states: "All human beings are born free and equal in dignity and rights." This principle of inherent human dignity has deep overlap with the foundational Islamic principle "And We have certainly honored the children of Adam" (al-Isra', verse 70). Both systems regard human dignity as the basis of human rights, although they have different philosophical foundations (Baderin, 2003). In Hanafi jurisprudence, this human dignity is the basis of many protective rulings concerning women. The prohibition of slavery, the prohibition of selling women under the pretext of marriage, the prohibition of forced labor, and the requirement of consent in marriage are all based on this principle. From this perspective, Hanafi jurisprudence and the Universal Declaration of Human Rights meet at a shared point: respect for the inherent dignity of the human being as a human being, not on the basis of gender, race, or religion.

3.3.3. *Article 16 and the Right to Marriage*

Article 16 of the Universal Declaration of Human Rights provides that: "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses" (Morsink, 1999). The second paragraph of this article, which emphasizes "free and full consent," is consistent with the position of Hanafi jurisprudence regarding the necessity of an adult woman's consent in marriage. As Ibn al-Humam and other Hanafi jurists have explicitly stated, compelling an adult girl to marry is not permissible. This overlap shows that, at least in some respects, Hanafi jurisprudence has adopted one of the most advanced jurisprudential positions in support of women's freedom in marriage. Nevertheless, it is necessary to note an important distinction: Article 16 of the Declaration

speaks of the “equal right” of men and women in marriage, whereas Hanafi jurisprudence, like other Islamic schools, makes distinctions between the rights of men and women in some respects, including suitability, the right of divorce, and certain financial aspects. These distinctions remain the subject of ongoing debates in comparative law (Peters & Wolper, 1995).

3.3.4. *Article 17 and the Right to Property*

Article 17 of the Universal Declaration provides that “Everyone has the right to own property alone as well as in association with others” and that “No one shall be arbitrarily deprived of his property.” This principle is fully consistent with women’s financial rights in Hanafi jurisprudence, which were explained in detail in section 2.2 of this article. In Hanafi jurisprudence, a woman has full and independent financial capacity, and no one has the right to deprive her of this capacity. Preventing a woman from exercising control over her inheritance or personal property is prohibited both under Hanafi jurisprudence and under the Universal Declaration.

3.4. *The Cairo Declaration on Human Rights in Islam and Its Position on Violence against Women*

3.4.1. *Background and Status of the Cairo Declaration*

The Cairo Declaration on Human Rights in Islam was adopted in 1990 by the Organization of Islamic Cooperation (OIC). This Declaration was, in effect, the response of Islamic countries to the 1948 Universal Declaration of Human Rights and sought to offer a human rights framework based on Islamic values (Mayer, 2012). Although this Declaration is not binding under international law, it expresses the official position of the member states of the Organization of Islamic Cooperation, including countries whose legal systems are based on Hanafi jurisprudence. Some jurists, including Baderin, believe that the Cairo Declaration can be used as a complementary instrument alongside international human rights instruments, provided that a flexible interpretation of the concept of “Sharia” is adopted (Baderin, 2003). By contrast, critics such as Mayer believe that the Declaration’s absolute subordination to Sharia effectively conditions and weakens every right stated in it (Mayer, 2012).

3.4.2. *Provisions Related to Violence against Women*

Article 6 of the Cairo Declaration provides that “woman is equal to man in human dignity” and has rights, responsibilities, civil personality, and independent financial obligations. It also states that the husband is responsible for the maintenance and care of the family. This article shows that Islamic countries have officially accepted the principle of equal dignity of women and men, although their interpretation of “equal rights” in this Declaration differs from the interpretation in CEDAW. Article 17 of this Declaration concerning marriage provides that marriage is concluded only with the full consent of the parties and without any restriction based on race, color, or nationality, and that, according to the principle of Islamic law, the husband bears responsibilities concerning maintenance and care of the family. This position is consistent with Hanafi jurisprudence regarding the necessity of consent in marriage.

3.4.3. *Comparative Evaluation*

Several points are noteworthy in comparing the Cairo Declaration with other international instruments on the one hand and with Hanafi jurisprudence on the other. First, in some areas, the Cairo Declaration provides less protection for women than what Hanafi jurisprudence offers in its ideal form; this shows that the “official Islamic position” is not necessarily identical to the deepest teachings of classical jurisprudence. Second, both the Cairo Declaration and Hanafi jurisprudence emphasize the prohibition of explicit physical violence against women, although the issue of physical discipline within marriage is a subject that will be discussed later. Third, all three systems—Hanafi jurisprudence, the Cairo Declaration, and international instruments—emphasize the inherent dignity of women as human beings, and theoretical bridges can be built from this shared point.

3.5. *The ILO Violence and Harassment Convention (No. 190) and Hanafi Jurisprudence*

3.5.1. *Introduction to the Convention*

The International Labour Organization Violence and Harassment Convention, 2019 (No. 190), adopted in 2019, is the first international labor standard specifically addressing violence and harassment in the world of

work. This Convention covers a wide range of violent and harassing behaviors, including sexual harassment, gender-based harassment, and domestic violence that affects the workplace ([International Labour Organization, 2019](#)). The broad definition that this Convention provides for “violence and harassment” has a direct relationship with some concepts in Hanafi jurisprudence. According to Article 1 of this Convention, the term “violence and harassment” refers to a range of unacceptable behaviors and threats, whether occurring once or repeatedly, that aim at, result in, or are likely to result in physical, psychological, sexual, or economic harm ([Trebilcock, 2020](#)).

3.5.2. *Alignment with Hanafi Rulings on Forced Labor*

As explained in detail in section 2.2.7 of this article, Hanafi jurisprudence prohibits every form of compulsion to work, and al-Sarakhsi explicitly states that the husband has no right to compel the woman to perform household work or work outside the home. This position is consistent with the provisions of ILO Convention No. 190 concerning the prohibition of forced labor. However, there is an important difference: ILO Convention No. 190 operates on the basis of full equality between men and women in the labor market and treats every distinction based on gender as unacceptable ([Trebilcock, 2020](#)). By contrast, Hanafi jurisprudence, while accepting distinct roles for men and women in the family, justifies some gender-based limitations in the field of employment, although it does not regard these limitations as absolute.

3.6. *The Convention on the Rights of the Child (CRC) and Hanafi Jurisprudence*

3.6.1. *Child Marriage*

The Convention on the Rights of the Child, adopted in 1989, defines a child in Article 1 as every person below the age of 18, unless majority is attained earlier under national law. This Convention has now been ratified by 196 countries and has the broadest coverage among international human rights treaties ([Unicef, 2007](#)). Regarding child marriage, the Committee on the Rights of the Child has stated in several pronouncements that marriage under the age of 18 is incompatible with the principles of the Convention, particularly Article 24, concerning the right to health, and Article 28, concerning the right to education ([Unicef, 2007](#)). By contrast, Hanafi

jurisprudence, as discussed in the previous section of this article, recognizes the possibility of marrying a minor girl under the guardianship of the father or paternal grandfather. Here, two levels must be distinguished. At the first level, both systems emphasize the need to observe the best interests of the child. At the second level, the main difference lies in the definition of “sufficient age”: Hanafi jurisprudence regards puberty as the criterion, which may occur before the age of 18, whereas the CRC sets 18 as the boundary of childhood. In the contemporary era, many Muslim-majority countries, including countries whose legal systems are based on Hanafi jurisprudence, have established a minimum age of marriage at 16 or 18 under the influence of the CRC. This trend shows that alignment between jurisprudential rulings and international obligations is not only possible but already occurring ([Welchman, 2007](#)).

3.7. *The Beijing Declaration and Platform for Action 1995 and Hanafi Jurisprudence*

3.7.1. *The Importance of the Beijing Declaration*

The Fourth World Conference on Women, held in Beijing in 1995, adopted the Beijing Declaration and Platform for Action. Although this document is not binding, it has been highly influential politically and identified twelve critical areas of concern requiring urgent action, including violence against women, education and training, and economic rights ([United Nations, 1995](#)). Section D of the Beijing Platform for Action, which is specifically devoted to “violence against women,” offers a comprehensive definition of this phenomenon, including physical, sexual, and psychological violence within the family, in the community, and by the state. This broad definition is comparable to the Hanafi approach examined in the second section of this article.

3.7.2. *Points of Commonality and Difference*

First, both approaches, namely the Beijing Declaration and Hanafi jurisprudence, emphasize the prohibition of explicit physical violence against women. Second, both acknowledge the importance of education and training for women; while Hanafi jurisprudence regards the pursuit of knowledge as obligatory for men and women, the Beijing Declaration also recognizes the right to education as one of women’s fundamental rights ([United](#)

Nations, 1995). Third, women's right to property and economic independence is affirmed in both systems. The Beijing Declaration emphasizes "reproductive rights," which may conflict with some rulings of Hanafi jurisprudence. Moreover, the Declaration emphasizes the "principle of equality" as an absolute value, whereas Hanafi jurisprudence, in some areas, presents "justice" instead of "mathematical equality" (Baderin, 2003).

3.8. The Istanbul Convention and Its Comparison with Hanafi Jurisprudence

3.8.1. Introduction to the Convention

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, commonly known as the Istanbul Convention, was adopted in 2011 and entered into force in 2014. This Convention is recognized as the most advanced regional instrument in the field of combating violence against women (Council of Europe, 2011). The Istanbul Convention is based on four fundamental principles known as the "four Ps": prevention, protection, prosecution, and integrated policies. It criminalizes a wide range of violent behaviors, including physical, psychological, and sexual violence, stalking, forced marriage, female genital mutilation, and marriage by deception (Sosa, 2020).

3.8.2. Forced Marriage in the Istanbul Convention and Hanafi Jurisprudence

Article 37 of the Istanbul Convention criminalizes forced marriage and calls on States Parties to take the necessary legislative measures to criminalize it. As shown in the preceding section of this study, Hanafi jurisprudence also does not permit the forced marriage of an adult girl and regards it as subject to ta'zir. This significant compatibility shows that, in this area, alignment between Hanafi jurisprudence and international instruments is entirely possible (Sosa, 2020).

3.8.3. Psychological Violence and Hanafi Jurisprudence

Article 33 of the Istanbul Convention criminalizes psychological violence as conduct that intentionally causes serious impairment of a person's psychological integrity through coercion or threats. This is an area in which Hanafi jurisprudence addresses psychological violence implicitly rather than explicitly. Concepts such as "coercion," in al-Sarakhsi's definition, which includes the removal of consent or choice, also include psychological aspects. However, the more detailed treatment offered by the Istanbul Convention in this area is not found in Hanafi jurisprudential literature, which itself creates an opportunity to enrich jurisprudential literature. In order to provide a clear picture of the findings of the comparative discussion, the principal manifestations of violence against women examined in this study are compared with international instruments in the following table:

Table 1

Comparative Analysis

Type of violence	Position of Hanafi jurisprudence	Position of international instruments	Degree of compatibility
Buying and selling women	Prohibited and unlawful	Prohibited (UDHR Article 4; CEDAW)	Complete
Baad-dadan	Prohibited and subject to ta'zir	Prohibited (CEDAW Article 16)	Complete
Forced marriage of an adult girl	Prohibited and subject to ta'zir	Prohibited (CEDAW; Istanbul Convention)	Complete
Child marriage	Permissible under guardianship, but with the option of puberty	Prohibited (CRC)	Partial
Denial of inheritance	Prohibited and subject to ta'zir	Prohibited (CEDAW Articles 15 and 16)	Complete
Obstruction of education	Absolutely prohibited in individually obligatory matters	Absolutely prohibited (CEDAW Article 10)	Partial
Obstruction of employment	Prohibited in cases of necessity	Absolutely prohibited (CEDAW Article 11)	Partial
Forced labor	Prohibited and subject to ta'zir	Prohibited (ILO Convention No. 190)	Complete
Polygyny	Permissible subject to justice	Objected to (CEDAW General Recommendation No. 21)	Conflict

Psychological violence	Implicitly addressed through coercion	Explicitly addressed (Istanbul Convention Article 33)	Partial
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3.9. Areas of Conflict and Adaptive Solutions

Based on the analysis conducted, the main conflicts between Hanafi jurisprudence and international instruments may be classified under several headings:

- First: conflict concerning the age of marriage. Hanafi jurisprudence permits the marriage of a minor girl under the guardianship of the father, whereas the CRC and CEDAW emphasize a minimum age of marriage. This conflict has been managed in the positive law of many Islamic countries through the determination of a legal minimum age.
- Second: conflict between the principle of equality and the principle of justice. International human rights law emphasizes “equality” in the rights of men and women, whereas Hanafi jurisprudence, in some areas, emphasizes “justice” and differentiated roles.
- Third: polygyny. This issue is treated in international instruments as a form of discrimination, whereas in Hanafi jurisprudence it is permissible under certain conditions.

To move toward a legal system that is compatible both with the foundations of Hanafi jurisprudence and with international standards, the following solutions are proposed:

1. Using the internal capacities of Hanafi jurisprudence: Hanafi jurisprudence, with rules such as the negation of harm and the negation of hardship and with its emphasis on the necessity of consent, has substantial capacities for combating violence against women. Activating these capacities can resolve many conflicts.
2. Distinguishing between fixed and variable rulings: By distinguishing between principles that are fixed and rulings that arose from the social conditions of the era of the great jurists, modern readings of Hanafi jurisprudence can be offered that are compatible with contemporary realities.
3. Modern national legislation: Islamic states can, by using theories such as public interest and restriction of the permissible, adopt laws that preserve Islamic identity while also securing

international human rights standards (Welchman, 2007).

4. Education and awareness-raising: As stated in the Beijing Declaration, combating violence requires cultural change. Educating jurists, lawyers, and the general public about women’s rights from the perspective of both systems is the key to success on this path.

4. Conclusion

The comparative analysis showed that Hanafi jurisprudence, despite its historical antiquity, adopts positions in many areas related to violence against women that overlap with international human rights standards. Concepts such as the prohibition of forced marriage, financial independence, and the prohibition of forced labor in Hanafi jurisprudence are fully consistent with the provisions of international conventions, including CEDAW and ILO instruments. Nevertheless, differences also exist, mainly arising from differences in the definitions of puberty, approaches to polygyny, and traditional interpretations of the institution of guardianship. These differences do not necessarily indicate a fundamental conflict; rather, they show the need for further legal dialogue and for dynamic, time-appropriate interpretations within the framework of Hanafi jurisprudence, so that the common objective of both systems, namely the preservation of women’s dignity and security, may be achieved.

Authors’ Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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Declaration of Interest

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Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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