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**Criminal Protection of Women's Rights against Violence in
Palestine**

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PREFACE

The Legal System in Palestine

The legal system in Palestine is considered a unique legal system, due to the exceptional circumstances that Palestine have been going through over the successive historical periods. Since 1517, Palestine entered under the control of the Ottoman Empire, and remained so for a period of approximately four centuries. Throughout that period, the rules of administrative and legal organization imposed on the rest of the Ottoman provinces were applied, as the Ottoman laws were in their inception derived from Islamic law and custom. After the Ottoman Empire turned to codification in order to create a unified legal system, the Code of Judicial Rulings was issued in order to represent the civil law applied at the Palestinian courts until today. Furthermore, it imported laws from European countries such as France, Belgium, the Netherlands, and Germany, such as the Penal Code of 1840, which is considered a historical source for the Jordanian Penal Code No. 16 of 1960 which is still in effect in the West Bank..

Palestine remained within the jurisdiction of the Ottoman Empire until the year 1917. After the defeat of the Ottoman Empire in the First World War, Britain entered Palestine and took control of the country completely in 1918. The British administration took many forms, starting with the military occupation and then the civil administration. With the issuance of the Mandate for Palestine in 1922, Palestine was formally placed under the British Mandate, which clearly worked to create a legal ground to facilitate the establishment of the Jewish national home on Palestinian land through the demolition of the inheritance of the Ottoman law almost completely. Because most of the Ottoman laws were subject to amendment, modification, and cancellation, the focus was on the penal law, which was given great importance due to the political events that the region was going through. The result was the issuance of Law No. (4) of 1936, which is still applied in the Gaza Strip, and the land laws, which amended some of its articles to provide the opportunity for Jews to acquire land by legal means.

With the end of the British Mandate over Palestine on May 15, 1948, Jordanian forces entered the West Bank, claiming responsibility for it on May 19, 1948, as per the agreement signed with the British Foreign Minister, which stipulates that Jordan should administer

the Palestinian Arab territories in accordance with the partition decision after the evacuation of the British forces. It was clear at that time that the focus of the Jordanian government was focused on controlling the political situation and attempts to annex the West Bank to the East Bank legally and lawfully to reduce the intense opposition that the Jordanian government was facing at the time. Consequently, the legislative activity during that period was in this context, as all mandatory laws were preserved without amendments. After completing the process of annexing the West Bank to the East Bank following the elections for the Legislative Council in 1950, and the issuance of the 1952 Constitution, the features of the new state called the Hashemite Kingdom of Jordan began to become clear. It was evident, therefore, that the two banks had to be united legally as well as politically. Especially since the British Mandate over Jordan did not result in interference in the legislative process, as the Ottoman laws were not subject to amendment, while the laws applied in the West Bank were subject to the amendments of the British administration, this legal discrepancy did not favor the annexation process. Therefore, many unified laws were issued, such as the Law on the Formation of Courts, the Law of the Magistrates Courts, the Evidence Law, the Law on the Principles of Rights Trials, the Procedure Law, the Income Tax Law, the Law on Disposal of Immovable Property, the Law of Land Identification and Surveying, and also the Jordanian Penal Law No. 16 of 1960 which is still in effect in the West Bank until today.

The picture differs in the Gaza Strip, which was under the Egyptian administration after the end of the British mandate over Palestine. After entering the Gaza Strip, the Egyptian forces announced as per Order No. (6) of 1948 that the courts of all degrees and types would continue to apply the laws in force on May 15, 1948. It should be noted that the legislative activity of the Egyptian administration was very limited and did not significantly affect the mandatory legal system. This is due to the Egyptian administration's view of the nature of its presence in the Gaza Strip as a temporary existence until a solution to the Palestinian crisis is found and matters are restored. In this context, it can be said that most of the legislations issued by the Egyptian administration at that time were legislations related to organizing daily life without prejudice to the prevailing legal system. This explains the legislative discrepancy between the West Bank and the Gaza Strip after 1948.

With Israel's occupation of the West Bank, the Gaza Strip, the Golan Heights, and Sinai after the defeat of the Arabs in the 1967 war, the military occupation issued Order No. (2) in which all powers were concentrated in the hands of the military governor and stipulated that all laws applied to the West Bank and Gaza Strip prior to 1967 would apply. At the time, the military administrations did not make any effort to unify the legal and administrative systems between the West Bank and the Gaza Strip, but concentrated all their efforts to control and establish political control. Even after the establishment of the Civil Administration in 1981, the authority to legislate remained in the hands of the military authorities, while the role of the Civil Administration was focused on implementing the local laws applied before 1967 and the new laws enacted by the occupation authorities in the form of orders, leaflets, appointments, and in some cases the issuance of some secondary legislation. As the military orders were given priority to apply to the local laws in effect, so the military orders had caused many changes in the legal and administrative structure in the West Bank and Gaza Strip. As for East Jerusalem, it was annexed by the Israeli occupation in 1980 and the Israeli law was imposed on it¹.

On 13/09/1993, the Oslo Agreement was signed between Israel and the Palestine Liberation Organization, which was the first direct formal agreement between the two parties. The agreement provides for the establishment of a transitional Palestinian self-government authority, and an elected legislative council for the Palestinian people in the West Bank and Gaza Strip for a transitional period not exceeding five years, during which the course of permanent negotiations between the two parties with the aim of reaching a permanent settlement on the basis of Security Council Resolutions 242 and 338. After the Palestinian Authority entered Gaza and Jericho on 04/05/1994, the late President Yasser Arafat issued his first decision as President of the Palestinian National Authority on 20/05/1994 stating continuing to apply the laws and regulations that were in effect before 05/06/1967 until they are unified. In 1996, the first legislative elections were held in which the Palestinian people held great hopes of representing their legislative will, and felt that they were standing in front of the first experience of representative democracy in its contemporary

¹) See Birzeit University Law Institute, 2008, the Summary of the Legal System and Legislative Process in Palestine.

history, after its legislative interests were represented by bodies that did not express a sincere expression of its will, reality, and aspirations².

Since then, the focus of the Legislative Council has been on unifying the laws in effect in the West Bank and Gaza Strip, and establishing a Palestinian legal system that reflects the needs and aspirations of the Palestinian people. In the context of achieving this goal, 220 laws have been included on the council's agenda, 93 of which have been approved by the President of the National Authority. Accordingly, they published in the Official Gazette, among them were eight laws regarding the general budget of the authority, and the rest of the laws were distributed in the economic, social, judicial, administrative and security fields, in addition to the field of freedoms and human rights³. At the head of these laws were: the Amended Basic Law which was approved by the Legislative Council on 02/10/1997. However, the President of the Palestinian National Authority did not sign it until 2002, after which it became effective since it was published in the Official Gazette on 07/07/2002. Nevertheless, it was amended on May 15, 2003. Although the effectiveness of the Basic Law is temporary, it represents the constitutional umbrella of the foundations of legislation, implementation, litigation, the system of government, rights and freedoms, as it has the characteristics of the constitution as all laws issued by the legislative authority must comply with the Basic Law and should not contradict it; otherwise, it will be challenged for its unconstitutionality based on the principle that the constitution prevails over all laws⁴.

The legislative process in the West Bank and the Gaza Strip continued to proceed according to a unified mechanism with reference to the Basic Law and the internal system of the Legislative Council until the events of 14/06/2007, when Hamas took control of the Gaza Strip and the resulting political and legal division between the West Bank and the Gaza Strip. Since then, the mechanism for enacting legislation in the West Bank differed from that in the Gaza Strip. In the West Bank, many legislations were issued in the form of decrees by law issued by the President of the State of Palestine, based on Article (43) of

²) F. Bekirat and others, 2006, p .11.

³) The Palestinian Legislative Council. The first Legislative Council. http://www.pal-plc.org/ar_page.aspx?id=oTDukEa141811197aoTDukE

⁴) See F. Bekirat, 2005, p.7.

the amended Palestinian Basic Law, totaling 270 decrees by law till mid-year 2020. Meanwhile, the Legislative Council in the Gaza Strip issued laws in accordance with the usual mechanism for the conduct of the legislative process, with an amendment to the internal procedures in the Council⁵. Despite the national and Arab initiatives and attempts to bridge the gap and achieve national unity, division is still the master of the situation, casting its dark shadow over the Palestinian reality and a deepening of legal chaos.

It should be noted that the legal status picture is not complete except by the necessity to indicate the presence of Palestinian lands in the West Bank that are still subject to Israeli laws, which are lands classified according to the Oslo Agreement as Area C. According to the agreement, the Palestinian National Authority is responsible for providing educational and health services to the Palestinians in Area C, while these areas are still under the control of the Israeli security and administrative authorities. In addition, the Israeli laws are still in effect on the Israeli settlements in the West Bank.

⁵) M. Alawneh, and others, 2017. p. 7.

INTRODUCTION

Research Issues and Aims

The Palestinian legislator starts to achieve legal justice in the criminal sphere through the formulation of the criminal policy related to the Palestinian social reality. This acquires privacy in the context of the general situation in terms of the successive occupation periods that have passed on Palestine, which have had a great bad impact, that attempts to achieve the aim of comprehensive social, political, and economic reform. This is done in light of the principles of social justice, freedom, and equality. The Palestinian legal system is based on the principle of the rule of law and the subordination of all organs, authorities, and individuals to the rule of law. All the Palestinians are equal before the law and judiciary as the amended Basic Law of 2003 and its amendments guarantees human rights and fundamental freedoms and make them under due respect⁶.

Accordingly, the Palestinian legislator has woven criminal policy, targeting the behaviors that affect the legitimate interests that are worthy of protection. He devoted to them punitive rules, which are considered the highest degree of legal protection. Violent behaviors in societies in general and the Palestinian society in particular are considered one of the legitimate interests that the legislator targets within the context of these rules. In this respect, many punitive legal rules can be found that criminalize violent behaviors in all their forms, as it targets the human person who is the nucleus of society around which all other activities and human interests revolve.

Since women are the most vulnerable element in the society, it is necessary to find some kind of special protection that targets this vulnerable group in the context of the cultural heritage in the region, which often attempts to waste women's rights and marginalize their social, political, and economic role in the society, which in fact is worth of legal protection. With the development of social life in all its aspects, which is considered a catalyst for the creation of legal norms, all legislations, international conventions and conventions have

⁶The Amended Palestinian basic law of 2003 and its amendments is considered as the Palestinian constitution.

sought to find the foundations upon which the protection of this important group in the society in order to achieve the supreme goals of the rules of justice in general.

With this in mind, Palestine strived to join the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and declared its ratification in 2009 by the Presidential Decree No. 19 of 2009 on the ratification of CEDAW. In 2014, and after becoming a member of the United Nations as an observer State, Palestine joined CEDAW without making any reservations to any of its provisions. Consequently, Palestine has taken on the responsibility of achieving equality between women and men in all fields of life in all possible ways. This state of affair has made the issue of the prohibition of discrimination against women at the level of criminal laws and all state legislation, and achieving equal protection of the criminal rights of women in the face of violent crimes, the most prominent challenge that faces the State of Palestine to meet its international obligations. This is, in particular, in light of the various enforceable laws that do not respect women rights inherited by Palestine from the successive states that have controlled Palestine successively including the Ottoman Empire, the British Mandate, the Jordanian administration of the West Bank, the Egyptian administration of the Gaza Strip, the military orders issued by the Israeli occupation, and ultimately, the laws issued by the Palestinian National Authority (PNA). The PNA has tried hard to bridge the gender gap and promote the principle of equality. However, obstacles related to the Israeli occupation and the political division between the two parts of the homeland prevented the completion of the process of unifying the legislation and achieving its harmony with the international human rights standards. Thus, a severe negative impact was cast on the Palestinian women who suffer according to the report of the special rapporteur on violence against women, its causes and consequences; “the violence of the Israeli occupation, whether directly or indirectly, but they also suffer from a system of violence emanating from the tradition and culture, with embedded patriarchal social norms and multiple outdated legal framework”⁷.

Therefore, it has been necessary to shed light on the legal situation concerning the protection of Palestinian women from violence, and to focus on the criminal policy pursued

⁷ UN Human Rights Council, (2017), Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to the Occupied Palestinian Territory/State of Palestine, A/HRC/35/30/Add.2, P. 6.

by the Palestinian legislator in the context of achieving this protection, whether preventive, criminal, punishment, or through the criminal procedural policy applied in the criminal justice system. Furthermore, it provides the required privacy to deal with gender in line with the requirements of legislative harmonization through the political and economic empowerment of women, and to achieve equality and legal justice in all its aspects.

This study aims to identify the shortcomings in the field of substantive and procedural criminal protection of Palestinian women's rights in confronting violence, to show the risks of physical and sexual violence against women in the family and society, to demonstrate the importance of policies as a key factor in protecting women's right to life, to identify the legal obstacles and practical difficulties faced by women and girls who are victims of violence in dealing with criminal justice system in their quest for justice, to brief the ways of economic and political empowerment of women, and to refer to international mechanisms in the face of violence against women and the harmonization of Palestinian legislation for such mechanisms.

For the purposes of this study, criminal protection means a set of substantive or procedural criminal rules or provisions by which the legislator seeks to protect a person, property, or interest against an actual or potential prejudice, or to impose a criminal penalty on a violator or a procedural penalty for the procedural action involving such prejudice or having contact with this prejudice in one way or another⁸. Violence against women is considered as a form of discrimination based on gender and is defined according to CEDAW that "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty⁹".

According to the 1993 Declaration on the Elimination of Violence against Women, violence against women is defined as: "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women,

⁸ See H. Ahmed, 1986, p. 19.

⁹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 19: Violence against women, 1992, available at: <https://www.refworld.org/docid/52d920c54.html>

including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.¹⁰

Violence against women is one of the most prominent universal problems that a society, whether described as developed or developing, is hardly devoid of them. Throughout history, it is practiced in different forms and manners as a manifestation of unequal power relations between men and women that have led men to dominate and discriminate against women and to prevent the full advancement of women. During Greek time, women were denied from religious rights and were restricted to serving men, having children, and caring for the home. Women were not allowed to participate in neither political nor public life. Women were characterized by a lack of reason and legal personality in the Roman law. In the same way, women did not have the legal or financial capacity to conduct legal acts such as concluding contracts and filling a position. The husband had the right to kill his adulterous wife, without her enjoying the same right. The model of women created for the sexual pleasure of men in the ancient era of Mesopotamian civilization was commonplace. Consequently, the trade of women increased despite the recognition of some kind of human and economic rights of women. At the time of Pre-Islamic period, Arab women knew the status of slavery in all its dimensions of slavery and captivity. However, the phenomenon of girls infanticide and burying then alive constituted the most severe violence against women in that period. That case continued in the Arab society until the advent of Islam, which defended all the human rights of women, rejecting all forms of violence against them, correcting the inferior view of women and achieving human equality between women and men¹¹, and preferring the female to the male. Almighty says: "The male is not like the female"¹². Once the glamor of Islam faded in the hearts of the Arabs, the violence of the pre-Islam against women invaded Muslim societies once again. Women were

¹⁰ Article 1 of The Declaration on the Elimination of Violence against Women adopted by the United Nations General Assembly in its resolution 48/104 of 20 December 1993.

¹¹ See Sh. Dziyyi, 2010, pp. 43-67.

¹² Masrawy, the interpretation of Sha'rawi verse 36 Surat Al-Imran. https://www.masrawy.com/islamayat/quran-ayt_elyoum/details/2015/9/5/649953/%D8%AA%D9%81%D8%B3%D9%8A%D8%B1-%D8%A7%D9%84%D8%B4%D8%B9%D8%B1%D8%A7%D9%88%D9%8A-%D9%84%D9%84%D8%A2%D9%8A%D8%A9-36-%D9%85%D9%86-%D8%B3%D9%88%D8%B1%D8%A9-%D8%A2%D9%84-%D8%B9%D9%85%D8%B1%D8%A7%D9%86

socially, economically, politically, and culturally have been suppressed in the name of religion. Religious texts were interpreted in a context that restores the inferiority of women in society and enhances men's superiority over them. This is reflected in the legislation and laws in force to this day in most Arab countries, including Palestine.

Violence against women takes many different forms, including physical, sexual, verbal, psychological, economic, social, legal, and political violence. Violence may be material or moral. There is no inclusive list of violence against women¹³. Therefore, the study restrictions determine the scope of this study in the scope of physical violence against women without referring to moral violence. The research process has been determined and limited to the objective and procedural criminal rules in the crimes of physical and sexual violence and crimes against the right to life due to the seriousness of these crimes and their significance and sensitivity in the Palestinian social framework. Due to that fact that there are various forms of violence against women that require a lot of effort, research, and administering questionnaires, they are not within the scope of this study. The spatial framework of this study has also been determined in the West Bank, where the Jordanian Penal Code No. 16 of 1960 is applied, with the exception of East Jerusalem, which is subject to the Israeli Penal Code. The Gaza Strip is also excluded since it is under the jurisdiction of the Penal Code No. 74 of 1936, issued by the British High Commissioner, and it is also difficult to study and analyze three punitive laws in the same study. This study does not address the violence resulting from the Israeli occupation practices against women, since the scope of these studies is the prerogative of international human rights law and international humanitarian law.

Study Questions

This study attempts to answer the following questions: Is there an integrated legislative system in the protection of women against violence? Does the criminal protection of women against violence constitute full respect for international human rights covenants, in particular CEDAW? Have the legislations achieved the necessary equality in protecting

¹³ UN General Assembly, In-depth study on all forms of violence against women: Report of the Secretary General, 2006, p.48.

women against violence? Does the legal system equate with the human rights system in protecting women against violence? Is social protection compatible with the necessities of protecting women against violence? To what extent have legislative developments contributed to the criminal protection of women against violence? What is the role of the criminal justice system in protecting women against violence and the adequacy of this role? To what extent do civil society and human rights institutions contribute to protecting women against violence? How can the economic and political empowerment of women be achieved with the harmonization of Palestinian legislation of international mechanisms in the face of violence against women?

The Significance of the Study

Although there are many books and researches that talk about combating violence against Palestinian women in general, this study draws its significance from the fact that it deals with the issue of criminal protection of women's rights in Palestine in the face of violence in an integrated manner in its various aspects, whether substantive, procedural, or legal harmonization processes. It also outlooks mechanisms to empower women in different aspects, clarifies the deficiencies in the penal legislation specialized in combating violence against women, and foresees the filling of legal gaps by recommending its amendment by the Palestinian legislator in order to achieve harmony with international human rights covenants. The study also addresses the shortcomings in the state policy in dealing with women and girls as victims of violence as well as ways to develop a gender-sensitive policy through legal proposals and the practical processes.

The significance of this study is highlighted since it comes at a time when the Palestinian society is witnessing an increase in crimes of violence against women. In particular, there is an increase of murders of women and girls against the background of the so-called honor. Domestic and sexual violence remain socially accepted and underreported due to the stigma suffered by victims¹⁴, and the lack of legislation capable of protecting women. This study seeks to alert the necessity to find a clear and disciplined criminal law aimed at

¹⁴See UN Committee on the Elimination of Discrimination against Women (CEDAW), 2018, Concluding observations on the initial report of the State of Palestine, CEDAW/C/PSE/CO/1. P. 8.

combating crimes of violence against women and applying its provisions on the ground; thus contributing effectively to combating violence against women.

Furthermore, the significance of this study is also highlighted through placing the issue of violence against women as an important issue for the Palestinian legislator as expressed by the beginning of legal amendments to the Penal Code in force to the draft law in order to protect the family from violence. It is also highlighted by the executive authority's interest in opening safe houses. However, violence against women is still a large and growing phenomenon in the society, according to statistics. Judicial decisions are still so weak in the area of protecting women from violence that judicial rulings issued by Palestinian courts that emphasize criminal protection to women against violence are still rare. The protection of the right to live and the protection of the physical integrity of women are among the fundamental human rights to which international conventions and treaties are bound and obliged to the states. Consequently, these rights are considered so sacred that cannot be waived even in the darkest of circumstances and situations, and among the systems that have adhered to this Palestinian lawful and legal system. This leads to the question whether the Palestinian law and legislator have created the necessary guarantee to protect women from violence in a way that guarantees their human dignity and individual freedom on an equal basis with men.

The legislator created criminal protection, but this protection is characterized by deficiencies at the level of substantive rules, Chapter One, and deficiencies at the level of procedural rules, Chapter Two. Therefore, it is necessary to include the findings and recommendations by calling for strengthening the criminal protection of women's rights in the face of violence in Chapter Three.

Notes on the Methodological Approach Adopted

The descriptive analytical and critical methodology was followed in this study by extrapolating the legal provisions and rules in the Palestinian legislation, especially the objective and procedural penal legislation. The study attempted to come up with general

rules and identify their goals in the framework of addressing violence against women, without deviating from the historical, theoretical, and practical approaches.

The present dissertation has been based on the study of domestic legislation related to the subject of research and a descriptive, analytical study, in the light of international covenants and human rights charters, to show the discrimination against women on the basis of sex, and the contradictions of the legislation among them on the amount of protection guaranteed to women from violence. These legislations include the amended Basic Law of 2003 and its amendments; the Jordanian Penal Code No. 16 of 1960; the Palestinian Penal Procedure Law No. 3 of 2001; the Jordanian Crime Prevention Law No. 7 of 1954,; the Labor Law No. 7 of 2000; the Palestinian Child Law No. 7 for the year 2004; the Decision of the Cabinet No. (18) of 2013 related to the National Transfer System for Battered Women' and the laws by decrees amending the Jordanian Penal Code issued by the Palestinian President.

In addition, this dissertation included several legal issues and judicial rulings related to crimes of violence against women, with guidance from the legal experiences of some Arab countries in the fight against gender-based violence. Furthermore, references have been made to the views of the jurisprudence of the criminal law and the Islamic law in cases where the criminal law was based on *Sharia* (Islamic doctrine) as a primary source of legislation. The dissertation also relied on official statistics issued by the Palestinian Central Bureau of Statistics (PCBS) and several local surveys and exploratory studies, without losing sight of international reports related to the subject matter of the research.

Previous studies:

- Maram Omar Hassan Najjar's study, entitled "Assaults on Women in the Family", a master thesis (2014) at An-Najah National University, Nablus, Palestine. This study aimed to shed light on the legal loopholes contained in the provisions of the Jordanian Penal Code No. 16 of 1960 which address crimes against women within the family. It focused on the distinction between males and females from a gender perspective in the provisions of the law dealing with such crimes. The study reached the findings, the most prominent of which was the establishment of the Penal Code No. 16 of 1960, violence against women within the family, through the loopholes

- of the law and its limitations and prejudice to the male in some legal texts, in addition to the legislative vacuum for some crimes that were not addressed by the law.
- Faten Abdullah Sadiq Salhab's Study entitled “Palestinian Women's Rights between CEDAW Convention and Palestinian Legislation”, a master thesis (2017) at An-Njah National University, Nablus, Palestine. This study aimed to identify the Palestinian women’s rights from the perspectives of CEDAW and the individual's rights which is implemented in the West Bank. The study findings show that CEDAW and the individual's rights implemented in Palestine are compatible enough, and both approve and guarantee some rights (e.g. the right to learn, the right of medical treatment, the right of property ownership and disposal). However, the researcher finds conflicts between the two laws in terms of other rights including (housing, working, inheritance, alimony, guardianship, polygamy, divorce) due to the gap between the Islamic teachings and the cultural rules that are implemented in Palestine. CEDAW calls for equality between the two genders, changing the stereotypical roles of both men and women with familial confinements, abating male guardianship or custody over females. Yet, such rights cannot be amended or modified to be consistent with CEDAW as they entirely contradict the Islamic creed and rule.
 - Women's Center for Legal Aid and Counseling (WCLAC) study, entitled “Murder of Women in Palestine between the Culture and the Requirements of Change” (2016). This study is an analytical report on the results of monitoring and documenting the killings of women in the Palestinian society during the years 2014-2015. The study aimed to provide a gender perspective analysis of the dimensions, factors, and repercussions of the murders of women in Palestinian society; to provide gender-sensitive statistics and data on the murders of women; to highlight the incompatibility of the legislation in force in Palestine with international human rights conventions; to highlight the impacts of human rights and legal developments on the murders of women. The report pointed out that the phenomenon of killing women is still going on despite the differences in numbers from year to year for social, political, and economic reasons. Nevertheless, the

- course of the phenomenon is still increasing and practiced in different forms and means where suicide has topped the phenomenon in recent years as one of the declared causes of death.
- Donia Al-Amal Ismail's study, entitled “Rape of Women in the Gaza Strip: Voices of Victims”, issued by the Women's Affairs Center (n.d.), Gaza, Palestine. Through this study, the researcher aimed to study the cases of a number of women victims in order to shed light on the issue of rape as a form of violence against women which is not spoken about in the Palestinian society to find out whether rape constitutes an individual problem or a phenomenon. The researcher attempted to identify the real reasons behind the cases of rape of women in addition to the relationship between rape and killing women based on the background of the so-called honor, suicide, the police position on complaints and rape cases, and media coverage of rape cases. The study concluded that social indicators are increasing about the growing problem and turning it into a phenomenon that is silenced by the will of the male-oriented society. This issue is not among the strategic priorities of public official tendencies, which is reflected on the mechanisms of official and civil dealing as individual cases affecting a limited number of women.
 - Shatha Odeh Study's, entitled “Measuring and Analyzing the Services and Procedures of the Palestinian Civil Police in the West Bank from a Public and Gender Perspective”, published by Miftah Foundation (2016), Ramallah, Palestine. This study aimed to measure and analyze the services and procedures of the Palestinian Civil Police in the West Bank from a public and gender perspective. In addition, the study aimed to identify the challenges and gaps facing the work of the police, in order to come up with proposals that would contribute to the development of mechanisms and work procedures to meet the security needs of male and female citizens while taking into account their gender. One of the most prominent findings of the study was that the police were given the confidence and satisfaction of the public by 80%, despite the difficulties and gaps that still exist in the performance of the police. However, it was able to challenge many obstacles through the reform and development processes. The study also concluded that the police need sufficient cadres and competencies, supporting equipment such as police patrols,

qualified facilities, and supporting work instruments, since the security needs constitute a continuous and growing process. Therefore, the shortage of human resources and supporting equipment negatively affected all security needs in a reasonable and acceptable time to the public.

Comment on the previous studies:

This study is distinct from the previous studies as it is a legal study that deals with the legal aspects in its criminal division which is considered the highest degree of legal protection in order to empower women and protect them from violence. It is also characterized as being more general and more comprehensive as it covers the substantive and procedural aspects of crimes committed within the family and outside, i.e. in the various areas of violence against women. At the same time, the study focuses on demonstrating the consistency of Palestinian legislation with international human rights principles. Furthermore, this study was also conducted on the legal treatment of the phenomenon of violence against women in Palestine and the scope of legal legislation applied in the West Bank, which can be considered multi-source legislation and unstable. Moreover, several of the legislations in force in Palestine are obsolete and they are often inconsistent.

This study can also be considered as an addition to the research literature on the scope of violence against women, since it describes this phenomenon from a legal point of view. In addition, the study is based on the analysis of texts and violent behaviors that can be committed against women. Ultimately, the study reached the findings that can be built on in order to anticipate a better reality in combating violence against women and protecting their rights. This can be considered as an integral part of procedural and social studies that target the same subject but from different perspectives and research methods.

Division of the study:

This study consists of three chapters, an introduction and a conclusion.

In Chapter One, the researcher discusses the extent of the criminal protection of women's right to life, physical integrity, and sexual freedom, by analyzing and criticizing the legal provisions that protect these rights in order to show their deficiencies in discrimination

against women on the basis of sex, and the deficiencies in ensuring the full protection of women against violence as required by international conventions and charters related to human rights. As such, this chapter discusses the violation of the right to life by license of the law, the impact of legislative developments on the narrowing of the violation of this right, and the violation of the right to body integrity under legal excuses and the exercise of the right. In addition, this chapter addresses the issues of sexual abuse against women that occur within the family and society. Therefore, it discusses the crime of rape with the focus on deficiencies in the legislative treatment of the consequences of that crime. It also discusses the crime of incest by analyzing its legal elements and social dimensions and showing the position of the Penal Code and specialized legislations on the crime of sexual harassment against women.

Chapter Two discusses the legal and factual obstacles and challenges that limit the abilities of women who are victims of violence to access justice. This is done by highlighting negative practices related to administrative arrest and detention in safe houses, and the legal restrictions and gaps related to the complaint. In addition, it focuses on the position of the criminal justice agencies on cases of violence against women; the way they deal with battered women and their complaints, and their adherence to the laws and respect for human rights standards in this context, by discussing the extent of the efficiency of the police in dealing with gender issues, especially after the establishment of the Family Protection Unit. On the other hand, this chapter discusses the powers of the Public Prosecution in cases of violence against women, without neglecting the important role played by forensic medicine in achieving criminal justice. Finally, the chapter discusses the extent to which the judiciary authority respects the specificity of gender and the need for battered women for legal assistance.

Measures to strengthen the criminal protection of women's rights in the face of violence are discussed in Chapter Three. This is done by adopting mechanisms for the legal empowerment of women in order to achieve harmony with international human rights standards, and to achieve legislative harmonization with CEDAW, through discussing the rationale of enacting a law to combat violence against women and the obstacles to the adoption of the law to date, and ways to achieve redress for victims. Other aspects of

women empowerment are not neglected. In particular, the political empowerment of women is discussed by focusing on ensuring their participation in voting, running in elections, and highlighting the importance of their participation in decision-making. In addition, the economic empowerment of women is achieved by ensuring their right to inheritance, work, and joint funds on an equal basis with men to equip them with the weapons necessary to confront and eliminate violence.

List of Abbreviations:

CEDAW	The Convention on the Elimination of All Forms of Discrimination against Women
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICHR	The Independent Commission for Human Rights
MIFTAH	The Palestinian Initiative for Promotion of Global Dialogue and Democracy
PCBS	Palestinian Central Bureau of Statistics
PLO	Palestine liberation organization
SHAMS	Human Rights and Democracy Media Centers
UDHR	Universal Declaration of Human Rights
UNAIDS	The Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UN Women	United Nations entity dedicated to gender equality and the empowerment of women
WCLAC	Women's Center for Legal Aid and Counseling
WHO	World Health Organization

1. FAILURE OF CRIMINAL PROTECTION AT THE LEVEL OF SUBSTANTIVE RULES

Women's contribution is crowned as a fundamental and effective element of society if they feel on the basis of integration with satisfaction in their physical and moral entity, whether at home, family or street. As long as they feel safe in themselves, their homes and their actions, they will be capable of unlimited sacrifice and giving which contributes to the building and development of the society and the development of its capabilities. On the other hand, women's expectations are narrowed whenever they come under attack or violence; this abuse takes place whenever there is a failure of criminal protection against physical violence and when there is a failure of criminal protection against sexual violence targeting women.

1.1. Failure of Criminal Protection against Violence on the Human Existence of Women

There are numerous types of crimes against individuals, especially women, whether crimes against the right to life or crimes against the right to physical integrity. The Penal law is supposed to intervene to combat such crimes and to provide the necessary protection for women. However, women, as a fragile social component from the perspective of the physical structure, are exposed to violation of their rights, especially in the protection of their physical and moral entity in the face of violence as proved in the failure of penal regulations to protect women's right to life, and failure to confront violence in protecting their rights in physical safety.

1.1.1. Failure of Criminal Protection of Women's Right to Life

The Universal Declaration of Human Rights (UDHR) guaranteed the right to life, including each individual without discrimination. Article (3) of the Declaration states that "Everyone has the right to life, liberty and security of person." According to this Article, the right to life means the safety of the soul from every assault. Each human being has the right that his soul shall not be lost on the hands of another human being. The term "each individual" indicates equality and non-discrimination among human beings on bases of sex or any other

pattern of discrimination. In addition, the Declaration starts with a literary value¹⁵; nevertheless, its regulations have become now closer to enforceable international legal regulations that have been complemented by the International Covenant on Civil and Political Rights (ICCPR) as Article (6/1) states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". In this essence, the right to life is a sacred right that the canons undertake to protect, and no one shall be deprived from it without a legal justification. Perhaps the legal justification is the one that denies the character of arbitrariness from the assault on the right to life¹⁶. In this respect, the right to life enjoys the protection of the International Bill of Human Rights that enforce obligations on the states to respect and guarantee it on males and females equally; that its violation results in international liability and penalties¹⁷.

The right of women to life constitutes a fundamental base from which the other general and private human rights and freedoms spring off; and on whose foundation many international and regional agreements for human rights are based that attempt to consolidate it with explicit and expressed texts in a way that promotes the protection of the right of women to life¹⁸. Furthermore, such protection is reinforced at the level of the national legislations that agree to incriminate the assault on the right to life whether such assault is deliberate or not.

¹⁵Some sees that Universal Declaration of Human Rights, despite the consensual adoption of the United Nations General Assembly, and non-objection of any state, doesn't represent it as a document that has the force of a law. The Declaration is a mere recommendation issued by the UN General Assembly, similar to other documents or recommendations or resolutions issued prior to that, which has no established international obligations. Furthermore, it has not been phrased in the form of an agreement, which gives it the status of international legal rules and it does not include guarantees for individuals or sanctions against countries if it is violated. Others believe that the declaration has great moral and literary value in international public opinion; a breach of its rules and regulations entails international retribution and responsibility. While other researchers believe that it is binding to all countries because it is complementary to the Charter of the United Nations in the field of the imposition of respect for human's¹⁵ rights, while the prevailing view that the declaration has gained mandatory force over time, especially after the adoption of the Covenants and translated into the principles contained in the Declaration to binding legal rules. And the promulgation of many constitutions of States adopting the principles contained in the Declaration. See I. Aline, 2017, p. 6.

¹⁶C. Kenny, 1944, p. 116.

¹⁷See ICCPR Article 4/1/2.

¹⁸See Article 2/1 of the European Convention on Human Rights, Article 4 of the American Convention on Human Rights, Article 4 of the African Charter on Human Rights and Article 5 of the Arab Charter on Human Rights.

In this context, the Jordanian Penal Code No. 16 of 1960, which is enforceable in the Palestinian territories, incriminates all assault acts that affect the right to life of human beings¹⁹. As contained in Chapter One of the Eighth Section, entitled "Crimes and Misdemeanors that are Committed against Human Beings", Article (326) states that "whoever murders a human being deliberately shall be punished with hard labor for fifteen years".

Article (326) of the aforesaid Jordanian Penal Act constitutes the legal frame for incriminating the assault act on the right to life and punishing it, and according to it, incriminates the act whether positive or negative²⁰, If connected to a legal duty²¹; and the consequence of the assault on the right to life is the criminal consequence known as death provided that the causative relationship is accomplished between the assault on the right to life and the death of the victim²².

In addition to the physical corner²³, the homicide is based on the moral corner that consists of awareness and will²⁴, on which liability is determined whether ordinary²⁵, extenuating²⁶, or aggravated²⁷. As per the nature of liability, criminal legislations impose on the perpetrator of the murder high penalty if accompanied with criminal severity for the

¹⁹The Jordanian Penal Code No. 16 of 1960 did not define murder. Its legal provisions were limited to indicating the elements and pillars of the crime, its punishment, and its aggravating and mitigating circumstances. The jurisprudence of the criminal law defines murder as unjustified killing of another human being. See M. Al-Fadel, 1959, p. 45.

²⁰ Positive Act: defined a bodily movement whether voluntary or involuntary. Negative Act "Omission": the absence of bodily movement which violate the explicit legal obligation to act. See M. Dubber, 2002, P. 33&35

²¹The legal duty is what the statute or the contract requires a person to do. The physician in the hospital is responsible for rescuing patients under the contract with the Ministry of Health. A. Reed & B. Fitzpatrick, 2006, p. 30 & 3

²²It means that the accused conduct caused the occurrence of the certain consequences which requested by criminal law to consist the crime. Smith &Hogan, 1992, p. 42.

²³The physical element of crime is the main component of the crime because it is an expression of its concrete material that appears to the outside world. For the crime to exist, the will of the perpetrator must be embodied in the form of external acts that constitute the material element of the crime. See M. Al-Qadi, 2014, p. 317.

²⁴The moral element of the crime is the psychological elements that link the offender to the material of the crime which conducted by a person who is criminally responsible. See M. Al-Qadi, 2014, p.385. and Smith &Hogan, 1992, p. 53.

²⁵See Article 326 of The Jordanian Penal Code No. 16 of 1960.

²⁶See. Article 343 of The Jordanian Penal Code No. 16 of 1960.

²⁷ See Articles 327 and 328 of The Jordanian Penal Code No. 16 of 1960.

purpose of achieving the element of deterrence²⁸; whereas the liability of the criminal offender is extenuated when the killing acts occur by mistake, constituting in this respect unintentional crime²⁹.

On the level of the constitutional rules, the law equates men and women in protecting the right to life³⁰. However, this equality is wasted through the penal legislations that take in consideration the customs, traditions and masculine cultural heritage most of which is based on the idea of protecting woman's honor and body. Consequently, the penal legislations defeat the constitutional value of the women right to life, as seen in the pardon from punishment, legal and judicial extenuating excuses in honor killings that granted a legal license to kill women³¹. Recently, the legislator has sought to limit them in order to protect the right to life.

1.1.1.1. Assault on the Right to Life by the License of Law

Assault on the right to life by the license of law refers to such circumstances that the legislator allows the assault on the women's right to life based on traditional social ideas or in consideration of the offender's psychological state. This is represented by the excuse that exempts from punishment, the extenuating legal excuses, and the Judicial Mitigating Grounds.

1.1.1.1.1 The Excuse that Exempts Punishment

Article 340/1 of the Jordanian Penal Code No. 16 of 1960 states that ""He shall take advantage of the excuse if he surprise his wife or his first of kin in flagrante delicto of adultery with another person and killed, wounded, or harmed both or either of them"³².

²⁸The purpose of the punishment is to deter future misconduct by the perpetrator, while his punishment will cause other people to forgo criminal conduct in the future. J. Dressler, 1987, p. 5.

²⁹See Article 343 of Penal Code. The definition of Unintentional crime is a crime in which the offender acts on his will and choice, without the intention of causing the harmful consequences, the legislator lays the burden on him for the consequences of the act and punishing him for his willful consequences and wrong doing. M. Nimour, 2002, p. 147.

³⁰See Articles 10/1 and 9 of the amended Basic Law of 2003 and its amendments.

³¹"Honor killing" is a severe form of violence against women. It is an act of homicide which the perpetrating family members justifies as an act of protecting and redeeming the honor of the family. See T. Kanchan, A. Tandon, & K. Krishan, 2016, p. 1861.

³²The Jordanian Court of Cassation has defined adultery in its criminal verdict No.97/739 as "the total sexual intercourse between a man and a woman who is alien to him unlawfully".

Article (96) of the aforesaid act states that "the excuse exempts the offender from any punishment whereas it is possible to punish him when necessary precautionary measures such as bail."

The exempt excuses are called pardoned excuses from punishment because they prevent the sentencing of the offender although the crime is proven, and its elements are available, for considerations and rules that concern the interest of the community³³, and related to the good application of the criminal policy³⁴; and takes in consideration the motives or the causes³⁵, for which the crime is committed³⁶. It is an expression of the legislator's vision that the interest of the community in exemption of penalty is stronger than its interest in punishment³⁷, meaning that the legislator, through the provision of the excuse of impunity in the murder of women predominates the society interest in maintaining its customs, traditions, and its tribal cultural heritage that grants the man all the authority and jurisdiction over the woman's body and life in the interest of society in the preservation of all its members and human powers that are required to continue the survival of the community. In this respect, the legislator considers that murdering the woman and assaulting her life in the pretext of reserving honor in the Palestinian society is a noble motive that exempts the man from any punishment³⁸. The issue is as if the law authorizes man to replace the society in the task of conserving its customs and cultural heritage, and so permits murdering the woman who violates the societal system and deviates from its customs and traditions and rewards him by exempts him from punishment.

This legal text traces its historical roots to some ancient Roman systems, in particular, to those related to the domestic court system, and the authority of man over his wife and

³³M. Husni, 1975, p. 779.

³⁴The purpose of criminal policy is to decide on the guidelines, methods and means to eliminate crimes. See V. Babu, 2012, p. 601.

³⁵The Jordanian Penal Code No. 16 of 1960 defines the motive in Art (67) as: "The motive is the reason the perpetrator acts in this way, or the ultimate purpose that he aspires," as stated in paragraph (2) of the same article: "The motive is not an element of criminalization unless in situations defined by the law ". In criminal law motive refers to the why of a defendant's actions, it could be Noble or evil one. S. Reid, 1995, p. 50.

³⁶M. Al-Halabi, 1993, p. 535.

³⁷K. Al-Saeed, 1998, p. 692.

³⁸Honor is a social value associated with the body of a woman and her sexual chastity. D. Ismail, 2006, p. 15.

offspring³⁹. The old French law expanded it and applied it on the father if he murders his harlot daughter and her partner⁴⁰. This legal text was transferred to the punitive legal system of the Arab states from the French Penal Act of the year 1810 through the penal

Law of the Ottoman State of the year 1858⁴¹, which denies all the allegations in connecting the exempts from punishment for honor killing with Islamic religion⁴².

The murder of women accompanied by an excuse of impunity requires the availability of the legal elements of the intentional murder, as well as the special conditions relating to the offender's status, the victim's status, the element of the flagrante delicto of adultery⁴³, and the element of surprise⁴⁴, as stated in Article 340/1.

The one who is exempt from punishment is any male related to the victim with matrimonial relationship, or a relative relationship so that the victim is one of his “Mahrams” unmarriageable females including (the female descents and descendants of the offender;

³⁹“Honor killing” is a pre-Islamic Tradition that prevailed in many countries for centuries and whose roots are lost in time. N. Pope, 2012, p. 17.

⁴⁰R. Obaid, 2015, p. 122.

⁴¹ Article 342 of the French Penal Code of 1810 states that in the case of adultery, provide for by article 336, murder committed upon the wife as well as upon her accomplice, at the moment when the husband shall have caught them in the fact, in the house where the husband and wife dwell, is excusable.

The French legislator has limited the excuse for the killing penalty for the husband without the wife for certain circumstances, which was the rise in the phenomenon of infidelity during the French army fighting its foreign wars under Napoleon Bonaparte since 1807. The French legislator backed down under criticisms of the criminal law by scholars of criminal law, and granted the excuse to the husband and wife if one of them was surprised by the other in the case of adultery in the marital home, and remained so until the French legislator abolished the legal text relative to the excuse in killing cases in accordance with Article (17) of the amended law of the French Penal Code issued on 11/6/1975. This approach was accompanied by the repeal of the crime of adultery by the French legislator in article 25 of the amended law of 1975. E. Abdeen, 2014, p. 16.

⁴¹'Honor killing' considered in Islam as murder. There is no justification provided for such crimes. Neither any verse in the Holy Quran nor any tradition of the Holy Prophet Muhammad (peace and blessings of Allah be upon him) permits such crimes. And instead calls for the protection of women. No Place for 'Honour Killing' in Islam. (2014). PR Newswire Europe Including UK Disclose.

⁴³See Article (26/1) of the Palestinian Criminal Procedure Law No. 3 Of 2001, that refers to the flagrante delicto of adultery. The definition of the flagrante delicto of adultery is the crime that is seen during the commission or upon completion. S. Al-Shawi, 2011, p. 61.

⁴⁴"Sudden" is the difference between what a husband and relative believe in his wife or relative and what reality is when he saw her committing adultery. K. Alsaeed, 2006, p. 150.

the parents descendants including sisters and their daughters, in addition to paternal and maternal aunts)⁴⁵, and murdered her and her partner or either of them in case he is surprised by seeing the victim in complete flagrante delicto of adultery with another person. In this case, the man catches the woman and sees her in act of sexual intercourse with her partner⁴⁶, becomes furious with anger in such a way that loses his self-control, making him unable to control his acts, falls under control of provocation that causes him to commit murder instantly. If sufficient time passes to the disappearance of surprise and anger, or the offender knows for sure and certainty the woman's adultery in a way that denies his surprise element, there is no place for him to benefit from of the excuse of impunity. The estimate of sufficient time to appease the killing is up to the trial judge⁴⁷.

Therefore, should the circumstances stated in Article (340/1) are satisfied, the offender shall be exempted from all punishment except that he may be subject to precautionary procedures⁴⁸, such as precautionary bail⁴⁹, as per Article 69 of the penal act.

The range of the punishment exempting excuse extends to include in its range all types of deliberate killing even what is aggravated due to its being committed with premeditation, and also the type of crime "beating that leads to death"⁵⁰, that expands the possibility of benefitting the male offender from exemption from punishment when assaulting the woman's right to life.

The male offender still enjoys the benefit of the punishment exempting excuse even during the period of his divorce from his wife as long he has the right to return her to his

⁴⁵See Article 24 Of the Personal Status Law of 1976,"Mahrams" Means women who a man is forbidden to wed based on the provisions of Islamic law. M. Sartawi, 1997, p. 99

⁴⁶K. Alsaed, 2006, p. 150.

⁴⁷The Jordanian Court of Cassation emphasized in one of its verdicts that: "it is not necessary that the murder be committed at the moment of the sudden occurrence, but only requires that the killing takes place before the time passes for the disappearance of surprise and anger resulting from the insult to the honor and estimation of the time sufficient to calm, the response killing left its discretion to the courts. See "Penalties No. 44/53 of 1953, Set of Legal Principles of the Court of Cassation in Criminal Cases, Part I, p.1053.

⁴⁸The precautionary measure is defined as a criminal penalty, which is a set of procedures determined by the law and signed by the judge against the person who proves his criminal danger and is intended to confront this danger. And are characterized as not related to the criminal liability of the offender. N. al-Majali, 2015, p. 521.

⁴⁹See Article 32/1 of The Jordanian Penal Code No. 16 of 1960.

⁵⁰See Article 330 of The Jordanian Penal Code No. 16 of 1960.

custodianship; the husband does not lose his competence in the case of revocable divorce; as long as the divorced wife in the period of her legal waiting, he can return her to his custodianship at any time. However, if the divorce is irrevocable, or if the period of legal waiting elapses, the husband shall not have the right of returning his divorced wife⁵¹, and then he ceases to benefit from the punishment exempting excuse⁵².

Furthermore, the excuse of impunity in the murders of women on the ground of honor discriminates against women on the basis of sex⁵³, Since the benefit of it is restricted to men rather than women; as can be seen in the legal text that states, "who catches his wife or one of his unmarriageable females". The connotation of this expression is restricted to man rather than woman; if a wife catches her husband in flagrante delicto of adultery, she will not have the right of the punishment exempting excuse, which comprises an unfair discrimination that explains the historical source of the excuse⁵⁴. On the other hand, its explanation can be interpreted by the interest of tribes and clans that used to dominate the Arab communities during the period of proposing the law by keeping and promoting it for its harmony with the concepts of power, domination, and the patriarchal male control in the community.

The jurisprudence of the criminal law justifies the reason that lies behind the exclusiveness of the punishment exempting excuse on the man rather than the woman in a number of opinions, the most significance of which is that the emotion, psychological disruption, and

⁵¹A revocable divorce is defined as: "Divorce which the man has the right to return the divorced woman to the marriage without a new contract, as long as she is in her legal waiting "a period of 3 months". Irrevocable divorce is the divorce that terminates the marriage contract immediately, the man cannot return the woman to him. There are two kinds of irrevocable divorce: a minor one, In this case, the man cannot return the divorced woman to the marriage except with a new contract and dowry. and the major one, this is the divorce that is complementary to the three types of divorce, so that the divorced woman becomes forbidden temporarily, where It is not permissible for him to marry her unless she marries another man, then divorced or the husband died and completes her legal waiting. The legal waiting is: "The period defined by the Islamic religion is reserved for women without marriage after the break up with her husband or because of his death. O. Al-Takrouri, 2004, P. 194,196, 197, 235, 201.

⁵²See T. Sorour, 2003, p. 106.

⁵³Article (1) of the CEDAW define discrimination against women with any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

⁵⁴R. Obaid, 2015, p. 125.

jealousy are stronger for the husband than the wife in honor crimes⁵⁵, because the effect of the crime appears on the adulterous woman in her defloration, pregnancy, or mixing of lineages. Furthermore, disgrace in the Arab communities dishonors man if he catches his wife or one of his unmarriageable females in flagrante delicto of adultery. On the other hand, if the wife catches her husband with another in the same situation, she will not be disgraced⁵⁶.

It is obvious that the legal text of the exempting excuse and the accompanying jurisprudential justifications constitute degradation of the woman's dignity and legal and societal profanation for her human feelings, in addition to the legal and societal view of her as a source of disgrace. Therefore, she and her human rights are in a rank inferior to the rank of the man who is the protector of the family's honor and who is authorized to have legal privileges that empower him to assault her right to life to straighten her sexual behavior. This is translated legally in the punishment exempting excuse. In this respect, the legislator committed a crime in the right of the woman and her right to enjoy life.

On the other hand, the legal text of the exempting excuse contradicts what the basic law guaranteed for the woman in respecting her human rights and basic freedoms since they are obligatory and must be respected. Woman's right to life represents the essence of her human rights which are closely related to her human personality and the most important of all. Nevertheless, the penal law waives its protection and maintenance in discrimination against the woman and promotes the man's interests in the community. Accordingly, the punishment exempting excuse forms a sword brandished at the necks of women that delimits their capabilities of demanding their rights in the community and forces them to submit to the power of men, in addition to making them also lose their sense of personal safety. They are at any time exposed to the assault and deprivation of their right to life as long as men enjoy a legal license to kill women and take their lives under the immunity of the exempting excuse which guarantees the man exemption from punishment.

⁵⁵Definitions of the term "honor killing" are very diverse and disparate; there is no definite consensus over what constitutes "honor killing." See R. Terman, (2010), p. 7. The term "honor crimes" in Palestine is used to indicate the organized, planned crimes committed by a member of the woman's relatives of first of kin under the pretext of defending honor. D. Ismail, 2006, p. 7.

⁵⁶M. Najm, 1999, p. 94.

Furthermore, the legal text of the exempting excuse violates the regulations of the amended Basic Law of 2003 and its amendments that guarantees the woman her right of equality before the law and judiciary. Within its contents, it includes a material discrimination against the woman on basis of sex, in addition to its representation of one of the most obvious images of favoritism of the penal code for men by determining a legal privilege and right that men but not women can benefit from although the constitution states their complete equality before the law and judiciary.

In addition, the legal text that contains the punishment exempting excuse constitutes a departure from other legal provisions in the penal law that incriminates taking the right by hand⁵⁷, in application of the criminal policy that requires individuals to recourse to the state represented in the criminal justice institutions to report the crime and complain against the perpetrator and avoid taking the right by hand⁵⁸, and the personal avenge from the offender. This methodology in the criminal policy excludes the woman who is caught in flagrante delicto of adultery. The punishment exempting excuse grants the man to take right by hand in revenge from the woman. Consequently, the killing of women for the purpose of maintain honor becomes an acquired legal right that the man practices by legal authorization and license that authorize the man to replace the state in performing its right of punishment in an oppressive and unjust manner that is not commensurate with the sin of the committing woman, in an image that represents the state's waive of its right in punishment in favor of male power and authority over women's behavior, life, and death.

It should be noted that no offender in the cases of murdering women from the punishment exempting excuse as per Article (340) of the penal code. The collection of judicial verdicts that are published on the electronic page (*Al-Muqtafi*)⁵⁹, refers to the lack of judicial verdicts or rulings that were based on the grounds of Article (340), since this refers basically to the provision of the legal text that the victim must be caught in the act of

⁵⁷See Articles 233 and 234 of the Jordanian Penal Code No. 16 of 1960.

⁵⁸Historically, crime control was largely a matter of private vengeance against the perpetrator by the victim or by his family, nowadays the control of the crime is the function of the state and personal vengeance is forbidden. See D. Newman, 1986, P. 2.

⁵⁹Al-Muqtafi: Is the first legal information bank of its kind in Palestine, contributed to the design, development and modernization of dozens by legal researchers and programmers at the Institute of Law at Birzeit University. See <http://muqtafi.birzeit.edu/>

flagrante delicto of adultery completely, i.e. in the act of sexual intercourse with another person by the man who must see by himself the act of flagrante delicto of adultery⁶⁰, since it is not sufficient to be told by another person that he has seen his wife or one of his unmarriageable females in this situation⁶¹.

The Jordanian Court of Cassation established this, stating in its verdict, "It is stipulated to apply the exempting excuse in murder that the offender must catch his wife in the act of flagrante delicto of adultery with another person, whereas the accused caught his wife in this case while she was preparing coffee for the victim who was hiding in the kitchen of his house, requiring that the regulations of the aforesaid Article do not apply on the circumstances of the killing committed in this case"⁶².

This is the condition that is not met in all the cases of killing women at honor background, indicating that the cases of killing women are for merely getting suspicious of the woman's conduct or for other reasons completely different from the adultery crime such as sexual abuse⁶³, particularly by a family member and fear of exposing his crime⁶⁴, her refusal of getting married by a person accepted by the family, her insistence of getting married to a person that the family does not accept, demanding divorce⁶⁵, for economic reasons such as demanding her share in inheritance, acquiring financial gains⁶⁶, for revenge and defamation⁶⁷, or family fights, and any other simple reasons for which a woman's life is threatened and taken.

It is obvious that the legal text that includes the punishment exempting excuse has established for long decades societal concepts inherited by generations about the law permission of killing women to maintain the family honor accompanied by serious consequences that reinforced the inferior position of the woman in the community and, at

⁶⁰M. Namour, 2002, p. 92.

⁶¹M. Hosni, 1978, p. 138.

⁶²See the Jordanian Court of Cassation Verdict No. (79/1989). The Jordanian Court of Cassation is the source of judicial precedents on which the Palestinian courts rely on.

⁶³N. Pope, 2012, p. 20.

⁶⁴HRW, 2006, p. 49.

⁶⁵L. Welchman, & S. Hossain, 2005, P. preface.

⁶⁶D. Vitoshka, 2010, p. 7.

⁶⁷D. Ismail, 2006, p. 14.

the same time, reinforced man's authority and his patriarchal male powers⁶⁸, and established his position as the controlling master of the destiny and life of women by the state and law.

In addition, its enclosure in the heart of the penal legislation resulted in disregard and disrespect of the woman's life and rights, and encouraging the adoption of the violence culture against women in its most severe pictures. It also contributed mainly in undermining the woman's ability to demand her other rights, delimiting her role in the community and societal participation. It also established the satisfaction feelings of the citizens with the perpetrators of such crimes⁶⁹, and accepting the offender in the community as the hero who is jealous for his honor. All those respects exceeds many times the seriousness of the impunity of one perpetrator.

1.1.1.1.2. Legal Extenuating Excuses

Legal extenuating excuses are defined as the circumstances surrounding committing a crime and the motives that encouraged the perpetrator to commit it. They are defined by the law text where the judge can only rule as per it when the conditions are satisfied⁷⁰. They can be used to mitigate the penalty imposed on the accused perpetrator. There are two types of the legal extenuating excuses: legal excuses for specific crimes, such as the extenuating legal excuses provided for in article (340/2) to reduce punishment for honor killings of women. And general legal excuses that apply to all crimes and offenders when their conditions are met, such as the legal excuses for provocation and the anger provided for in article (98) of the Penal Code⁷¹.

The Penal Code provides a special excuse for the punishment of an offender who catches his wife, one of his descendants, ascendants, or his sisters on in “illegal bed” with another person, and thus kills her. Article (340/2) states that "The perpetrator of murder, injury, or the harm may benefit from the extenuating excuses if he surprises his wife, one of his ascendants, his descendants, or one of his sisters on an “illegal bed” with another person."

⁶⁸N. Pope, 2012, p. 26.

⁶⁹WCLAC, 2016, p. 65.

⁷⁰M. Al-Halabi, 1993, p. 543.

⁷¹N. Al-Majali, 2015, p. 495.

The enforcement of the extenuating excuses provided for in Article (340/2) requires the fulfillment of surprise elements and committing the murder during the moment of surprise by the male who has a marital or blood relationship with female victim as required to enforce the pretext provided for in the same article. However, the extenuating excuse applies when the perpetrator sees the woman in bed, and the exempting excuse applies in the case of adultery flagrante delicto⁷².

To know when to apply the extenuating excuses on murdered women due to honor background and when to apply the exempting excuse, it is necessary to determine the meaning that the legislator intends by the illegal bed to differentiate it from the flagrante delicto of adultery. By referring back to the Penal Code, it could be found that it does not contain any clarification for what the legislator means by the illegal bed term. The law neither defines the concept of illegal bed nor the difference between it and the flagrante delicto of adultery. Therefore, one has to refer to the jurisprudence of the criminal law to determine the connotations of this term that extends to include any suspicious seclusion between a woman and a man at any location on earth, sofa, vehicle, or wagon; so that the wife or woman is caught in suspicious circumstances and suspect her of cheating or committing adultery but it does not reach the stage of certainty. The offender in this case does not see the scene of the sexual act between the woman and her partner, but rather the idea of the marital infidelity is present in mind and the evidence of the case is conclusive that the offense of adultery has occurred or is in the process of occurring⁷³.

The legislator also distinguishes between the extenuating excuses and the exempting excuse in terms of the victim's status. Therefore, he stipulated that the perpetrator can benefit from the extenuating excuses if the victim is his wife, one of his ascendants, descendants, or one of his sisters, whereas he extended the scope of the exempting excuse to include man's unmarriageable females.

It could be concluded from the forgoing that the special extenuating excuse stated in Article (340/2) constitutes a precautionary paragraph aiming to insuring the mitigation of the penalty for the perpetrator in murdering women crimes on the basis of honor in case where

⁷²K. Al-Saeed, 1991, p. 145.

⁷³M. Namour, 2002, p .99.

the conditions provided to benefit from the exempting of punishment are not met. It also comes in the context of the legislator's criminal policy of promoting violence against women and violate their right to life. It doesn't stop until there, it also extends to include cases of murdering women on the basis of honor within the range of taking benefit from the general legal extenuating excuse stated in Article (98) of the Penal Code, which is known as the provocation or rage fit. Thus, Article (98) of the Penal Code states that "The crime committer benefits from the extenuating excuse when he did it in a fit of extreme rage resulting from a serious, unfair act committed by the victim."

The extenuating excuse stated in Article (98) was applied in case the victim committed a physical act that is not permitted by law and in a manner of severity and gravity, in such a way that affects the psychology of the offender that makes him so angry that he loses his will partially and so he loses his control and commits his crime during rage and provocation without any considerations to the consequences of his act as if he were in his normal state⁷⁴. Although the legislator requires that anger shall be severe, he does not determine a parameter to measure the extent of anger severity, leaving the issue for the judge authority or the competent court that looks into the case⁷⁵.

The extenuating excuse stated in Article (98) does not require that the offender has a marital status or a certain degree of relationship with the victim; he may be the husband or a relative whether close or distant. It also does not require seeing the woman in flagrante delicto of adultery, in an illegal bed, or solid evidence of her misconduct⁷⁶.

it is deduced that the extenuating excuse of punishment represented in the provocation element "fit of rage" stated in Article (98) of the penal law includes encouragement on the adoption of a culture of violence against women, which constitutes a serious threat to women's right to life for a number of reasons:

1. It complements the system of legal texts that promote the culture of violence against women by their leniency in the punishment of perpetrators of the murders of women on the grounds of honor. In the cases where the exempting and extenuating excuse

⁷⁴S. Al-Shawi, 2011, p. 373.

⁷⁵B. Bushnak, 2016, p. 109.

⁷⁶HRW, 2006, p. 51.

stated in article 340/1/2 cannot be applied for not satisfying the conditions of catching in flagrante delicto, in illegal bed, or the man does not have the competence as required by the law in his relationship with the victim, the text of Article (98) that contains a general punishment extenuating excuse ready for application. The judicial verdicts collection that are published on the electronic page "*Al-Muqtafi*" indicates that the judicial rulings and verdicts where the punishment is commuted for the perpetrators of honor killings against women are based on Article (98) ⁷⁷, paving the way for threatening a lot of lives on bases of only rumors and suspicions in the sexual conduct of women without bases of truthfulness and reality⁷⁸.

2. This legal text enlarges the category of male perpetrators who can assault the woman's right to life and benefit from mitigated penalty; it does not stipulate marital relationship nor a relative relationship with the victim. This means that any family member whether close or distant may assault the woman's right to life with a legal indulgence that provides him with a reduced penalty.
3. The legal text of Article (98) constitutes a conviction that all men can certainly be in a situation of severe rage and unable to control themselves towards the conduct and behavior of the disgraceful woman, leading to the creation of a definitive legal presumption in favor of the man who is deluded by his passion and severe anger that the indictment authority cannot deny since it is a presumption derived from its binding character as a legal excuse⁷⁹. In this context, the Jordanian Court of Cassation ruled that "The adulterous wife is considered as a serious, unfair act that the husband perpetrator benefits from the extenuating excuse stated in Article 98 of the penal code"⁸⁰. It should be noted that this legal ruling is criticized since the Court reached its certain conviction in granting the perpetrator a legal extenuating excuse without verifying the condition of severe anger was satisfied and the perpetrator was not able to control himself; or meeting the condition related to committing the crime at once before he calms down from the provocation situation caused by the conduct of the victim. Furthermore, A study carried out by Judge Ahmad Al-Ashqar on a sample of

⁷⁷K. Nasr, 2014, p. 107.

⁷⁸A. Shier, & E. Shor, 2016, p. 1165.

⁷⁹R. Obaid, 2015, p. 126.

⁸⁰The Jordanian Court of Cassation Penalty Verdict No. 85/84

the judiciary rulings issued by the Palestinian courts showed that the courts of appeal do not verify that the conditions required by law to apply Article (98) are satisfied; in other words, relative to murdering women at the honor background, the Palestinian judiciary tends to apply Article (98) without analyzing whether its three legal conditions are satisfied or not⁸¹.

4. The text of Article (98) lacks specific, clear standards and controls for its actions⁸². The regulation does not specify a measurement for estimating the extent of the anger required to be available as a condition so that it can be applied to the perpetrator and consequently mitigate the penalty; leaving the estimation of anger and its severity to the conviction of the judge⁸³.
5. It constitutes a legal loophole that contributes to the use of the legal text to mitigate the penalty against perpetrators of murdering women in general due to the general attitude of lawyers to exploit this legal text to guarantee penalty mitigation on their perpetrators clients for the purpose of achieving legal reputation whether such crimes are committed at honor backgrounds or not, particularly, in view of male dominance and monopoly – until very recently – of the criminal justice sector of the state, the law profession, and judges positions.
6. Although that this legal text does not apparently contain any discrimination against women, the extenuating excuse stated in Article (98) applies to men and women who commit murders while they are in a state of severe rage resulting from illegal serious act committed by the victim, the legal applications show that the activation of the extenuating excuse legal text occurs most often in case where men but not women who commit murders against women on honor grounds. In the Case No, 34/2004, Crimes, the Ramallah First Instance Court in its jurisdiction as a criminal court considered that the girl who becomes pregnant by act of incest from her brothers is a serious act causing disgrace and harm to her and her family, on grounds of Article (98) related to the mitigating excuse of punishment and Article (99) related to the judicial extenuating circumstances, it sentenced the murderer mother for five years. In case the extenuating

⁸¹A. Al Ashqar, 2014, p. 9.

⁸²E. Abdeen, 2014, p .20.

⁸³M. Namour, 2002, p. 102.

excuse are applied, the court shall have a discretionary authority to determine the volume of mitigation in the punishment, which can be larger when the perpetrator is a male based on the culture of the criminal judge and to what extent he is influenced by the male culture prevailing in the society that restricts the concept of defending honor in men rather than women. Judges are a part of the community influenced by it and its culture that discriminates against women on the bases of sex⁸⁴.

It should be noted that in case the extenuating excuse stated in Article 340/2 or Article 98 are satisfied, the punishment is mitigated as per Article (97) of the penalty code. The penalty for normal intended homicide of hard labor for 15 years is mitigated for a minimum of 6 months and maximum of two years. However, if the crime is committed under aggravated circumstances, the penalty is intensified to hard labor life imprisonment⁸⁵, or execution⁸⁶. If the extenuating excuse for the murders of women under the category of severe penalty and legal description is applied, the penalty shall become imprisonment for one year or less⁸⁷.

1.1.1.1.3. Judicial Mitigating Grounds

The judicial mitigating grounds are defined as the judicial mitigating grounds that the legislator left to the discretion of the judge⁸⁸. The legislator has estimated that the judge may see in some cases that the circumstances of the crime and the situations of the criminal may mitigate the penalty against the criminal⁸⁹. Since it is not possible to cover and restrict all such circumstances in advance, the judge is granted a discretionary power on their estimation⁹⁰.

Article (99) of the Jordanian Penal Code No. 16 of 1960 states that "if there are mitigating grounds in a case, the court shall rule: (1) instead of execution, the hard labor life

⁸⁴WCLAC, 2016, p. 52.

⁸⁵See Article 327 of the Jordanian Penal Code No. 16 of 1960.

⁸⁶See Article 328 of the Jordanian Penal Code No. 16 of 1960.

⁸⁷See Article 97 of the Jordanian Penal Code No. 16 of 1960.

⁸⁸M. Al-Halabi, 1993, p. 554.

⁸⁹Attendant circumstances are facts surrounding act and the criminal mind. S. Reid, 1995, p. 51.

⁹⁰N. al-Majali, 2015, p. 496.

imprisonment, or temporary hard labor from ten years to twenty years in prison; (2) instead of the hard labor life imprisonment, temporary hard labor from five years to fifteen years in prison, and instead of life detention, temporary detention for at least five years; (3) it may reduce any other criminal penalty until the half; (4) it may reduce, except repetition, any penalty whose minimum limit does not exceed three years to imprisonment for one year at least."

As per the text of Article 99 of the Jordanian Penal Code, the penalty of the man who assaults and wastes the woman's right to life is reduced according to the conviction and discretionary authority of the judge. Fairly frequently, the court considers that the honor motive, waiving the personal right, the perpetrator's young age, his old age⁹¹, being a family sustainer, a university student, his health or psychological state, compassion with his social status, lack of previous criminal records, or any other grounds as mitigating grounds that the court take in compassion when sentencing the perpetrator who wastes the woman's life. In practice, most, if not all, of killing women within the family reveals that the perpetrator benefits from the court's application of the legal text related to the judicial mitigating grounds as a result of waiving the personal right by the family itself so that the penalty is reduced to a half if the murder is categorized as intended homicide⁹².

Furthermore, as per the law regulations, the court may adopt in the same case the legal extenuating excuse as stated in Article (98) and the judicial mitigating grounds of Article (99)⁹³, resulting in the perpetrator's benefiting from double reduction of the penalty as a result of applying the punishment relieving excuse in the first time, and as a result of the court's adoption of the judicial mitigating grounds. In Case No. 9/2009 Criminal, the Jenin First Instance Court in its jurisdiction as a criminal court considered that the departure of the wife (R.S.) from the marital home located in Jenin and residing in Ramallah for a number of years was an unfair act that disgraced the honor of her brothers; so it granted her killer (her brother) a sentence of hard labor life imprisonment based on Article (98) of the penal code related to the rage fit and due to waiving the personal right by the killer's

⁹¹WCLAC, 2016, p. 67.

⁹²M. Najjar, 2014, p. 21.

⁹³See Article No.105 of the Jordanian Penal Code No. 16 of 1960.

father, and using Article (99) related to the judicial mitigating grounds "the illness of his mother and compassion with his social status", the court reduced the sentence to the minimum limit⁹⁴.

The Palestinian courts often resort to and rely on the judicial mitigating grounds in reducing the penalty of the perpetrator in cases of killing women, particularly because taking such grounds goes back to the court's conviction without requiring specific conditions and controls for their application⁹⁵. The law does not specify the judicial grounds, their nature, nor any control on the court for their deduction⁹⁶. They are subject to the judge's discretionary authority regarding adopting them or not based on the circumstances of each case individually⁹⁷. In a judicial ruling issued by a Palestinian court, the court considered that "the woman's misconduct, the relative degree with the perpetrator, the customs and habits, that consider the girl's misconduct caused harm to her and her family notwithstanding how much the relative degree was, were discretionary mitigating grounds to reduce the penalty"⁹⁸. Although the text of Article (100/3) of the penal code requires that the decision that grants the mitigating grounds sufficiently explained, the practical application shows that in reality all the grounds in the cases of killing women as used as mitigating grounds based on the social rule that permits murdering women if they are connected with the concept of honor⁹⁹.

The danger of this legal text becomes apparent since it constitutes a close of the fracture in the system of complacency and indulgence in punishing the perpetrators of murdering women on honor background. When the legal conditions specified to benefit from the extenuating excuse as stated in Article (98), the court resorts to mitigate the penalty against the perpetrator to the discretionary mitigating grounds as stated in Article (99). The Jordanian Court of Cassation ruled that "the perpetrator committed the murder of his sister

⁹⁴K. Nasr, 2014, p. 107.

⁹⁵However, the court sentence based on the extenuating excuse should be fully explained, since it will be examined by the cassation court. See Article 100/3 of the Jordanian Penal Code No. 16 of 1960.

⁹⁶E. Abdeen, 2014, p. 24.

⁹⁷The use of discretionary extenuating factors is a matter of fact that the competent court has discretion in accordance with the circumstances of the case and evidence. See the Palestinian Appeal Court Penal sentence No. 1422/1999.

⁹⁸See the Palestinian Appeal Court Penal sentence No. 98/1063 & 98/1047.

⁹⁹WCLAC, 2016, p. 67.

after a long period of time when he became aware of her disgraceful conduct – which is a sufficient period of time to relieve his rage fit – does not provide the condition of his benefit from the extenuating excuse as stated in Article 98 of the penal code. However, the disgraceful conduct of the victim constitutes a discretionary mitigating ground in the meaning of Article 99 of the penal code¹⁰⁰.

Despite the outweighed cause that ruled the existence of mitigating grounds in the penal code that empowers the judge to avoid harsh penalty determined by the law, it provides him with capabilities to achieve justice and impose the appropriate penalty¹⁰¹, that suits the circumstances of the crime and criminal since it is a method that makes the legal texts related to the penalty appropriate to the reality requirements¹⁰². However, the judicial applications of this legal text in most cases of killing women reveal that this legal text is used in a way that contradicts with the requirements of achieving justice for which it is proposed. In the honor crimes, the family drops the personal right in approximately all cases because it is in conspiracy in the crime¹⁰³. The reports show that the majority of killers are sentenced to six months in prison because the courts consider that they commit their crimes while they are in a state of emotion and rage and because their families dropped the claims against them¹⁰⁴.

The study of Judge Ahmad Al-Ashqar shows that the courts applied the mitigating grounds and excuses in 29 of 37 of the reviewed rulings¹⁰⁵. Which reveals the extent of arbitrariness in applying the legal text in a way that undermines the legal protection of the woman's right to life, placing the women in a vulnerable weak position in the community with fragile rights. The justice scales incline in favor of the masculinity in the community as a result of this legal provision and its use to express sympathy and judicial leniency with the man who assaults the woman's right to life, in order to strengthen his authority and his position in the society over women, to guarantee her loyalty, submission and dependence on man, and

¹⁰⁰See the Jordanian cassation Court Penal sentence No. 79/1994

¹⁰¹M. Al-Halabi, 1993, p.555.

¹⁰²S. Al-Shawi, 2011, p. 377.

¹⁰³HRW 2006, p. 52.

¹⁰⁴European Neighborhood Information Center (ENPI), 2010, p. 29.

¹⁰⁵A. Al Ashqar, 2014, p. 12.

her inferiority in the society, contributing directly to disrespect and degradation of the legal value of the woman's right to life.

1.1.1.2. Delimiting Assault on the Right to Life

The legislator sought to reduce the legislative license of assault on the woman's right to life through an array of acts that confront such assault through decrees that enjoy the power of law where perspectives differ regarding its value.

1.1.1.2.1. Decrees that Have the Power of Law:

On 15/05/2011, the Decree by Law No. (7) of the year 2011 was issued by the Palestinian president Mahmoud Abbas based on (the extraordinary powers of the President in legislation)¹⁰⁶, granted to him as per the Palestinian modified basic law of the year 2003 that "grants the chairman of the Palestinian Authority, in urgent cases that cannot wait delay in situations that do not allow the convening of the Legislative Council, the power to make decrees that have the power of law provided that they shall be displayed at the Legislative Council at the first session that it convenes following the issuance of such decrees"¹⁰⁷. In addition, the President based in its issuance on the Jordanian Penal Code No. 16 of the year 1960, and the Cabinet decree No. 43 (07/37/13/M.W./S.F) of the year 2010 related to assigning the Chairman of the Palestinian National Authority to suspend enforcing the articles of the act related to crimes that are committed on the background of "family honor"¹⁰⁸.

The decree by law No. (7) of the year 2011 attempted to suspend enforcing Article (340) of the Jordanian Penal Code No. 16 of the year 1960 which is enforceable in the West Bank in its first paragraph that contains the excuse exempting the man from punishment who murders or harms his wife or one of his unmarriageable females in case he catches her in flagrante delicto of adultery, and its second paragraph that contains the extenuating excuse of punishment in case the man catches his wife or one of his unmarriageable females in illegitimate bed with another person. The decree by law states that "As per the

¹⁰⁶ WCLAC, 2016, p. 61.

¹⁰⁷ See Article 43 of the amended Basic Law of 2003 and its amendments.

¹⁰⁸ The decree by law No. (7) of 2011, regarding amendment of applied penal code in the northern districts, and applied penal code in the southern districts, Palestinian Events, 91st edition, 10/10/2011

regulations of the decree by law, the text of Article (340) of Chapter One of Part Eight of the Penal Act No. (16) of the year 1960 enforceable in the northern governorates shall be revoked" ¹⁰⁹.

The aforesaid decree by law became enforceable as of the date of its publication in the official gazette "the Palestinian Events" on 10/10/2011¹¹⁰, where Article (5) states that "the related parties, each in its concern, shall enforce the regulations of this decree by law, and applied as of the date of its publication in the official gazette."

The Palestinian president issued the decree by law to abolish the legal text of Article (340) that contains the punishment exempting and extenuating excuse in murders of women on the pretext of family honor following the murder of the university student Aya Baradeya, 21 years old, from the village of Soreef in the north west of the Governorate of Hebron on 20/04/2010, where the victim was found thrown in a remote water well far away from the village after 13 months of her disappearance. The victim's uncle and two of his friends were accused of killing her due to her wish to marry a young man outside the family who came forward to get engaged with her¹¹¹.

The case of the disappearance and killing of the student Aya Baradeya shocked the Palestinian public opinion, particularly after disclosing the crime's details, the identity of the offender, how close he was to the victim, and the motive to commit the crime. Following that, feminist and legal organizations doubled their activities to demand the amendment of legal texts that encourage killing of and violence against women in the Palestinian society¹¹². Therefore, the Palestinian president expressed his intention to apply

¹⁰⁹See Article 1 of the decree by law, No. 7 of 2011

¹¹⁰The Palestinian Events: is the official gazette for publishing the legislations issued by the competent authorities in the State, a condition for their enforcement, and for the knowledge of all citizens to obtain the best access to information. Article 116 of the amended Basic Law of 2003 and its amendments stipulate the need to publish laws in the Official Gazette. The Office of Fatwa and Legislation is the competent authority to prepare and issue it.

¹¹¹For the full Story of the murder of Aya Baradiea See <https://www.alwatanvoice.com/arabic/news/2011/05/17/176686.html>

¹¹²E. Abdeen, 2014, P.6.

the aforesaid amendment during a television interview by a call from the secretary general of the presidency office¹¹³.

In an official comment regarding the issuance of the aforesaid decree by law, it was mentioned that "following the killing of the student Aya Baradeya from the Hebron Governorate, lights were shed again on issues of the so-called *honor*. Since there is a certain understanding of the public opinion related such articles, the president issued his directives to find the proper mechanism to modify them without prejudice to the general principles of law"¹¹⁴.

"A committee was set up that included the Minister of Justice, Dr. Al AlKhashan; Vice Chairman of the Supreme Judiciary Board, Judge Sami Sarsour; the Attorney General, Ahmad Al Mughni; Rohi Fattouh in his capacity as the chairman of the former Legislative Council' and Al-Ouri, in his capacity as the legal consultant of the president. After each of them supplied a legal note containing his vision for the modification, all of them agreed on a final joint form that was submitted to His Excellency, President Mahmoud Abbas, for his endorsement and signing it as a decree by law." The legal consultant of the Palestinian president says that "the distinguishing issue of this amendment is that it is an indication from the political Palestinian level that killing women is prohibited and that the offender shall be incriminated just like any other criminal"¹¹⁵.

It was noted that women representation was absent from the committee. The committee, which was set up to form a modified vision of the penal law that guarantees an exempting and extenuating excuse of punishment for the offender in cases of murdering women at the background of honor, was distinctively masculine, in an image that reflects the extent of marginality that Palestinian women suffer from, and the absenteeism and exclusion from participation in decision-making even when the affair is related to the most significant decisive issue that touches the Palestinian woman in her existence and survival. It was noticed also the absence of representatives from the civil community who work in the field of honor killing.

¹¹³WCLAC, 2016, p. 62.

¹¹⁴Hassan al-Auri, the legal adviser to the Palestinian president. See N. Khalil, 2011, p. 12.

¹¹⁵N. Khalil, 2016, p. 12.

The decree by law No. (7) of the year 2011 was welcomed by the civil community establishments in general and the women establishments and human rights activists in particular¹¹⁶, who considered as a step to the right direction to treat the Palestinian woman fairly and achieve justice. On the other hand, others degraded its usefulness and importance because it canceled an article which is not used to issue judicial rulings in cases of killing women at the honor background, and it ignored the texts that constitute the legal grounds in judicial applications of such cases¹¹⁷. The affair led to another legislative amendment related to Article (98) of the penal law at the same mechanism and method used in the first legislative amendment related to Article (340).

On 11/05/2014, the Palestinian president issued a decree by law No. (10) of the year 2014 related to modifying Article (98) of the Jordanian Penal Code No. (16) of the year 1960 and its amendments so that it becomes "The one who benefits from the extenuating excuse is the offender who commits the crime in a sharp fit of rage as a result of unfair, serious act committed by the victim. The offender shall not benefit from this extenuating excuse if the act is committed against a female on the pretext of honor"¹¹⁸. The decree by law No. (10) of the year 2014 became effective on 15/07/2014 when it was published in the official gazette¹¹⁹.

It has been noted that "the decision to modify the law came in order to delimit the murdering of women that are categorized within the rage fit as a result of indecent act by the victim, which have recurred frequently in our communities under the so-called "honor crimes". It has also been noted that "there are crimes that are committed against women by their relatives who utilize the extenuating excuse; consequently, the verdict came to abolish the extenuating excuse as stated in Article (98), and to reduce murders against women"¹²⁰.

The legislative amendment related to Article (98) came after years of calls from the legal, women establishments, and legal activists demanding the Palestinian government to stand

¹¹⁶WCLAC, General Federation of Palestinian Women, Women's Association for Development

¹¹⁷H. Aldenif, 2017, p. 67.

¹¹⁸Article 1 of the decree by law, No. 10 of 2014, regarding amendment of the Jordanian Penal Code, No. 16 of 1960, Palestinian Events, 106th edition, 15/7/2014

¹¹⁹Article 4 of the decree by law, No. 10 of 2014

¹²⁰N. Khalil, 2016, p. 12.

firmly to confront the spread of the phenomenon murdering women at the background of honor. However, the second legislative amendment was not as expected since it overlooked modifying the text of Article (99) of the penal code related to the judicial mitigating grounds which is the most used in judicial applications by waiving the personal right by the family, or other grounds that the judge applies the text of Article (99) of the penal law¹²¹, so that the door is still open for judicial tolerance and indulgence in punishing offenders of murders and violence against women, leading to make the third legislative modification.

On 14/03/2018, the Palestinian president issued decree by law No. (5) of the year 2018 to modify Article (99) of the penal law upon the placement of the Cabinet on 05/03/2018 so that "the felonies against women and children are excluded from the regulations of the previous paragraphs"¹²², that became effective on 25/03/2018¹²³.

The third legislative amendment was issued by the Palestinian president following the announcement of Prime Minister in a televised speech on the occasion of the Eighth of March, the International Women Day, that was posted on his personal account on the Facebook including a package of procedures to improve the regulations related to women in Palestine, including the penal law by modifying Article (99)¹²⁴.

1.1.1.2.2. Different Perspectives

The legislative amendments introduced at the Jordanian Penal Code No. 16 of the year 1960 by the decree by law No. (7) of the year 2011 that abolished Article (340), the decree by law No. (10) of the year 2014 that modified Article (98), and the decree by law No. (5) of the year 2018 modified in Article (99), that are related to abolishing the exempting legal excuse, and modifying the extenuating legal excuses and judicial grounds in the cases of murdering women at the background of honor, are considered as a step in the correct direction to promote equality between the two sexes in the penal law, judicial applications,

¹²¹See E. Abdeen. a new legislation in the face of the growing phenomenon of women's murder, http://www.dci.plo.ps/ar_print.php?id=d295dy862557Yd295d

¹²²Article 2 of the decree by law No. 5 of 2018, regarding amendment of The Jordanian Penal Code, No. 16 of 1960 and its amendments, Palestinian Events, 141st edition, 25/3/2018

¹²³Article 6 of the decree by law, No. 5 of 2018

¹²⁴ See the Palestinian prime minister speech, <https://www.facebook.com/Rami.Hamdalla/>

and community culture. After the discriminatory legal texts worked against women on the basis of sex for more than 50 years by degrading the legal value of the right of women to life and encouraging violence against them by exempting the man from punishment or punishing him with mitigated penalties that are not proportional to the gravity of the committed, the legislative amendments have come at last for women's relief and equity by lifting injustice and unfair discrimination that women had suffered from for decades in the penal laws. They are also considered by activists that they are qualitative step to delimit murders against women¹²⁵.

On the other hand, the modifying legislative interventions in the penal law received significant criticism. The most prominent was the lack of clear legislative vision of the Palestinian legislator as reflected by the legal amendments based on a situation of legislative confusion and turmoil in approaching the growing phenomenon of the killing of women¹²⁶. They have not come as a result of comprehensive study based on in-depth studied analysis of all aspects of the nature of the issue¹²⁷; but the amendments rather came fragmented as instant reactions for individual events and cases that preoccupied the Palestinian public opinion, the most prominent of which was the murder of (Aya Baradeya) that resulted in abolishing Article (340) as per the decree by law No. (7) of the year 2011.

Furthermore, the legislative revealed deep flaw in the adopted criminal policy¹²⁸; the size of the gap has been evident between the legislator and the issue that he intervened to solve. That has been evident clearly when the legislator abolished a legal text that the Palestinian courts had never relied on in their judicial rulings to exempt or relieve penalty against the convicted offenders in cases of killing women on the pretext of honor¹²⁹, and leaving the legal articles (98, 99), on which the Palestinian judiciary relies in its rulings, enforceable without amendments¹³⁰, which reduced the importance of its issuance and its actual

¹²⁵N. Khalil, 2016, p. 12.

¹²⁶See E. Abdeen. a new legislation in the face of the growing phenomenon of women's murder, http://www.dci.plo.ps/ar_print.php?id=d295dy862557Yd295d

¹²⁷ WCLAC, 2016, p. 62.

¹²⁸ E. Abdeen, 2014, p .7.

¹²⁹ A. Al Ashqar, 2014, p. 8.

¹³⁰A. Abu Hayya, 2011, p. 4.

value¹³¹, and required second and third legislative interventions in order to address the shortcomings and disability of the first legislative intervention to protect the woman's right to life and achieve the concept of deterrence.

The legislative interventions are criticized bitterly in a way that reflects the volume of their contradictions with the purpose for which they are introduced. The criticism is about the use of the legislative interventions of the term "*honor*": the first legislative amendment as represented by the decree by law No. (7) of the year 2011 used the term "*family honor*"; whereas the second legislative amendment as represented by the decree by law No. (10) of the year 2014 used the term "*for the grounds of honor*"¹³². That comes at a time when the penal legislations do not mention the term "*honor*" which has not been stated at all in the current penal code¹³³. In addition, the penal code does not include any definition for it that determines what is meant by "*family honor*" and "*for the grounds of honor*", causing huge problem related to determination of what is meant so that females murders are excluded by its virtue from the range of applying the legal relieving excuses as per the decree by law No. (10) of the year 2014. In particular, the aforementioned term is considered a variable, relative, general, loose, and can accommodate many interpretations and indications as per the community's culture, customs, and traditions. This contradicts with the principle of legitimacy on which the penal legislations are based, that includes "No crime and no penalty except by a text"¹³⁴, and which requires that the provisions of the law be clear, precise, clearly-defined without any ambiguity, and unambiguous in order to guarantee the rights and freedoms of individuals.

On the other hand, by including the term "*honor*" with which women are persecuted¹³⁵, the legislator departs the basic objective that he attempted to achieve by his legislative intervention, represented by limiting the killing of women and seeking greater legal protection for women's right to life, since the legislator attempted to give the motive to

¹³¹ H. Aldenif, 2017, p. 63.

¹³²It is noted that the third legislative amendment, pursuant to Law No. (5) of 2018, has avoided criticism regarding the use of the term "honor" and instead used "felonies against women".

¹³³The Jordanian Penal Code No. 16 of 1960 uses the term "pretext to kill" to refer to Article 340 and didn't use the term "honor"

¹³⁴ See Article 3 of the Jordanian Penal Code No. 16 of 1960.

¹³⁵M. Idriss, & T. Abbas, 2010, p. 1.

commit the crime represented by the honor that carries a sacred value and something more precious to the person than even his / her life¹³⁶, a weight and volume in the introduced legislative amendments. This is an erroneous issue revealing the legislative party was entrapped in the trap of the current intellectual, cultural, and societal patterns that believe that man's honor is embodied in the woman's body¹³⁷, and the issue of keeping the woman's life depends on maintain her honor. Consequently, the legislative amendments promote the traditional stereotype of honor killings instead of fighting them, and contradictory with their objectives. The best example to prove this is the increased number of women murders in the community after the president issued the decree by law No. (7) of 2011 that abolished the penalty exempting excuse. WCLAC revealed that 4 women were killed in 2011, whereas the number rose to 13 women in 2012, and the number doubled to 27 women in 2013¹³⁸.

By including the term "*honor*" in the introduced legislative amendments, the legislator transferred this term from the community cultural field to the legislative legal level in a dangerous precedent that may cause negative results in the context of the Palestinian legislative situation, particularly, since such legislative amendments are temporary¹³⁹, and suspended on the approval of the Palestinian Legislative Council in its first session of its meeting, a matter that shall promote the chances of not approving of such decrees by law. Consequently, they will threaten the legal gains and achievements that enhance and protect women's right to life achieved by Palestinian women in a long and bitter struggle with the danger of disappearing.

The Palestinian legislator should have been more aware of the dimensions of the social and cultural issue and their backgrounds so that the solution and amendment be proportional to the problem in all its aspects rather than aggravating it. It was better for the Palestinian legislature to exclude the term "*honor*" from the legal amendments, and replace it by the phrase "excluding the murders of women" in order to avoid all the contradictions and

¹³⁶R. Doğan, 2011, p. 423.

¹³⁷L. Welchman, & S. Hossain, 2005, p.6.

¹³⁸ See WCLAC press release on the International women's Day <http://www.wclac.org/atemplate.php?id=343>

¹³⁹N. Khalil, 2016, p. 12.

inaccuracies in which he entered and suspended by them the future of Palestinian women and the amount of legal protection for their right to life, placing women in a test and a real crisis between the legal gains protecting their right to life and their cultural and societal contradictions that expose them to fail having legislative approval.

1.1.1.2.3. The Suggested Legal Assessments

The issue of the decrees by law constitutionality issued by the chairman of the Palestinian National Authority in general and the decrees by law related to the legal provisions for killing on the grounds of honor in the penal law in particular are considered a subject of public legal discussion and controversy in a way that make it subject to challenge for their unconstitutionality at any moment before the Palestinian judiciary (the Supreme Constitutional Court). Article (43) of the modified basic law of the year 2003 stipulated that if the president shall issue decrees by law that enjoy the power of law have to satisfy a number of conditions including that the Legislative Council shall not be in session phases; no decree by law shall be issued unless related to an urgent state that cannot be delayed; provided that the issued decrees by law shall be related to the extraordinary condition and directly related to it and at the necessary extent to confront the crisis; and present the decrees by law at the Legislative Council¹⁴⁰.

By referring the decrees by law related to killing women on the grounds of honor background, the constitutional provision related to the urgent situation that cannot be delayed, it is not satisfied. The historical roots of murdering women on the grounds of honor in the Palestinian society go back deeply to decades; and so are the demands of the women movement, the legal institutions whether local or international to abolish and amend them. What indicates that the urgent situation as stated in Article (5) of the decree by law related to the exempting excuse is the provision in the text that it shall become effective as of the date of its publication in the official gazette is that the aforesaid decree by law was issued on 15/05/2011 but published on 10/10/2011¹⁴¹, that is after

¹⁴⁰M. Al-Lahham, 2015, p. 41-45.

¹⁴¹Article (5) of the Decree Law No. 7 of 2011. States: "All competent authorities, each within its own jurisdiction, shall implement the provisions of this resolution by law and shall come into effect from the date of its publication in the Official Gazette."

approximately 5 months as of the date of its issuance, which is a sufficient period of time in itself as the constitutional jurisprudence and judiciary to say that the urgent situation that cannot be delayed had elapsed¹⁴².

It is noted that the aforesaid decrees by law were based on decisions by the Cabinet related to placement to the chairman of the Palestinian National Authority, a fact that raises another legal point. Assigning decrees by law to such placement may lead to challenge their non-constitutionality since the constitution does not permit the Cabinet to make any placement to the chairman of the Palestinian National Authority to issue any decree by law at all. The task of the President to issue extraordinary legislation as per Article (43) is assigned exclusively to the President without any mediation from anybody¹⁴³. The interference of the Cabinet in the course of the extraordinary legislation constitutes a clear constitutional breaching to the text of Article (43)¹⁴⁴.

Article (43) of the constitution provides that the decrees by law shall be presented to the Legislative Council at its first session held after issuing such decrees, or their law power shall cease to exist. If they are presented at the Legislative Council as stated above, and they are not approved, their law power shall cease to exist¹⁴⁵. This means that the decrees by law are temporary until the Legislative Council convenes¹⁴⁶. It also means that there is a high probability that such legal provisions shall come back to life if the Legislative Council does not approve the decrees by law that are issued by the chairman of the Palestinian National Authority that contains their abolishment or amendment.

It should be noted that the amendments on the penal code regarding the cases of killing women on the grounds of honor background as per the aforesaid decrees by law are not consistent with the orientation adopted by the new proposed Palestinian penal act draft. The act draft does not exclude "the homicide of women on the grounds of honor background" from the legal exempting or relieving excuses as stated in its article No. (149), neither does it exclude them from the judiciary mitigating grounds that are included in

¹⁴²E. Abdeen, 2014, p .1.

¹⁴³B. Bushnak,2016, P. 109.

¹⁴⁴E. Abdeen, 2014, P.12.

¹⁴⁵See Article 43 of the amended Basic Law of 2003 and its amendments.

¹⁴⁶N. Khalil, 2016, p. 12.

articles (152) and (153), leading strongly to the risks of going back to the beginning and entering a bitter, long-term societal and cultural struggle in order to achieve fair penal legislative treatment related to homicide of women on the grounds of honor background¹⁴⁷. The destinations of thousands of Palestinian women and girls depend on the understanding of the members of the new Palestinian Legislative Council of gender issues; the extent to which they are influenced by the concepts of human rights and principles; and the extent to which they are tempted to legislate laws that violate the culture of a large segment if not the majority of the Palestinian voters, which keeps the legal amendments aimed at enhancing the legal protection of women's right to life is not permanent or stable and is dependent on the orientations and beliefs of the people elected by the people to take on the task of enacting legislation in the new Palestinian Legislative Council.

The aforementioned decrees by law are criticized because they did not eradicate the legal texts that encourage violating the right of women to life on the basis of honor in the provisions of the Revolutionary Penal Code of the Palestine Liberation Organization of 1979¹⁴⁸, which apply to the military personnel that comprise a large segment of Palestinian citizens, as well as its applicability not so long ago to civilians as well¹⁴⁹, that were not included in the revocation or amendment under the decrees by laws issued by the chairman of the Palestinian National Authority. This means that legal texts will continue to encourage the continuation of a culture of violence against women and reinforce the criminal policy based on the contents of impunity or complacency in punishing the

¹⁴⁷Palestinian penal code draft of 2010

¹⁴⁸The Revolutionary Penal Code of 1979 is part of the Palestinian military justice system, an extension of what is known as the Revolutionary Judiciary of the Palestinian Revolutionary Forces and factions under the umbrella of the Palestine Liberation Organization (PLO), and was implemented after the issuance of the legislative resolution number (5) by the late Palestinian President Yasser Arafat on 11/7/1979

The provisions of this law have been applied to the military personnel of the Palestinians and the civilians who committed crimes against the Palestinian revolution in the Palestinian diaspora and in all places where the forces of the Palestinian revolution were present. After the signing of the Oslo Accord in 1993, Military justice continued to operate in the territory of the Palestinian National Authority of the Palestinian National Authority. See G. al-Rubai, 2008,

¹⁴⁹The Palestinian General Intelligence Service issued a decision not to arrest any Palestinian civilians except under an arrest warrant issued by the Civilian Public Prosecutor's Office as of 15/1/2011. Earlier, judges and members of the military prosecution justified the extension of the jurisdiction of the military judiciary to include all Palestinians, whether civilians or military personnel, on the basis of Article (3) & (9) of the Revolutionary Penal Code. See N. Al-Rayes, 2011, p. 11.

perpetrators, effective in part of the enforceable penal laws¹⁵⁰. Article (117) of the Revolutionary Penal Code states that "The perpetrator of the crime, who commits the crime in a great fit of rage resulting from a serious, unfair act by the victim shall benefit from the relieving excuse." Article (118) of the aforesaid code states that "if there are mitigating grounds in a case, the court shall rule: instead of execution, the hard labor life imprisonment, or temporary hard labor from seven years to fifteen years in prison; instead of the hard labor life imprisonment, temporary hard labor a minimum period of seven years in prison; instead of life detention, temporary detention for at least five years; it may reduce any other criminal penalty until the half; it may reduce, except repetition, any penalty whose minimum limit does not exceed three years to imprisonment for one year at least." Article (390) also states that "(a)The person who catches his wife, one of his ascendants, one of his descendants, or his sister in flagrante delicto, or in obscene sexual act with another person, and killed or harmed them, or killed or harmed either of them inadvertently, shall benefit from the exempting excuse, (b) The perpetrator of murder or harm, who catches his wife, one of his ascendants, one of his descendants, or his sister in a suspicious condition with another, shall benefit from the relieving excuse."

In order to avoid redundancy, what was said in the interpretation of the legal texts relating to the same subject as stated in the Jordanian Penal Code No. 16 of 1960 can be said in this regard. It should be noted that the provisions of article (390) of the Revolutionary Penal Code of 1979 have extended the scope of the punishment exempting excuse to include, in addition to the case of flagrante delicto of adultery, any obscene sexual acts.

In addition, it extended the benefit from the punishment mitigating excuse in the Second of the same article in such a way that opens the door wide to kill women simply because they are merely in a suspicious situation with another person, i.e. in the case of suspicion and uncertainty of her conduct, as well as relying on the military judge's discretionary

¹⁵⁰Although the Revolutionary Penal Code of 1979 is still applicable to Palestinian military courts, Al-Haq's study concluded that the PLO's legislation on the Palestinian territory shall not be enacted and enforced in, since it does not comply with the requirements of publication which the amended Palestinian Basic Law of the 2003 and its amendments requires as a main condition for the enforcement of any legislation. N. Al-Rayes, 2011, p.125.

power to determine what is meant by the suspicious situation that justifies the assault on her right to life.

It could be concluded from the above discussion that there are serious probabilities that the legal texts encouraging the violation of women's right to life will be revived to application by the Palestinian courts because the decrees by law that amended them contain constitutional violations, and the fact that the option of not being approved by the Legislative Council remains.

Civil society organizations, women's organizations, and human rights defenders should be called upon to unite efforts to strengthen the legislative amendments that protect women's right to life in the face of a culture of honor killings by launching community awareness campaigns targeting all sectors of society, in particular decision-makers and young generations, that should not be limited to the women's community¹⁵¹.

1.1.2. Failure of Criminal Protection of Women's Right to Bodily Integrity

The right of women to the integrity of the body is directly and basically related to the right to life, since life cannot be properly exercised in a way that achieves the individual's goals and aspirations except through a full body that maintains the safety of its organs and performs its functions effectively and free of pain. Nor can any society maintain its existence as a coherent society at a level of progress and prosperity unless the right to bodily integrity is preserved and surrounded by adequate safeguards to protect it equally for all individuals, women, and men away from violence.

Therefore, it could be found that the various international conventions and charters have attempted to prohibit torture and other forms of cruel, inhuman, or degrading treatment of human dignity, as such acts constitute a blatant aggression against the right to bodily integrity. Article (5) of the UDHR states: "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment." They have also attempted to keep the human body and its physical integrity protected by scientific and medical experiments.

¹⁵¹ A study carried out on a sample of ninth graders in secondary schools in Amman, Jordan. Boys were more than twice as likely to support honor killing: 46.1% of boys and 22.1% of girls. M. Eisner, & L. Ghuneim, 2013, p. 411.

Article (7) of ICCPR states: "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation".

In addition, the penal legislations of the states protect the right to bodily integrity with the necessary legal protection to ensure that it is not assaulted, and so all types of beatings, injuries, and abuses that are harmful to it are criminalized, and the rest of the acts that violate the health and effectiveness of its organs are penalized. The perpetrator shall be punished in different severity relative to the volume of damage, pain, and the amount of prejudice to the right of the victim to the integrity of her body.

In this context, the Jordanian Penal Code No. 16 of 1960 criminalized all acts of harming persons within Chapter Eight, which it entitled as crimes and misdemeanors committed against human beings, in which it listed a number of legal texts that dealt in details with the various types of cases where the integrity of the body crime, physical, and moral elements, the penalty prescribed in the case of its commission, and aggravating or mitigating circumstances.

All crimes of victimization involve in their application on a living human body, and after that, such acts may affect the internal or external organs of the body, or the effect of which may affect the normal functioning of the body and its organs; or result in the low level of health of the victim or cause physical pain. The physical component of the crimes of assault on the right to the integrity of the body consists of the criminal behavior as represented by all acts of beating, wounding, and harm by any act of violence or abuse¹⁵², and the criminal result as represented by the harm to the right to bodily integrity, or to the dysfunction of the normal functioning of its organs as affected by the conduct of the criminal behavior of the perpetrator¹⁵³. The crimes of abuse and infringement on the integrity of the body also require the availability of a moral basis as represented by the awareness of the perpetrator of his behavior and its seriousness against of the right of the victim in the safety of his body, and the direction of his will to harm the body of the victim and hurt him. As such, the offense of victimization is intentional and punishable with a different penalty

¹⁵² See Article 333 of The Jordanian Penal Code No. 16 of 1960.

¹⁵³ A. T. Ahmed, 2012, p. 20.

depending on the duration of the disruption and the amount of damage to the victim's right to the integrity of his body. The crime of victimization is classified as an unintentional offense when the acts of victimization are made by mistake and the perpetrator is then liable for an unintended offense¹⁵⁴.

The legal texts have distinguished the punishment for crimes against the right to bodily integrity in accordance with the magnitude of the criminal result that occurred. The offenses of victimization are considered as a type of felony if the assault leads to death, permanent disability, or abortion of a pregnant woman. The perpetrator shall be punished with temporary hard labor for a period not exceeding ten years¹⁵⁵. The offenses of misdemeanor shall be considered as a misdemeanor if the acts of assault result in illness or disability for personal business for a period of 20 days or more or less, with a requirement to file a complaint to the competent authorities to direct the public prosecution proceedings of the public prosecution if the period of disabling and illness is not more than 10 days. In this case, the perpetrator shall be punished by imprisonment for a term from 3 months to 3 years depending on the period of illness or disabling¹⁵⁶. The offenses of victimization are also subject to aggravating circumstances in accordance with the provisions of Article (337), added to the original penalty of one third to half of them if the offenses of victimization occur on more than one person or a public official, or occur in conjunction with another crime of the type of felony, misdemeanor, or committed with premeditation, or committed by ascendant on descendants.

Although the Penal Code criminalizes all acts of victimization by many explicit legal provisions that have been enacted by which the legislator sought to ensure the criminal protection of the right to bodily integrity for all members of society without discrimination on the basis of sex, based on constitutional rules that guarantee equality before the law and the judiciary, the legislator turned and wasted the woman's right to the integrity of her body and discriminated against her when he gave the man a legal license to harm her on the

¹⁵⁴ See M. Namour, 2011, p. 124-153.

¹⁵⁵ See Article 330, 335 and 336 of the Jordanian Penal Code No. 16 of 1960.

¹⁵⁶ See Article 333, 334 of The Jordanian Penal Code No. 16 of 1960.

pretext of preserving the honor and gave permission to exercise the right, including the violation of the right to bodily integrity.

1.1.2.1. Violation of the Right to Bodily Integrity by License of Law

The research in the amount of penal protection enjoyed by the woman's right to the integrity of her body within the provisions of the Penal Code requires addressing the exempting excuse of punishment within article (340/1), and the excuse for mitigating punishment under Articles (340/2) and (98), in addition to the judicial grounds for mitigating the sentence under Article (99). The provisions of these legal articles extend to ensuring that perpetrators are exempt from punishment or that they are lenient in their punishment for crimes of violence and abuse that are committed against the physical integrity of women, which have for years constituted legal encouragement to practice violence against women.

1.1.2.1.1. Exemption from Punishment

According to Article (340/1), only the man but not the woman is granted the right to practice acts of beating, wounding, and harm in the event of seeing a wife or one of the unmarriageable females in an act of an adultery relationship and got surprised by this incident in a way that aroused his anger, prompting him to commit his crime. The law guarantees for him complete immunity from punishment, notwithstanding the extent of the harm and victimization inflicted on the victim. The legal text remains a product of its effects by exempting the perpetrator from punishment, even if the victim suffers permanent disability or serious harm. Under the pretext of preserving family honor, the Penal Code allows the man to practice violence against women and abuse their physical integrity. Although the right of women to the safety of their body is no less important than their right to life, the preservation of the body intact and healthy is essential to the exercise of life in a natural and effective way, but the legal attention was mostly concerned with the implications of the text of Article (340/1) for the right of the woman to life and neglected to address the implications on the right to the integrity of the body. This can be explained in terms of the fact that the right to life is superior to the rest of human rights since it is the basis and the essence of human rights, and its violation constitutes the most extreme violence against women. It can also be explained from another angle that the culture of Arab society reduces the significance of violating women's right to their bodily integrity

on the pretext that the physical violence against it is not unusual in the context of the right of discipline granted to parents and spouses, under which acts of violence involving abuse of women's physical integrity are not considered as punishable offenses, as will be shown in the Section II of this study.

The legal provision of article (340/1) is criticized because it undermines the right of women to lead normal, free-of-pain life in their bodies, maintaining their full organs and their appropriate health and job quality.

1.1.2.1.2. Leniency in Punishment

Article (340/2) guarantees the perpetrator a lighter penalty if he commits acts of violence including wounding or harm against his wife, one of his ascendants, descendants, or sisters if he is surprised to catch them in a suspicious situation that makes the idea of marital infidelity or acts of adultery present in his mind. The legal provisions continue to ensure that the perpetrator enjoys a mitigating punishment if he commits acts of violence against women and deprives them of their right to bodily integrity. Even if the necessary legal conditions do not apply to effect the exempting or mitigating excuses in the crimes of victimization of women under Article (340), the court can rely on the text of article (98) of the Penal Code, which in turn guarantees the perpetrator a lighter punishment if he commits his crime as a result of the wrongful behavior of the victim that aroused his rage. In the event that none of the above-mentioned legal provisions apply to the perpetrator, the court shall rely on Article (99) of the Penal Code, which gives discretionary authority to mitigate the punishment for grounds that the judge is satisfied with. It should be noted that the penalty for victimization offenses becomes in the case of mitigating excuses in Article (340/2) and Article (98) imprisonment from six months to two years after they were without mitigation temporary hard labor for a period that does not exceed ten years. The penalty for misdemeanor offenses may be imprisonment for up to 6 months or a fine of 25 Jordanian Dinars, after it was imprisonment for up to three years¹⁵⁷. In the case the court takes in consideration the mitigating circumstances in accordance with the provisions of Article (99), the perpetrator of criminal offenses of misdemeanor shall be punished by half

¹⁵⁷ See Article 97 of The Jordanian Penal Code No. 16 of 1960.

of the penalty prescribed by law for his crime, while the penalty shall be reduced to reach one year imprisonment¹⁵⁸.

These legal texts are criticized for being in effect for many years to keep women in the circle of fear, danger, and threat in a way that affects their personal security, limits their ability to claim their rights and freedoms, and leads to growing feelings of helplessness, frustration, and isolation from society, keeping them locked in a cycle of violence and persecution.

Furthermore, not only do these texts constitute a legal license to encourage men to practice acts of violence and abuse in a way that promotes the culture of violence against women in the society, but they also may result in, due to the legal and judicial leniency with the perpetrators, continuing to violate the integrity of the body of women and waste their right to life.

In order to avoid repeating what has been discussed in the previous requirement concerning (the right to life) about the conditions of applicability of the exempting excuses, the mitigating excuses, and the mitigating extenuating grounds and their gravity as legal provisions on the rights of women and the grounds for their remaining in the study, they have been briefly addressed in this section to the extent that it affects the right to bodily integrity.

1.1.2.2. Violation of Body Integrity by Practice of Right

The women's right to their bodies' integrity and their liberation from violence in the family range is considered one of the most controversial topics in the Arab and Islamic societies. As men enjoy a legal license based on misinterpretation of the Islamic religion, their right to body integrity is violated¹⁵⁹. Violent acts extend to affect the woman notwithstanding her position in the family or her age, whether she is a mother, a sister, a wife, an old or a young daughter. On the pretext of discipline, her body integrity and private freedom are violated in order to control, discipline her conducts, and manipulate her in such a way appropriate to the family's wishes and the society's customs and traditions that require them

¹⁵⁸ See Article 99/3/2 of The Jordanian Penal Code No. 16 of 1960.

¹⁵⁹ See F. Sadiqi, 2014, p. 2.

to show submissiveness and obedience to the male in all the large and small issues of life and not to oppose his authority, or otherwise she will be subject to the discipline, as the husband has the right to discipline his wife and his sons.

1.1.2.2.1. Husband's Right to Discipline Wife

The Arab man derives his authority for discipline from the criminal laws that allow him to physically assault the wife by beating, under the pretext of relying on the provisions of the Islamic law, which give men the right to guard women. Some Arab penal legislations explicitly state that the husband is entitled by the law to the right to discipline his wife, as it is the case in the Iraqi Penal Code¹⁶⁰; whereas some penal legislations have implicitly determined the right of disciplinary action, such as the Egyptian Penal Code¹⁶¹. As for the Jordanian Penal Code, it does not explicitly approve the husband's right to discipline his wife. However, the criminal law interpreters have interpreted some legal texts in such a way as to give the husband the right to beat and insult his wife based on the grounds of permissibility and justification contained in the Penal Code.

A set of legal opinions in favor of the idea of granting the penal code to the husband the right to discipline his wife¹⁶², is based on Article (62), which states that "(1) The act permitted by law is not a crime, (2) The law permits: (a) Cruelty inflicted by the parents of their children as allowed by the general custom ... ". It believes that by using the method of induction on the right of the discipline granted to parents over their children, the husband has the right to discipline his wife¹⁶³. As the principle of non- induction¹⁶⁴, within the provisions of the Penal Code is prohibited in the field of rules of criminalization and

¹⁶⁰ Article 41 of the Iraqi Penal Code No. 11 of 1969 states that: "No offense shall be committed if the act is committed in the use of a right established by law and is considered an exercise of the right: 1. Discipline of the husband to his wife and disciplining parents and teachers and minors Within the limits of what is prescribed by Shari'a law, law or custom."

¹⁶¹ Article 60 of the Egyptian Penal Code No. 58 of 1937 states: "The provisions of the Penal Code shall not apply to any act committed in good faith pursuant to a right established by Shari'a".

¹⁶² Such as Mahmoud Najib Hosni, Nizam Tawfiq Majali, and Kamel Said.

¹⁶³ N. Al-Majali, 2015, p. 183.

¹⁶⁴ One of the characteristics of the Penal Code is the principle of non- induction, regardless of the similarities between the act and the other and no matter how serious this act should not be criminalized and should not be punished by the method of measurement in order to achieve legal stability, based on the principle of legitimacy. M. Al-Halabi, 1993, p. 19.

punishment for creating new crimes and penalties¹⁶⁵, whereas in the field of rules of justification and permission, there is nothing to prevent the induction¹⁶⁶.

This perspective justifies granting the husband, rather than the wife, the right to discipline on the grounds that man is better able to understand life, and that he is more able to control his emotions and better use his mind. It is believed that the interest of the family and in turn the interest of the community require that some of its members have authority over others and that this authority supports the right to impose a penalty on those who come out on it¹⁶⁷.

This perspective is criticized on the grounds that it is a masculine opinion that is fundamentally seeks legal justifications and arguments to permit acts of violence against women and ensuring impunity for the male offender, since this perspective overlooks the right of the wife victim to the safety of her body integrity, turns a blind eye to the serious negative effects of violence on the mental and physical health of women¹⁶⁸, and neglecting her right to justice and equity, in the interest of men in maintaining their authority and male dominance in the family¹⁶⁹.

This perspective can be answered and refuted on the grounds that the basis of criminal law and its only source is legislation, and so the induction cannot be a source. If the provisions

¹⁶⁵ The reasons for permissibility are defined as cases of absence of the legal element based on restrictions contained within the scope of the text of criminalization to exclude certain acts. So it becomes permissible rather than criminal. M. Husni, 1975, p. 196.

¹⁶⁶ M. Husni, 1975, p. 182.

¹⁶⁷ M. M. M. Al-Qadi, 2014, p. 182.

¹⁶⁸ Women who had experienced intimate partner violence are exposed to mental health implications such as depression, PTSD, anxiety, suicidality and self-harm, psychological distress, and impact on quality of sleep and sleep disorders, as well as physical health outcomes including functional health, self-perceived physical health impact, and chronic health conditions. G. Dillon, R. Hussain, D. Loxton, & S. Rahman, 2013, p. 4.

¹⁶⁹ UN, In-depth study on all forms of violence against women: Report of the Secretary General, 2006, p. 29.

of the Islamic jurisprudence¹⁷⁰, the principles of the Islamic law,¹⁷¹ customs¹⁷² and rules of justice "the natural law"¹⁷³ are the sources of civil law in addition to legislation, the source of the Criminal law can only be legislation¹⁷⁴.

Whereas the majority of views supporting the husband's right to discipline his wife find in Article (59) of the Penal Code, the legal basis for the permissibility of the beatings and discipline inflicted by the husband on his wife, since Article (59) states that "An act committed in the exercise of a right without abuse is not considered a crime". This means that a husband can beat and discipline his wife without considering that his act is a crime punishable under the Penal Code if the husband has the right to discipline his wife within the system of rules and legal texts applied in Palestine, since the legal wording contained in the text of Article (59) comes in a general absolute way that contains every legal provision whether included in the legislations or they are included within the rules of the Islamic law or the applicable norms¹⁷⁵.

By returning to the legislation in force in Palestine, it can be found out that it is devoid of any legal provisions that give the husband the right to beat and abuse his wife. However, in this regard, the Islamic law, which is part of the general legal system as an essential source of legislation¹⁷⁶, is taken as a valid legal basis to justify granting the husband the

¹⁷⁰ Islamic jurisprudence means the jurisprudential opinions that have settled through the four Islamic schools of Hanafis, Maalikis, Shaafa'is Islamic jurisprudence is a collection of jurisprudence reached by Muslim scholars during the period following the mission of the Prophet Muhammad, These jurisprudential interpretations are combined with the latest developments and issues that appear in the period of time that they have been put on the grounds that the jurisprudence tries to address the emerging issues that do not contain a text to deal with at the time they appear. B. F. Al-Sarhan, 2012, p. 108 & 110.

¹⁷¹ The principles of Islamic law are the source from which the rulings are derived, which are formed as a general rule of "The Qur'an" and the Sunnah. . B. F. Al-Sarhan, 2012, p. 110.

¹⁷² Custom is defined as an approach followed by people in their dealings with their sense of obligation to them legally, customs are a result of the frequency of work among people by taking certain solutions in one aspect of their lives (habituation), with their sense that this solution has become a binding behavior, and there is a legal sanction available to ensure respect for it. T. Abdel Hamid, 2010, p. 218.

¹⁷³ "natural law" And the "rules of justice" refer to the set of fixed rules derived from the nature of things and valid for all time and place and can be detected by the human mind. A. Sh. M. Abdel Rahman, 2005, p. 138.

¹⁷⁴ I. M. Rabee, 2002, p. 57.

¹⁷⁵ See M. Najm, 2000, p. 184. & N. Al-Majali, 2015, p. 197.

¹⁷⁶ Article 4/2 of the amended Basic Law of 2003 and its amendments stipulated: "The principles of Islamic law are a major source of legislation".

right to discipline his wife¹⁷⁷. Based on verse 34 of Surat al-Nisa', which says "*As for those from whom you fear disloyalty, admonish them, and abandon them in their beds, and then strike them*". The Arabic word for "*strike them*" is interpreted in the sense of permitting physical violence against women, such as kicking and slapping, in accordance with strict hermeneutics of the Quranic verse, under which a man is allowed to beat his wife without severity¹⁷⁸.

It is possible to respond to this trend through the moderate hermeneutics of the verse (4;34), which considers that the meaning of the Arabic word for *beating* mentioned therein does not mean at all physical violence against the wife, but it rather means the departure of the man and leaving the marital home in preparation for separation between the spouses.¹⁷⁹ In the sense of a number of verses in which the Quran used the Arabic term for *beating* in the sense of leaving, departure, and separation¹⁸⁰, and the significance of many verses of the Quran that show the nature of the relationship between spouses and organize it on the basis of affection and mercy. Almighty Allah says, "*And live with them honorably*"¹⁸¹; "*And of His signs is that He created for you wives from among yourselves, that you might reside with them, and has put kindness and mercy between you. Surely, there are signs in this for those who think.*"¹⁸²; "*Divorce is twice, then an honorable keeping or allowed to go with kindness*"¹⁸³. The Messenger of Allah (PBUH) also explicitly forbade the beating when he said, "*Do not beat the odalisques of Allah*"¹⁸⁴. The Messenger (PBUH) never beat a woman in his life, but rather when it happened that he became angry his wives, he went away from them and left the marital home for a whole month¹⁸⁵. The Messenger (PBUH) says,

¹⁷⁷I. M. Rabee, 2002, p. 55.

¹⁷⁸ M. Ibn Yusuf, (al-Garnati, H. A.), 1978, p. 242 & M. R. Rida, 1973, p. 59.

¹⁷⁹ Mustafa Hosni, and hit them - hit women in Islam, <https://www.youtube.com/watch?v=a1xoKLhmvL8>

¹⁸⁰ Such as the Verse (18;11), in which God say " So We beat over their ears within the cave for a number of years". Which was interpreted that God cast [a cover of sleep] over their ears within the cave for a number of years. And the Verse (57;13) when God Say, "And a wall had been beaten between them". Which was interpreted that: "And a wall will be placed between them".

¹⁸¹ Holy Quran, 4:19.

¹⁸² Holy Quran, 30:21.

¹⁸³ Holy Quran, 2:229.

¹⁸⁴ Prophet Mohammad (PBUH)

¹⁸⁵ Sheikh Khaled Al-Jundi, Program of Religion and Life, <https://www.youtube.com/watch?v=0BrIzjzCaQE>

"Women are sisters of men; they are honored by only gentlemen, but they are insulted only by a mean person"¹⁸⁶. All of the foregoing statements are proofs and evidence from the Holy Quran and the Prophet tradition clearly indicate that the Islamic law is not directed to the permissibility of violence against women.

This means that the right of the husband to discipline his wife by beating her does not really constitute a fixed and certain basis in the Islamic law, but it is rather a matter of dispute (and doubt), and this entails significant legal consequences. As long as the right of the husband to discipline the wife by beating or physical violence is not a certain right under the provisions of the Islamic law in the light of many modern interpretations of modern jurisprudence that it is false that Islam permits to resort to violence against women, this violates the conditions of the application of Article (59) of the Penal Code, Which requires that the right should be fixed, certain, and un disputed as a condition for its exercise without criminalization and legal punishment¹⁸⁷.

However, for decades, it has been permissible to beat women according to the strict hermeneutics of the Islamic law, in a manner that has been established as religious beliefs that cannot be discussed in the society. As long as the right of discipline by physical beating is linked to the Islamic law, this means that getting into discussions about it has become a taboo that constitutes a departure from the religion. It also means that it is not subjected to legal research to ascertain the extent to which it is proven to be a consensus religious right as a basis for the legal activation of Article (59) as a ground for permissibility. This happens particularly, in light of the religious propaganda aimed at strengthening men's authority and dominance in the patriarchal societies.

In this context, it is possible to point out the statements of the President's advisor on religious affairs, the Chief Justice of Palestine, on 08/12/2018, that harmless beating of women is used as a means of education, which is considered to encourage violence against women. His statements came through a television interview broadcast by Palestine TV during the period of a campaign activity to combat violence against women witnessed by the Palestinian society. It is also considered contrary to the obligations of the State of

¹⁸⁶ Prophet Mohammad (PBUH)

¹⁸⁷N. Al-Majali, 2015, p. 178. & M. Al-Halabi, 1997, p. 175.

Palestine under the Convention of CEDAW, where these statements are considered very serious because they reflect a conflict in the official position of the State between international obligations and local position on violence against women¹⁸⁸.

This linkage has also contributed to promoting the prevalence and the acceptance of husband's violence against his wife in a large-scale in the society. It is became accepted even by the battered women themselves¹⁸⁹, due to the prevailing belief that the husband is following God's commandments¹⁹⁰, therefore, his act is not considered an offence, that's why between 13% and 69% of the Palestinian women are strongly agreed or agreed on that wife beating is justified¹⁹¹. And just only 23.5% of Palestinian women had reported that they have been subjected to physical violence by their husbands¹⁹².

In fact, this percentage does not properly reflect the extent of physical violence practiced by spouses against their wives due to the reluctance of women to disclose or report to police departments the violence they are subjected to, since they consider it as a private family matter that women must coexist with it in order to ensure the safety of their children and to avoid social embarrassment or scandal¹⁹³. This has resulted in serious consequences which have made spouse violence away from the competent authorities and not correctly included within the therapeutic and preventive policies.

Based on the above, it could be concluded that there is ambiguity in the criminal protection of women's right to bodily integrity within the provisions of the Jordanian Penal Code, to keep the door open for the interpretation and hermeneutics of the Holy Quran as permitting the beatings against the wife and the possibility of the Palestinian judiciary authority relying on these jurisprudence opinions in its rulings on cases of violence against women based on Article (59), which makes the amount of criminal protection of the right of women to the integrity of their bodies vague, diminished of its value and devoid of adequate legal

¹⁸⁸ See wide condemnations of Habbash's statement about beating women, Shasha News, <https://www.shasha.ps/news/309912.html>. And see Habbash's remarks about "beating women" are controversial, Raya Media Network, <https://www.raya.ps/news/1054737.html>

¹⁸⁹ A. Boy, & A. Kulczycki, 2008, p. 53.

¹⁹⁰ S. Douki, F. Nacef, A. Belhadj, A. Bouasker, & R. Ghachem, 2003, p. 168.

¹⁹¹ M. M. Haj-Yahia, 1998, p. 543.

¹⁹² PCBS, 2012, p. 25.

¹⁹³ WHO 2012, Understanding and addressing violence against women: intimate partner violence, p. 3.

safeguards to protect it, especially in patriarchal societies that often resort to acts of violence and abuse in order to maintain the superiority of men and the inferiority of women.

The legislator should be invited to intervene in the enactment of clear legal provisions criminalizing all acts of violence and physical abuse practiced by the husband on the pretext of disciplining his wife so as not to invoke that Islamic law or even custom as part of the legal system as a legal basis to activate Article (59) of the Penal Code and to permit violence against the wife.

Attention should be also paid to the need for ensuring health care services for battered women to reduce the negative effects of violence. At the same time should work to fight ¹⁹⁴ against violence by empowering women, financially and personally¹⁹⁵. and changing social norms condoning this behavior¹⁹⁶, through launching community awareness campaigns, promoting community religious debate, working to deliver the voice of the moderate religious trend to all segments of society, Encouraging women to report violence and not to remain silent about perpetrators and calling women's institutions to build alliances and strengthen partnerships with various sectors of the state and society to achieve the desired goals.

1.1.2.2.2. The Right of Parents in the Discipline of Sons

Article (62/2/a) of the Penal Code states that "the law allows for the forms of discipline inflicted on children by their fathers in a way as permitted by public custom". The purpose of disciplinary measures is intended as the acts of verbal, physical, and psychological violence practiced by fathers against their children in order to refine their behaviors and guide them in accordance with the customs and traditions of the society. In this case, the interest of the family and in turn the interest of the community exceeds the right of the child who is subject to the parental discipline in the safety of his body¹⁹⁷.

¹⁹⁴ See World Health Organization, 2017, p.1.

¹⁹⁵C. Garcia-Moreno, & C. Watts, 2011, p. 2.

¹⁹⁶ N. Linos, M. Khawaja, & R. Kaplan, 2012, p. 625.

¹⁹⁷K. Alsaeed, 1998, P. 188.

Article (62) grants fathers, a term that includes legally all those who have the guardianship of the minor as the law-abiding people in the discipline and refining of the minor in accordance with the provisions of the Islamic doctrine (shariah) including (father, mother, grandfather, paternal uncle and maternal uncle). According to customs, it also includes the elder brother who has the guardianship right of the person in the absence of the father or grandfather or if he has the guardianship right to money as a family sustainer¹⁹⁸, the right to monitor the behavior of children under the age of 18 years old and discipline them in a way that allows the use of acts of violence against their physical integrity, without constituting a crime punishable under the Penal Code. However, it is required to allow the acts of discipline to fall within the scope allowed by the general custom in Palestine and authorized as practices for the discipline of children, or otherwise the act shall become a punishable victimization crime.

The custom stipulates to allow acts of discipline involving violence: beating acts shall be simple, mild, and shall not leave any effect on the body. The scope of the permit is limited to the use of the hand thus, it is prohibited to use any instrument or equipment in the acts of discipline. It is also required that the violent acts shall not target any vital or dangerous places of the human body such as head and face, for example, in a manner that may jeopardize their lives or constitutes a serious violation of the right to bodily integrity¹⁹⁹. The aim of these acts must be to discipline and reform, not to for the purpose of vengeance or revenge²⁰⁰, or to compel them to commit criminal acts. This right is within the framework of legitimate interests, which is just and not arbitrary.

One of the judicial applications of the right of fathers to the discipline of children is that the Jordanian Court of Cassation has ruled that “the mother beating of her child with the aim of calming his screams and not for the purpose of harm is a form of discipline that parents inflict on their children as permitted by the public tradition”²⁰¹. The Egyptian Court of Cassation ruled that “the father or holder of the right to discipline the minor should take whatever measures he deems appropriate, such as placing the manacles on the ankles of a

¹⁹⁸M. Najm, 2000, p. 185.

¹⁹⁹K. Alsaed, 1998, P. 189.

²⁰⁰M. Al-Halabi, 1997, p. 216.

²⁰¹The Jordanian Cassation Penal Court Verdict No. 7/71, Journal of the Bar Association, p. 413.

minor girl in order to prevent her from eloping if her father fears her moral loss to prevent her from leaving the house”²⁰².

This text can be seen as a legal encouragement to commit violence against children. According to PCBS, parents are the first aggressors to children. Since 34.4% of children declare that they were subjected to physical violence by their parents,²⁰³ thus reinforcing the culture of violence within the family and turning it into a source of violence, Children become more violent towards their peers and society.²⁰⁴ In addition to the negative effects of violence on the physical, mental and psychological health of children, which may put them at risk of death or serious wounds, as well as the incidence of many physical and psychological diseases²⁰⁵.

A deeper look and analysis of the legal text and its application in a masculine society, patriarchal authority, and family socialization that discriminate against girls and favor males as supporters of the family²⁰⁶, give strong indications that the right granted to parents to discipline their children under Article (62) of the Penal Code is widely used to discriminate between children on the basis of sex. This right is often used in a way that violates the right of the minor girl to the integrity of her body, deprives her from enjoying the rest of her human rights, restricts her freedom, and limits her growth and developing her natural character and ability to build her future on an equal footing with male children. Furthermore, it wastes her safety and protection in her home, making her get used to submission and obedience, and easy to fall victim to sexual crimes committed within the family, for being in the circle of fear of violence and accordingly for her inability to refuse. Consequently, she becomes used to accepting the acts of violence and abuse as permissible

²⁰²The Egyptian Cassation Penal Court Verdict dated in 4th of Feb.1943, the set of legal principles, part 6 No. 62. P 85.

²⁰³ PCBS, 2012, p. 27.

²⁰⁴ See R. Thompson, K. Kaczor, D. Lorenz, B. Bennett, G. Meyers, & M. Pierce, 2017, p. 34.

²⁰⁵ See World Health organization, 2018, “Violence against children” Fact Sheet. <http://www.who.int/mediacentre/factsheets/violence-against-children/en/>

²⁰⁶ It should be noted that children with special needs are not excluded from the scope of the legal provision, which gives parents the right to discipline their children by using violence, this represents legal injustice against them and disregard for their health, physical and psychological conditions.

acts within the family that such acts do not constitute punishable offenses, and so the child does not report domestic violence even in cases of severe abuse.

By prescribing this statutory provision, the Penal Code contradicts with the Declaration on the Rights of the Child of 1959 issued by the General Assembly of the United Nations, which stipulates that “The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration”²⁰⁷. It also contravenes with the Palestinian Child Act No. 7 of 2004, which seeks to protect children from all forms of violence. In this respect, Article (42/1) states that "The child shall have the right to protection against all physical, moral, or sexual violence, or negligence, homelessness or other forms of ill-treatment or exploitation ..."

Therefore, due to the negative impacts of the legal permissibility of violence against children in general and its practice on females in particular, it requires the legislator to call for the repeal of Article (62) of the Penal Code, especially in light of Palestine's accession to the 1989 Convention on the Rights of the Child²⁰⁸, which requires the states to undertake to ensure that the child has the necessary protection and care for his or her well-being and, to that end, to take all appropriate legislative and administrative measures²⁰⁹.

1.2. Failure of Criminal Protection against Sexual Abuse

There are numerous forms of sexual assaults targeting individuals in society, especially women, that leaves behind many of the negative impacts that exceed the victims of the assault to affect not only the family but also society as a whole. However, women as representatives of the honor of men and the family in the patriarchal society remain the hardest hit and suffering from sexual violence. This suffering is compounded when the

²⁰⁷Principle 2 of the Declaration of the right of child, 1959.

²⁰⁸Palestine has joined the Convention on the Rights of the Child, 1989. on 20 May 2014

²⁰⁹See Article 3/1 of the Convention on the Rights of the Child, 1989.

Penal Code fails to protect women from the crimes of sexual felonies, as well as the crimes of sexual offences.

1.2.1. Failure of Criminal Protection against the crimes of sexual felonies (Rape).

The international agreements and conventions guarantee protection of women against attack on their honors especially against rape since rape is considered as a type of sexual abuse²¹⁰. Nevertheless, the rape crimes, despite their seriousness against women, the family, and the community, have not been given a particular international agreement that criminalizes them expressly. Hence, a general definition of rape could not be found that has consensus in the international law. However, it is defined at the level of national legislations and jurisprudences as "The engagement of a man in intercourse with a woman not his wife, by force or threat of force; against her will and without her consent"²¹¹. The Palestinian judiciary defines rape as "Sexual intercourse with a woman without voluntary consent from her, i.e. illegal intercourse with a female while being aware that occurs without her consent". Therefore, the elements of this crime are represented by intercourse with a female without her consent; the intercourse means penetration of the male organ into its assigned location in the female's body. Consequently, any other act no matter is their nature, whatever extent they may be disgraceful, and no matter how they violate honor are not considered rape"²¹².

At the international level, the international criminal courts of former Yugoslavia and Rwanda considered rape as torture acts²¹³. The International Criminal Court has introduced organized rape into its jurisdiction as a crime against humanity and war crimes;²¹⁴ whereas the Security Council considers rape a weapon of war²¹⁵.

²¹⁰ The Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, emphasize in Article 27 that "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault"

²¹¹ S. Estrich, 1987, p. 8.

²¹² The Palestinian Court of Cassation Verdict No.15/2010

²¹³ United Nations. Division for the Advancement of Women, 2006, p. 90.

²¹⁴ See the Rome Statute of the International Criminal Court of 1998. Articles 7/1/g and 8/b/22

²¹⁵ Security Council Resolution, S/RES/1820 (2008).

The domestic penal legislation of States seeks to protect the sexual freedom of individuals with a number of legal provisions²¹⁶, ensuring that they are not violated. Punitive legislations, by its punitive penal provisions, protect the rights and freedoms of individuals. In this regard, the Jordanian Penal Code No. 16 of 1960, incriminates and punishes rape in Articles (292-295). Article (292) states that "Who makes sexual intercourse by force with a female other than his wife shall be punished by hard labor for at least five years".

The crime of rape is a criminal offense that requires the punishment of temporary hard labor²¹⁷. The crime occurs when its material element that requires a man making a sexual intercourse with a woman without a marriage contract against her will and without her consent²¹⁸. The perpetrator may resort to force²¹⁹ the victim to be subjected to the sexual intercourse by physical coercion, and acts of violence such as beatings and harms as a means of paralyzing her resistance and robbing her will²¹⁹. He may also resort to acts of deceit, deception, or threat, which fall within the moral compulsion to force women to sexual intercourse. The moral element of the crime must be available in the direction of the offender's sexual assault, knowing that her dissatisfaction and sexual intercourse are illegal.

The law punishes with a severe penalty for the crime of rape, by adding to the original penalty of one-third to half if the crime of rape is committed by more than one person, resulted in infecting the victim with syphilis, or the victim lost her virginity²²⁰. If the crime of rape is associated with the crime of kidnapping the victim²²¹, or the rape results in the

²¹⁶ Women's sexual freedom include two dimensions. The first dimension is related to their reproductive rights and the second comprises the lack of coercive actions such as violence that restrict women's control over their sexuality. J. Ortiz-Rodriguez, & V. Pillai, 2016, p. 1183.

²¹⁷ According to Article 20 of the Jordanian Penal Code No. 16 of 1960., the duration of temporary hard labor is between 3 and 15 years.

²¹⁸ It is not necessary to show that force was used or threatened, what is only important that consent was absent, W. Wilson, 1998, p. 320.

²¹⁹ Physical coercion means: acts of physical force or violence directed at the victim to eliminate her resistance, Mental (moral) coercion means: To force the victim to accept sexual intercourse by threatening her with a serious injury to her body or by harming her reputation or by threatening to harm a loved one or by threatening to reveal a secret to her. N.A. Saleh, 1999, p. 193.

²²⁰ See Article 301 of the Jordanian Penal Code No. 16 of 1960.

²²¹ See Article 302/4 of the Jordanian Penal Code No. 16 of 1960.

death of the victim, the perpetrator shall be punished with temporary hard labor for a period of not less than 10 years²²².

In view of the fact that the crime of rape constitutes a flagrant aggression against the immunity of the woman's body, and the concepts of oppression, coercion, humiliation and abuse of honor and sexual freedom, making it one of the most serious crimes against women after the killing, and in view of the fact that rape constitute a direct violation of the security of the community and cause concern for reassurance and raise the fears of public opinion; therefore, all criminal legislations in the Arab and Western countries is keen to envelope the honor, dignity, and sexual freedom of women with criminal protection. This protection, however, has been characterized by failure in confronting rape, as well as failure in the criminal treatment of the consequences resulting from this crime.

1.2.1.1. Failure of Criminal Protection in Confronting Rape Crimes

Rape breaks the character of the woman and keeps her wounded because of the serious consequences that turn the woman's life upside down. They may become infected with sexually transmitted diseases and serious diseases such as AIDS²²³, may lead to an unwanted pregnancy and attempts to abort it which is not safe, or may make them bear the responsibility of raising a child alone in social and economic conditions that she cannot keep pace with. The consequences of rape and its repercussions are exacerbated when society hangs the honor of the man and the family on the hymen of the woman's virginity, particularly in conservative traditional societies with closed culture and obsolete customs and traditions. Realistic simulation of the fate of women victims of rape is that their chances of marriage will be lost because of the scam and disgrace to which they and their family are stamped²²⁴.

Despite the fact that the woman is the victim in this crime, she will bear the responsibility of her attack in the eyes of the society, making her locked up in the house and unable to

²²² See Article 301/1/2 of the Jordanian Penal Code No. 16 of 1960.

²²³ Studies from around the globe confirm the links between violence against women and HIV. World Health Organization, 2010, addressing violence against women and HIV/AIDS what works? p. 2

²²⁴ M. Hafez, 1993, p. 10.

confront the society²²⁵. The issue is not restricted to the raped woman, but also affects the chances of other women from the same family to marry. This statement is not pure coincidence or fiction, but it is a Palestinian reality, which is observed by every legal and social researcher in the field, which is living reality in our existence.

However, if the woman is married, the crime of rape renders her married and stable marital life in danger especially after the crime of rape has threatened the victim to expose her and blackmail her. Therefore, the victim attempts so often to hide the issue and not disclose it to the family or to file a complaint to the competent authorities. According to PCBS, about two thirds of abused women prefer to resort to silence²²⁶. The victim alone, without parental support or support from the community, bears the consequences of physical, mental and psychological crime and may consider committing suicide for fear of scandal²²⁷. In many cases, she becomes a victim of murder in the pretext of maintaining honor. All these crises and sufferings are faced by the victim who may be a minor, with special needs, or even a wife.

1.2.1.1.1. Rape of a Minor

The legislator's interference in the criminalization of the rape of female minors was characterized by legislative confusion. He did not clarify exactly how much such protection was required under somewhat vague legal provisions in confronting rape crimes. In addition, it was also fragmented in many respects, which can be presented as follows:

1. The Jordanian legislator determines the penalty of temporary hard labor for the crime of rape. The penalty is intensified as per Article (292/2) if the offense is committed against a girl who has not completed the age of 15 years, making the minimum penalty of temporary hard labor for seven years²²⁸. At the same time, Article (294/1) prescribes

²²⁵ D. Ismail, 2006, p. 15.

²²⁶ PCBS, 2012, Survey of Violence in Palestinian Society, 2011, p. 26.

²²⁷ On 25/8/2018 (N. A) a married woman aged 31 years, with two children, from Jerusalem, committed suicide by blackmailing her with embarrassing pictures and videos that damaged her honor. <https://ultrapal.ultrasawt.com>

²²⁸ Article 292/2 of the Jordanian Penal Code No. 16 of 1960 states that: "The penalty shall not be less than seven years if the victim has not completed the age of fifteen years."

the penalty of temporary hard labor (without raising the minimum penalty) for assaulting a girl that has not completed the age of 15 years²²⁹.

It is clear that the legislator intervened here in two separate legal texts to criminalize the same act committed against the same victim who has not completed the age of 15²³⁰. However, each of the two legal texts decides a different punishment from the other penalty, one of which is aggravated, which is the temporary hard labor from 7 years to 15 years; so, the judge may decide to sentence the accused by the minimum punishment of 7 years. However, the second without aggravation, which is temporary hard labor from 3 to 15 years; so, the judge may decide to sentence the accused by the minimum punishment of 3 years.

This constitutes an imbalance in the Penal Code which leads to a contradiction between the judicial verdicts issued by the Palestinian courts regarding the rape crimes of a girl who has not completed the age of 15 years in violation of the balance of criminal justice scales and the principle of equality before the law and the judiciary. It also opens the door to judicial leniency and the issuance of sentences with light sentences that are not commensurate with the gravity of the crime of rape committed or the objective of expected deterrent punishment.

2. Article (294/2) makes the punishment of rape of a girl who has not completed the age of 12 temporary hard labor for a period not less than five years²³¹; whereas the punishment for the rape of a girl of 12 years of age but did not complete the age of 15 in accordance with article (292/2) hard labor for a minimum period of seven years. This means that the Jordanian legislator has made the minimum penalty for the rape of a girl who has completed the age of 12 years higher than the minimum penalty for the rape of a girl who has not completed the age of 12.

It is clear from this that the legislator fails to observe the circumstances associated with the crime of rape and not to be simulated through legal provisions that guarantee greater

²²⁹ Article 294/1 of the Jordanian Penal Code No. 16 of 1960 state that: "Who makes sexual intercourse with a female has not completed the age of fifteen years old shall be punished by temporary hard labor".

²³⁰ It is noteworthy that the legislator, contrary to what some believe that the age of criminalization of aggravation of penalty is the arrival of 15 years, while the condition within the explicit text indicates that the age of aggravation of penalty is before the beginning of the age of 16 years.

²³¹ Article 294/2 of the Jordanian Penal Code No. 16 of 1960 state that: "The penalty shall not be less than five years if the victim did not complete twelve years of age".

criminal protection against sexual offenses of the most vulnerable age groups in society. Children, especially females, are more vulnerable to sexual abuse²³². Therefore, the criminal legislations attempt to envelope their sexual innocence with strict penal protection that takes into account the seriousness of the physical, health and psychological consequences of the crime²³³. The Jordanian legislator did not pay attention to the seriousness of this issue and did not take that into account when assessing the penalty.

It is clear that the legal deficiency in confronting rape crimes against the minor occur at a time when the law must take a clear and firm position, stressing the punishment of the offender, whose crime is facilitated by the young age of the girl and her lack of experience and the consequences of the commission of crime as well as the seriousness of the crime and the terrible impact on the girl and her future. This is what the Jordanian legislator was aware of when he amended the legal text so that a rape penalty for a female who did not complete 15 years of age became a death sentence²³⁴. However, this amendment was limited to Jordan and has not reached Palestine. The law has been in effect in Palestine since its promulgation in 1960 without the amendments that have been introduced by the legislative authority of the State that issued the law itself.

3. The legislator criminalizes the sexual intercourse of a female who completed 15 years of age but has not yet completed the age of 18 years. The temporary hard labor penalty is stated if the offender is of the legal or illegal ascendants of the victim, the husband of her mother, the husband of her paternal grandmother and everyone who was engaged in her upbringing or observation²³⁵, or if the offender is a clergyman, employment

²³² The US national telephone survey of children (two thousand children aged 10 to 16 years were interviewed) indicates that Sexual Abuse was substantially more common among girls than boys. D. Finkelhor, & J. Dziuba-Leatherman, 1994, p. 414.

²³³ The rape of a young girl causes serious physical damage that may result in her death, losing her virginity, permanent disability, as well as the serious psychological harm to the victim, whose effects may last until the end of life. M. Namour, 2011, p. 221.

²³⁴ See Amendment No. 9 Of the year 1988.

²³⁵ Article 295/1 state that: "If a female who completed 15 years of age but did not complete 18 years of her age is molested by one of her ascendants, whether legal or illegal, the husband of her mother, the husband of her paternal grandmother and everyone who is engaged in her upbringing or observation shall be punished by the temporary hard labor." The legitimate ascendants of the victim mean those from whom the victim descends naturally but not by law, such as father or grandfather even if he is higher, and illegitimate parents and grandparents by virtue of adoption. The agent who is authorized for upbringing or care means anyone

office manager or employee, who uses or acts in the commission of an offense that is abusive to the authority or facilities derived from such authority²³⁶.

The legislator should have tightened the penalty in this case and should not be satisfied with the ordinary simple form of punishment for the crime of the victim is committed by persons connected to her and linked to her by a relationship of trust or exercising powers that facilitated the commission of the crime.

In particular, the legislator has increased the punishment for rapes in articles (292,293,294) in the event that they are committed by one of the above-mentioned persons²³⁷, in such a way that makes the ignoring of the legislator of intensifying the penalty in the same legal provision in which the characteristics of persons were defined as an aggravating circumstance for the rest of the rape crimes is a critical issue.

Moreover, this legal provision aims at providing penal protection for the right to a sexual life of a minor who has reached the age of 15 years and has not yet completed the age of 18 years, which requires that the perpetrator should be punished more severely because of the age of the victim and the second severity is due to the characteristic and authority of the perpetrator and easy commission of the crime.

As it can be seen from the review of all the legal provisions of the crime of rape, the penalty prescribed for the rape of a girl who has reached the age of 15 years but has not completed 18 years of age by strangers who are not connected to the victim by a close relationship, a disciplinary, or work relationship, is greater than the punishment for the crime of rape by persons with whom the victim has a relationship of trust or they exercise authority on her. This reflects the state of irrational legislative confusion in dealing with the crimes of rape that are committed against the minor girl.

4. The Jordanian legislator maintains the legal adaptation of acts of sexual intercourse between a man and a female who has not reached the age of 18 years as a crime of rape even if the act of intercourse takes place with the consent of the female. The Penal Code

who has authority over the victim, whether this power is derived by law, custom or reality. See the judgment of the Jordanian Court of Cassation in Penal Judgment No. 79/105.

²³⁶ Article 295/2 of the Jordanian Penal Code No. 16 of 1960.state that:” The same penalty shall be imposed if the perpetrator is a cleric or office manager or a worker who conduct the act misusing authorities or facilities derived from this authority”.

²³⁷According to Article 300 of the Jordanian Penal Code No. 16 of 1960.; the original penalty shall be aggravated by adding one-third to half of it.

does not respect the consent of the female who has not reached the legal age of adulthood to deny the rape²³⁸, within the framework of strengthening the penal protection of the minor girl's right to the safety of sexual life. However, the legislator tightens the penalty of rape when, in the context of the legal text of the term "coercion"²³⁹, in a way that implies the legislator has gave a value to the minor victim's consent or coercion for the intercourse to determine the amount of punishment²⁴⁰.

This indicates the discrepancy between the declarations made by the texts of the non-arrangement of the legal value of the consent of the minor girl who has not reached the age of legal adulthood to keep the crime within the scope of rape crimes, and the weight and importance given by the legislator to the consent of the minor victim when determining the amount of punishment. That implies injustice and degradation of the penal protection assigned to the right of the minor to the safety of her sexual life.

5. The legislator differentiates in the scope of the penalty for the crime of female rape (associated with) with a kidnapping offense in accordance with the provisions of article (302/4/5/6)²⁴¹, by prescribing the penalty of assault of rape on the abducted female by temporary hard labor for a minimum of ten years. The penalty for temporary hard labor shall be for a period not less than ten years if the crime of rape is committed against a minor who has been abducted and has not completed 15 years of age and has a husband. The penalty shall be of temporary hard labor for a minimum of seven years if the minor completed 15 years of age and has a husband.

It can be said that the reason for the tightening of the punishment lies in the fact that the victim is in fact the victim of two crimes, neither of them is less serious than the other; she is the victim of an attack on her right to individual liberty and the victim of

²³⁸ M. Namour, 2011, p. 218.

²³⁹ According to Article 292/2 of the Jordanian Penal Code No. 16 of 1960 punishment shall be temporary hard labor at least seven years.

²⁴⁰ The Punishment shall be according to Article 294 of the Jordanian Penal Code No. 16 of 1960 temporary hard labor.

²⁴¹ Article 302/4/5/6 of the Jordanian Penal Code No. 16 of 1960 state: "4. Hard labor for a period not less than ten years if the abductor male or female, has been assaulted by rape or indecent assault. 5. Hard labor shall not be less than ten years if the female abductor who has a husband, she has not yet completed the age of 15 years and has been assaulted by sexual intercourse. 6. Hard labor shall not be less than seven years if the female abductor who has a husband, is more than 15 years of age and has been assaulted by sexual intercourse".

the violation of her right to the safety of her sexual life. By this, the legislator in this case has excluded a married minor who reached the age of 15 years of age from the scope of the tightening of the penalty unjustifiably and does not include any protective penal wisdom.

It is certain that the criminal protection of a woman's right to individual liberty and sexual liberty must be determined for herself and her individual human nature and that she enjoys full legal personality irrespective of whether she has a husband or not. The gravity of the crimes of abduction and rape also increases the punishment of the offender, without the husband of the victim having the effect of aggravating the sentence. However, it can be said that the focus of the Jordanian legislator in the context of the legal text on the fact that the victim has a husband is a reflection of the masculine societal culture that sees women as an accessory to the honor of men.

Hence, it is worthwhile that the legislator should be called to amend the legal texts of the crime of raping the minor so that the confusion and dispersion are removed, and to intensify the punishment against the perpetrator. He should also be invited to adopt rehabilitation programs for offenders, taking into consideration their psychological or social conditions

1.2.1.1.2. Rape of Women with Special Needs

People with special needs are defined as: "Persons with disabilities *including* those who have long-term physical, mental, intellectual or sensory impairments which hinder their full and effective participation in society on an equal basis with others"²⁴².

The World Health Organization (WHO) sees that the term *people with special needs* refers to "difficulties encountered in any area of functioning impairments, activity limitations, participation restrictions, or all three areas of functioning"²⁴³.

The legislator has been alerted necessarily that there are women who acquire special social situations in terms of physical or psychological incapacity, which makes them more vulnerable to cheating and deception. For the protection of this category, Article (293) of the Penal Code states: "He who assaulted with sexual intercourse a female other than his

²⁴²United Nations, [What Is Disability And Who Are Persons With Disabilities?](https://www.un.org), <https://www.un.org>

²⁴³ See World Report on Disabilities, 2011, p. 5.

wife who cannot resist because of physical disability, psychological deficiency, or because of the use of some kind of deception, shall be punished by temporary hard labor."

The protection of the penal code for the right of women with special needs in confronting the crime of rape is not at the necessary and required manner to preserve their right to their sexual freedom and to protect their human dignity from harm or abuse. The Jordanian legislator did not take into account the state of weakness and physical or psychological disability of the victim; or the victim's inability to resist and defend herself; or the lack of awareness of the nature of the sexual assault on her, to be considered in the legal treatment of the crime of rape in Article (293). The Penal Code did not intensify punishment for the offender who exploited the vulnerability of the victim and sexually assaulted her, and punished him with hard labor, which is the basic punishment for the crime of rape in its normal form without any intensification.

The Penal Code should include in the legal provisions that treat the crime of rape strict penalties for the purpose of ensuring greater penal protection for the right of women with special needs to sexual freedom as one of the most vulnerable, marginalized and subject to sexual exploitation and violence. Studies indicate that women with special needs are four times more likely to face sexual violence than other women²⁴⁴. A study on "Domestic Violence against Women with Disabilities in the Gaza Strip" revealed that 79.3% of the disabled subjects of the study were victims of sexual violence, and 56% of them were exposed to rape²⁴⁵.

Rape crimes that target women with special needs are common because of the perpetrator's sense of security and impunity. Fairly often, women are afraid to report the abuse because of the emotional or financial dependence on the abuser; her rely on him; her fear of losing him; displacement; losing help²⁴⁶; her inability to reach the official bodies and report the attack, which requires the legislator to take this in account seriously and impose severe

²⁴⁴ European parliament, 2003/2109(INI), report on the situation of minority women in the European Union p.13. <http://www.europarl.europa.eu>

²⁴⁵ Study conducted in the Gaza Strip, including 300 women with disabilities, 65% of them declared that they were exploited and sexually raped The Study shows the horrific family violence against women with disabilities in Gaza, Available at <https://www.alwatanvoice.com>

²⁴⁶ United Nations, Advancement of Women, 2012, p .9.

punishment within the legal texts of the Penal Code so that the text in the body of the law could be used to prevent the commission of the crime.

Furthermore, the need is required to urgently tighten the punishment of the offender of the rape of women with special needs, mainly due to the seriousness of the consequences and impacts of the crime, where women with special needs of childbearing age are more vulnerable to the consequences of pregnancy that are more harmful than other women²⁴⁷, due to the fact that they are unable to cope with pregnancy period, to take care of the new baby, accept it and take care of it, especially in cases of mental disability where women are unable to be aware of pregnancy and childbirth.

The pregnancy possibilities of women with special needs as a result of rape, the birth of children of unknown descent, the burden of the family to take care of them and spending on them, upset parents and encourage them to expose women to abortions or forced sterilization hysterectomy, which puts their lives at risk and often leads to continue to exploit them sexually²⁴⁸, and the persistence of their rape due to not showing the results of the sexual relationship and its uncovering by pregnancy.

It should be noted that the perpetrator of the crime of rape under article (293) cannot benefit from the reduction of the sentence by half by implementing the legal provision relating to the judicial mitigating grounds as cited in Article (99) of the Penal Code. By issuing the decree by law No. 5 of 2018 that amended the text of Article (99) by adding a the paragraph "The provisions of the preceding paragraphs shall exclude the crimes against women and children" and its entry into force, since the discretionary authority of the judge in this regard shall be restricted and the punishment of rape of disabled women with temporary hard labor shall not be reduced. The enforcement of this decree by law before the Palestinian courts shall remain temporary until it is approved by the Legislative Council."

The legislator should also be invited to amend the legal text of the rape of persons with special needs and to intensify the punishment of the offender; As well as to adopt

²⁴⁷ M. Mitra, K. M. Clements, J. Zhang, & L. D. Smith, 2016, p. 507.

²⁴⁸ United Nations, Advancement of Women, 2012, p .9.

rehabilitation programs for offenders, taking into consideration their psychological or social conditions

1.2.1.1.3. Raping Wives

Raping wives is defined as physical contact of the husband with his wife without her consent or forcing her on sexual intercourse when the time is not suitable for her or when she is ill²⁴⁹. Feminist theory scholars define marital rape as a means of social control and dominance over women through the use of the patriarchal family²⁵⁰.

The Jordanian Penal Code No. 16 of 1960 excludes the woman who is forced on marital cohabitation by her husband from the domain of the penal protection as prescribed in rape crimes. The legal text regarding the rape crime requires expressly to call it a crime is not being consented with the sexual intercourse by a female who is the wife of the man. As stated in article (292) that “who committed a sexual intercourse a female by coercion other than his wife ..”. This means that the coercion of the husband on his wife to make sexual intercourse without her consent or taking in consideration her health or psychological conditions; or using his strength and power to force his wife to make sexual intercourse does not fall within the criminalization of the crime of rape punishable under the Penal Code²⁵¹.

It also means that his deed does not constitute a crime; since a rape crime is not a crime as long as there is marital relationship as per a marriage contract. Neither is it a crime in the case of revocable divorce as long as the woman is still in her legal period of waiting during which her husband still has the right to return her; and if he does make sexual intercourse with her, he shall not be considered a rape crime offender²⁵².

The Penal Code condones, in this approach, a basic idea that the coercion of a woman to have sexual intercourse is actually a kind of rape, whereas it even represents the extremist degree of violating the sexual freedom of a human being notwithstanding the perpetrator's

²⁴⁹ D. Ismail, 2006, p. 7.

²⁵⁰ E. Martin, C. Taft, & P. Resick, 2007, p. 332.

²⁵¹ I. S. Al-Raqeeb. 2010, p. 27. However, the husband can be held accountable for the consequences of his actions on the right to life or the right to bodily integrity.

²⁵² A. R. Auh Hjeala, 2011, p. 8.

status who might be the closest of the woman's relatives²⁵³. In fact, the commonest of the sexual violent assaulting crimes are raping wives; whereas the highest percentage of the most sexual assault cases happens at homes, especially from the husband²⁵⁴.

The Jordanian legislator adopts his not criminalizing of the marital raping the methodology of all the penal laws in the Arab region which have not recognized either that raping of wives is a crime that deserves penalty and deterrence²⁵⁵. In a judicial verdict issued by the Jordanian Cassation Court that ruled "That the defendant's (A) having sexual intercourse with his wife (F) occurred as per a valid marriage contract and that the claim otherwise was a useless argument, and that the act of the accused could not in any case be considered rape and not punishable"²⁵⁶.

There are some who explained that by saying that the Penal Code considers that the sexual intercourse between spouses whether with consent or not is an original right of the husband over the wife²⁵⁷. The reason for this legal attitude is that the legislator has adopted Islamic religious considerations regarding the husband's right to have a sexual relationship with his wife in the frame of a marriage contract which aims at protecting both spouses from having illegal relationships; the husband practicing his right with his wife without her consent is not considered a case of aggression or beyond the legal frame but rather he is practicing one of his ensured legal rights²⁵⁸. Of that, The jurisprudents of the penal code consider "Rape does not occur by the husband to his wife as long she is still under his custodianship because the marriage contract enables him to enjoy her when requested"²⁵⁹. Therefore, the wife does not have the freedom of choice in surrendering herself or not to

²⁵³ S. Shawous, 2013-2014, p. 40.

²⁵⁴ M. R. Zalzi, 2016, p. 17.

²⁵⁵ See Nazra for Feminist Studies, 2016. Sexual violence against women and girls in the Middle East and North Africa, a research paper. <http://nazra.org/2016/03/57>

²⁵⁶ The Jordanian cassation penal court judgment No. 1999/362

²⁵⁷ See Nazra for Feminist Studies, 2016.

²⁵⁸ S. Abdali, 2015, p. 130.

²⁵⁹ M. Najm, 1999, p. 187.

her husband but rather she is forced by virtue of the marriage contract²⁶⁰; and that “the husband cannot be guilty of a rape committed by himself upon his lawful wife”²⁶¹.

This perspective can be revoked by arguing that the mentality that drafted the Penal Code, including the legal texts of the crime of rape and its legality, is a male mentality which, when the law was enacted, reflected the interests of the male in the society and disregarded the rights and freedoms of women. This is demonstrated by the wife's exclusion from the scope of rape²⁶², justifying that exclusion by religious and cultural considerations related to the customs and traditions of the society²⁶³. The religious rules are manipulated and divided into provisions that are consistent with the interests of masculinity in the society and using them to oppress women and deny their rights in the name of religion, by which they grant the legal text an attribute of holiness where it is a taboo to demand to amend or even discuss them.

The male mentality is entrenched by religious justifications that can be formulated and used to ensure that the legal texts that reinforce their superiority prevail over women in the society. Despite the contradictions of these religious justifications with the principles and teachings of the Islamic religion which clearly and explicitly rejects any insult to women, any infringement, moral harm, or damage to them and any physical harm²⁶⁴, as per the tradition of the Prophet (PBUH), who said, "Take good care of women; women are the sisters of men; they are honored by only a decent man; and they are humiliated by a depraved man"²⁶⁵.

The marital relationships is constructed as per the Islamic principles upon affection and compassion as Allah (Be Braised) said “*And one of His Signs is this, that He has created wives for you from among yourselves that you may find peace of mind in them, and He has*

²⁶⁰ The Egyptian cassation penal court judgment No. 1928/1/22 went farther more when it said that: “sexual intercourse The sexual relationship is the right of the husband to his wife because it is legally obliged by virtue of the marriage contract to obey her husband and the initiative to bed whenever he called for it and it is not allowed to refrain without a legitimate excuse, otherwise he had the right to discipline her”.

²⁶¹ Hale, 1736 cited. E. Martin, C. Taft, & P. Resick, 2007, p.331.

²⁶² See E. Martin, C. Taft, & P. Resick, 2007, p. 332.

²⁶³ J. Bennice, & P. Resick, 2003, p. 233

²⁶⁴ S. Abdali, 2015, p. 132.

²⁶⁵ Prophet Mohammad (PBUH)

*put love and tenderness between you. In that surely are Signs for a people who reflect”*²⁶⁶. Moreover, the Islamic doctrine imposes that the man shall treat his wife with kindness as Allah (Glory to Him) said “*and consort with them in kindness”*²⁶⁷. And he shall not do harm to her as the Prophet (PBUH) said, "There should be neither harming nor reciprocating harm". Furthermore, Islam does not accept coercion in religion; then, how would it accept coercion for women in sexual relationships?!!

Under these principles and interpretations, it is better to say that Islam does not accept the idea of sexual intercourse between the husband and wife by force or violence which it is in a legal term constitutes the marital rape²⁶⁸, based on imposing a sexual relationship by force. On the contrary, the sexual relationships, in Islam, are based on mutual consent; therefore, there must not be a justification of non-criminalization based on religious arguments and justifications.

The legislator and the jurisprudence of the Penal Code, in favor of the absence of the crime of rape from the husband on the wife, are unaware that the woman even when she is bound by a marriage contract, she continues to enjoy the right to sexual freedom and her human dignity maintained by all international human rights instruments and also enshrined in the Palestinian Basic Law, which require respect for human rights and freedoms without discrimination. They also ignore that a husband forcing his wife to do sexual intercourse is considered rape in terms of humanity because sexual practice without the consent of the woman is a form of humiliating the woman and wasting her dignity even if she is his wife²⁶⁹.

The absence of legal criminalization of marital rape encourages husbands to continue sexual violence against women at home²⁷⁰, where the victim wife feels threatened, intimidated, insecure, and helpless in her home. Between 2.7% and 9% of married Palestinian women have been exposed to various forms of sexual violence by their

²⁶⁶ The Holy Quran, 30/21

²⁶⁷ The Holy Quran, 4/20

²⁶⁸ S. Abdali, 2015, p. 132.

²⁶⁹ F. Al- Moaqat, 2006, p. 15.

²⁷⁰ See P. Mahoney, 1999, p. 994.

husbands²⁷¹. This percentage does not constitute a true expression of the size of the real proportions because of the shyness of women and their reluctance to delve into a subject they consider to be the privacy and secrets of married life²⁷². In addition, women consider the practice of their husbands to have sex with them without their desire is a legitimate right of the husband, which is the same perspective adopted by the majority of men²⁷³.

The husband uses violence in the marital relationship as a means to show the extent of his control over the wife, and he also uses it to show his superiority over the woman and enhances her inferiority. Forcing the wife to have sex includes meanings aimed at humiliating and degrading her²⁷⁴, diminishing her role in the family and the society by enhancing her sense of inability to make decisions and expressing her opinion, feelings, and her inability to control and dominate her body.

The absence of legal criminalization of marital rape also encourages the husband to persist in violence against the wife in all its forms and verbal, physical, psychological and economic forms²⁷⁵, which has a great impact on the children and the rest of the family, which contributes to turning the family into the largest source of violence in society.

Based on the above, The Jordanian Penal Code No. 16 of 1960 is criticized for neglecting the protection of the right of married women to sexual freedom and limiting their right to remove (rape of wives) from the scope of acts of sexual violence that are liable to criminalization and punishment in rape crimes. The legislator should be invited to work to criminalize the rape of the wife within the legal provisions dealing with the crime of rape and not to exclude them. He is also recommended to adopt rehabilitation programs for offenders, taking into consideration their psychological or social conditions.

1.2.1.2. Failure of Criminal Treatment of Rape Crime Consequences

²⁷¹ M. A. Yahya, 2013, p. 89.

²⁷² D. Ismail, 2006, p. 12.

²⁷³ D. Ismail, 2006, p. 12.

²⁷⁴ A. A. Ayyash, 2007, p. 19.

²⁷⁵ R. K. Bergen, & E. Barnhill, 2006, p. 3.

The consequences of the rape crime are not limited to the severe physical and psychological harm that accompanies the female throughout her life, nor to the scandal and disgrace to which she is stained. But they rather extend to the suffering that continues and the consequences of the crime that duplicate when the raped girl is forced to marry the rapist. Moreover, the consequences of her illegal pregnancy resulting from her rape become worse when the female is legally forced to keep the infant.

1.2.1.2.1. Marriage of the Rapist and the Raped

Article (308) of the Penal Code states that "(1) If there is a true marriage line between the perpetrator of one of the crimes stated in this chapter and the victim²⁷⁶, the pursuit shall be stopped; and if a verdict was awarded in the case, the punishment of the convicted shall be suspended. (2) The Public Prosecution shall restore its right to pursue the public case and to carry out the sentence before the expiry of 3 years for the misdemeanor and 5 years for the offense if the marriage ends with the divorce of the woman without a legitimate cause." This means that the perpetrator in the rape crimes benefits from a punishment exempting excuse if he marries the victim. Therefore, under this legal provision, the offender is exempted from the penalty if he offers to marry the victim provided that she agrees to marry him and provided that the marriage continues for five years without the offender "her husband" divorcing her arbitrarily²⁷⁷.

The text of (308) expresses the penal policy approach adopted by the legislator in dealing with sexual assaults on women, revealing that the legislator takes precedence of the cultural and social concepts related to honor over women's rights and freedoms²⁷⁸. Instead of dedicating the legal texts to the culture of deterrence, it is found out that they conspire with the perpetrator against women and ensures his impunity.

²⁷⁶ This chapter include; rape, indecent assault, kidnapping, seduction and anti-modesty

²⁷⁷ Arbitrary divorce refers to the divorce conducted by the husband against his wife for no reason.

²⁷⁸J. S. Osama, 2017, p. 7.

The text of Article (308) carries in its ramifications the meaning of laundry of the rape crime legally and societally. Under the pretext of preserving the interests of the woman and her family and protecting them from the scandal²⁷⁹, and without the least respect for the feelings of the woman or her psychological condition, the perpetrator is legally and socially allowed to continue to rape his victim under the marriage contract. Although the law requires the consent of the woman and her acceptance of marriage, she is in fact forced by pressure from the family and society, and in fear for her life and physical integrity, to accept and agree to marry the offender who raped her or else she may be killed in defense of family honor, or forced to commit suicide, especially if the crime resulted in the pregnancy of the victim.²⁸⁰ As for the perpetrator, he is legally rewarded with a wife for the crime of rape.

The text of Article (308) reinforces the inferiority of women in the society and establishes their dependence on men for the violation of their rights at all levels and fields. After ignoring the fact that women are victims of rape and wasting their right to justice and equity, ignoring their to choose their husbands freely²⁸¹, empowering the family and the community to determine their future and destiny, the legislator gave the offender the right to divorce after 5 years of marriage²⁸². Consequently, the woman becomes locked up in a fake marriage for five years, suffering from various types of violence and abuse on the other hand, and lacks the sense of security and family stability if she accepts reality and accepts the offender as a husband; as well as divorce puts the woman and her children in the face of legal, familial, societal, and economic challenges that exceed her ability to bear and keeps her in the circle of subordination to the man.

It could be concluded from the above that the woman in the shadow of article (308) is the victim of the perpetrator who violates her right to sexual freedom, the victim of the family and the society that force her to marry the offender; and the victim of the law that wastes

²⁷⁹ M. R. Zalzl, 2016, p. 16.

²⁸⁰ D. Ismail, 2006, p. 15.

²⁸¹ M. W. H. Al Masre, 2002, p. 124.

²⁸² “15 marriage cases of usurper from the usurped out of 60, in the shelter house located in the city of Nablus ended with the arbitrary divorce”. HRW 2018, “Palestine: the abolition of the marriage law of the rapist” <https://www.hrw.org/ar/news/2018/05/10/317698>

the criminal protection of her rights by deciding on a punishment exempting excuse for the perpetrator in returns for his marriage to the victim.

In this context, it is worth calling for the need to create a social awareness that precedes the legal awareness of the legislator that the woman is a victim of an irresponsible criminal act and should not be taken into account, and that her value as human is worth of what she is and not just by making sexual intercourse with her one time and by force.

It should be noted that as of 25/03/2018, the Palestinian courts will not issue any judicial decisions based on the text of Article (308)²⁸³. The text of the aforementioned article was repealed from the Penal Act No. 16 of 1960 by Article (3) of the Decree by Law No. (5) of 2018 issued by the Palestinian President on 14/03/2018. The repeal of article (308) is seen as a positive step in the right direction to ensure fair criminal protection of women's rights and freedoms without discrimination against them on the basis of sex and to ensure better penal protection for women against sexual violence and rape crimes by denying the perpetrator the possibility of impunity and achieving concepts of deterrence, justice, and equity. However, these amendments remain pending approval by the Legislative Council in the first round of its session.

1.2.1.2.2. Abortion of Pregnancy Resulting from Rape Crime

Abortion is defined as: “any untimely delivery voluntarily procured with intent to destroy the fetus”²⁸⁴. Article (321) of the Penal Code provides that "every woman who aborts herself with means that she uses or has consented to the use of such means by others shall be punished with imprisonment from six months to three years."

The Jordanian Penal Code No. 16 of 1960 did not distinguish between the abortion of a pregnancy resulting from a legitimate relationship and the abortion of pregnancy resulting from sexual assault. In both cases, aborting the fetus is a criminal and punishable even if

²⁸³ See Article 6 of decree by law No 5 of 2018.

²⁸⁴G. WILLIAMS, 1958, p. 139.

the woman has to resort to it as a means of getting rid of the effects of the crime of rape that she was involved in²⁸⁵.

The penal law incriminates abortion in all its forms, whether it is administered by the woman herself or by others. The difference in punishment occurs when the abortion is with the consent of the woman or without her consent; and the punishment shall be severer if the abortion leads to the death of the woman²⁸⁶, whereas the punishment is mitigated if the woman aborts herself for the sake of preserving her honor²⁸⁷.

It should be noted that the penal law compels the woman to retain the fetus resulting from the crime of rape, whereas the scholars of the Islamic law are in consensus on the permission of abortion within 120 days of pregnancy, before the soul is breathed in, since the woman who is forced to be involved in sexual relationship in the Islamic law is not forced to retain the fetus resulting from this coercion²⁸⁸.

In these cases, the Penal Code compels the woman to bear the consequences of the crime of rape and grants her bitter options; she can either abort herself secretly with unsafe means that may endanger her life²⁸⁹, and, therefore, becomes a criminal in the eyes of the law and punished if the event is discovered; or she can wait for her baby to be delivered in a non-open cultural environment to accept her and her child who will not receive legal care or economic support. The State does not grant the children born out of marriage a full family name, nor are they allowed to use an existing family name, including the mother's family name. The mother's name and identification number are indicated in the child's registration documents, an issue which exposes both the children and their mothers to stigma, as well as its consequences on their right to inheritance. Therefore, the victims are forced to marry

²⁸⁵ The Jordanian Penal Code No. 16 of 1960 does not allow abortions unless it is within Article 62 regarding the authorization of the law for medical or surgical operations with the consent of the patient and for the purpose of treatment or in the case of urgent necessity in Article 89 of the Jordanian Penal Code No. 16 of 1960 and meeting the conditions indicated in Article 8 of the Palestinian Health Law No. 20 of 2004.

²⁸⁶ See Article 322/1 & 323/1 of the Jordanian Penal Code No. 16 of 1960.

²⁸⁷ See Article 324 & 97 of the Jordanian Penal Code No. 16 of 1960.

²⁸⁸ See A. Talha, It is permissible to miscarry a raped woman before blowing the soul into the fetus, Al-riyadh newspaper, <http://www.alriyadh.com/435130>

²⁸⁹ See Risks of abortions J. Frampton, 1968, p. 298.

the offenders in order to register the child in the family name of his father²⁹⁰. As a result, the victim may also have to abandon the child for not being able to present it and show it to the community and put it in a care home; or she may decide to take responsibility for raising her child alone, and she may also be forced, because of her fear of scandal, especially if she has never married, to move her residence to another place outside her social environment, and so she may be exposed to exploitation, deprivation and violence.

The conservative Arab society refuses to understand that the woman and her child are victims of sexual abuse that they do not bear its liability, whose consequences have been exacerbated by the fact that the law has deprived it of the right to preserve what remains of her personality and social existence by forcing her to keep the fetus, and punishing her and her child with a perpetual societal punishment that inflicts them with scandal and disgrace for life²⁹¹. The extent of the punishment exceeds the amount of punishment of the offender who has raped her, who rarely appears for litigation, as a result of community restrictions that prevent women from filing a complaint with judicial authorities.

The criminalization of a woman aborting her fetus resulting from sexual assault includes many legal and human rights violations, which will be presented as follows:

1. Law stands along with the perpetrator who violates the sexual freedom of a woman while the law violates the woman's right upon her own body and deprives her from the right of choosing between keeping or aborting the fetus resulting from the rape crime.
2. The Penal Code abandons the woman as a victim of rape crime by denying her legal care affirmed for victims in care and security leaving her by forcing her to keep the fetus resulting from rape in the circle of murder as a claim of keeping the family honor or assaulting her physical integrity for the purpose of abortion. This is what has forced women for long periods of time to accept the rapist as a husband according to the abolished article (308) of the Penal Code.
3. The law deprives the woman of the complete protection right for her and her fetus if she decides to keep the fetus when it grants the family members up to the third degree

²⁹⁰ Joint report Between HRW and WCLAC, and Equality Now to CEDAW Committee on the State of Palestine, 70th Session, <https://www.hrw.org/ar/news/2018/07/04/320101>

²⁹¹ I. Al Alami, 2016, p. 140.

a punishment relieving excuse if they force her abort to preserve the honor²⁹². Law does not grant the woman the right to choose and take the decision regarding her body, but rather equals between them and the victim in the magnitude of the legal punishment relieving excuse represented by the motive of honor without taking into consideration of the principle of judicial exclusivity which has to take in consideration the circumstances in which the woman was found around and made her commit her crime²⁹³. Hence, the psychological and mental situations and fear of scandal have a big influence on the woman when she gets raped. Those consequences aggravate with pregnancy; and her attempt for abortion has a special judicial exclusivity which gives her a punishment exempting excuse to maintain her honor equaling her with the man whom the legislator grants a punishment exempting excuse to maintain his honor related to the woman.

It could be concluded that the legal criminalization of women aborting their fetus resulting from a rape crime shows the size of legal difference between a man and a woman, and the size of legal discrimination against her on gender basis. Whereas in the time when law grants the male perpetrator a legal exempting excuse for committing a murder crime as a claim of preserving his honor, the law denies the woman's right in abortion due to claims of honor and keeps punishing her. If it is compared between the male perpetrator's right in the exempting excuse provided under article (304) of the Penal Code, it is found that it grants it to them in the most dangerous crimes which is murder that is considered a violation of the woman's right to life which is the most important of the human rights.

While it is necessary not to ignore that man hasn't been a victim of the crime and none of his rights have been violated but rather he is granted the punishment exempting excuse to maintain his honor which is granted a legal value more than the value of women's right to life. Hence, it is found that the legislator deprives a woman from the punishment exempting excuse if she aborted her fetus resulting from a rape crime in order to keep the right of fetus to grow, develop, and live; overlooking the woman's right to preserve her honor as a human

²⁹² See Article 342 of the Jordanian Penal Code No. 16 of 1960.

²⁹³ The principle of judicial exclusivity means that the judiciary and the enforcement authorities are able to achieve the disparity in punitive treatment among offenders according to their circumstances, N. Al-Majali, 2015, p. 455.

being, ignoring her being the victim in the rape crime which constitutes blatant violation of her right of sexual independence and physical integrity, and endangering her life by being killed by the family members. The scale of equity requires doing justice to women by granting her more legal value for her right in her sexual independence, physical integrity, her right to preserve her human dignity, and her right to life over the right of developing and life of the fetus that comes a consequence against her will by assaulting her sexually, and equaling her with the man before the law regarding legal advantages resulting from the concept of honor.

Taking this in consideration, it is recommended that it is necessary to amend the legal texts related to abortion crime, especially under the increasing volume of sexual assaults on women and girls; the disability of the state to protect them and provide security in the society and families, by adding a paragraph related to benefiting the woman, who aborts her fetus resulting from a rape crime, from the punishment exempting excuse. This paragraph is necessary to be added in the shadow of the Penal Code amendment and cancelling Article (308).

The legislator should be called to abolish the legal punishment relieving excuse granted to the woman's relative up to the third degree in the case of aborting without her consent due to claims of honor as it represents legal encouragement to violent acts against women.

The researcher recommends that it is necessary to provide confidential, free, and secure abortion at government hospitals for pregnancy resulting from rape.

If the victim decides to retain the fetus resulting from the crime of rape and gives birth to it, and for respecting her will to do so, it is also important to recommend that the State should ensure the right of women to obtain full health care. In addition, the right of the child should be guaranteed to equality with other legitimate children to obtain the full name without any discrimination in official documents that indicate that he is a child born out of legitimate marriage. In this respect, it is recommended that the State should add a certain number in the official documents so as to be identified only by the competent authorities and official institutions in the State and in order to provide economic support services, psychological, social counseling, and awareness programs, in addition to follow-up programs.

1.2.2 Failure of criminal protection against crimes of sexual offences

The crimes of sexual offences still considered as one of the most serious crimes committed against women. Despite they are classified as a medium seriousness according to the legal classification of crimes in the Jordanian Penal Code No. 16 of 1960. Since it poses a threat to their personal security and causes the loss of confidence in their surroundings, especially within the family, the working environment and public life as a whole. The seriousness of crimes of sexual offences is exacerbated when it is rampant in the society especially in light of the failure of criminal protection in addressing the crime of the incest and as a result of the failure of criminal protection against sexual harassment.

1.2.2.1. Failure of Criminal Protection in Addressing the Crime of Incest "Rape of Relatives"

According to the Jordanian Penal Code, the incest crime comes under the category of crimes of misdemeanors against the ethics of the family. Article (285) states that "Incest between the ascendants and descendants, whether legal or illegal; between siblings, parental or maternal half siblings; or any of the abovementioned persons in their categories of kinsmen; or one of the perpetrators has on the other a legal or actual authority, shall be punished from two to three years in prison." Incest means: any sexual intercourse between a man and a woman who are related with a relative degree, a legal, or an actual relation that causes the man to be responsible for protecting the woman who is under the sexual intercourse act. The Jordanian Cassation Court defines incest as "adultery in satisfaction²⁹⁴ between relatives"²⁹⁵. From a gender perspective, incest is defined as the sexual act practiced by one of the ascendants or descendants on a female, which is often kept confidential by getting rid of the victim under the pretext of honor crimes and accusing the female with committing a sexual relationship with a person from outside the family²⁹⁶.

The legislative rationale of incriminating incest lies in the necessity of maintaining the family links in their intact framework away from the sexual relations outside manners and

²⁹⁴ K. Saeed, 1995, p. 226.

²⁹⁵ The Jordanian Court of Cassation Penal Verdict No. 1982/177, published on page No. 114 of the Journal of the Bar Association on 1/1/1983.

²⁹⁶ M. Najjar, 2014, p. 113.

human instinct. Since sexual relations within the family constitute blatant aggression on family ties, resulting in a severe break in the relations among the family members and the disruption of their roles²⁹⁷, the Jordanian legislator, like many legislations around the world, attempted to criminalize incest and punish it.

The physical element in the crime of incest is established when a man commits a sexual act on a woman with her consent; whereas the moral element of the crime is based on the knowledge of the perpetrators of the illegality of the sexual relationship between them because of the attribute of kinship and the direction of their will to practice it. In this case, the crime of incest is not different from the crime of adultery in respect of the criminal nature. However, what distinguishes the crime of incest from the crime of adultery is the relationship between the perpetrator and the victim, the legal or actual authority enjoyed by the offender against the female²⁹⁸.

The crime of incest is committed between ascendants and descendants such as cases when a man commits a sexual intercourse act with his daughter or granddaughter; a son with his mother or grandmother; among siblings; paternal or maternal half siblings. The crime is also committed between persons who are connected with in-law relationship which is a legal personal link that occurs due to marriage between one of the spouses with the relatives with the other spouse. The husband's father, mother, brother, sister, son, or daughter from an ex-marriage are relatives in-law to the other spouse. The crime is also considered incest if it occurs from persons who have legal or actual authority over the other party such as guardian²⁹⁹, custodian, teacher or school principal³⁰⁰.

The crime of incest is distinguished from the crime of rape by the moral element of the crime; the crime of rape is committed by forcing the woman to do the sexual intercourse act; whereas in the crime of incest, a female commits the act of sex with her full consent and without coercion with a male as specified in Article (285). The categorization of the

²⁹⁷ S. Gil, 2016, p. 175.

²⁹⁸ In case that the status of kinship or the legal or actual authority is not achieved, the legal adaptation of the crime becomes a crime of adultery according to the provisions of Article 282 of the Jordanian Penal Code No. 16 of 1960.

²⁹⁹ K. H. N. Barghouthi, 2012, p. 47.

³⁰⁰ K. H. N. Barghouthi, 2012, p. 49.

crime as rape or incest results in significant legal consequences since the woman in the crime of rape is considered as a victim; whereas in the crime of incest, she stands in the dock side by side with the man. The Penal Code considers that both man and woman are accomplices in the crime of incest, and so they are punished with imprisonment of two to three years.

The availability of women's consent or lack thereof is considered the standard criterion of distinguishing the crime of rape from incest, which raises serious doubts in the context of absolute patriarchal male domination over women in the Palestinian society, which makes the consent of women in sexual relations as a presumed consent, albeit due to moral violence, and the legislator adds herein by ignoring the criminalization of the attempted incest "rapes of kin".

1.2.2.1.1. Consent of Women to the Sexual Relation

To consider a woman a partner to a man in the crime of incest, the punitive law requires that she has allowed him to make sexual intercourse with her with explicit and proper consent that expresses her acceptance of the sexual relationship and she is aware of the consequences of her act and the direction of her will to do so, which is highly questionable due to unequal power relations rooted in concepts of dependency and subordination³⁰¹, under the control exercised on the female by the male family and the total submission to their rule in the male environment predominant in the matter since the early stages of the establishment in the family to devote the concept of obedience to the male, taking advantage of what the parents enjoy legally and male family members enjoy traditionally of disciplinary authorities exercised on the female to guide her behavior. Consequently, males are certain that they are able to expand their use of this authority including what it contains of verbal, physical, and psychological violence to compel the woman physically and morally in a way that makes her lose her ability to choose and forces her to accept the sexual relation, rather than a true expression of her will of consent and acceptance³⁰².

³⁰¹ L. Dominelli, 1989, p. 298.

³⁰² K. Al-Saeed believes that the concept of consent includes obedience. On the contrary, obedience not involve consent. See K. Saeed, 1995, p. 266.

According to a study conducted in this regard, "The involvement of most females in cohabitation of a member of the family by coercion and continued cohabitation for many years under the factors of threat, fear, or disgrace"³⁰³. " The same study shows that the highest percentage of sexual assaults on the female within the family in terms of degree of kinship was committed by the father by a percentage of 36%³⁰⁴, followed by the brother by a percentage of 18%³⁰⁵. They are people who have powerful authority over women in the family³⁰⁶. Furthermore, Feminist work has shown that incest is about sexualized power relationships through which the coercive imposition of male gratification and interests upon women is enacted³⁰⁷.

On the other hand, the legislator contradicts himself in the content of the legal text of the crime of incest when, in article 285, he explicitly states that, "If one of the criminals has legal or actual authority over the other", and at the same time, he requires that the moral element of the crime requires the free consent of the woman without coercion or force; both of which are not equal to women's subordination to men's legal or actual authority; and in contravention of the requirements of justice that require men and women to be equal before the law. In this case, men have powers over women that make them superior to women and compel them to obey and accept. At the same time, the legal provision equals between men and women in the legal value of consent when criminalizing and punishing, without consideration of the balance of power that favors men and limit women's freedom and free choice.

A female does not have the right to refuse or to be able to make a decision. She does not have basically the right of guardianship on herself because she is a woman, making her

³⁰³ There are no in-depth studies on incest crimes in the Palestinian society since these crimes remain in the private sphere of the family and are treated within the family for fear of shame and social ostracism. And there are no statistics issued by the Palestinian justice and police departments, which means that the size of the phenomenon is unknown to researchers, scholars and decision-makers in light of social and official obscurity. See D. Ismail, 2006, p. 16.

³⁰⁴ A. Atieqa, 2017, p. 260.

³⁰⁵ A. Atieqa, 2017, p. 256.

³⁰⁶ A conducted study in Canada on Three groups of girls who were sexually abused (by either brothers, fathers, or stepfathers) were compared indicates that sibling incest is not less severe or harmful than father-daughter incest. See Cyr, Mireille, Wright, John, McDuff, Pierre, & Perron, Alain. 2002, p. 958.

³⁰⁷ L. Dominelli, 1989, p. 298.

restricted by the authority of the father or the male family members and under their mercy in making fateful decisions in her life such as allowing her to complete her education³⁰⁸, work, marriage, or move to work in another city. Consequently, she is forced to obtain their satisfaction by submitting to them and satisfy their demands. Therefore, the woman who is under the control of men in different aspects of her life cannot express her explicit rejection of the sexual relationship. Without consisting the age of young girls or women a factor that contributes to the reduction of male domination over their lives³⁰⁹.

Woman's freedom of choice in sexual relations is strongly reinforced by the fact that they are forced to do sexual intercourse by people who are considered as the formal authority to whom wife and children must respond according to the patriarchal nuclear family hierarchy³¹⁰, in addition, those people had enjoyed for many years a legal license to kill Women in the name of honor, with no legal punishment or community accountability. Furthermore, many of the sexual relations date back to the childhood of the girl and the relation continued after reaching the age of adulthood, when the girl is forced to continue cohabitation under the threat of death and disgrace³¹¹, Studies indicate that the cases of sexual intercourse with females within the family range start from the age of 5 years and continues for many years without being discovered. The most age group subjected to sexual assault by a member of the family is the minors between the ages of 13-16 years³¹². The girl does not dare to refuse and the perpetrator continues to exploit the girl sexually by his strong influence in the family and her fear of the consequences of disgrace under threat³¹³, intimidation, and beatings if the victim does not respond to the demands of the perpetrator. Which lead legally to say that the moral element in the crime of incest is not existed, therefore the crime should be considered as a crime of "rape of relatives"³¹⁴.

³⁰⁸ The guardianship of the person defined as: the supervision of the personal affairs of those who are subject to the guardianship for the purpose of maintenance, preservation, discipline, education and marriage.

³⁰⁹ K. H. N. Barghouthi, 2012, p. 59.

³¹⁰ M. M. Haj-Yahia, 1998, p. 536.

³¹¹ Miftah "Ray Akher", 2016, p. 2.

³¹² A. Atieqa, 2017, p. 257.

³¹³ M. Sharifa, 2017, p. 146.

³¹⁴ F. Al-Moaqat, 2006, p. 57.

In light of the foregoing, it could be concluded that the freedom of sexual women must be protected by greater legal guarantees by establishing a constant presumption that any unlawful sexual relationship between a man and a woman that occurs within the family by persons who enjoy authority over women is considered a sexual assault on her by physical or moral coercion, which denies the consent of women and thus constitutes a crime of rape, but can be proven contrary by establishing the evidence of consent of women to sexual relationship so that the crime could become a crime of incest. Therefore, that comprises a significant importance in the achievement of justice and equity for women and protect them from sexual violence. Moreover, that would contribute to changing the stereotype society which holds women fully responsible for the sexual assaults against them and that they are always responsible for their commission. The law should also allow women to abort the pregnancy caused by incest.

1.2.2.1.2. Initiation of Incest (Rape of Relatives)

The Jordanian Penal Code No. 16 of 1960 leaves girls and women in their homes without adequate criminal protection for their right to bodily integrity and sexual freedom, despite the fact that 80% of sexual abuse occurs inside the house. The crime of incest according to the criterion of the categorization of crimes in the Jordanian penal legislation is considered as crimes of the offense³¹⁵,. e. crimes of medium risk and harm, meaning that the initiation of incest is not criminal or punished unless the law provides for it^{316 317}. The Penal Code does not provide for punishment for the initiation of incest, making it easy to commit the crime without hesitation at a later date. It also means that the penalty of simple imprisonment is the penalty prescribed for the crime of incest, which is not commensurate with the seriousness of the crime committed and the effects and consequences thereof³¹⁸. Sexual assaults on women within the family include murder of the victim's psyche and

³¹⁵ M. B. Al-Masha'ili, 2010, p. 129.

³¹⁶ The initiation is defined as the initiation of the manifest acts leading to the commission of a crime of a felony or misdemeanor and failure to achieve the criminal result. See Article 68 & 71 of the Jordanian Penal Code No. 16 of 1960.

³¹⁷ It was amended in the Jordanian Penal Code which applicable only in Jordan to become a felony

³¹⁸ M. Najjar, 2014, p. 117.

execution of her sense of safety³¹⁹. They carry a deep breach of trust. The perpetrator is supposed to be the source of safety for the victim, rather than exploiting her confidence and easy access to commit his crime, which requires a tightening of the punishment and non-leniency in his criminal prosecution to guarantee the rights and freedoms of women and to achieve the desired deterrent punishment. It also requires the approval and activation of programs to rehabilitate the victim and the offender taking into account the psychological and social conditions of each.

It could be concluded by saying that while the legislator is strict in punishing female sexual assaults by strangers outside the family, in a manner that constitutes a legal deterrent to future crimes, the Penal Code is lenient in the face of sexual assaults that occur in the family or by those who have authority over women, as it is found unjust to women, when he turns a blind eye to the "rape of relatives" and considers it incest after failing to take into account the masculine authorities - referred to above – that exceed the limits of the authority of women.

1.2.2.2. Failure of Criminal Protection in Confronting Sexual Harassment

Sexual harassment is a constant concern among women all over the world. It is a serious phenomenon that takes a global dimension that permeates all societies³²⁰, targeting its victims with multiple behaviors and actions that have different sexual connotations depending on the culture of society and different personal criteria. It is, therefore, difficult to find a consensus comprehensive definition of sexual harassment, as there is no consensus to this day on a single definition^{321 322}. Nevertheless, The Equal Employment Opportunity

³¹⁹See P. Timothy Janikowski, E. James Bordieri & M. Noreen Glover, 1997, p. 448. And See V. J. Felitti, 1991, p. 328.

³²⁰ Based on the European Union Agency for Fundamental Rights (FRA) Violence Against Women Survey, "sexual harassment remains a pervasive and common experience for many women in the European Union". R. Latcheva, & J. Goodey, 2017, p. 1822.M. and See also Khneisser, Study of Laws on Sexual Harassment in Lebanon: The Right of Equal Women in Public Spaces, Issam Fares Institute for Public Policy and International Affairs, American University of Beirut, <https://website.aub.edu.lb>

³²¹ Despite the varying definitions of sexual harassment, many authors agree on three characteristics which uniquely describe sexual harassment. "Sexual harassment means sexual attentions that are (1) unwanted, (2) repeated and (3) affect a woman's job, either her performance or expectations". P. Wright, & S. Bean, 1993, p. 31.

³²² See L. F. Fitzgerald, S. L. Shullman, N. Bailey, M. Richards, J. Swecker, Y. Gold, ... & L. Weitzman, 1988, p. 152.

Commission guidelines define sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment"³²³. Although sexual harassment may occur in the home, street, schools, universities, and many other places, targeting women, children and men, the multiple definitions have focused on sexual harassment of women in the workplace, based on studies that indicate that women comprise the majority of victims of sexual harassment especially those occurring in the work environment³²⁴.

Furthermore, international criminal legislations have also been divided in its handling of the sexual harassment issue. Some countries, such as the United States of America and France, have defined sexual harassment in their laws, and some states have not defined the definition of sexual harassment, such as Tunisia and Algeria, where they have been limited to characterizing acts, behaviors, and all that can be considered as sexual discrimination³²⁵. On the other hand, some countries, such as Jordan and Palestine, did not address the issue of sexual harassment explicitly and clearly in their legislations.

The international community contends that sexual harassment is incompatible with the principles of human rights because it violates human dignity. Sexual harassment violates the dignity and privacy of women and is incompatible with the right to equality and non-discrimination, the right to participate in public life, the right to education, employment and equal opportunities. Its proliferation means eliminating the professional future of women, their community participation, and their economic empowerment³²⁶. The ILO Committee on the Application of Conventions and Recommendations considers sexual harassment as a form of discrimination based on sex. The Declaration on the Elimination of Violence against Women in 1993 also considers sexual harassment and intimidation in the workplace as part of the concept of violence against women³²⁷. The Beijing Declaration

³²³National Academies of Sciences, Engineering, and Medicine, 2018, p. 23.

³²⁴ Hartford, 1990, Sexual Harassment in the workplace, p. 3. And D. Maypole, & R. Skaine, 1983, p. 385

³²⁵ the Egyptians an independent daily newspaper, The concept of sexual harassment in comparative legislation, <https://almesryoon.com>

³²⁶ Coalition for Integrity and Accountability AMAN, 2010, p. 4.

³²⁷ J. Bellinger, 2017, p. 19.

and Platform for Action of 1995 considers sexual harassment to be an act of physical, sexual, and psychological violence occurring within communities and workplaces³²⁸.

Although sexual harassment is an old social phenomenon, talk about it began shyly with the beginning of women's participation in the workplace. However, this situation has changed at the present time in light of the increasing awareness and campaigns that sweep the social networking sites to urge women not to shy away from the participation of their experiences, in order to highlight the magnitude of the phenomenon³²⁹.

The legal concern on sexual harassment remains the most recent in comparison with other crimes. The true nucleus of the criminalization of sexual harassment was the 1964 US Civil Rights Act, which banned gender discrimination in public service. In 1980, the Equal Employment Opportunities Commission issued an act that prohibits all sexual discrimination, including sexual harassment, followed by France in 1992 in criminalizing acts of sexual harassment³³⁰. Many States subsequently criminalized sexual harassment in their criminal legislations. This is illustrated by the criminalization of sexual harassment in the Penal Code and in specialized legislations.

1.2.2.2.1. Criminalization of Sexual Harassment in the Penal Code

By analyzing the articles of the Penal Code, it is found out that the Jordanian legislator does not explicitly criminalize acts of sexual harassment. He does not criminalize the acts of sexual harassment that occur within the family, street, school, or work expressly in a way that guarantees the right of women to respect their human dignity, sexual freedoms, and physical and psychological integrity in order to protect their personal security from sexual violence, guarantee their right to equality of employment opportunities, and promote

³²⁸ See Article 2/b of the Declaration on the Elimination of Violence against Women, 1993. And See Article 113/b of The Report of the Fourth World Conference on Women in 1995 (Beijing)

³²⁹ See L. F. Fitzgerald, S. L. Shullman, N. Bailey, M. Richards, J. Swecker, Y. Gold, ... & L. Weitzman, 1988, p.135 . More than a million women around the world responded to the “Me Too” campaign. Which was launched at social media platforms in 2007 by Tarana Burke an African-American woman, who was sexually abused at the age of 13 by her mother’s boyfriend. The campaign became fashionable in social media when actress Alyssa Milano invited women to write “Me too” as a status to give a sense of the magnitude of sexual harassment problem’. In response to the sexual abuse accusations of the US film producer Harvey Weinstein by over 80 women in 2017. See D. Isaacs, 2018, p. 341.

³³⁰ H. Ben Halima, 2014-2015, p. T. and M. Lqatt, 2012-2013, p. 13.

the concept of deterrence. Nevertheless, the legislator was only sufficient with a set of legal texts that criminalize acts contrary to public morals. Consequently, these texts require studying and analyzing in order to determine whether they include the criminalization of sexual harassment acts³³¹.

Article (305) of the Penal Code provides that "Anyone who slobbers in an indecent manner (1) a person who has not completed fifteen years of age, male or female, or (2) a woman or a girl of fifteen years of age or older, without their consent shall be subjected to imprisonment for a period of not more than one year".

It is clear from this article that the legislator seeks to protect the female in the face of acts of anti-modesty, in order to protect her dignity regardless of where they occurred, whether in the house, the street, or at work³³². The physical element in this crime occurs when the perpetrator touches and slobbers the victim's body in a way that awakens her sexual feelings or suggests the idea of sexual mixing without her consent, provided that it does not reach to touch the areas of chastity and the private parts that a person is keen to cover³³³. Otherwise, the act is subject to legal adaptation to the crime of degradation. Indecent slobbering acts include for example hugging the female, kissing her, or touching her body³³⁴. The moral element is achieved in the direction of the will of the perpetrator to commit the act while he is aware that act will scratch the victim's shyness and his knowledge of her dissatisfaction. It is a deliberate crime in which the perpetrator shall be punished with a penalty of imprisonment for a term that does not exceed one year³³⁵.

It could be concluded that Article (305) of the Penal Code criminalizes acts of physical sexual harassment in an implicit manner and without explicitly using the term sexual

³³¹ The identification of the general sense of modesty depends on the set of values, ethics, and social beliefs of literature that prevail in any society. It is a flexible and relative idea that varies according to time, place, conditions, beliefs and religions. It is different even in one state. See M. Najm, 1999, p. 224

³³²The anti-general modesty flirtation means the flirtation that defies modesty, whether the ear or eye modesty and arouses sexual feelings is an illegitimate flirtation. A. T. Ahmed, 2012, p. 326.

³³³See the Jordanian Cassation Penal Court Verdict No. 74/65 of 1975, Set of Legal Principles, 2, p. 1135

³³⁴ The Jordanian Court of Cassation defines disgracing as "any act of indecent assault committed by a person against another male or female directly, and he/she shall be subjected to a disgrace that harms him/her in his/her honor and dignity." the Jordanian Cassation court Penal Verdict No. 53/7. And M. Namour, 2011, p. 250.

³³⁵ M. Najm, 1999, p. 242.

harassment, and without securing a variety of penalties or aggravating or mitigating circumstances for the penalty. Or even Precautionary measures.

The Penal Code governs the acts of the perpetrator that involve presenting or directing obscene statements (sexually suggestive) by article (306), which stipulates that "whoever presents to a child under 15 years of age or to a female an indecent act or indecent speech, he shall be punished by imprisonment for a term not exceeding six months or by a fine not exceeding twenty five dinars"³³⁶. The criminalization of acts of verbal sexual harassment implicitly regardless of where it occurs, including a penalty less than the punishment of physical harassment; it varies between imprisonment for a period not exceeding 6 months or a fine not exceeding 25 dinars.

Whereas Article (320) states that "Anyone who commits an indecent act or displays an obscene sign in a public place, in a public society, or in a manner in which a person who is in a public place can see it shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding 50 dinars". By this article, the aim of the legislator is to protect the general sense of modesty, where the physical element of the crime occurs when the perpetrator of the act of non-modesty takes the form of material, physical work, movement, or a gesture that scratched the modesty of others by raising the idea of sexual mixing, whether the perpetrator's act is committed to himself, such as exposing his genitals, or commits the act on the body of another person, with or without their consent, like kissing or hugging a woman in a public place. This crime is also required to provide a public element, which is achieved in committing the act in a public place, in a public society such as public roads, squares, public parks, at government departments, schools and training institutes, at hospitals, or public transport. It is also achieved by the occurrence of the indecent act in a private place, but it can be seen by a person who is in a public place³³⁷. The moral element of the crime is achieved by the elements of the criminal intent of the

³³⁶ Article 305, 306 is subject to the scope of Article 308 of the Jordanian Penal Code No. 16 of 1960, which exempts the offender if he marries his victim.

³³⁷ The advertisement means that the act is seen by one of the people or heard if the hearing indicates the substance of the act or that the act is in the manner in which it was signed to be seen or heard by others, even though he did not see or hear it. See R. Behnam, 1982, p. 402. It is not necessary for the crime to be considered committed the actual observation of the blatant act, it is sufficient to have the possibility of seeing the blatant act, M. Namour, 2011, p.258.

perpetrator to direct his will to the act of anti-modesty and to have the element of knowledge that it can do to undermine the general sense of modesty in the presence of the views or hearing from others. The legislator determines a criminal penalty for this crime ranging from imprisonment for a period not exceeding six months or a fine not exceeding 50 dinars³³⁸.

The scope of the legal provision, based on the text of article (320), extends to include acts of sexual harassment that occur in private places (if anyone can see them) and public places. This means that acts of sexual harassment that occur in the home as a private place are not covered by criminalization.

Furthermore, this legal provision is not primarily intended to protect women from acts of sexual harassment that occur in public places, as much as the legislator intends to protect the general sense of modesty. This indicates that the prescribed penal protection against sexual harassment is not intended to protect the female in the first place, insofar as it aims at protecting the conservative image of Arab society.

It is noticed that the legislator does not criminalize in a specific way the acts that form sexual harassment and this means leaving the issue of sexual harassment to the judge of the matter.

The legislator does not prescribe an aggravating circumstance in case a victim of sexual harassment is a girl despite its negative psychological and physical consequences and the serious impacts that the sexual harassment leaves on her future. The victim's young age makes it easy to commit acts of sexual harassment because the victim is unaware of its nature and her inability to confront the perpetrator and defend herself. In addition, the perpetrator may keep on sexual assaults even to the extent of rape or ravishment, or the perpetrator continue to target children and sexually harass them due to in the lack of a deterrent punishment. It was better for the legislator to strictly aggravate the punishment to the extent that it ensures adequate protection for the girl child in the face of various

³³⁸ M. Namour, 2011, p. 260.

forms of sexual harassment in accordance with the Palestinian Child Law, which stipulates that the child must be protected and cared for without discrimination³³⁹.

Moreover, the legislator does not consider the occurrence of acts of sexual harassment by a member of the family as an aggravating circumstance, despite the fact that the victim's confidence in the offender and his proximity to them make it easy to commit acts of sexual harassment. As well as placing them at greater risk of sexual assault for the absence of a legal deterrent, which also requires strict punishment. The legislator does not also aggravate punishment in the event that the victim is physically or mentally incapacitated or in case the perpetrator repeats his crime.

It could be concluded that the Jordanian law criminalizes acts of sexual harassment implicitly under the anti-modesty act, where the punishment of sexual harassment is characterized by simple imprisonment or financial fines among many legal texts. Therefore, the legislator should be invited to attempt to include in the Penal Code legal provisions that explicitly and clearly criminalize sexual harassment, and explain in detail what sexual harassment and its types are and includes a variety of penalties against perpetrators.

1.2.2.2.2. Criminalization of Sexual Harassment in Specialized Legislations

The Palestinian Labor Act No. 7 of 2000, and the Civil Service Act No. 4 of 1998, have not addressed the discrimination or violence based on the social gender although all types of such violence proliferate in workplaces. Although the amended Basic Law of 2003 and its amendments stipulates that human rights³⁴⁰, including the right to work and the right to hold public office and jobs, are binding and shall be respected by everybody for all on equal bases and without discrimination; and despite the guarantee of work for every Palestinian citizen in the Palestinian Labor Act which has provided a specific chapter for organizing women work³⁴¹; and although the Basic Law affirms that labor relations are organized to ensure justice for all and the need to provide care and security for workers;

³³⁹ See Article 7/1 of the Palestinian Child law No. 7 of 2004.

³⁴⁰ ILO, 2016, p. 11.

³⁴¹ See Articles 9, 10, 25 & 26 of the amended Basic Law of 2003 and its amendments. And See Articles 2 & 100 and chapter 7 of the Palestinian Labor Law No. 7 of 2000.

the acts of sexual harassment in the workplace have not received the attention of the legislator³⁴². They have never been mentioned in the provisions of the Labor Law or the Civil Service Law and has not been criminalized and punished. There has also been no provisions for disciplinary sanctions against an employee who has committed sexual harassment, which resulted in leaving women in the field of work without legal protection and making them prey to the reach of workers and reviewers, especially employers and officials of men who occupy the high positions and senior administrative levels, whereas women hold lower levels and managerial positions and are subject to the supervision and guidance of male officials³⁴³, making women workers the majority of victims of sexual harassment practices prevalent in the workplace in Arab societies, including Palestinian society. Studies show that the phenomenon of sexual harassment is present abundantly in the male societies that exploit their authority to dominate the workplace and consider women as a pot of sexual pleasure, thus exploiting the values, customs, social traditions and customs³⁴⁴.

According to PCBS in a fact file that they issued, a complete absence of specific laws that criminalize gender-based sexual violence in the workplace is a serious problem. These are summed up as follows³⁴⁵:

- 1) The exclusion of Palestinian women from participation in economic life and development due to the lack of a sense of security in the work environment and public service. The opportunity to obtain employment, job placement, access to labor rights, promotion, benefits, or employment continuity³⁴⁶, may be subject to providing sexual services to the supervisor or administrator³⁴⁷. Verbal sexual harassment behaviors such as embarrassing remarks, sexual hints or jokes; or non-

³⁴² See Article 25/1/2 of the amended Basic Law of 2003 and its amendments.

³⁴³ Studies indicate that women are limited to the lower and middle grades of the career ladder. Women make up only 3% of decision-making centers such as legislators and senior management. Coalition for Integrity and Accountability “Aman”, 2007, p. 7.

³⁴⁴ Coalition for Integrity and Accountability AMAN, 2010, p .2. And forms of sexual harassment in the Algerian working women and the measures taken to reduce the phenomenon, <https://platform.almanhal.com/>

³⁴⁵ ILO, 2016, Women's Rights in Palestine, Guidance Guide, p. 11.

³⁴⁶ Coalition for Integrity and Accountability AMAN, 2010, p .5.

³⁴⁷ Which defined as “quid pro quo” harassment according to the U.S. Equal Employment Opportunity Commission C. Campbell, A. Kramer, K. Woolman, E. Staecker, J. Visker, & C. Cox, 2013, p 425.

verbal, such as looks and erotic gestures related to sexual life; or physical acts such as undesired and unnecessary physical contact, such as touching or trying to kiss³⁴⁸, lead to create a "hostile work environment"³⁴⁹ in which women are forced to quit work³⁵⁰, and the loss of their labor rights³⁵¹, due to excluding sexual harassment as part of the serious causes and errors that give working women the right to leave work while retaining their labor rights in the labor law such as their right to end of service reward³⁵².

Due to the limited opportunities and resources in the Palestinian labor market, women may have to ignore and tolerate the sexual harassment, especially when forced by poverty, physical destitution, family responsibilities, and fear of the economic consequences of losing the source of income, to stay in their work and bear the psychological stress³⁵³, which results in negative results on their mental and neurological health, limits their ability to their performance. In addition to the social consequences that degrades the reputation of women, in all cases³⁵⁴, women are seen in the eyes of the society that they are the cause of the sexual abuse they suffer from and they are blamed for. At the same time, excuses are provided in the society and culture for the men's sexual abuse actions where the exit of women to the labor market and mixing with men is the main cause of the spread of this phenomenon, rather than trying to counter them and limit their proliferation. Hence, many voices of community start calling for the return of women to her home and leave the field of work.

³⁴⁸ ILO, 2012, p. 46. & National Academies of Sciences, Engineering, and Medicine, 2018, p.14.

³⁴⁹ Hostile work environment occurs when a woman is subjected to sexually harassing conduct sufficiently severe or pervasive to alter the conditions of her employment, requiring her to perform her job functions in hostile. R. Gregory, 2004, p. 19.

And when workplace conduct unreasonably interferes with employees' job performance by creating an intimidating work environment. C. Campbell, A. Kramer, K. Woolman, E. Staecker, J. Visker, & C. Cox, 2013, p 425 and defined also sufficiently severe or pervasive to alter the conditions of her employment, requiring her to perform her job functions in hostile

³⁵⁰ Hartford, 1990, Sexual Harassment in the workplace, p. 3.

³⁵¹ See ILO, 2016, p. 11.

³⁵² Article 42 of the Palestinian Labor Law allows a worker to leave work while retaining his legal rights in the event of an assault by the employer or his representative on the worker, without mentioning the sexual abuse.

³⁵³ See J. A. Bargh and P. Raymond, J. B. Pryor & F. Strack, 1995, p. 769.

³⁵⁴ See J. Barling, A. Rogers, & E. Kelloway, 2001, p. 255.

- 2) Working women are deprived from their right to justice and legal remedies. Harassment and sexual abuse in the workplace, despite the seriousness and negative repercussions on women's rights, have not been translated in the language of law that protects the rights and freedoms into texts that explicitly and clearly guarantee sufficient protection for women's rights and freedoms to deter their perpetrators with strict penalties. This means impunity for the perpetrators, the majority of whom are males by virtue of the dominance of male authority over the positions of power, supervision, and influence in the economic life and society³⁵⁵. This, in turn, contributes to the promotion of the phenomenon of sexual harassment and its proliferation in the workplace and its transformation from individual behavior to a phenomenon that is widespread and difficult to remedy in light of the legislative vacuum and the inadequacy of the legal system to absorb the risks and challenges faced by working women and their inability to provide the legal protection required and necessary to ensure their enjoyment of their right to work and occupy public functions and equal opportunities. This also reflects the inability of Palestinian labor legislation to keep up with economic developments that require the participation of women on an equal footing with men in order to achieve economic development and prosperity.
- 3) Working women are exposed to more serious sexual assault such as rape because the perpetrator of sexual harassment acts keeps on his aggressions as he feels secure from the punishment for the absence of the legal deterrent that prevents him from the beginning from harassing and sexually harassing women, exploiting their need for work and their weak position in the legal and social system. As such, their right to life may be jeopardized and killed in defense of family honor because of the social stigma attached to them. Enacting a law to criminalize sexual harassment, or even amending existing legal texts to provide clear and explicit criminalization of acts of sexual harassment is considered as a preventive act and an attempt to prevent its transformation into more serious crimes³⁵⁶.

³⁵⁵ ILO, 2016, p. 11.

³⁵⁶ H. Ben Halima, 2014-2015, p. 36.

- 4) The persistence of sexual harassment acts in the Palestinian society in the context of concealed sexual assaults (hidden) because of the limited information available about the extent of their spread in the workplace. The statistics of the criminal justice systems are devoid of any mention of sexual harassment acts in the absence of clear and explicit legal criminalization of them. In addition, women are reluctant to report sexual harassment for fear of scandal³⁵⁷, retaliation, social blame, or fear of losing their jobs³⁵⁸.

Following the shortcomings of previous legislations in the criminalization and raising awareness of sexual harassment; however, the legislator have finally been aware of this deficiency and rectify it through the Anti-Corruption Law No. 1 of 2005, by assuming sexual harassment acts such as abuse of power by the employee in accordance with the definition of corruption referred to in Article (1) of the aforesaid law.

It could be concluded that the sexual harassment acts reflect a form of oppression that women are subjected to in society as a result of the imbalance of power in the relationship between the two sexes. Furthermore, sexual harassment is a repressive factor for women in the labor market and in public life, leading to the consolidation of the inferior view of women and strengthen their subordination to men as a result of weak economic empowerment³⁵⁹. This comes at a time when women strive to get out of the shell of private life, the pattern of constraining traditional roles, and freedom from the control of customs and traditions to prove their community presence as an active positive element. The legislator should be aware of the seriousness of sexual harassment and also include in the labor legislations legal texts and provisions that prohibit sexual harassment in workplaces and impose penalties on its perpetrators. The legislator is also invited to amend the labor law by including acts of sexual harassment among the reasons that give working women the right to leave work while retaining their labor rights such as the end of service reward. Moreover, the Ministry of Labor and the Ministry of Women should also be invited to work together on the preparation of internal regulations clearly and expressly stating that the

³⁵⁷ See R. Jagsi, 2018, p. 209.

³⁵⁸ Hartford,1990, Sexual Harassment in the workplace, p. 7.

³⁵⁹ See R. Gregory, 2004, p. 1.

perpetrators of sexual harassment shall not be tolerated, in addition to preparing a list of acts that are considered sexual harassment and disseminating it on a large scale. It is necessary to hold workshops to educate employees and workers of both sexes about the risks of sexual harassment and its consequences under ministerial regulations and instructions. In addition, it is necessary to involve trade unions in awareness campaigns for women workers and employees on how to act in the event of sexual harassment with emphasis on the importance of reporting to the competent authorities and avoid silence, which requires the Ministry of Labor to activate the complaints system to confront sexual harassment.

It is recommended to conduct in-depth studies to determine the extent of the spread of this phenomenon in the Palestinian society and the preparation of programs and awareness campaigns to confront them, while emphasizing the importance of media participation and interaction with these campaigns positively.

2. FAILURE OF CRIMINAL PROTECTION AT THE LEVEL OF PROCEDURAL RULES

Substantive rules remain a non-existent message unless the Rules of Procedures intervene to bring them into existence. The procedural rules go beyond the limits of the Code of Penal Procedures No. 3 of 2005, reaching old legislations such as the Jordanian Crime Prevention Law No. 7 of 1954. Others are recent ones such as the National Conversion System for Battered Women No. 18 of 2013, in addition to certain procedural practices that are not subject to a specific legal system except the discretionary powers of criminal justice authorities, under the pretext of protecting human rights, in particular the protection of women's rights. The Rules of Procedures are the actual form of State democracy; and they are the most sincere expression of their respect for not only public rights and freedoms, but also human rights in general. The Rules of Procedures are an instrument of the State's dedication to respect for human dignity and a tool to violate that dignity. Based on the principle of legality, and on principles that foster respect for human rights, therefore, if a defect occurs in a procedural principle, it will fall short of its intended purpose. The defect may be the result of actions outside the framework of justice or the result of a failure within the framework of justice.

2.1. Actions outside the framework of justice

The status of justice in a country cannot be rectified without controlling the actions of its legal institutions, in particular the actions of criminal justice institutions. Their obligations and duties must be determined towards the rights of individuals under constitutional and procedural legitimacy in accordance with international treaties and conventions that guarantee human and citizen rights in order to prevent violation of individual liberties and human dignity, in particular to prevent violations of women's rights. As a fragile element in society, the woman must be protected against all violations, especially the violence against them. But this statement is deficient at the level of procedural rules because of the existence of negative practices and deficiencies for Procedural reasons.

2.1.1. Negative practices

Freedom is a sacred right that cannot be infringed without a judicial order based on a legitimate legal text issued by the competent judicial authorities in the state. Nevertheless, the Palestinian reality reflects a violation of women's enjoyment of this right through administrative detention and detention in safe houses.

2.1.1.1. Administrative Detention

Administrative detention means the deprivation of liberty of a person by virtue of a decision issued by the executive authority in isolation from the judicial authority and without assigning any charge to the detainee³⁶⁰. It is socially known as detention at the responsibility of the governor. The question arises about the legality of administrative detention of women and the circumstances of their detention.

2.1.1.1.1. Legality of administrative detention

The governor, as per the Jordanian Crime Prevention Act No. 7 of 1954, shall detain individuals in administrative detention in case of suspected danger to the public order. The powers granted to the administrative governor as per the Crime Prevention Act fall under the concept of administrative control as represented by restrictions and controls on individuals' activity and freedoms in order to protect public order³⁶¹. According to articles (3) and (8) of the aforesaid law, any person found in a public or private place in circumstances that convince the administrator that he is about to commit any crime or help to commit it, and whoever is in a condition that makes his presence free without bail dangerous to people, the governor can imprison him for an unlimited period of time as long as the reasons for his detention remain in effect³⁶². The aforesaid Act does not specify the duration of administrative detention³⁶³.

The Governor uses his legal powers to issue a decision to place battered women in a correction and rehabilitation center, in case there is a risk of abuse against them for the

³⁶⁰ M. Namour, 2005, p. 374.

³⁶¹ ICHR. Annual Report, 2014, p. 97.

³⁶² A. al-Sweiti, 2014, p. 11.

³⁶³ N. al-Momani, 2015, p. 31.

purpose of protecting them in cases of domestic violence and the threat of killing them on the pretext of honor³⁶⁴. Fairly frequently, victims used to escape from violence or murder to the governorate for protection, especially in the time prior to the establishment of police family protection units. The abused women were administratively detained at the responsibility of the governor and placed in a correction and rehabilitation center because there were no places to shelter abused women or girls, such as safe houses. The abused women used to remain in detention until the governorate takes measures to preserve their safety and freedom from exposure to violence or abuse. In another context, the governor rests on article (3) of the Jordanian Crime Prevention Act to detain women whose behavior constitutes a violation of the customs and traditions of the community in violation of public order.

In the case of Aline Hammouri from Nablus governorate, she was administratively detained by the Governor after fleeing her family who had held her in the house for more than a year and her identity papers were hidden in order to prevent her from traveling and returning to Kuwait. She was on vacation with her five children, but she was surprised by the conspiracy of her husband and father to prevent her from returning as a result of marital and family disputes. Following this, she filed a complaint against her father at the Family Protection Unit in the police that she was threatened with death and demanded to obtain her identity papers. As a result, she was transferred to the Environmental Center in Jericho for her protection. When her father and brother had come to the Center in order to return her home, the police asked her to go to the governorate headquarters so that the parents would sign a pledge so that would not assault her. However, she was also surprised that she was asked to waive her complaint against her father in the police. In return for her insistence not to sign, the governor threatened her with imprisonment as another option. This was denied by the governor, saying that her behavior was contrary to social customs. Under the pretext of protecting her from assault, she was detained in prison³⁶⁵.

³⁶⁴ See Penal Reform International, 2014, P. 8.

³⁶⁵ WATAN and the ARIJ network, investigative reporting: detainees at the responsibility of the governors Victims circumvent the law, <https://www.wattan.tv/ar/tv/104148.html>

By legal analysis, it is found out that the administrative detention of abused women for the purpose of protection constitutes a violation of the law, in obvious contradiction with the Jordanian Crime Prevention Act on which its issuance is based³⁶⁶. The Crime Prevention Act empowers the governor to employ administrative detention against persons who pose a threat to members of the community, whereas this act is applied to battered female victims, which means that it is applied in contradiction to the legal text. Instead of taking legal actions against the source of danger and threat, abused women are detained and their rights are sacrificed. On the other hand, the male perpetrator remains free at large without being subjected to any legal liability although his behavior represented in threat, and is often associated with physical abuse, constitutes criminal acts that fall within the scope of the crimes of abuse, threats, and threats of a felony or misdemeanor stipulated in the Jordanian Penal Code, rather than merely a disturbance to the public order which calls for the application of the Jordanian Crime Prevention Act on the source of male threat and danger. This results in the disruption of the penal act against perpetrators and the unjust application of the Jordanian Crime Prevention Act to women victims who are arbitrarily deprived from their right to personal freedom.

Even in cases where women are administratively detained on the basis of the aforementioned Crime Prevention Act in order to preserve public order and morals on the grounds that their behavior is inconsistent with the customs of the community, this is in contravention of the amended Basic Law and the Palestinian Penal Procedures Act on guarantees of arrest, detention³⁶⁷, and the right to fair trial.

In this context, the legal workers question the constitutionality of the Jordanian Crime Prevention Act, on which the issuance of these decisions is based. They consider that it is null and void because it contradicts with the provisions of the Palestinian Basic Law³⁶⁸. This is according to Article (119) of the Palestinian Basic Law, which stipulates that: "All that contradicts with the provisions of this amended Basic Law shall be repealed." As long as Article (8) of the Jordanian Crime Prevention Act No. 7 of 1954 clearly and explicitly

³⁶⁶ See N. al-Momani, 2015, p. 9.

³⁶⁷ A. Abu Haya, 2018, p. 11.

³⁶⁸ See A. al-Sweiti, 2014, p. 33.

contradicts with the right of individuals to have personal liberty guaranteed by Article (11) of the Basic Law, which stipulated that, "1- Personal freedom is a natural, guaranteed, and untouched right. 2- No one may be arrested, searched, imprisoned, restricted in any way, or prevented from moving, except by a judicial order in accordance with the provisions of the law.", that makes the judiciary represented by the Public Prosecution "standing judiciary" and the judiciary of the magisterial and first instance courts the "sitting judiciary" the only authority with jurisdiction as per the law to restrict the freedom of individuals to the extent permitted and allowed by law. As for the decisions issued by the governor regarding the detention of women, they are administrative decisions issued by the executive authority and are worthy of appeal because they are not issued by the judicial authority as guaranteed by the Basic Law.

As long as the powers granted to the Governor under the Jordanian Crime Prevention Act contradict with article (14) of the Basic Law, which stipulates: "The accused is innocent until proven guilty in a legal trial in which he is guaranteed the right of self-defense, every accused person charged with a felony shall have a lawyer to defend him." As long as the administrative detention does not include charges against the detainee, the detainee is not brought before the judiciary, and he / she is not allowed to exercise his / her right to defense, this law should be challenged as unconstitutional.

Furthermore, it also constitutes a departure from the principle of legality provided for in Article (15) of the Basic Law, which stipulates: "The penalty shall be personal, and collective punishment shall be prohibited. Penalty shall be imposed only by a judicial decision, and only after subsequent acts of law enforcement." This means that the administrative detention of women violates the principle of presumption of innocence, the right to a fair trial, and the right of defense as guaranteed under the Basic Law. It is included within the penalties that deprive freedom which may be imposed only by a court ruling issued by a competent court as a result of the woman committing a crime stipulated by law and imprisonment shall be determined as punishment. This requires the application of Article (119) of the Basic Law.

Notwithstanding the explicit revocation of the legal texts that authorize the Governor with the powers of administrative detention for their contradiction with the provisions of the

Basic Law, it is still in force under the pretext of maintaining public order. Consequently, women are subjected to arbitrary deprivation of their freedom as such detention is illegal and falls within the forms of arbitrary detention described by the UN Working Group on Arbitrary Detention³⁶⁹. In the case of the detention of "Aline Hammouri" without committing a crime or being charged as per the legal procedures, the Independent Commission for Human Rights (ICHR) "Office of Grievances" filed a constitutional challenge at the High Court of Justice in its constitutional capacity on behalf of the detained woman that included the unconstitutionality of the Jordanian Crime Prevention Act, on which her detention was based, in addition to the unconstitutionality of the decision of Nablus governorate to detain the appellant. In spite of filing the appeal to the court on 27/02/2014, the court did not consider it until January 2015 but rejected without convening the hearing session. Consequently, the aforesaid woman remained arbitrarily detained for a long time³⁷⁰.

The issuance of the decision by the executive authority makes it an administrative decision that can be appealed only to the High Court of Justice in accordance with Article (33/3) of the Law on the Formation of Statutory Courts No. 5 of 2001, which states that, "The High Court of Justice shall have jurisdiction to consider the following: Applications which are of the type of opposition in custody in which requests for the release of unlawfully detained persons are ordered." According to Article (285) of the Code of Civil Procedures No. 2 of 2001, which stipulates that, "The petition shall not be heard before this court unless it is submitted by a practicing lawyer." This requires that a lawyer be appointed to undertake legal proceedings on behalf of women, which makes it more difficult to apply as a result of the victim's detention and deprivation of her freedom. Although it is legally possible to appoint a lawyer by one of the relatives of the petitioner up to the fourth degree in accordance with paragraph (2) of the same article, this situation does not, in most cases, apply to the reality of women who are victims of domestic violence. It is the source of violence and threats that has the right to authorize a lawyer on behalf of the detained

³⁶⁹ Arbitrary detention means the detention of persons without the proper procedures set forth in the law and without showing a legal basis to justify deprivation of liberty. A. Al-Khalidi et al., 2015, p. 483. And See when deprivation of liberty becomes arbitrary, Working Group on Arbitrary Detention, Fact Sheet No. 26, p. 10.

³⁷⁰ ICHR. Annual Report, 2014, p. 101.

woman. This is made even more difficult due to the physical barriers in the absence of women's legal assistance in this case, especially since the legal representation before this court needs a highly qualified lawyer and often the attorney fees are high³⁷¹. This means that women arbitrarily detained by the Governor's responsibility for a long time in difficult conditions of detention have negative consequences for women and their future, especially since the entry of women in prison has turned it from a victim to a guilty and criminal from the point of view of the community. This is the most severe form of psychological and physical violence against women and girls victims, because it is caused by the official bodies to which women resort to escape from domestic violence. However, the official institution meets them with other violence that not only robs them of their freedom and social value, but also reinforces the discriminatory stereotype against them in the society. It should be noted that the protection of women from violence should not be achieved at the expense of exposing them to other forms of violence, but through the issuance of legislations that protect their rights to preserve their dignity, freedom, and image before the family and the society.

2.1.1.1.2. Circumstances of administrative detention

Detained women suffer from difficult conditions of detention. Due to their small number³⁷², they are detained in facilities that are attached prisons assigned for male prisoners³⁷³, but they are inappropriately separated from the total prison inmates³⁷⁴, leaving them at risk of overcrowding, as well as neglecting their gender needs and denying them access to many services and opportunities that are available for male prisoners³⁷⁵.

According to the availability of women's sections, the female detainees are distributed to four major correction and rehabilitation centers in the cities of Ramallah, Bethlehem, Jericho and Jenin³⁷⁶. The Women's Section of the Jenin Correction and Rehabilitation

³⁷¹ Penal Reform International, 2014, P. 9.

³⁷² Girls and women represent a minority of prisoners around the world, accounting for 2 to 9 percent of all prisoners at the country level. Penal Reform International, 2014, P. 5.

³⁷³ See Article 125 of the Criminal Procedure Code No. 3 of 2001. And Article 24 of Act No. 6 of 1998 on Correction and Rehabilitation Centers.

³⁷⁴ Penal Reform International, 2012, P. 5.

³⁷⁵ UNODC, 2014, P. 4.

³⁷⁶ ICHR. Special Reports, 2017, p. 15.

Center is the only section in the northern West Bank to receive female inmates from all the six northern governorates³⁷⁷. Although the capacity of the center is estimated at (12) female inmates, sometimes the number of female inmates rises up to (15) inmates in addition to the presence of children³⁷⁸. The over-crowdedness makes the conditions of detention inappropriate in terms of capacity, ventilation, or adequate lighting³⁷⁹. In addition, detained women are exposed to the dangers of engaging in crime as a result of direct contact with female inmates detained for multiple criminal cases. Although the provisions of Article (25) of Act No. (6) of 1998 on Correction and Rehabilitation Centers stipulates that detained inmates shall be separated from other inmates in separate sections, the legal text linked this to the extent permitted by the conditions of the center, which is difficult to apply to the inmates in light of the limited human and material resources, especially those that are associated with the women police staff assigned to oversee those sections. Moreover, it contributes to the further isolation of women prisoners as a result of the remoteness of places of detention from their places of residence and their families³⁸⁰.

On the other hand, there is no place in all women sections dedicated to receive pregnant inmates; there is no place for mothers and their children separate from the rest of the female inmates³⁸¹. In addition, there are no women's necessities in detention centers, indicating that the specific needs of women have not been taken into account³⁸². Also, mental, psychological, sexual, and reproductive health care programs are not provided, although women in prison are more likely than men to suffer from psychological problems as a result of frustration and isolation³⁸³, or mental disabilities that usually arise from domestic violence and physical and sexual abuse³⁸⁴, as well as the risk of being infected with sexually transmitted diseases such as HIV because of sexual abuse.

³⁷⁷ ICHR. Special Reports, 2017, p. 18.

³⁷⁸ ICHR. Special Reports, 2017, p. 19.

³⁷⁹ Sh. Odeh, et al., 2016, p. 120.

³⁸⁰ Penal Reform International, 2012, P. 5.

³⁸¹ ICHR. Special Reports, 2017, p. 22.

³⁸² Sh. Odeh, et al., 2016, p. 120.

³⁸³ Penal Reform International, 2014, P. 16.

³⁸⁴ UNODC, 2014, P.10.

Fairly often, female inmates do not have access to prison facilities such as the dining hall, library, sports room, activities, and main yard. Since there is no specific place to eat in all women sections, female inmates have to eat either in the detention rooms or in the specified yard which is often small and covered, and so the female inmates are not exposed to sunlight. In addition, female inmates are not allowed to enter the library but the policewomen usually bring the books requested by the inmates. The sports room is used as a detention room when the number of inmates increases³⁸⁵. As rehabilitation programs are restricted to female inmates with high court rulings³⁸⁶, detained female inmates do not have the same training opportunities as the convicted women, as they are seen as temporary inmates and do not need to undergo rehabilitation programs, preventing them from contributing to their rehabilitation and reform³⁸⁷.

In light of the provocation of the Governor's powers of administrative detention of legal confusion in the Palestinian society between supporters and opponents of those powers and those who acknowledge and those who challenge its constitutionality, the researcher recommends that the Palestinian legislator should explicitly repeal the provisions related to the powers of the governor to issue administrative detention. It should be recommended that it is necessary to stop issuing administrative detention decisions against girls and women who are at risk of being abused by their families and relatives, since the placement of these women in correction and rehabilitation centers poses a serious risk to their lives, their future, their reputation, and their ability to integrate into society after that experience.

2.1.1.2. Detention in safe houses

Women are held in safe houses far away from their families and children. In Palestine, there are three safe houses: the Jericho Emergency Center³⁸⁸, the Safe House in Nablus³⁸⁹,

³⁸⁵ ICHR. Special Reports, 2017, p. 19. 20. 21.

³⁸⁶ ICHR. Special Reports, 2017, p. 25.

³⁸⁷ N. al-Momani, 2015, p. 33.

³⁸⁸ It was established in 1996 by WCLAC to provide emergency services to women, accommodates battered women from one day to a month.

³⁸⁹ the Family Defense Society run this house since 1999, which provides emergency and primary services, and receives women for long periods of time. In practice, the Ministry of Social Development buys services from the society. it faces financial crises that threaten his functioning.

and Mehwar Center in Bethlehem³⁹⁰. The Ministry of Social Development supervises their administration³⁹¹ without taking the permission of women, which is contrary to the right of self-determination and has negative consequences.

2.1.1.2.1. Conflict with the right of self-determination

Rule 59 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary” THE BANGKOK RULES”³⁹², states that,

“Generally, non-custodial means of protection, for example in shelters managed by independent bodies, nongovernmental organizations or other community services, shall be used to protect women who need such protection. Temporary measures involving custody to protect a woman shall only be applied when necessary and expressly requested by the woman concerned and shall in all cases be supervised by judicial or other competent authorities. Such protective measures shall not be continued against the will of the woman concerned.”

According to this rule, all measures of protection of the victim, including the detention of women for the purpose of protection, must be carried out with their consent and without coercion. The acceptance of battered women for the protection provided service constitutes the legal basis for the validity of protection measures and is a prerequisite for not turning them into an arbitrary detention case.

When resorting to criminal justice system to escape from violence and seek protection and justice, women victims are at risk of forcible transfer to safe houses against their will. It has been noted that the use of this measure has increased significantly following the risk of the lives of a number of abused women after resorting to the police or the official

³⁹⁰ It was opened in 2007 with the support of the Italian government. It is the first national multi-purpose center and services at the level of prevention, protection, empowerment, rehabilitation, and social reintegration of battered women and receives battered women and their children for a period up to one year. See Ministry of Social Development, 2016, pp. 20-21.

³⁹¹ ICHR. Annual Report, 2009, p. 87.

³⁹² adopted by the General Assembly on 21 December 2010.

establishment for protection and some lost their lives as a result³⁹³. As a result, human rights and feminist institutions have blamed the official institution of the state in general and the family protection units in the police in particular, accusing them of failing to protect battered or threatened women as a result of diminishing the importance of their complaints and not treating them seriously enough. In response, family protection units routinely adopt the strategy of transferring victims automatically to safe houses, lacking an accurate assessment of the seriousness of the situation, regardless of the victim's position and satisfaction with the procedure. Especially in light of the lack of human resources and guidance for the protection of women at the Ministry of Social Affairs, the lack of their presence around the clock, the difficulty of communication with them after the official working hours, which places a burden on the protection of family and juveniles in the process of evaluation and determine the level of risk, they are forced to inform the governorate and discuss the level of risk to women with them and then make the decision to transfer to women to the Emergency Protection Center³⁹⁴.

Due to the modernity of the Palestinian official institutions, the legislative failure to cope with the needs of women has become a general feature and has resulted in the inability of the criminal justice agencies to protect abused women and caused the continuation of violence against women. But this time it takes the pattern of the violence of the official establishment. Perhaps the most important reason that led the police or the official institution to adopt the forcible transfer of battered or endangered women to safe houses is that the criminal legal system does not have any protection measures for women victims that are imposed by law on the offender in such a way as to ensure that the offender shall not threaten the victim or compromise her safety again. At the same time, it ensures that the victim is not taken away from her environment and forcibly placed in safe houses. However, this legislative deficiency must not justify the official establishment's assault on

³⁹³ Especially in the aftermath of Nancy Case where she was publicly murdered by her husband, Although the victim turned to the police to complain against her husband. See Section I of this chapter: Deficiencies in the Powers of the Police.

³⁹⁴ See Ministry of Social Development, 2016, pp. 24-25.

the right of women to freedom and the violation of their right to self-determination in a way that results in the victimization of violence and endless societal persecution.

The seriousness of this measure is intensified in light of the dependence of the safety houses on the mechanism of work based on the idea of detaining the beneficiaries and not allowing them to leave these houses at all until the completion of the process of securing the protection of abused³⁹⁵. This process, which means that no girl or woman shall leave the center without guarantees, is done through the governorate, the police, notables in the town, or the family for non-violence against her³⁹⁶. It is believed that protection measures in this way enhance the male guardianship of women on the pretext of ensuring their security and safety, and reflect once again the extent of patriarchal power relations and patriarchal dominance in the community in a way that deprives women of their basic rights and exposes them to all forms of violence and oppression. This issue demonstrates the extent of limitations and discrimination in the protection of women from the procedural perspective.

2.1.1.2.2. Consequences of detention in safe houses

The forcible placement of abused women in safe houses results in psychological consequences of frustration as a result of the official establishment dealing with them in this way and determining their fate and future without paying attention to their opinion or taking into account the specificity of their situation. In addition, they are shocked by uprooting them from their families and environment, especially in the case of abused mothers who are separated from their children, and their inability to cope with the new life. The victim is separated from her home, family, and the environment in which she lived independently and free movement, to live with strangers whom she does not know in an environment characterized by discipline, closure, and isolation from the community³⁹⁷. As a result of the restrictions on women's freedom to communicate with the outside world and their inability to adapt to the rules of procedure in safe houses, their feeling of rejection of

³⁹⁵ See N. Abu Awwad, 2016, p. 43.

³⁹⁶ See “MEHWAR” The first Palestinian center in Palestine to assist battered women. <https://www.rb2000.ps/news/232587.html>

³⁹⁷ See N. Abu Awwad, 2016, p. 37.

the new environment is reinforced. Her fear is also intensified from the reaction of her family and community as a result of entering safe houses and her fear for the fate of her family, children, and their reputation. These factors combine to intensify the harshness of the experience of women that are exhausted by violence and threats. They feel remorse for resorting to the criminal justice system, especially because they do not know or expect this result and unwillingness to happen.

The psychological repercussions of women survivors from violence are exacerbated by the poor physical resources of safe houses, which have negatively reflected on the quality of services provided and the availability of human cadres including psychologists, social workers, and lawyers, who are able to deal with women victims and help them to overcome the crisis and experience of the severe violence³⁹⁸.

The forced placement of women victims in protection homes is also subject to social rejection and dismissal, where women who are placed in protection homes are stigmatized by social stigma and disgrace. In spite of the fact that she is a victim of violence, the community looks at her with inferior view, simply because she enters protection houses and treats her in a manner that calls into question her behavior and morals, especially since there is a misconception among community members about the role these houses play as a shelter for women fleeing their homes, divorced women, or notorious women who depart from the customs and traditions of the community. Protection houses are not seen as centers for their protective and sheltering role for victims of violence or danger. After spending a period of shelter in the safe houses, the victim finds herself facing a difficult confrontation with the community and within a new stage and enormous challenges that are reflected in how to reintegrate them into society that rejects the idea of accepting her as an undesirable individual and is treated with suspicion and caution. More than often, she suffers from a

³⁹⁸ On 30/8/2018, the safe house directed by the Family Defense Society in Nablus threatened to close Due to the salary crisis arising from the financial crisis experienced by the Society because of the non-compliance of the

Ministry of Social Development in paying its financial obligations resulting from the purchase of the safe house services from the Society. See Family Defense Society looms closure of Nablus Safe house, Madar News, <https://madar.news/%D8%AC%D9%85%D8%B9%D9%8A%D8%A9-%D8%A7%D9%84%D8%AF%D9%81%D8%A7%D8%B9-%D8%B9%D9%86-%D8%A7%D9%84%D8%A7%D8%B3%D8%B1%D8%A9-%D8%AA%D9%84%D9%88%D8%AD-%D8%A8%D9%80-%D8%A7%D8%BA%D9%84%D8%A7%D9%82-%D8%A7%D9%84/>

desire to exploit her at all levels, especially sexually, being a prey easily accessible alone in the light of family abandonment and the fragility of her socio-economic status. It is the result of the lack of her educational qualifications and practical experience, she is without economic resources to support her and her children and ensure a decent life away from violence. In particular, safe houses lack the idea of empowerment because most safe houses are seen as places of residence only without programs for economic empowerment or regular programs of psychological support³⁹⁹. Thus, safe houses are blamed because they do not help victims to engage in the labor market as required. Their programs are restricted to group training programs that do not take into account individual differences, the education level of the victim, or her predilections⁴⁰⁰. Consequently, this situation adds to the hardship of reintegrating her into the community.

Based on the above, it is recommended that it is necessary to find legal solutions to ensure the protection of battered women without arbitrary detention in safe houses. One of the most important solutions is to include protective measures imposed on the offender in the Code of Criminal Procedures. It is also necessary to obtain her explicit consent in writing and signed by her own desire and will without coercion that she accepts transfer to safe houses. The Penal Code should include a legal provision that criminalizes the transfer of women against their will to safe houses to ensure women's right to personal freedom and their right to self-determination and respect for their dignity and will.

It should be recommended that work should be done to transform safe houses from a place where abused women are kept to a place that provides various services of psychological and legal support, welfare and socio-economic empowerment through the providing safe houses with human cadres of psychologists, social workers, and qualified lawyers who are able to deal with abused women and make them aware of their rights, raise their level of

³⁹⁹ Nazra for Feminist Studies, Where do survivors of violence go? Problems of Safe Houses for Women in Egypt and Gaps in Responding to the Needs of Women, Research Paper, 19, May 2016, <https://nazra.org/2016/05/%D8%A7%D9%84%D9%86%D8%A7%D8%AC%D9%8A%D8%A7%D8%AA-%D9%85%D9%86-%D8%A7%D9%84%D8%B9%D9%86%D9%81%D8%A5%D9%84%D9%89-%D8%A3%D9%8A%D9%86-%D9%8A%D8%B0%D9%87%D8%A8%D9%86>

⁴⁰⁰ See N. Abu Awwad, 2016, p. 37.

awareness of human rights, legal, social, and economic knowledge, so that women are better able to make decisions in line with their situations, interests, and future.

It is also important to recommend that the government to support safe houses financially through including the budget of safe houses within the state budget in a way that ensures the sustainability of services and programs provided, improves their quality, achieves job stability for workers in safe houses, and stability in services for women beneficiaries. It is essential to recommend that the government to carry out permanent coordination and joint cooperation with women's associations that run safe houses to standardize the level of services and programs offered.

2.1.2. Deficiencies for Procedural Reasons

Procedures of the public case are complemented by the sequence established by the legislator in the proceedings and the restrictions imposed by him, which constitutes the procedural legitimacy that guarantees the rights of individuals. Any violation of these rights creates a violation of the procedural legitimacy and constitutes support of violence against women and strips them of their rights. Among these restrictions is the registration of the complaint and the absence of provisions guaranteeing their rights.

2.1.2.1. Complaint Restrictions

Procedural restrictions that restrict women's rights are highlighted by the requirement of filing a complaint for crimes of physical abuse and incest with special conditions that are required.

2.1.2.1.1. Complaint in the crimes of abuse and incest

Article (334/2) of The Jordanian Penal Code No. 16 of 1960 states that: “If the acts set forth in the previous article does not result in illness or disruption of work for a period exceeding 10 days, the case must not be pursued without the written or verbal complaint of the victim. In this case, the complainant shall have the right to waive his complaint until the judgment acquires the final degree. Then, case of publici juris is dropped”. Article (333), which is referred to in this legal text as the previous article, includes: the acts of beating, wounding, and abusing by any effective act of violence and abuse methods. The

illness is defined as an impairment that affects the health of the victim and consequently affects the element of maintaining the level of health under which he lives⁴⁰¹. The disruption of work is defined as the inability of practicing the profession, craft, or job⁴⁰².

As per this article, the Penal Code hereby restricts the competence of the Public Prosecution to initiate the public proceedings⁴⁰³ of violence and minor harm offences that do not result in illness or disruption of work exceeding 10 days, on the record of the complaint. What is meant by complaint is the victim, the harmed, or his agent reporting to the competent authorities about the occurrence of a crime upon him / her and requesting them to prosecute the perpetrator to prove his criminal responsibility and have legally defined penalty against him.⁴⁰⁴ In offenses pending on a complaint, the law does not allow the Public Prosecution Office to initiate criminal proceedings or take any preliminary investigation procedures⁴⁰⁵ before filing a complaint; otherwise, the procedure is considered null and void⁴⁰⁶. Article (4/1) of the Palestinian Criminal Procedures Code No. 3 of 2001 states that: “The Public Prosecution may not conduct an investigation or institute criminal proceedings, which the law has suspended over a civil complaint, claim, request, or authorization, except on the basis of a written or verbal complaint from the victim or his special agent, or a civil claim from him or his special agent, or an authorization or request from the competent party.” The complaint record is considered as a stumbling rock, blocking the abused woman’s way in a way that denies her from her right to obtain justice. Thus, the Penal Code, when a public action is required for a particular crime, provided that the victim has filed a complaint, it then leaves the victim to assess their attitude on the basis of the idea that the initiation of criminal proceedings for some crimes would harm the reputation of the victim or cause him harm beyond the harm caused by not punishing the perpetrator. He is then entrusted with the responsibility of determining the appropriateness of prosecuting or

⁴⁰¹ E. Mohamed, n.d., p. 771.

⁴⁰² M. Al-Jabbour, 2000, p. 177.

⁴⁰³ The initiation of the lawsuit is the commencement of the first procedural action in the lawsuit that establishes the litigation between the litigants. M. Elayyan, 2003-2004, p. 10.

⁴⁰⁴ M. Abdul Baqi, 2015, p. 102. And M. al-Ghareeb, 1997, p. 120.

⁴⁰⁵ A preliminary investigation is a set of procedures carried out by the investigating authority. It forms the link between the evidence gathering phase and the trial phase. The investigator at this stage collects evidence to support the charge and those that deny the charge. M. Abdul Baqi, 2015, p. 180.

⁴⁰⁶ S. Khalil, 2016, p. 69.

condoning a crime⁴⁰⁷, based on the fact that the victim has the absolute freedom and the sufficient ability to take a decision of whether resorting to the public authorities or not⁴⁰⁸. This is the matter that cannot be recognized or validated for the woman who is the victim of physical violence within the family, because it fundamentally contradicts with the composition of patriarchal society and the balance of power in the family. Thus, the domestically abused woman neither has the ability nor the courage to take a serious and absolute decision like this one as this puts her in direct confrontation with the patriarchal authority, exposing her to more violence, further restrictions on her personal freedom and social relations, and limiting her ability to enjoy her basic human rights such as education, movement, work, marriage, and other rights.

Therefore, it is not easy for the abused women to be able to take it, especially since the Penal Code stipulates that the complaint must be directed against a specific person as it cannot be against an anonymous person⁴⁰⁹. This means that a woman must file a clear and explicit complaint against a male family member, such as the father, brother, husband, grandfather, or uncle, accusing them of violently and physically assaulting her with beatings, wounds, or abuse, which is rare and unlikely⁴¹⁰.

On the other hand, many women believe that the violence and abuse suffered by the male family members does not constitute a legal criminal violence as it is often justified socially and religiously⁴¹¹. Furthermore, women face numerous difficulties in understanding and realizing their legal rights due to the complex diversity of the legal systems⁴¹². In addition, women fear from the apparition of divorce, scandal, and stigmatization of social stigma⁴¹³, and feeling guilty towards the family, its disintegration, the loss of children and harming their reputations, especially the female members. This prevents them from filing a complaint. These fears are reinforced in the absence of economic resources that battered women can rely on in their legal battle to question the legally violent man, especially in

⁴⁰⁷ F. Abdel Sattar, 1975, p. 133.

⁴⁰⁸ F. Abdel Sattar, 2010, p. 115.

⁴⁰⁹ N. Saleh, 2006, p. 161.

⁴¹⁰ S. Sabah, 2009, p. 39.

⁴¹¹ women media and development, 2016, p. 46.

⁴¹² ESCWA, 2014, p. 51.

⁴¹³ A. Abu Ayyash, 2007, p. 21.

the absence of shelter for them and their children if they are rejected and abandoned by the family; in addition to the widespread belief among women of lack of confidence in the criminal justice system and unwillingness to deal with it⁴¹⁴.

On the other hand, article (334/2) allows the complainant to waive his / her complaint at any stage of the litigation, provided that the waiver is issued before the judgment rendered in the lawsuit becomes final⁴¹⁵. Waiving a complaint is a legal action by the victim, either explicitly or implicitly, expressing his / her will to suspend the proceedings of the case. It is also a branching right from the right of filing a complaint so it is only accepted from those authorized by law to file it⁴¹⁶. The law does not require that the complaint shall be clearly waived and in writing before the court. But it rather permits it to be presented orally before the police or public prosecution. It also permits the judge to implicitly infer it from the victim's behavior at his discretion according to the facts before him⁴¹⁷.

The right to waive the complaint is a source of danger that encompasses the female complainant throughout the criminal proceedings, especially since the waiver of the woman complainant is waiving her right to prosecute the perpetrator irrevocably for the expiry of the criminal case⁴¹⁸, and consequently, his impunity is achieved. Women are often forced to waive their complaints under the family pressure⁴¹⁹ by threats of being killed, divorced, deprived from inheritance, or any other pressures and restrictions as limiting her freedom and preventing her from leaving the house or being in contact with the outer world, especially if her complaint resulted in detaining the accused in one of the rehabilitation and correction centers pending this case. Waiving the complaint is a female's right but, at the same time, it is a weapon used against her, and duplicates the hardships on her way of seeking justice.

It is believed that the pressure exerted by the family to force the victim to waive her complaint against the aggressor is a means used to consecrate the patriarchal system which

⁴¹⁴ A. Abu Ayyash, 2007, p. 20.

⁴¹⁵ The peremptory or the final verdict is the verdict that has become the title of truth to exhaust all the appeal procedures.

⁴¹⁶ M. Najm, 1991, p. 71.

⁴¹⁷ F. Abdel Sattar, 2010, p. 124.

⁴¹⁸ O. Kayed, 2007, p. 304.

⁴¹⁹ ESCWA, 2014, p. 42. And A. Shomer, 2000, p. 61.

seeks to provide protection and support to the perpetrator by not allowing him to be subjected to the rule of law and tried at the expense of the rights of the woman victim who is not allowed to depart from the patriarchal authority or rebel against them in order to maintain the centers of power in the family and community. Therefore, the researcher recommends that women should be given the right to waive a complaint with legal safeguards to ensure that it will be released at their will without any pressure or coercion, as a condition that it be brought before the court only, explicitly and in writing and after taking judicial measures to ensure that women are not subjected to violence.

As for the requirement of the complaint required by the legislator to initiate the criminal case for the crime of incest "rape of kin", it has other grounds. The legislator in the crime of incest is not content with making women an accomplice in the crime, but rather holds her liable in penalty equally to that of a man. But rather, he increased the degree of his patronage to the patriarchal authority when he restricted the jurisdiction of the Public Prosecution to initiate a public action in the crime of incest by filing a complaint which gave the right to file it to family members other than the accused woman. According to article (286) of the Penal Code: "The incest perpetrator described in the previous article shall be prosecuted on the basis of a complaint by a relative or brother-in-law of a criminal until the fourth degree."⁴²⁰

The deprivation of the woman's right to file a complaint about the crime of incest can be explained by the fact that the main purpose of criminalizing the incest is not to protect women from sexual assaults and harassment against them within the family, but rather to protect the family itself with its family ties and social reputation. From the legislator's perspective, this crime is committed by a woman and a man who have a legally defined relationship so that the family is the victim of the crime⁴²¹. Accordingly, the legislator grants the right to file a complaint to relatives or in-laws to the fourth degree but not women⁴²². Due to the legislator's miscalculation of the balance of power in family relations,

⁴²⁰ The preceding article is Article 285 concerning the incest mentioned in Chapter One.

⁴²¹ See the first chapter of the study.

⁴²² This means that the father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, uncles, aunts, nephews and Those in the same degree of kinship by the husband's family. have the right to file a complaint against women for being prosecuted for the crime of incest.

the woman becomes a perpetrator in a sexual offense⁴²³. He then grants most of the members of her family and her husband's family if she is married the right to initiate public action on the basis of the right to lodge a complaint, which has become a weapon that threatens women to exploit and blackmail in more sexual relations without being able to resort to the judiciary circles for obtaining justice. Women are afraid to go to the competent authorities to report sexual assault because they fear that the criminal justice agencies will receive their story with suspicion and disbelief, and blame her for the crime and accused her of complicity in committing the crime and causing her stigma publicly⁴²⁴.

The judiciary does not take into account the reasons why women are forced to avoid reporting the crime when they are subjected to rape, especially when such crimes fall within the family. Her silence and lack of recourse to the court to file a complaint against her rapist is evidence of her consent to the incident, which makes her in the field of indictment for the crime of incest. In a case in which a citizen filed a complaint against his father-in-law and his brother on charges of sexual assault on his sister, he was surprised that the Public Prosecutor's Office had charged his sister with the crime of incest. The Public Prosecution considered that "the failure of the woman to file a complaint against the two accused persons as evidence of her consent to sexual relationship". This caused her complainant brother to waive his complaint so that the suit for the incest against his sister be dropped⁴²⁵. This is especially true since the criminal justice institution represented by the police, the public prosecution, and the judiciary is not bound by the complainant's adaptation and are free to adapt the incident based on their understanding of legal texts, which are often not separate from the male mentality and stereotypes of women in the community.

2.1.2.1.2. Conditions of the complaint

The Code of Criminal Procedures No. 3 of 2001 requires that a complaint to be filed within a period not exceeding three months from the date of the victim's knowledge of the crime

⁴²³ See General Union of Palestinian Women, 2017, p. 28.

⁴²⁴ Amnesty International. 2015. P. 11.

⁴²⁵ See Ramallah's Penalty Magisterial Court Case No. 1147/2008

and the perpetrator with certainty beyond doubt⁴²⁶. Article (5) of the Code of Criminal Procedures No. (3) of 2001 states that: "In all cases where the law requires the filing of a criminal case, there shall be a complaint or a claim in the civil right by the victim or others, the complaint shall not be accepted after three months as of the date the victim is aware of it and the perpetrator unless the law provides otherwise." As long as the applicable penal procedures and penalties laws do not contain any specific legal provision that excludes crimes of violence and abuse against women from the time limit of the complaint, this means that the victim's right to lodge a complaint lapses over this period. If a complaint is filed after the expiry of the period, the complaint shall not be admissible and shall not have any legal effect⁴²⁷. Otherwise it will be void⁴²⁸.

In limiting a short period of time to lodge a complaint, the law aims to achieve legal stability so that the complaint does not become a sword in the hands of the victim who exploits it against the offender⁴²⁹, or misuses it⁴³⁰. However, the time limit for filing a complaint in cases of violence against women constitutes an additional impediment to women's access to their right to justice. The law does not take into account the beginning of the extent of the difficulties that hinder the arrival of battered woman to the competent authorities to file a complaint and then she is required to file it at a specific time that her complaint shall not be accepted after its expiry, especially since the resort of battered women to public authorities is not their first alternative. Battered women adopt individual self-strategies to protect themselves from violence within a gradual theory based on women's circumstances and the frequency of violence⁴³¹. This strategy begins with a period of silence, which is the result of trauma, pain, and psychological and physical attrition punctuated by giving the perpetrator plenty of opportunities to change his violent behavior⁴³². Then she moves to the stage of resorting to family mediation, which may expose her to exploitation and take advantage of her weakness and circumstances to impose

⁴²⁶ O. Kayed, 2007, p. 113.

⁴²⁷ N. Saleh, 2006, p. 161.

⁴²⁸ M. Abdul Baqi, 2015, p. 105.

⁴²⁹ F. Abdel Sattar, 2010, p. 113.

⁴³⁰ O. Kayed, 2007, p. 229.

⁴³¹ women media and development, 2016, p. 20.

⁴³² A. Abu Ayyash, 2007, p. 20.

sexual relations on them⁴³³. After all efforts have been exhausted at the domestic level and after the violence exceeds the woman's energy and tolerance, the woman begins to consider resorting to the official authorities to file a complaint⁴³⁴. At that stage, the legal time limit for accepting the complaint is over, especially since most women are not aware of the legal process⁴³⁵, such as the time limit related to filing a complaint. These legal details are difficult for non-law professionals to be aware of. Therefore, it is recommended that Article (5) of the Code of Criminal Procedures No. 3 of 2001 be amended to exclude crimes of violence against women, especially crimes of domestic violence, from the condition of limiting the time for filing the complaint. However, at the same time, it should be pointed to the problem of the loss of evidence to prove the fact of violence over time and the resulting weak legal status of the victim in her complaint. Therefore, the legal civil community establishments and women's rights organizations are demanded to launch legal awareness campaigns that aim at raising awareness among women on the issue of violence against women and the legal means available to the victim to confront it and prevent recurrence and hold the aggressor legally accountable, while at the same time, emphasis should be concentrated on the procedural legal articles that provide knowledge to ensure women's right to access to justice. Furthermore, the continuity of these campaigns should be emphasized so that they can become part of the permanent programs of these institutions and are not linked to internationally funded projects. In addition, such campaigns should be expanded to include all cities, towns, villages, camps and rural and remote areas; they should not be restricted to some major cities where civil society institutions exist.

The Code of Criminal Procedures No. 3 of 2001 also stipulates that the complaint must have specific conditions. Article (6), Clause (1) states that: "If the victim, in the circumstances referred to in Article (5) of this Code, has not reached the age of fifteen years or has a disability in his mind, the complaint shall be filed by his guardian, custodian or trustee." This means that the Code of Criminal Procedures No. 3 of 2001 requires the complainant to reach the age of fifteen years of age and be free of mental illness as a condition for accepting his complaint. Otherwise, the right to lodge a complaint about the

⁴³³ UN Women, 2014, p. 31.

⁴³⁴ S. Sabah, 2009, p. 49, 50.

⁴³⁵ ESCWA, 2014, p. 42.

crime to which he was a victim is transferred to his legal representative⁴³⁶. On the other hand, paragraph (2) of the same article stipulates: "If the interest of the victim conflicts with the interest of his representative or does not have a representative to represent him, the Public Prosecution shall take his place." The interest of the victim contradicts with that of his or her legal representative when the crime occurs from the legal representative to the child who has not reached the age of fifteen or to the person with a disability in his or her mind. In this case, the Public Prosecution replaces the legal representative in the exercise of the right to file a complaint.

From a theoretical perspective, this legal text does not marred any problem. However, its practical applications in the context of domestic violence against women raise a number of important issues, which mainly revolve around the mechanism of the Public Prosecution's knowledge of crimes of abuse against the girl child or women with mental disabilities, especially when such crimes are committed by the person who represents her legally in filing the complaint, and so their interest in filing the complaint contradicts with his interest in impunity; or in other cases where the guardian sacrifices the interest of the victim in exchange for preserving the interest of a male family member such as a brother, an uncle or a grandfather in impunity, or maintains the family's reputation and social image. It is well known that domestic violence is one of the most prominent challenges facing the official authorities due to the difficulty of detecting its cases, which remain mostly kept secret⁴³⁷. These crimes often occur behind the walls of the house and are surrounded by secrecy as a result of the practice of threatening the child victim not to inform anyone of the violence and abuse that she suffered from. In addition, it is always possible to keep the victim in isolation from the outside world, such as preventing her from going to school, going out of the house, or in contact with relatives. This is especially true in cases of separation of parents and children staying with the father, as a result of the mother's loss of custody of her children⁴³⁸, or the expiry of her legal custody⁴³⁹. Children, as a result of

⁴³⁶ S. Al-Waleed, 2012, p. 115.

⁴³⁷ H. Obeido, 2011, p. 9.

⁴³⁸ According to the Personal Status Law in force, the mother loses the right to custody if she marries someone who is not an unmarriageable person to a child. See O. Takroui, 1998, p. 271,

⁴³⁹ The mother's custody of her children ends at the age of 12 for male and at 9 for the female. See O. Takroui, 1998, p. 277.

hatred and grudge, are particularly vulnerable to abuse and harm, especially if the father marries another woman and establishes a new family. In this respect, it is possible to cite the case of the child, *Baraah*, whose father, after separation from her mother, practiced violence, beating, and abusing her, in addition to imprisoning her without the knowledge of anyone of the competent authorities for 9 years in the bathroom at home, preventing her from going to school⁴⁴⁰.

As for the victim with a mental disability, the case is more difficult and complicated because families consider the presence of a disabled person in the family as a social embarrassment, and so he is reserved and isolated from society completely. This increases the risk of ill-treatment, violence, and abuse in all its forms and ways, including physical and sexual violence, due to the victim's inability to understand the violence and the inability to file a complaint. In this respect, it is possible to cite in this context the case of *Samar*, who was suffering from a mild to moderate mental disability. On 12/9/2013, she was found murdered in her home; and after the investigation and examination of (DNA), it was found out that her brother raped and killed her while pregnant in the eighth month⁴⁴¹.

In light of the above, the researcher recommends that it is necessary to provide a free national line 24 hours a day, seven days a week, belonging to the Family and Juvenile Protection Police to receive and follow up reports of children, and launch national awareness campaigns for children on radio, television, and schools to raise the children's awareness of that free line. This should be accompanied with a national campaign to amend the articles of the Penal Code that allow parents to beat and abuse their children in order to contribute to the elimination of the culture of violence against girls and women in both the family and the community. It is recommended that the need to coordinate between the Public Prosecution and the Ministries of Health and Social Affairs, to conduct periodic field visits to families with people with mental disabilities, in order to ensure their protection from various types of violence and abuse by strengthening the element of monitoring and official follow-up in addition to discovering the crimes of abuse they may

⁴⁴⁰ Al- Bayan, Baraa and the story of her detention in the bathroom 9 years: <https://www.albayan.ae/editors-choice/varity/2012-01-24-1.1579288>

⁴⁴¹ ICHR. Annual Report, 2013, p. 64.

be exposed to and provide protection for victims by turning them into private shelters, and to hold the perpetrators accountable and be punished.

2.1.2.2 Lack of Legal Texts

The absence of legal provisions that guarantee women's rights is evident at the level of the Penal Code and the Code of Criminal Procedures.

2.1.2.2.1 Lack of Provisions in the Penal Code

The absence of legal criminalization of all forms of sexual harassment against women, whether at home, in the work environment or in the community, is an obstacle to their access to the right to justice. In light of the absence of a legal provision that explicitly and expressly criminalizes acts of sexual harassment of the elements and pillars of the crime and punishes them with a deterrent punishment, the criminal justice agencies will not be able to initiate public action against them, as this would be contrary to the principle of legality, which states that "there is no crime and no penalty except by text", and leaving out of the nature of the relationship that connects the Penal Code and the Code of Criminal Procedure. The Code of Criminal Procedure governing the competence of criminal justice services revolves in existence and non-existence with the Penal Code and consequently affects it in such a way that it put its provisions into practice⁴⁴². Because of the legislative vacuum resulting from the failure of the Penal Code and its inability to cope with the needs of members of the community, especially the need for women to feel safe and protected from sexual harassment that disturbs their lives and restrict their rights, the criminal justice system has been constrained and unable to prosecute and punish perpetrators, which means that they remain free with impunity to deter them and the victim remains without legal protection. Therefore, it is worth to reiterate the need to amend the Penal Code by adding a legal provision criminalizing all acts of sexual harassment.

In another context, the exemption of the Penal Code for crimes of beating, wounding, and abuse against women, which does not exceed the duration of illness and disruption, which does not exceed ten days of the scope of the duty to report the public official of the competent authorities of the crime is considered as turning a blind eye to violence against

⁴⁴² S. Al-Waleed, 2012, p. 9.

women. The Penal Code requires the public official to inform the competent authorities of criminal and criminal offenses to which he or she becomes aware of while performing his job or because of his performance of his job. In addition, it also requires health professionals to inform the competent authorities in case of suspicion that the person being treated is the victim of a criminal or a criminal offense, under penalty of criminal accountability for those who refrain from carrying out this legal duty for committing the crime of stifling felonies and misdemeanors and punishing them with a penalty of imprisonment of one week to three months or a fine of five dinars to twenty dinars, according to the text of Article (207/2/3).

This article is considered as an important legal means to enable public authorities to detect crimes in the community, to prosecute perpetrators and hold them accountable in penalty in order to achieve justice, ensure security, and tranquility for members of the community. However, this legal provision loses its legal value when it comes to physical violence against women, since it is unable to assist her in accessing justice because the legislator has excluded from the duty of the legal communication of offenses for which the law prohibits the initiation of public action against the victim's complaint in accordance with paragraph (4) of article (207). This means that the public official and health professionals are not legally mandated to report the crimes of abuse to which the woman is a victim if the duration of the illness or disruption does not exceed ten days.

Under this article, the law returns the ball back to the court of the woman, the victim of the crime of victimization and is expected her to lodge a complaint to punish the aggressors. In this case, it would have abandoned the abused woman and failed her when it obliged her to take the decision to file a complaint although it could save her from violence and suffering and rid her of the violence of her aggressor by a communication issued by the employee or physician to the competent authorities that it may exempt her from entering the quagmire of filing a complaint and the consequent family and community clashes with the patriarch authority.

The application of this legal provision means that women remain in the increasing and endless cycle of the violence due to the failure of the official health institution to deal seriously with the issue of reporting violence against victims due to establishing a culture

of non-interference in cases of violence against women. Studies have shown that women victims of domestic violence go to health establishments in a ratio higher than other women, because of the multiple health consequences of violence against them. However, it is often not possible to determine the true cause of the symptoms and signs of disease on them, even in the most obvious forms of violence, such as physical violence, where the possibility of violence is overlooked. The injuries are attributed to accidental accidents and women do not receive the information and services they desperately need⁴⁴³, particularly, assistance to inform the competent authorities about the violence against her.

Perhaps the case of the deceased Esraa Gharib, 20 years of age, from the town of Beit Sahour, is the latest evidence that can be put forward in this context to show the seriousness of this procedural deficiency on the lives of women. On 10/08/2019, the victim arrived at Beit Jala Governmental Hospital, suffering from scars and bruises all over the body and face. Her condition was not normal and it was clear that she had the signs of assault. The victim was admitted to hospital for medical tests to find a broken spine. The family claimed the victim fell from the balcony of her room. Nevertheless, the competent authorities were not even informed of the suspicion of possible violence. Even after the hospital staff heard the victim's screaming and demanding the police for help, the victim remained in the government hospital for three days after which she was released on the family's responsibility without completing the treatment. Following this, she was returned to the hospital dead body on 22/08/2019⁴⁴⁴. The forensic report showed that the victim's death was the result of acute respiratory failure due to multiple injury complications that she

⁴⁴³ Ministry of Health, (n.d.), p. 9.

⁴⁴⁴ The Killing of Israa Ghraib: Waiting for a Forensic Report: <https://www.arab48.com/%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A%D8%A7%D8%AA/%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1/2019/09/05/%D9%85%D9%82%D8%AA%D9%84-%D8%A5%D8%B3%D8%B1%D8%A7%D8%A1-%D8%BA%D8%B1%D9%8A%D8%A8-%D8%A7%D9%86%D8%AA%D8%B8%D8%A7%D8%B1-%D8%AA%D9%82%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D8%B7%D8%A8-%D8%A7%D9%84%D8%B4%D8%B1%D8%B9%D9%8A-%D9%88%D8%A7%D9%84%D8%AA%D8%AD%D9%82%D9%8A%D9%82%D8%A7%D8%AA-%D9%85%D8%B3%D8%AA%D9%85%D8%B1%D8%A9>

sustained⁴⁴⁵. The official investigations revealed that they were dealing with a murder case as the victim died as a result of beatings, domestic physical and psychological abuse⁴⁴⁶.

It is believed that the absence of a legal provision that requires public officials and medical professionals to report all crimes of violence and abuse to which women are subjected, while at the same time maintaining the restriction of the complaint constitutes a stumbling block in the way of women's access to justice. They also constitute a vicious circle in the efforts to confront and eliminate violence against women due to the continuity of the violence and increasing its severity and gravity over time and taking root in the community as long as acts of violence and abuse will remain out of sight of the competent authorities to prosecute and hold perpetrators accountable. Therefore, it is essential to recommend that the text of Article 207 of the Penal Code be amended to explicitly oblige the public official and health professionals to inform the competent authorities in case of suspicion that a woman is the victim of a physical assault under penalty of criminal responsibility in case of abstention, without restricting the duty of the complainant to file a complaint of the victim.

It should be noted in this context that the case of the victim Israa Ghareeb highlights the failure of implement measures to protect abused women in reality, especially the failure of the health sector in the implementation of the national transfer system of abused women issued by the Cabinet's Resolution No. 18 of 2013, which obliged workers in the health sector to explore violence against abused women who come to the health service⁴⁴⁷. They should also investigate violence against them, especially when there are situations, behaviors, signs, and indicators of psychological and physical well-being of women⁴⁴⁸, and to ensure that abused women are protected by informing the Family Protection Unit in the police if there is a threat to their lives⁴⁴⁹. This imbalance is the result of the lack of control

⁴⁴⁵Judicial medical report issued in the case of the victim Israa Gharib from the General Department of Forensic Medicine in the Palestinian Ministry of Justice

⁴⁴⁶ A press conference by the Palestinian Attorney General on the results of the investigation into the case of the girl Israa Gharib: <https://www.youtube.com/watch?v=6mltOsDI7nE>

⁴⁴⁷ Article 10 of the Cabinet's Resolution No. 18 of 2013, on the national transfer system of abused women.

⁴⁴⁸ Article 12/2 of the Cabinet's Resolution No. 18 of 2013, on the national transfer system of abused women.

⁴⁴⁹ Articles 15,16 of the Cabinet's Resolution No. 18 of 2013, on the national transfer system of abused women.

over health service providers regarding adherence to the national transfer system for battered women, as well as the absence of effective application of the disciplinary and penal accountability element against violators of health service providers⁴⁵⁰.

Furthermore, the absence of alternatives in the Penal Code to substitute penalties that deprive liberty constitutes a fundamental dilemma that prevents women from accessing justice. The Penal Code, with its traditional punitive policy limited to penalties that restrict freedom such as imprisonment, detention, and hard labor as punishment for violence crimes against persons, places battered women with two bitter options. A woman who is the victim of violence may either file a complaint whose consequence will result in the imprisonment of the aggressor and, therefore, deprivation of the family from the source of income and its sole breadwinner⁴⁵¹, or remain silent and endure violence and humiliation in order to preserve her source of livelihood. Battered women remain compelled by economic destitution to remain silent and cope with violence against them⁴⁵². The economic situation affects the decision of women to prosecute the aggressor, especially since many abused women are victims of a long series of violence, deprivation and discrimination since childhood, whose most prominent forms are represented by deprivation of education and early marriage, which is reflected in their educational attainment and cultural level, making it is difficult for them to refuse the life of violence and depend on themselves for the difficulty of finding good jobs or earning income to help them continue their lives independently.

⁴⁵⁰ See S. Abu-Alrob, Protecting Women from Violence Roles and Responsibilities, Issam Abdeen Intervention, 24 FM,

<https://www.facebook.com/24fmpalestine/videos/%D9%85%D8%AD%D8%B7%D8%A9-24-%D9%85%D8%B9-%D8%B3%D8%A7%D8%B1%D8%A9-%D8%A3%D8%A8%D9%88-%D8%A7%D9%84%D8%B1%D8%A8%D8%AF%D9%88%D8%B1-%D8%A7%D9%84%D9%85%D8%AC%D8%AA%D9%85%D8%B9-%D8%A7%D9%84%D9%85%D8%AD%D9%84%D9%8A-%D9%88%D8%A7%D9%84%D9%85%D8%A4%D8%B3%D8%B3%D8%A7%D8%AA-%D9%81%D9%8A-%D8%AD%D9%85%D8%A7%D9%8A%D8%A9-%D8%A7%D9%84%D9%86%D8%B3%D8%A7%D8%A1-%D8%A7%D9%84%D9%85%D8%B9%D9%86%D9%81%D8%A7%D8%AA-%D9%85%D8%B9/525665701514756/>

⁴⁵¹ H. al-Bastawisi, 2007, p. 20.

⁴⁵² A. Abu Ayyash, 2007, p. 21.

On the other hand, the perpetrator's imprisonment reinforces his hatred towards the woman who caused him to be imprisoned regardless of being a victim. No matter how long he is imprisoned, he will leave the prison with worse behavior⁴⁵³. Consequently, the abused women are forced to succumb to the reality of violence, and husbands become more intransigent if one of them is imprisoned after the wife has filed a complaint, which weakens the official establishment's efforts to negotiate with the violent husband to create a family environment free from violence⁴⁵⁴.

It is believed that the idea that the Penal Code should address the crimes of domestic violence against women should primarily target the perpetrator's behavior, rely on the idea of rehabilitation and correction instead of the idea of punishment limited to the punishment that deprives freedom whose negative consequences affect the victim and her children, so that it would be closer to calling it a collective punishment rather than correctional punishment. Therefore, the researcher recommends that the punishment that restricts freedom for non-serious crimes of violence, abuse, and in cases of recidivism or repetition should be replaced by precautionary measures aimed at changing the perpetrator's thoughts and beliefs about violence against women and accordingly contributing to the modification of his violent behavior in order to eliminate violence against women in the family under a wise punitive policy.

2.1.2.2.2 Lack of Provisions in the Code of Penal Procedures

Women fear that if they file a complaint with the competent authorities, they may become at risk of re-escalating or intensifying violence against them. The experiences of women who have resorted to the formal system for help have shown that they have been exposed to new types of stress and dangers to their lives, especially young single women and girls⁴⁵⁵. In the light of the absence of legal provisions in the Criminal Procedure Code that guarantee the protection of women victims⁴⁵⁶, and ensure that they would not be subjected to further violence if they resort to criminal justice, the woman complainant finds herself

⁴⁵³ H. al-Bastawisi, 2007, p. 20.

⁴⁵⁴ See N. Abu Awwad, 2016, p. 38.

⁴⁵⁵ UN Women, 2014, p. 29.

⁴⁵⁶ Amnesty International. 2015. p. 2.

alone in confronting the patriarchal authority while seeking justice without any orders or protection measures which aim to protect victims of domestic violence from further abuse. For example, they can prevent the alleged aggressor from contacting the victim, approaching a certain distance or forcing him to move from the house he shares with the victim⁴⁵⁷. There is nothing in the legal texts system that guarantees protection for abused women, no matter how the volume of violence is, even if they are threatened with death. In the case of the 16-year-old girl (AA), a report was sent to the police that she was subjected to sexual violence by a family member as well as being threatened with death by her family for a period of one year. Although the police followed up the case, the girl was found murdered on 7/6/2009⁴⁵⁸.

Women suffer from all these obstacles and challenges in the way of seeking justice whereas the perpetrator remains free and without being subjected to the detention of his freedom until proven guilty⁴⁵⁹. Even if he is detained on pending trial, he is often released on personal or material bail, regardless of the seriousness of the crime committed⁴⁶⁰, on the guarantee of his place of residence and being a breadwinner for his family, an employee, a university student, or any other pretexts justified by the lawyers who are good at providing proficient arguments for the benefit of the male client who is able to pay the bail amount and authorize the best lawyers to defend him. This means that the perpetrator remains free for the duration of the trial proceedings, which may take several years, threatening the woman victim in a way that affects her right to safety, security, and a decent life.

In the case of the citizen, Randa, who filed a complaint against her father and brother for beating her severely, the public prosecution released the perpetrators on bail. They came out and renewed the severe beatings that caused the death of the victim as a result of fractures in seven rib ribs in the chest cage. The crime was revealed after the victim's body

⁴⁵⁷ “Your Destiny is to Stay with Him” - State Response to Domestic Violence in Algeria, HRW. April 23/2017. <https://www.hrw.org/ar/report/2017/04/23/302587>

⁴⁵⁸ ICHR. Annual Report, 2009, p. 88.

⁴⁵⁹ UN Women, 2014, p. 35.

⁴⁶⁰ M. Abdul Baqi, 2015, p. 289.

was exhumed from the grave by a decision of the public prosecutor after the family protection police suspected of murder⁴⁶¹.

This lack of protectionist measures reveals shortcomings in the penal legislation that lack safeguards to protect the rights of victims in general and vulnerable groups in particular such as women in their quest for justice. This not only reflects negatively on the image of the judiciary and criminal justice agencies and the importance of their role in combating violence against women in society because of their inability to provide protection for victims, but also limits the confidence of battered women in the state justice institution and their willingness to seek legal assistance. Furthermore, it also reveals the inability of the criminal policy to confront and eliminate violence against women based on a deliberate legislative vision to ensure that women are encouraged to report violence against them and to resort to the official justice institution to protect and redress it.

On the other hand, the Code of Criminal Procedure does not allow the woman victim to go directly to the court to file her complaint about the violence and physical abuse she suffers from, but it rather forces her to go to the police station and the Public Prosecution to file a complaint. The Magisterial Court does not have the jurisdiction to look into the criminal case for misdemeanors without an indictment issued by the Public Prosecution⁴⁶². Therefore, if the woman goes directly to the court, she is directed to the police station or the public prosecution first. This makes women reluctant to file her complaint because of the suspicion and sensitivity of women when dealing with these institutions as male institutions, and other reasons referred to in section II of this chapter. Therefore, it is necessary to recommend that the amendment of the Code of Criminal Procedure No. (3) for the year 2001, by adding a legal provision allowing women to resort directly to the judiciary to file their complaint to a court competent to protect women from violence and a competent judge to consider her complaint or communication. In addition, the law should include protective measures whereby a judge can pronounce judicial decisions to ensure that the victim is protected from the risk of violence without being extracted from her environment and family. In this context, it is recommended that to review the Tunisian

⁴⁶¹ WCLAC, 2013, p. 45.

⁴⁶² M. Abdul Baqi, 2015, p. 104.

legal experience to confront violence against women and to benefit from it to ensure effective protection for women victims from domestic violence. The Basic Law No. 58 of 2017 on the elimination of violence against women allows women to seek restraining orders against perpetrators of violence against them without filing a criminal case. Orders can oblige the suspect perpetrator to vacate the house, stay away from the victim and her children, and refrain from violence, threats, damage to property or contact with the victim. The United Nations Entity for Women, which is the UN entity for gender equality, considers that these orders are among the most effective legal remedies to protect women from violence ⁴⁶³.

2.2 Failure within the Framework of Justice

For the safety of the penal procedures and ensuring the rights of the accused and the victims, the legislator divided the penal proceedings in stages that seek to ensure the best of rights and freedoms. Therefore, the legislator singled out both the judicial police and the public prosecution in conducting the pre-trial proceedings, and the sitting judiciary with the court proceedings.

2.2.1. Pre-trial Stage

The pre-trial deficiencies in the persistence of violence against women within the family and society are highlighted by the weakness of criminal justice authorities' penal measures to reduce it. This is evident through the work of the police, the powers of the prosecution, and the work of the Forensic Medicine.

2.2.1.1. Deficiencies in the Work of the Police

The amended Basic Law explains the function of the police service in defending the homeland, serving the people, protecting the society, maintaining security, public order, and public morals within the limits set by the law and in full respect for rights and freedoms⁴⁶⁴, especially since the police service has the capacity of judicial control under

⁴⁶³ Tunisia: Landmark Step to Shield Women from Violence, New Law Offers Protection, but Needs Funding. HRW, July 27/2019. <https://www.hrw.org/ar/news/2017/07/27/307198>

⁴⁶⁴ See Article 84 of the amended Basic Law of 2003 and its amendments.

the Code of Penal Procedures No. 3 of 2001⁴⁶⁵, This grants the police the power to prejudice the exception of personal freedoms within the procedural controls established by the law. In this capacity, the role of the police in confronting violence against women is evident in the period before and after the establishment of family protection.

2.2.1.1.1. Before the Establishment of Family Protection Unit

Women are underrepresented in various parts of the criminal justice system, especially in the police force⁴⁶⁶. In this regard, women constitute only 3.3% of the total number of workers in the Palestinian Police Service⁴⁶⁷. Their job tasks are limited to carrying out administrative tasks that do not involve any of the vital tasks such as investigating, taking complaints and statements, or administering grievances and human rights⁴⁶⁸. This makes the police service a highly masculine system both in terms of the number of policewomen and in terms of the distribution of roles and functions. Consequently, this is reflected negatively on the desire of abused women to resort to the police force. Due to the weakness of the female police component, women are reluctant to go to a place where the majority of men work⁴⁶⁹. In particular, the idea of questioning women by men is frightening to women, especially the quality of women who had contact with men from non-relatives is at the narrowest level⁴⁷⁰. The fear that can be generated in the victim at police stations may outweigh the fear and harm that may have been caused by the violence suffered by a member of her family, especially in light of the overcrowded police stations with other crimes and the absence of police officers trained to deal with victims of domestic violence⁴⁷¹.

When resorting to the police, abused women are discriminated against on the basis of sex⁴⁷², and inappropriate treatment such as ridicule and mockery of their cases, and they

⁴⁶⁵ See Article 21 of the Code of Criminal Procedure No. 3 of 2001.

⁴⁶⁶ ESCWA, 2014, p. 40.

⁴⁶⁷ Sh. Odeh, et al., 2016, p. 8.

⁴⁶⁸ Sh. Odeh, et al., 2016, p. 104.

⁴⁶⁹ Sh. Odeh, et al., 2016, p. 109.

⁴⁷⁰ UNODC, 2014, P. 8.

⁴⁷¹ H. Obeido, 2011, p. 1.

⁴⁷² Sh. Odeh, et al., 2016, p. 95.

are not treated seriously⁴⁷³. The victim is blamed for being subjected to violence⁴⁷⁴ and criticism, especially if her presence in order to file a complaint against her husband, brother, or father for committing violence against her, especially if the violence and abuse are not materially significant⁴⁷⁵. Police officers employ several methods to convince women not to bring their complaints to justice⁴⁷⁶. Sometimes women are treated with nervousness and lack of respect⁴⁷⁷; at other times, they are persuaded to endure violence and silence in order to preserve their families, children, her family's reputation, and her social status⁴⁷⁸. In other cases, the complaining woman faces the policeman's refusal to file her complaint⁴⁷⁹.

On the other hand, it is not uncommon for women who seek justice that the police are biased in favor of the perpetrator, who has a personal relationship with one of its members⁴⁸⁰. Fairly often, men's relationships are often extensive in society by virtue of the public space in which they are located whereas women's relationships are often limited and weak by virtue of the private space in which they are located. Normally, men exploit their personal relationships and influence within the police force to give priority to their interests that are incompatible with the interests of women. They are assisted in this by the fact that the nature of the police work in practice gives the police a wide area of diligence and discretion that may be abused for personal purposes⁴⁸¹. The police may refuse to take a woman's complaint against a powerful and patronizing assailant; patronage, as a manifestation of corruption, plagues the police⁴⁸². This is reflected in the credibility and professionalism of the police that lead to a loss of confidence in the justice system⁴⁸³.

⁴⁷³ See N. Abu Awwad, 2016, p. 35.

⁴⁷⁴ women media and development, 2016, p. 76.

⁴⁷⁵ UN Women, 2014, p. 40.

⁴⁷⁶ ESCWA, 2014, p. 40.

⁴⁷⁷ Sh. Odeh, et al., 2016, p. 44.

⁴⁷⁸ See Amnesty International. 2015. p. 2.

⁴⁷⁹ See N. Abu Awwad, 2016, p. 35. And For more See: A question of Security Violence against Palestinian women and girls, HRW, 5/11/2019, <https://www.hrw.org/report/2006/11/06/question-security/violence-against-palestinian-women-and-girls>

⁴⁸⁰ UN Women, 2014, p. 30.

⁴⁸¹ F. Rabayaa, 2017, P. 24.

⁴⁸² Sh. Odeh, et al., 2016, p. 44.

⁴⁸³ UN Women, 2014, p. 30.

Furthermore, the female victim finds it very difficult to resort to the police in order to file her complaint, especially when the subject of the complaint concerns a sexual offense. In cases of rape, the complaint of women or girls is not taken seriously enough. On the contrary, traditional rules are used to address the complaint before the complaint is registered and turned into a case by the police acting as a mediator to convince the victim to marry her rapist on the pretext to preserve the interest of the girl and preserve her reputation and the reputation of her family⁴⁸⁴. In addition, the female victim finds herself obliged to provide a detailed account of the crime to a male police officer. For this reason, she is reluctant to give explicit information about the details of the assault she suffered from because of embarrassment and fear of confidentiality⁴⁸⁵. This weakens her legal status as a result of incoherence or gaps in her statement. It is even more difficult if the victim is a child, who must file a complaint through her guardian in accordance with the Code of Criminal Procedures No. 3 of 2001⁴⁸⁶.

On the other hand, the bitter experience of women with sexual violence in the interrogation room becomes a material to satisfy the curiosity of investigators who try to learn more about the nature and forms of the relationship⁴⁸⁷, and inquire about the behavior of the woman and her previous sexual biography although these questions are not materially related to the requirements of the case, which hurts the woman and makes her worry, ashamed, and humiliated⁴⁸⁸. In most cases, women face doubts about the credibility of her narration of being sexually assaulted by indicating that she was satisfied with the sexual relationship and that was not the first time to have a sexual relationship⁴⁸⁹. In addition, the woman victim of sexual violence suffer from sexual harassment and degrading abuse, such as verbal abuse, as well as sexual harassment⁴⁹⁰, in addition to threatening with sexual assault⁴⁹¹, or attempts to impose private relationships by police officers who are familiar

⁴⁸⁴ D. Ismail, 2006, p. 17.

⁴⁸⁵ Sh. Odeh, et al., 2016, p. 89.

⁴⁸⁶ See article 6 of the Criminal Procedure Code No. 3 of 2001.

⁴⁸⁷ S. Sabah, 2009, p. 52.

⁴⁸⁸ UN Women, 2014, p. 41-42.

⁴⁸⁹ D. Ismail, 2006, p. 17.

⁴⁹⁰ Sexual violence against women and girls in the Middle East and North Africa, Nazra for Feminist Studies, <https://www.rdfwomen.org/wp-content/uploads/2016/02/SVAW-MENA-Arb.pdf>

⁴⁹¹ UNODC, 2014, P. 8.

with the victims' records⁴⁹². This contradicts with the duty of the police force to provide assistance, protection, and safety to the victims. These practices also constitute a violation of Article (2) of the Code of Conduct for Law Enforcement Officials that states:

"In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons⁴⁹³."

Furthermore, the abused woman who resorts to the police for protection and assistance is also forced to undergo a medical examination of her reproductive organs to verify her virginity because of questioning the credibility of being sexually assaulted and she is suspected of having sexual relations with her consent. In all cases where girls flee their homes as a result of domestic violence and resort to the police, they must undergo a virginity test as a condition for protection and shelter in safe houses⁴⁹⁴. Although there are no legal grounds for the police in implementing this humiliating measure of the dignity of women and violates their privacy in all criminal law systems, it is justified by "medical and legal necessities⁴⁹⁵."

In other cases, women who are victims of sexual violence may need to undergo a medical examination of their reproductive organs in order to obtain evidence to prove that they have been raped in a manner that strengthens their legal position to initiate a rape case. However, battered women, because of the male dominance of the forensic sector, do not trust its medical reports⁴⁹⁶. On the other hand, medical examinations following sexual violence appear to be another type of violence against women⁴⁹⁷. The medical examination carried out by male doctors may put them at risk of trauma again⁴⁹⁸, especially when the sensitivity and specificity of the medical examination is not taken into account for women, which exposes them to enormous psychological pressures, which are further aggravated by exposing women to the risk of exposure to the public and stigmatizing them with social stigma that brings them scandal throughout their lives. Police procedures for medical

⁴⁹² See N. Abu Awwad, 2016, p. 34.

⁴⁹³ Adopted by General Assembly resolution 34/169 of 17 December 1979.

⁴⁹⁴ S. Abu Dayyeh, 2004, p. 160.

⁴⁹⁵ S. Abu Dayyeh, 2004, p. 160.

⁴⁹⁶ UN Women, 2014, p. 33.

⁴⁹⁷ UN, In-depth study on all forms of violence against women: Report of the Secretary General, 2006, p.126.

⁴⁹⁸ Penal Reform International, 2012, P. 6.

examinations do not make women feel comfortable, safe, and confidential. The victim is sent to a public hospital, which is always full of patients, their companions, and reviewers, using one of the official police cars. The woman is escorted with a police officer inside the hospital,⁴⁹⁹ which draws the attention of citizens and expose women to humiliation, shame, and disgrace⁵⁰⁰.

The lack of confidentiality and privacy is one of the main difficulties that face women in dealing with the police, as women news and details of their sensitive issues are often disseminated to all police members from different departments and sections⁵⁰¹, even those sections that have no direct jurisdiction in the process of investigating or reviewing the case. The police are busy knowing the details of the case and learn their particulars, not to contribute nor to help in finding a solution to the case, but rather out of curiosity and knowledge. As a result of the mismanagement of women cases who resort to the police, the women news and details of their cases are circulated and published in the victim's area by a police officer who lives in the same neighborhood, putting a woman's life and safety at double risk, such as murder to preserve honor and to wash away family shame as a result of social stigma⁵⁰². This provides a negative example of how the police and its management deal with the crises of women and their tragedies, as well as the multiplication of problems and exacerbation rather than finding solutions to them. Therefore, the fear of battered and raped women about resorting to the police has been reinforced because of their lack of confidence in maintaining their confidentiality⁵⁰³.

It should be noted that the failure of the police to respect the confidentiality contradicts with Article (4) of the Code of Conduct for Law Enforcement Officials that states:

“Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.”

⁴⁹⁹ See A. Assi, 2010, p. 14.

⁵⁰⁰ See F. Al-Homoud, 2002, p. 43.

⁵⁰¹ Sh. Odeh, et al., 2016, p. 99.

⁵⁰² See F. Al-Moaqat, 2007, p. 89.

⁵⁰³ D. Ismail, 2006, p. 18.

In many cases, the policeman plays the role of a social reformer rather than law enforcement. Police officers intervene in the course of justice by proposing to make settlement rather than resort to justice⁵⁰⁴. This is especially true in the absence of a clear standard procedure manual to be applied to all police departments if abused women victims resort to police stations,⁵⁰⁵ in addition to the lack of professional competence specialized in dealing with issues of violence against women⁵⁰⁶. As a result, their problems remain unresolved and they remain unprotected⁵⁰⁷. In many cases, the police returned the woman to her family without effective legal guarantees that she would not be harmed⁵⁰⁸. It is customary for women and girls seeking help from the police to be returned to their homes after a relative or safety officer such as a father, a brother or a husband signs a pledge not to beat or harm them. In most cases, however, the victim continues to experience violence after returning to her family⁵⁰⁹. The solutions provided by the police are temporary and quickly returned women to situations of violence and discrimination against them more acutely⁵¹⁰.

Such action violates Article (1) of the Code of Conduct for Law Enforcement Officials that states,

“Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.”

Police mediation reinforces women's negative perception of the official justice system, especially as it provides evidence of police bias towards patriarchal mentality and their preference for the male offender's impunity over women's interest in protection, security, and justice. In particular, the Palestinian Penal Procedure Act No. 3 of 2001 does not embrace the criminal mediation system. Under the pretext of preserving the family's unity and reputation, the police abandon their key role in protecting abused women and take the

⁵⁰⁴ ESCWA, 2014, p. 40. And Amnesty International. 2015. p. 2.

⁵⁰⁵ See A. Assi, 2010, p. 14.

⁵⁰⁶ D. Ismail, 2006, p. 18.

⁵⁰⁷ Sh. Odeh, et al., 2016, p. 84.

⁵⁰⁸ D. Ismail, 2006, p. 18.

⁵⁰⁹ UN Women, 2014, p. 31.

⁵¹⁰ S. Sabah, 2009, p. 58.

necessary legal action to begin criminally prosecuting and punishing the perpetrator⁵¹¹. The police, in their approach to abused women, are closer to the tribal system than to a criminal justice system⁵¹².

In another context, the police are blamed for not systematically classifying the data on cases of violence against women by age or marital status. In addition, there are no classified data based on the defendant or the victim, neither are there data on the family relationship between victims and suspects, as well as problems related to the classification of crimes related to sexual violence. Furthermore, there are also no data on the results of police investigations, classified according to type of crime and sex, including the number of cases opened or closed at the police level, and those that go to formal prosecution. All of the abovementioned issues impede the accurate measurement of the progress made by the police and institutions as a whole in addressing these crimes⁵¹³.

In the analysis and legal linkage, it is found out that the method adopted by the police in dealing with abused women includes a number of constitutional and legal violations, as follows:

To start with, this includes a clear constitutional violation of Article 30/1 of the Palestinian Basic Law, which states that "litigation is a protected right and guaranteed to all people. "Women have the right to seek justice and equity regardless of the degree and seriousness of the crime, regardless of the person who committed it, and the degree of his or her relationship with the victim. It is also her right to exercise this right on an equal footing with men without any difficulties or obstacles in the way of law enforcement due to discrimination against them on the basis of sex.

In addition, it includes the disruption of many articles of the Penal Code. When a woman turns to the police for fear of her life or physical integrity as a result of threatening of death or abuse, the police do not take legal actions on the pretext of claiming to achieve social

⁵¹¹ Amnesty International. 2015. P.2.

⁵¹² The tribal system is a traditional patriarchal system based on the male right to dominate and the duty of women to obey and sacrifice for the benefit of the family and children, so it is often seen as an impediment to women's access to their rights. See N. Abu Awwad, 2016, p. 38.

⁵¹³ UNDP/UN Women, (n.d.), Justice and Security Monitor, A Review of Palestinian Justice and Security Sector Data, 2011-2016. P. 33.

benefit and preserve family unity and social coherence⁵¹⁴, this means disruption of a wide range of articles of the Penal Code relating to threats of crime, felony, misdemeanor, inflicting unjustified harm⁵¹⁵, or even male violence crimes⁵¹⁶, and the crime of attempted murder⁵¹⁷. This occurs in light of the fact that the rules of the Penal Code are subject to the substantive rules that need to be applied in order to bring them into practice. This can only be done through the role of criminal justice agencies in taking the legal procedures to be followed in the event of one of the crimes stipulated in the Penal Code against women.

In addition to the formation of the practices of police officers who fail to accept complaints of women victims of the crime of complacency in the performance of job duties in accordance with Article (183/1) of the Jordanian Penal Code No. 16 of 1960, which states that: "Any employee who negligently has no legitimate reason to perform his duties and executes his orders based on legal provisions shall be punished by a fine of ten dinars to fifty dinars or imprisonment from one week to three months." Failure of the police officers to deal seriously with women's complaints is a breach of their duties as performed by the elements of the crime and requires criminal accountability.

In addition, the acceptance of police officers to intervene in cases of women for non-professional considerations constitutes a crime of corruption as per Law No. 7 of 2010 on the Amendment of the Graft Law No. 1 of 2005. Article 4/5 of the aforesaid law stipulates that: "Corruption for the purposes of implementing the provisions of this law shall be considered as follows: acceptance of favoritism and nepotism which nullify a right and validate a void." Favoritism and nepotism mean: the employee's decision or intervention in favor of an undeserved person or entity, or preference over others for non-professional considerations such as party, family, religious or regional affiliation to obtain material or moral benefit⁵¹⁸. Consequently, police officers acting as judicial officers by obstructing or delaying legal procedures for accepting a complaint by battered women with the purpose of obstructing the exercise of their right to access justice for personal, non-professional

⁵¹⁴ See Amnesty International. 2015. P. 2.

⁵¹⁵ The threat provisions according to The Jordanian Penal Code No. 16 of 1960 are: 349-354.

⁵¹⁶ See Articles 333-337 of The Jordanian Penal Code No. 16 of 1960.

⁵¹⁷ See Articles 68-70 of The Jordanian Penal Code No. 16 of 1960.

⁵¹⁸ Article 4 Decree by Law No. 7 for the year 2010 on the amendment of the illicit gain law No. 1 for the year 2005.

utilitarian considerations are punishable in accordance with the provisions of Article 14 of the Law by Decree in imprisonment for 3 to 15 years.

Criminal liability is also held to members of the police who return the abused victim to her home or to the violent environment after resorting to the police for protection and legal assistance. and consequently, she becomes a victim of another crime. The ground of criminal liability in this case is the failure of the police to fulfill their legal duty to protect lives and objects, and to protect the legitimate rights and freedoms guaranteed by the Basic Law and related laws, as provided for in Article 3 of the law by Decree No. 23 of 2017 related to the police. The crime here is a crime of omission whose material corner is the result of the failure of police officers to do the work required by the enforceable law. The crime becomes an unintentional crime due to the absence of criminal intent, but it may become intentional when the probable intent is available and bears criminal liability of the judicial officers who are responsible for pursuing the case.

In another context, the police officers offer to mediate and reconcile the victim and the offender constitutes an expressively violation of article (16) of the Code of Criminal Procedure No. (3) of 2001, which states that: "Conciliation is permissible only in offenses and misdemeanors that are punishable by fines. The competent judicial officer shall, at the time of writing the minutes, offer the reconciliation to the accused and his agent in the offences and state the same in his minutes. The offer of reconciliation in misdemeanors shall be from the Public Prosecution. "Reconciliation in a criminal case shall mean mutual consent and agreement between the victim and the accused in minor offenses to terminate the litigation under conditions to be agreed upon such as compensation or apology to the victim. As a result of the conciliation, the criminal case shall be forfeited. The interest of the community shall not be greatly affected by reconciliation in such minor crimes as long as the direct victim has consented and agreed with the accused on the terms of the reconciliation⁵¹⁹.

According to the legal text, reconciliation in offenses and misdemeanors is only for crimes punishable by a fine rather than imprisonment. It is also learned that the jurisdiction of the

⁵¹⁹ M. Abdul Baqi,2015, p. 124.

judicial police is limited to offering reconciliation in the scope of crimes of offenses. For the misdemeanor perpetrator, the offer of reconciliation is the responsibility of the Public Prosecution alone. Since the crimes of violence against women are mostly misdemeanors and felonies without irregularities, this means that the judicial police do not have the legal authority or legal jurisdiction to offer reconciliation in them. Even if the judicial police is authorized by the Public Prosecution to offer reconciliation in the crimes of misdemeanors, legal conditions must be available right from the beginning for the validity of the authorization, the most important of which is that the authorization shall not be absolutely general at all, or it becomes a waiver of authority from the competent authority in the procedure, which means that the authorization must be from the Public Prosecution to the judicial police to offer reconciliation in a particular case rather than open or absolute. What is more important is that the authorization falls within the powers and jurisdictions of the commissioner and therefore the authorization should be limited to offer reconciliation in the crimes of misdemeanors punishable by a fine only rather than imprisonment. In the Penal Code, there is nothing in the classification of crimes against persons misdemeanors punishable by a fine only. Therefore, it is not permissible to say that the Public Prosecution may authorize the Judicial Police to offer reconciliation, which is a clear violation of the Code of Criminal Procedures No. 3 of 2001 and exceeds the limits of legal jurisdiction.

In conclusion, the criminal justice system treats abused women as an invisible element. Therefore, the interests of the family and community override their right to access to justice, making the woman's right to access justice a theoretical right away from the possibility of exercising it. This issue has grave consequences in rooting violence against women in the community because of the absence of criminal accountability and deterrent punishment as a result of the official establishment's negligence and non-handling of complaints of battered women seriously. Consequently, this matter carries with it implicit messages that criminal justice agencies are not impartial and unfair to battered women and that they are inherently masculine, sympathetic with the perpetrator, understands his position on violence against women, and supports him. Therefore, the researcher recommends the following:

- 1) Amend the Code of Criminal Procedures No. 3 of 2001 by introducing a legal provision that explicitly prohibits the offer of reconciliation and mediation by judicial officers and the Public Prosecution Office in cases of violence against women, and to allow it to be presented only by the competent court specialized in violence against women and family protection while taking safeguards, protective measures, judicial supervision and supervision.
- 2) Amend the Penal Code by adding a legal provision that guarantees the right of the victim in cases of violence against women to obtain assistance of a lawyer before the police departments in order to guarantee their rights.
- 3) the Code of Criminal Procedures No. 3 of 2001 should include mechanisms to delimit the leakage of data related to battered women who have filed complaints to the police and other criminal justice agencies, especially those data related to women who have survived crimes of sexual violence, so as to provide special protection to the complainants' data and prevent them from being leaked to those who do not have access to them.
- 4) Activating disciplinary and criminal responsibility against police officers who violate the law in cases of violence against women.
- 5) The need to activate the monitoring of civil society including its human rights and women's institutions on the work of the police on issues of violence against women.
- 6) Raising awareness of women about the need to go to the ICHR to file complaints about the abuses they face while dealing with the police.

2.2.1.1.2. After the Establishment of Family Protection Units

Following its establishment in 2008 by the Palestinian Police Authority after a significant increase in the number of cases of attacks within the family of all kinds⁵²⁰, the Family Protection Unit works to receive battered women and children who are victims of domestic violence, and victims of sexual abuse regardless of the perpetrator's connection to the

⁵²⁰ By 2014, the Family Protection Unit was merged with the Child Protection Unit under the name of “Family and Juvenile Protection Unit” with the aim of combining capacities and energies into one more effective body. H. Aslan, 2016, p. 12.

victim or where the victim occurred⁵²¹. The unit aims to preserve the social and family cohesion, so its work is not limited to transfer to the judiciary, but it rather seeks to reform and provide other services through a network of professional relations with concerned partner institutions and ministries⁵²².

Despite the introduction of the Family Protection Unit and the tenth anniversary of its establishment, abused women are still reluctant to turn to the police as a result of the difficulties that women face in dealing with the Family Protection Unit, which can be summarized as follows:

Abused women are still facing the problem of lack of policewomen when they turn to family protection units. Although there are policewomen in the family protection unit, their percentage is generally limited⁵²³. The attendance duration of policewomen elements at the police station is limited and does not include evening or night shifts. Although there is a policewoman on duty, there is no policewoman actually at the police station, but she is summoned from her home or from the police housing when an abused woman shows up. This is also the case on weekends, holidays, and official occasions. This means that the main problem that hinders women from going to the official justice system remains. Abused women still have to deal directly with male police, even with the Family Protection Unit. Abused women still have to file a complaint with the responsible policeman, which means that the problem of reluctance, embarrassment, and the lack of disclosure of all information related to sexual crimes persists. In addition, the problems related to the degradation of women and indifference or giving seriousness to their complaints remain without any development in which women feel comfortable or a change in the way the police deal with their cases. Complex and slow, the procedures do not take into account the various burdens placed on women and associated with their reproductive role, often associated with the productive role as well⁵²⁴.

⁵²¹ Palestinian Police, Family and Juvenile Protection Department <http://www.palpolice.ps/ar/content/specialized-departments/family-protection-unit> .2019/2/1 10:30

⁵²² Palestinian Police, Family and Juvenile Protection Department.

⁵²³ Sh. Odeh, et al., 2016, p. 120.

⁵²⁴ Sh. Odeh, et al., 2016, p. 91.

In addition to the continuing problem of the inability to provide solutions to women who have sought help, many women have complicated their problem or have been subjected to further violence, exploitation, and abuse as a result of resorting to the family protection police⁵²⁵. In this context, the case of the murder of the citizen (Nancy) in 2012 by her husband after being subjected to public slaughter in front of all citizens in the market of Bethlehem city due to marital disputes between them and her request for divorce from her husband constitutes a black point in the record of the police dealings with battered women, especially after it was proven that the victim had turned to the police to file a complaint against her husband one day before the crime⁵²⁶.

This is mainly attributed to the fact that the Family Protection Unit has not developed or introduced new work mechanisms that are commensurate with the sensitive nature of the issues of battered women. Women's complaints still do not reach the judiciary and end at the police cause women often withdrawing their complaints⁵²⁷, and in many cases, battered women were negotiated about reconciliation, mediation, or resorting to a tribal solution⁵²⁸, instead of resorting to justice or providing protection for them. These are the same traditional methods used by the police to deal with cases of battered women before the establishment of the Family Protection Unit, which raises many questions about the importance or feasibility of establishing a specialized unit to deal with the cases of women victims without developing their mechanisms to provide protection for women and enhance their access to justice.

On the other hand, there are many observations regarding the way the policewomen officers in the Family Protection Unit deal with the abused women. As police directorates in all governorates lack qualified cadres to receive the abused women⁵²⁹, the treatment depends mainly on the personality of the policewoman, the extent of her belief in the abused woman, taking into account her circumstances, and understanding of the issue,

⁵²⁵ %13.3 of women going to the Family Protection Unit partially solved their problem, 10% did not solve it, and 13.3% experienced violence again. Sh. Odeh, et al., 2016, p. 93.

⁵²⁶ ICHR. Annual Report, 2012, p. 48. And WCLAC, 2013, p. 43.

⁵²⁷ Miftah "Ray Akher", 2016, p. 2.

⁵²⁸ %11.4 of the women who took refuge in family protection units. Sh. Odeh, et al., 2016, p. 91.

⁵²⁹ UN Women, 2014, p. 18.

which indicates a flaw in the professional aspects of dealing with women's issues⁵³⁰. Some policewomen officers were also harsher and more violent than policemen, an issue which should be taken in consideration. The women's police, given the surrounding male environment, could be more masculine than men and possess patriarchal beliefs to the extent that they would cause more harm than support and assistance to abused women⁵³¹. Therefore, they provide a negative model that reinforces the reluctance of battered women to turn to the police.

The environment in which family protection units are located poses real challenges for women. Family protection units are located in the main buildings of the police stations in the Palestinian city centers, which are vital venues for the local community characterized by active and constant movement of people. In addition to the large numbers of police officers from various units, the police directorates lack the appropriate infrastructure to receive abused women⁵³². The area of the police stations does not accommodate a place for women separate from men, which contributes to the preservation of their privacy and meets their needs⁵³³, and preserves their dignity from humiliation, making women who seek help and protection from the police in a state of vulnerability. They are in plain view of the public and all police⁵³⁴, exposing them to further suffering and aggravating their problems rather than solving them as a result of the stigma attached to the woman who enters police departments. Based on the ideas of the members of the community regarding the insulting, ill-treatment and sexual harassment of women, as a result of the experiences of former women who resorted to the police service and have been circulated socially. In addition, the woman who enters the police departments is considered as a criminal⁵³⁵. Therefore, she is surrounded with community inadmissibility. The nature of the community considers that it is a taboo for women to deal with the police, which is predominantly masculine⁵³⁶.

⁵³⁰ S. Sabah, 2009, p. 52.

⁵³¹ UN Women, 2014, p. 42.

⁵³² UN Women, 2014, p. 18.

⁵³³ Sh. Odeh, et al., 2016, p. 97.

⁵³⁴ UN Women, 2014, p. 49.

⁵³⁵ Sh. Odeh, et al., 2016, p. 109.

⁵³⁶ Sh. Odeh, et al., 2016, p. 72.

This is particularly more difficult and complicated in cases of sexual assault or in situations where the life of the abused woman is in danger, as a result of the Family Protection Unit need to keep the threatened woman at the police station until the completion of the protection procedures, which take a lot of time due to weak logistics and coordination problems with partners⁵³⁷. Under the cooperation agreement with the Ministry of Social Development, the process of approving the admission of women victims to protective homes was limited to the Ministry of Social Development, creating a major problem once a victim of violence arrives at the police station at the post-social worker time of attendance. Consequently, the abused woman has to stay at the police station until the next morning⁵³⁸. There is also no vehicle dedicated to the Family Protection Unit and the social worker is not always available when it is needed to carry out protection measures for women at risk⁵³⁹. Sometimes the threatened woman is kept until the morning in a room inside the Family Protection Unit within the main police building, which is not easy. Fairly often, there isn't a room dedicated for this purpose as well as being ill-equipped. Women find themselves forced to sleep on the seats as well as the difficulty of access to facilities and basic needs, which exacerbates the fear of women, anxiety, and isolation from society. In addition, she regrets coming to the Police for fear of the reaction of the family and the community to stay in the police station which is full of the male elements of the police⁵⁴⁰.

Since the family protection units are restricted within the police headquarters in the main cities, this is another obstacle for women seeking access to justice. It is not easy for abused women who reside outside the cities such as villages and rural areas to be aware of the services provided by the Family Protection Unit. It is not easy for them to go to the city in order to file a complaint, in addition to the financial cost of transportation, which abused women are often unable to cover because of their difficult economic situation⁵⁴¹.

Following customs and traditions, women need to inform and obtain the approval of the head of the family to leave home. In many cases, women cannot travel to the city without

⁵³⁷ H. Aslan, 2016, p. 12.

⁵³⁸ See N. Abu Awwad, 2016, p. 34.

⁵³⁹ See Ministry of Social Development, 2016, p. 25.

⁵⁴⁰ See A. Assi, 2010, p. 14. And see National Sectoral Strategy for Promoting Gender Equality, Equity, and Women's Empowerment 2017-2022, p. 28.

⁵⁴¹ Sh. Odeh, et al., 2016, p. 8.

a man accompanying them due to the difficult conditions faced by individuals at checkpoints and barriers set up by the Israeli occupation at the entrances to Palestinian cities. The same person may be the victimizing person of violence, a matter which prevents the female victim from resorting to family protection units⁵⁴².

Based on the foregoing, it is necessary to recommend that the departments of the family protection units should be independent from the main building of the police service, so that these departments are established in places that maintain the visual and auditory privacy of battered women, avoid social stigma, direct contact with the rest of the police, and maintain their confidentiality. They must be equipped with all the services needed by abused women including shelters and a medical clinic to provide care services, examinations and medical reports necessary to prove crimes of abuse and sexual assault. Attempts must be made to ensure the presence of a forensic doctor on duty at the unit headquarters in a manner that avoids women exposure to the public at government hospitals. It is necessary to activate the system of shifts for policewomen to ensure the presence of policewomen at the family protection unit for 24 hours a day, seven days a week. In addition to providing all the logistical needs of the means and open the windows of networking and communication with the institutions and the competent ministries.

Knowledge should be disseminated and community awareness should be raised about the role of the Family Protection Unit and its mechanisms of action in order to enhance women's knowledge of its existence and encourage them to resort to it by emphasizing confidentiality and speed in dealing with issues and finding appropriate solutions that preserve women's rights. It is also important to recommend that the need to provide a free national number service available around the clock to receive complaints of battered women who cannot reach the headquarters of the Family Protection Unit. The aforesaid line must operate in confidentiality to provide counseling services and legal guidance in cases of violence and is characterized by rapid response in cases of emergency violence that require direct intervention to save women and maintain their safety.

⁵⁴² ESCWA, 2014, p. 41.

It should be recommended that the need to increase the number of policewomen officers in the Family Protection Unit so that the percentage of women police is the predominant percentage, which promotes confidence and satisfaction among abused women. This can be achieved mainly by encouraging women to join the cadre of police by amending laws that discriminate against policewomen on the basis of sex and reducing their willingness to join police work. Foremost among them is the Law on Service in the Palestinian Security Forces No. (8) for the year 2005, which is referred to its application to members of the police in accordance with the law by decree No. (23) for the year 2017 on the police, which limits the social allowance, pension, and health insurance benefits to male police officers rather than females⁵⁴³. Raising the level of professionalism for the elements of the unit and developing methods to deal with abused women that are more sensitive and responsive to gender issues. In addition, it is important to prepare a unified procedures manual that works by all family protection departments in cases of battered women in order to enhance professionalism in work and reduce personal standards. It is recommended that the methods of investigation and interviews with victims of domestic violence should be changed in line with human rights principles. It is necessary police officers to respect the code of conduct for law enforcement officials.

2.2.1.2. Deficiency in the Powers of the Public Prosecution

The Public Prosecution is the standing judiciary and the representative of the society legally charged with prosecuting the criminals and bringing them to justice. on February 7, 2016 The Family Violence Protection Prosecution, was established by a decision of the Acting Attorney General⁵⁴⁴, is competent to investigate all crimes committed within the family,

⁵⁴³ See Article 72 on Social Allowances and Article 218 on the application of the Civil Service Act and the Social Insurance Act of the Service Law in the Palestinian Security Forces No. 8 of 2005.

For more see: L. Sahweil, 2013, pp. 88-107.

⁵⁴⁴ WCLAC, congratulations on the establishment of the Department of Prosecution to protect the family from violence, <http://www.wclac.org/News/167/%D8%AA%D9%87%D9%86%D8%A6%D8%A9%D8%A8%D8%A5%D9%86%D8%B4%D8%A7%D8%A1%D8%AF%D8%A7%D8%A6%D8%B1%D8%A9%D9%86%D9%8A%D8%A7%D8%A8%D8%A9%D8%AD%D9%85%D8%A7%D9%8A%D8%A9%D8%A7%D9%84%D8%A7%D8%B3%D8%B1%D8%A9%D9%85%D9%86%D8%A7%D9%84%D8%B9%D9%86%D9%81>

sexual crimes committed against women and children outside the family, as well as follow-up guarantees of fair trial for women in contravention of the law, particularly at the level of sexual crimes, and communicate with all related ministries and institutions⁵⁴⁵. However, there are powers of the Public Prosecution that may harm the status of women in public proceedings, including the filing of the case, pre-trial detention, and deficiency in alternatives to penal proceedings.

2.2.1.2.1 Filing the Public Action

Article 152/1 and Article 149 of the Code of Criminal Procedures No. 3 of 2001 give the Attorney General, his deputies, and his assistants the power to file a criminal case⁵⁴⁶. By filing a criminal case, it shall mean stopping the proceedings and not referring the accused to court⁵⁴⁷. Under the Code of Criminal Procedures, the Public Prosecution must, at the end of the preliminary investigation, act on it. This can be done either by referring the criminal case file along with the indictment statement to the competent court to try the accused, or to file the criminal case⁵⁴⁸.

The decision of the Public Prosecution to file the criminal case seriously affects the right of women to have access to justice. On the one hand, the members of the Public Prosecution have the right to file the criminal case if it turns out that the act is not a crime punishable

⁵⁴⁵ Maan Network, the morning talk, the role played by the Family Protection Prosecution, Interview with the Head of the Family Protection Prosecution Darin Salhie, <https://www.youtube.com/watch?v=2ALIV8VsfI8>

⁵⁴⁶ Article 152/1 states: "If the prosecutor determines that the act constitutes a felony, he shall decide to indict the accused and sends the case file to the Attorney General or one of his assistants." Paragraph 5 states that: "If the Public Prosecutor or one of his assistants finds that the act is not punishable by law, the lawsuit has expired by prescription, general amnesty, the accused has been tried for the same crime, he is not criminally responsible due to his age or mental disability, the absence of evidence, the perpetrator is unknown, or that circumstances require that the case shall be filed due to its insignificance, he shall file it." Article 149 states that: "1. When the investigation is concluded and the prosecutor considers that the act is not punishable by law, that the lawsuit has expired by prescription, death, general amnesty, prior to the trial of the accused for the same crime, or because he is not legally responsible for his age or because of a mental disability, or that circumstances require that the case shall be filed due to its insignificance, he shall express his opinion in a memorandum and send it to the Attorney General for action. 2. If the Attorney General or one of his assistants finds that the opinion of the Public Prosecutor is in its place, he shall issue a reasoned decision to file the lawsuit and order the release of the accused if he is detained."

⁵⁴⁷ Mahmoud Mustafa Mahmoud referred at: M. Abdul Baqi,2015, p. 304.

⁵⁴⁸ M. Abdul Baqi,2015, p. 301.

by law. As long as the penal code does not criminalize marital rape or acts of harassment clearly and explicitly, this means that the Public Prosecutor's Office may file criminal proceedings in these cases and does not refer them to the judiciary. It also means that the Public Prosecution files a large number of cases of abuse of girls and minors by their parents, and cases of abuse of wives by their husbands because of the legalization of the Penal Code of these acts among the reasons for permissibility of exercising the right and authorization by the law.

On the other hand, the Public Prosecution shall take its decision to file the criminal case if the circumstances of the case warrant its filing on the grounds of its non-importance. However, the determination of the relevance of the case is considered sensitive in light of the failure of the legislator to clarify the meaning of the importance or non-significance, although it is understood from it the insignificance or simplicity of the committed crime and its lack of seriousness in such a way that a criminal case is required. It is questionable: so how a crime of the type of misdemeanor or felony to be insignificant, whether for the victim, parents, or society. How can the Public Prosecutor decide, independently of the judiciary and its safeguards to safeguard the victim's right to justice and equity, the insignificance of the crime against her and decide to file it.

The sensitivity and complexity of the matter are increasing in light of the patriarchal mentality that dominates the criminal justice agencies, including the Public Prosecution, especially with regard to dealing with cases of domestic violence against women. The cases of domestic violence are not considered a priority of the Public Prosecution's work because they do not take the adequate time to investigate and gather evidence⁵⁴⁹. The assessment of insignificance is left as per the judicial instructions issued by the Public Prosecution for 2009, at the discretion and good judgment of the member of the Public Prosecution. Article (634) of the Code states that "the Public Prosecution may, despite proven fact and the availability of the elements of the crime, decide to file the papers if public interest considerations require that the criminal action shall not be initiated between the accused and the victim who had a close relationship or neighbor, or the accused was a student and had never committed crimes before. The filing in these cases shall be categorical for

⁵⁴⁹ See F. Al-Moaqat, 2007, p. 90.

insignificance, and all depends on the discretion of the member of the Public Prosecution and its good judgment, while taking into account warning the accused not to return to such acts in the future". As long as the preservation of the social cohesion falls within the concept of the public interest, this sounds the alarm for the rights of battered women who are victims of domestic violence, whether physical or sexual since the Public Prosecution can file the case because of its insignificance. All that the perpetrator receives from the penalty is a warning not to commit violence again in the absence of any kind of legal guarantees not to repeat the violence. I understand the importance of this procedure for the perpetrator or the accused, but its risks may be greater for the female victim who will not obtain her right to justice.

On the other hand, the decision of the Public Prosecution to file the criminal case as the competent authority to investigate is a judicial decision, which leads to the defendant gaining the right not to be prosecuted again except in accordance with the law⁵⁵⁰. It shall also result that the Public Prosecution refrains from taking any action to investigate the case⁵⁵¹. This decision is final and the victim does not have the right to appeal it by any legal means unless she has filed its complaint and acquired the competence of the plaintiff of the civil right to claim compensation for the damages caused by the crime⁵⁵². According to Article (153), "A civil plaintiff may appeal against the decision to file a case at the request of the public prosecutor, 2) The Public Prosecutor shall decide on the appeal within one month as of the date of filing it by a final decision. 3) The civil plaintiff may appeal the decision of the Public Prosecutor before the competent court to hear the case and its decision shall be final. If the court repeals the decision, the matter must be heard before another body." On the basis of this legal provision, the civil plaintiff has two ways to challenge the decision of the Public Prosecution to file a complaint. The first is to appeal the grievance to the authority that issues the decision; and the other is to appeal the decision to the competent court. If the female victim of violent crimes does not obtain explicitly in her complaint before the Public Prosecution the competence of the civil plaintiff to claim

⁵⁵⁰ M. Abdul Baqi, 2015, p. 305.

⁵⁵¹ The decision to file the case is provisional; the Attorney General may cancel the decision to file the case in the event of new evidence or identifying the perpetrator.

S. Al-Waleed, 2012, p. 115.

⁵⁵² S. Al-Waleed, 2012, p. 548.

compensation for the damage caused by the crime, she has lost her right to challenge and appeal the decision of the Public Prosecution to file the criminal case. Although the law requires the Public Prosecution to declare the filing order to both the victim and the civil plaintiff in accordance with Article (152/6), which states: "If the Public Prosecution decides to file the papers, it shall declare the order to the victim and the plaintiff with civil rights. If either of them was dead, the announcement shall be to their heirs in their places of residence". However, as stated in Article (153), the right of appeal to the plaintiff is limited to the civil plaintiff rather than the victim.

This is a reason to criticize the limitation of the legal text to the right of appeal against the decision of the Public Prosecution to file the criminal case on individuals who are seeking to obtain financial compensation while the real objective must be the right to appeal against the decision of the public prosecutor in filing the criminal case in order to guarantee justice for the victim and punishment for the perpetrator of the offense (the plaintiff of the civil right) can always resort to the civil judiciary to claim compensation. This exposes battered women to injustice for losing their right to access justice and to hold abusers accountable. In particular, since women's awareness of their legal rights is weak, especially that it is known that the victims resort to the Public Prosecution to report their complaints about the crimes committed against them to hold the aggressor accountable and deter them from continuing to threaten the safety and security of the victim, but not to claim compensation for the damage caused by the crime. On the other hand, this requires that the plaintiff of the civil right to pay the fees and judicial expenses necessary for the case⁵⁵³. This is what most women victims are reluctant to do because of their difficult economic situation.

It is clear, therefore, that the Public Prosecution's decision to file the criminal case has serious consequences that are manifested in the murders of women, which are recorded as deaths in mysterious circumstances. In the wake of the legal amendments that repealed the exempting and mitigating excuses for the murders of women against the backdrop of the so-called honor, the Palestinian society has heard many cases of women dying in abnormal circumstances, such as falling from a high place or drowning, in addition to many case of

⁵⁵³ See Article 198 of the Criminal Procedure Code No. 3 of 2001.

suicide⁵⁵⁴. According to reports by the ICHR, the proportion of women who died in abnormal conditions in 2012 rose to 17%⁵⁵⁵. The year 2013 witnessed a decrease in the proportion of women killed on the basis of the so-called honor to 3 cases there were 16 cases of death in abnormal circumstances⁵⁵⁶. In 2014, 19 female deaths were reported in mysterious circumstances⁵⁵⁷, whereas in 2015, 26 female deaths were reported in abnormal conditions⁵⁵⁸. In 2016, there were 5 cases of female deaths in mysterious circumstances, while only one death was recorded in connection with the so-called honor⁵⁵⁹. For 2017, there were no female killings on the grounds of the so-called honor, while 18 deaths were recorded under mysterious circumstances⁵⁶⁰. Similarly, in 2018, no femicide cases were reported against the backdrop of the so-called honor, while murders of females in mysterious circumstances are still on the rise, reaching 20 cases⁵⁶¹.

In the opinion of the ICHR "Office of Grievances", this indicates a significant decline from the authorities involved in the investigation of crimes⁵⁶². It also indicates that the causes of the mysterious death may have been motivated by "family honor", which obliges the Public Prosecution as an official competent investigation to expand largely the investigation in the causes of these deaths and to expedite the detection of perpetrators and bring them to justice⁵⁶³.

It is believed that the marked increase in the number of these deaths is a clear indication that legal amendments alone will not be sufficient to protect the lives of women if they are not accompanied by an actual development in the capabilities and potentials of the criminal justice system, accompanied by a real will, efficiency, and professionalism reflecting the seriousness of the competent authorities to investigate and detect the crimes committed

⁵⁵⁴ WCLAC, 2013, p. 48. And D. Ismail, 2006, p. 15.

⁵⁵⁵ ICHR. Annual Report, 2012, p.48.

⁵⁵⁶ ICHR. Annual Report, 2013, p. 61.

⁵⁵⁷ ICHR. Annual Report, 2014, p. 78

⁵⁵⁸ See ICHR. Annual Report, 2015, p. 149.

⁵⁵⁹ See ICHR. Annual Report, 2016, p. 47.

⁵⁶⁰ ICHR. Annual Report, 2017, p. 48.

⁵⁶¹ ICHR. Annual Report, 2018, p. 42.

⁵⁶² ICHR. Annual Report, 2012, p. 49.

⁵⁶³ ICHR. Annual Report, 2018, p. 42.

against women and deal with the mysterious deaths of women without complacency or inaction caused by discrimination against women on the basis of sex. It is also feared that the high rate of these deaths will signal the evolution of the mentality of the perpetrators by devising methods to kill women away from criminal responsibility and punishment. It is worth mentioning here that the Palestinian judiciary ruled that the defendants were innocent in the case of the murder of the girl Aya Baradeya, because of the suspicion and contradiction that marred the prosecution's evidence, and the inability of the Public Prosecution to convince the court to link the accused to the charge against them. With this verdict, the murder of the victim Aya has gone completely in the way of ambiguity without any criminal liability against the perpetrators.⁵⁶⁴

Therefore, the researcher recommends amending the Code of Criminal Procedures No. 3 of 2001 to include a legal text requiring the Public Prosecution to exert all efforts and continue investigations to uncover the circumstances of women deaths in mysterious circumstances and suicides and treat them as criminal suspicions until proven otherwise. In addition, it is recommended to introduce a legal provision that excludes murders of women from the jurisdiction of the Public Prosecution to file the public case, which cancels the attempts of the perpetrators aimed at impunity from criminal accountability and punishment.

It should also be recommended that any criminal case related to violence against women should not be filed until the file has been studied in all its dimensions by the Family Protection Prosecution and a gender sensitive team. The decision of filing the case must be accompanied by legal safeguards to ensure that women are not subjected to further violence in order to ensure the rights of women victims. It is also important to recommend that the Code of Criminal Procedure be amended to allow women victims to challenge the decision of the Public Prosecutor's Office to file public proceedings and not limit this right to the plaintiff of civil right. It should be recommended that the need to ensure the right of the victim to obtain legal assistance and seek the help of a lawyer before the Public Prosecution

⁵⁶⁴ See the judgment issued by the Court of First Instance in Hebron as a criminal court in felony No. 29/2011, dated 20/1/2016. Referred to A. Al-Ashqar, 2019, p. 55.

to ensure her right to access to justice in light of the legal loopholes that threaten it with losing.

2.2.1.2.2. Remand in Custody

The specter of remand in custody is one of the most serious consequences for women as victims of discriminatory laws and practices. When women resort to the criminal justice system, whose laws do not take into account gender sensitivity and balance of family and community powers, they face the risk of remand in custody as a result of being charged with the crime of incest or abortion. According to the article (108) of the Code of Criminal Procedures, “The prosecutor may detain the accused after questioning him/her for 48 hours. The detention shall be extended by the court in accordance with the law.” Remand in custody shall mean the imprisonment of the accused during the time of investigation in whole, in part, or until the end of his trial⁵⁶⁵. Although remand in custody is a temporary procedure that leads to deprive the accused of their liberty for a period of time in order to accomplish the public interest in detecting the crime, it is considered a serious procedure causing severe harm to whom it falls upon, since it deals with one’s self, reputation, honor, and interests. It is one of the most dangerous measures that the accused is subjected to during the investigation stage because it undermines his right to freedom and infringes his right to presumption of innocence, which requires that no penalty be imposed on him unless it is in execution of a judicial ruling. Remand in custody is therefore an exceptional measure that must be surrounded by safeguards guaranteeing the rights of the accused⁵⁶⁶. The Criminal Code organized it so that the Public Prosecution is competent to issue it starting for a period of forty-eight hours only that the courts will then issue the authority of making it issued in accordance with Article (120) of the Code of Criminal Procedures No. 3 of 2001 which authorized the magisterial court to extend the detention of the accused for periods of not more than a total of 45 days. It also authorized the Court of First Instance to extend the detention of the accused at the request of the Public Prosecution or one of his assistants for a period that shall not exceed another 45 days. The competent court is also authorized to extend the detention of the accused for further periods of time until the end

⁵⁶⁵ A. Sorour, 1985, p. 623.

⁵⁶⁶ See M. al-Murr, 2006, pp. 17, 32.

of their trial. In all cases, however, the period of detention of the accused shall not last longer than the period prescribed for the crime for which he was detained.

Many detained women suffer from prolonged periods of remand in custody, which may last for many years, often until the trial is over, due to the frequent adjournment of the hearings, the slow pace of trial proceedings, and witnesses subpoena⁵⁶⁷. The report regarding “The situation of inmates in correction and rehabilitation centers in Palestine” prepared by the ICHR, indicates there were women who had been detained for more than 7 years without being sentenced in their cases⁵⁶⁸.

The length of detention of women is also attributable in particular to the fact that they have not been released during the trial proceedings although the Code of Criminal Procedures No. 3 of 2001 allows permissible release in all crimes of the accused if the investigation procedures do not require continued detention⁵⁶⁹. However, the grounds for maintaining public order and making sure that there are no new crimes against women released by her family directs the judge not to release the accused woman, especially in light of the lack of clear criteria and controls that guide judges in issuing release orders or not⁵⁷⁰.

Women's vulnerability and economic deprivation also increase the risk of being remanded in custody due to their inability to pay bail⁵⁷¹, or the cost of hiring a lawyer⁵⁷², since she does not enjoy the right to obtain legal assistance. The Palestinian Code of Criminal Procedures links the release of the accused to bail as an alternative to the detention of the accused to ensure their attendance in the investigation or trial sessions⁵⁷³, even though law grants the court the authority of transferring the bail into obligating the defendant to attend to prove his presence at the police station when their financial condition does not allow

⁵⁶⁷ N. al-Momani, 2015, p. 32.

⁵⁶⁸ ICHR. Special Reports, 2017, p. 16.

⁵⁶⁹ In the sense of Contradicting Article 119 of the Palestinian Criminal Procedures Code No. 3 of 2001.

⁵⁷⁰ M. Abdul Baqi, 2015, p. 290.

⁵⁷¹ The bail shall either be personal in accordance with Article 139/1 of the Criminal Procedures Code No. 3 of 2001. And shall be signed by the accused and his guarantors if the court so requests, a pledge of the amount determined by the judge. Or financial in accordance with paragraph 2 of the same article. The released accused shall deposit a sum of money at the court's treasury.

⁵⁷² UNODC, 2014, P. 4.

⁵⁷³ M. Abdul Baqi, 2015, p. 288.

paying the bail⁵⁷⁴. However, this option does not suit the woman accused as a result of the false view of the community to women who keep visiting police stations; but on the contrary, it will negatively affect the consequence of her deed subjected to further violence, rejection, and societal persecution.

It could be concluded that the detention of women on remand custody for abortion and incest causes severe psychological and social damages such as deprivation of children, family collapse, loss of work and shelter, in addition to social isolation, inferiority and stigmatizing her socially by which she cannot be reintegrated into society. In addition, they suffer from the negative consequences that affect their children, such as their displacement and behavior towards crimes, which is detrimental to society as a whole⁵⁷⁵. Therefore, the researcher recommends that the Code of Criminal Procedures No. 3 of 2001 be amended to include non-custodial measures in place of the pretrial detention of accused women, since they are victims at the outset and to avoid the disadvantages and negative consequences of detention in correctional and rehabilitation centers, in line with rule (57) of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary” THE BANGKOK RULES” that states: “The provisions of the Tokyo Rules shall guide the development and implementation of appropriate responses to women offenders. Gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed within Member States’ legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities.”

2.2.1.2.3. Failure of Alternatives to the Penal Case

Article 18 of Guidelines on the Role of Prosecutors states that: “In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the

⁵⁷⁴ See Article 140 of the Criminal Procedure Code No. 3 of 2001.

⁵⁷⁵ Penal Reform International, 2014, P. 14.

stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.⁵⁷⁶

Alternatives to criminal case could be defined as giving more roles to the parties of the criminal case, i.e. the accused and the victim, with the participation of the community in ending the criminal case and controlling its proceedings to confront the criminal phenomenon⁵⁷⁷.

In accordance with the Palestinian Code of Criminal Procedures No. 3 of 2001, images of the criminal case alternatives are represented in the Criminal Reconciliation System, Summary Foundations, and Waiver of the Complaint, where the waiver of the complaint is considered as one of the particular grounds for the expiry of the criminal case⁵⁷⁸. It is one of the voluntary grounds that depend on the free will of the victim, who initially has the right to complain provided that he is 15 years old and is not suffering from a mental disorder. Otherwise, a waiver shall be issued by the person representing him legally. A waiver of the complaint is not required to be submitted to a particular party, as it may be submitted to the judicial police officer, the public prosecution, or before the competent court to hear the case. On the other hand, a waiver of a complaint may be made at any stage of the criminal case before the final judgment is rendered⁵⁷⁹; the waiver of the complaint leads to the expiry of the criminal case⁵⁸⁰.

The system of summary foundations is a judicial verdict that decides on criminal proceedings without trial. It is a modern means which contemporary criminal legislation adopts to simplify criminal proceedings. It is stipulated in the Palestinian Criminal Procedure Code in contravention of laws and regulations relating to the municipality, health, and road transport⁵⁸¹.

⁵⁷⁶ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁵⁷⁷ A. Al-Fil, 2015, p. 40.

⁵⁷⁸ A waiver of a complaint shall not be considered in the criminal case unless the action has been stopped on a complaint initially.

⁵⁷⁹ According to Article 4/2 of the Criminal Procedure Code No. 3 of 2001.

⁵⁸⁰ See O. Kayed, 2007, p. 302.

⁵⁸¹ See Articles 308-313 of the Criminal Procedure Code No. 3 of 2001.

The system of criminal reconciliation is defined as an agreement concluded between the state and the accused for certain crimes of imposing a fine and leading to the expiry of the criminal case. It is a procedural and consensual system designed to avoid overburden of the judiciary and the justice system with long proceedings⁵⁸². The Palestinian Code of Criminal Procedures includes a system of criminal reconciliation within the framework of offenses and misdemeanors punishable by a fine only. Reconciliation shall be imperatively offered to the accused or his agent in the violations by the competent judicial officer at the time of writing the report. Reconciliation in misdemeanors shall be submitted by the Public Prosecution⁵⁸³. The criminal case shall be terminated when the accused, who accepts reconciliation within fifteen days as of the day following the acceptance of reconciliation, paying the amount of reconciliation which is equivalent to one quarter of the maximum fine prescribed for the crime or the minimum value prescribed for whichever is lower⁵⁸⁴.

The Palestinian criminal legal system lacks the provision of a criminal mediation system, which is essentially based on the search for an amiable solution to a conflict that confronts people usually associated with permanent relationships, such as family members, neighbors, or co-workers, through the intervention of a third person, the mediator, who is outside the judiciary⁵⁸⁵ at the suggestion of the Public Prosecution⁵⁸⁶ with the requirement of the parties' consent. Criminal mediation aims not to initiate criminal proceedings from the ground up but rather to give the mediator the opportunity to play his role in mediating cases where criminal mediation is more successful than proceeding with the investigation and trial⁵⁸⁷, while ensuring that the victim is compensated for the damage caused by the crime.

The alternatives to criminal proceedings have significant benefits for the criminal justice system and for women accused of both abortion and incest. It helps the judiciary to get rid of the criminal justice crisis resulting from the accumulation of cases and prolonged

⁵⁸² F. Ferm, 2017, p. 108.

⁵⁸³ See Article 16 of the Criminal Procedure Code No. 3 of 2001.

⁵⁸⁴ See Articles 17 and 18 of the Criminal Procedure Code No. 3 of 2001.

⁵⁸⁵ M. Metwally, 2007, p. 22.

⁵⁸⁶ F. Baji, 2013, p. 187.

⁵⁸⁷ F. Al-Dhafiri, 2009, p. 120.

litigation proceedings, as it removes a large number of minor cases of concern and distracts from focusing on other serious cases. At the same time, they save the accused women from unlimited serious damage that ensues from the duration of the course of action in the criminal case⁵⁸⁸. They may also avoid the accused women from being remanded in custody⁵⁸⁹. The length and complexity of judicial proceedings may increase the length of remand in custody, and consequently avoid the disadvantages of negative friction with those convicted or accused of serious crimes. It preserves the dignity of the accused woman by protecting her from public exposure and stigmatizing her and her family life-long as a result of the charge, trial and imprisonment for sex crimes in life imprisonment.

However, by analyzing the extent to which women accused of abortion or incest are benefiting from the alternatives to criminal proceedings provided for in the Palestinian Criminal Procedures Code, it is found out that the system of summary foundations does not extend to offenses against morality and public morality, including abortion, or crimes against family morality which include the crime of incest seeing that its scope is limited to violating laws and regulations relating to the municipality, health and road transport.

The same applies to the system of criminal reconciliation, which applies only to offenses and misdemeanors punishable by a fine only, while the penalty legally prescribed when committing the crime of incest is imprisonment from two to three years; while imprisonment for six months or a fine of twenty-five dinars upon committing the crime of abortion, and in conjunction with the mitigating excuse of maintaining honor⁵⁹⁰. This means that the criminal case related to the crime of abortion will remain in the courts until it is sentenced to be imprisoned or fined without any possibility of finding alternatives to the criminal case and spare the woman the bitterness of scandal and shame. It also means that the only way for women accused of committing the crime of incest to stop the criminal case against them and stop the prosecution in respect of them, is based only on the will of the complainant and waive his complaint by his own free will without the intervention of

⁵⁸⁸ J. Zaid, 2011, p. 28.

⁵⁸⁹ O. Al-Hadithi, 2010, p. 13.

⁵⁹⁰ See Articles 79, 321 and 324 of The Jordanian Penal Code No. 16 of 1960.

criminal justice agencies or a third party. The public prosecution cannot formally suggest criminal mediation to the parties to the conflict as long as it is not regulated by procedural law and does not provide for its introduction.

It could be concluded from all these facts that in light of the fragile role of the public prosecution and society in achieving restorative justice and stopping the criminal case against women accused of crimes of incest or abortion, it will not be possible to heal the rift and rectify the mistakes made by the criminal legislative policy within The Jordanian Penal Code No. 16 of 1960 of not considering the crime of incest as a crime of "rape of kin", which is represented in having the retention of criminalizing abortion resulting from rape in a way that reflected negatively on women as victims of criminal codes, which included procedural deficiencies, exacerbated their suffering and caused social injustice.

Until the amendment of the Penal Code, decriminalization of abortion resulting from rape, and the amendment of the scope of criminalization in the crime of incest, it should be recommended that the legislator include in the Code of Criminal Procedure the criminal mediation system in a modified manner that allows the public prosecution to present mediation to the parties through a neutral intermediary outside the judicial system. The researcher recommends that he be either a representative of the Ministry of Women or WCLAC for their long experience in intervening in women's issues and negotiating and finding successful and satisfactory solutions in the interests of women away from the discriminatory mentality against them. The aim of mediation is to intervene to prevent criminal proceedings against women accused of incest and to avoid scandal, shame, and social stigma, by persuading the complainant to waive his complaint before initiating the public action and to find satisfactory solutions for the parties, including subjecting women to rehabilitation treatment programs and involving the complainant in awareness programs. It should be understood that there is no room to claim compensation for the victim (the complainant) financially for the damage caused by the crime of incest. The fact must not be neglected that women remain victims of patriarchal authority, which forced them to engage in unequal sexual relations resulting from violence, threats, and extortion, and victims of unjust laws that discriminate against them on the basis of sex and criminalize their involvement in those relationships without regarding their fragile situation with family and community. It is also important to recommend that the legislator amend the

Code of Criminal Procedures No. 3 of 2001 by stipulating explicitly the inclusion of the crime of abortion committed by women in order to preserve their honor within the criminal reconciliation system.

It is worth mentioning that the development of the criminal justice system including the police and the public prosecution, which is represented by the creation of specialized departments to protect the family from violence, was the result of administrative decisions issued by the leadership of these institutions but was not within the institutionalization of those departments. This is a matter of concern, especially as the Family Protection Department and the Family Protection Prosecution have not been established by law. In turn, this threatens the existence of these departments in the future, as well as the incomplete system of specialized criminal justice systems because there is no specialized judiciary to deal with cases of domestic violence⁵⁹¹.

2.2.1.3. Deficiencies in the work of the Forensic Medicine

The National Center for Forensic Medicine was established at the Ministry of Justice by virtue of a decision issued by the Cabinet at its 45th session on 19/04/2010. Forensic medicine is defined as the science that examines the application of technical expertise to cases pending before the judiciary, such as the detection of crimes and criminals, the mental and psychological state of persons and their ability to manage their own affairs. Forensic medicine also determines the types of injuries: criminal, fabricated, suicidal, accidental. It is also useful in adapting the crime of killing or suicide, minor or serious harm, rape or indecent assault, and determines the type of crime felony or misdemeanor and consequently the determination of the competent court.

⁵⁹¹ The Family Protection Unit was established by the decision of the General Director of Police and the Family Protection Prosecution was created under the decision of the acting attorney general. Interview with Dr. Issam Abdeen, Head of Advocacy Unit, Al-Haq, 19/10/2019.

In addition, forensic medicine also determines the amount of damage and the period of disruption to work in the crimes of victimization and the adaptation of the crime to harm minor or serious accordingly⁵⁹². The importance of the legal role of forensic medicine in the so-called criminal evidence which is the establishment of evidence of the crime and its attribution to the accused. The National Center for Forensic Medicine is responsible for the follow-up of forensic medical cases by autopsy, the apparent examination of corpses, examination of sexual assaults, and forensic medical examinations (clinical forensic medicine)⁵⁹³.

In Palestine, there is no law regulating forensic medicine, but it is based on some of the legal texts contained in the Penal Procedures Act No. (3) of 2001 concerning the deputation of experts and evidence⁵⁹⁴. Due to the absence of the law, there are no clear procedures in the work of forensic medicine. There are no legal provisions that determine when cases of autopsy shall be examined by either a medical committee or by a single physician. In addition, there are no legal provisions to control when the coroner's report is submitted to the competent authorities⁵⁹⁵. There are no other legal texts that regulate the work of the Department of Forensic Medicine and specify the conditions, scientific, and technical qualifications that must be satisfied in its cadres. Furthermore, there are no legal provisions that ensure confidentiality, impartiality, transparency, and credibility of forensic reports, and criminalize the process of manipulation or fraud and punish it with deterrent penalties. This issue raises the question of the integrity and credibility of the forensic reports issued by the Palestinian National Center for Forensic Medicine in cases of violence against women, particularly murder cases, as well as cases of sexual assault, this leads us to question the extent of the conviction among policy makers, especially the criminal ones, about the reality that women can be exposed to in general within the value and legal system, which seriously affects the existence of legal provisions that entail achieving criminal justice for women with the aim of comprehensive empowerment within the framework of

⁵⁹² M. Abdul Baqi, 2015, p. 414.

⁵⁹³ See The General Department of Forensic Medicine and the Criminal Laboratory, Justice Information Center at the Ministry of Justice, <http://www.moj.pna.ps/userfiles/file/teb.pdf>

⁵⁹⁴ See Articles 64-71 and 220 of the Code of Criminal Procedure No. 3 of 2001.

⁵⁹⁵ See R. Abu Zuhri, Israa Gharib what next?, Isam Abdeen interview, <https://www.facebook.com/AJYAL.FM/videos/436051463688820/UzpfSTE3NDE4ODUzNDU6MTAyM DU5NjU0MTEyNTEzNDE/>

equality and justice both at the social and legal. It can be said that it is essential to have clear legal controls with available mechanisms to implement them in order to delimit the procedural negatives at different stages in the criminal justice system.

If some examples might be cited from the press reports which make suspicions regarding the forensic system, it can be said that this is due to the absence of procedural legitimacy specified by the legislator, which is supposed to address any legal gaps through which such cases may penetrate. The case of the victim Israa Gharib opened the door wide to search and scrutinize the integrity of procedures, specialization, and methodology of the work followed by forensic medicine. It also highlighted the tainted chaos and abuses chasing some officials of its administration and staff. During the waiting period for the issuance of the forensic report, three of the forensic doctors submitted their collective resignation. Those are the doctors who were supposed to participate in writing the medical report on Israa Gharib, as they are members of the committee charged with the autopsy of criminal cases at the Institute of Forensic Medicine in Abu Dis. The resigning doctors stated that there were abuses and catastrophic mistakes made by the forensic department that led to the failure to announce the results of the autopsy and the results of the laboratories in the case of the death of the victim. Consequently, this led to a state of confusion caused by the non-participation of the resigning doctors in the autopsy of the victim where she was autopsied by a single doctor. That was also accompanied by misleading the Attorney General that laboratory tests were sent to Jordan for examination. However, the fluid samples were sent rather than the body tissue samples of the victim, which are of great importance, as well as the disappearance of the body tissue samples of the victim, which did not appear until the day when the doctors resigned. They were examined on 08/09/2019, while the autopsy was administered on 22/08/2019. In addition, the people who were interested in following up the case of Israa Ghraib are not qualified. One of them is an anesthesiologist and the other is specialized in Islamic law, while the director of forensic medicine was completely absent from attending the case and did not follow up the file of the victim because of his double career. Furthermore, a complaint was filed at the Public Prosecution on 05/09/2019, regarding one of the officials in charge of the Department of Forensic Medicine, who is holder of the Islamic law qualifications, impersonated forensic doctors and directors of the criminal laboratory, and wrote and

signed medical reports instead of them⁵⁹⁶. This places considerable question marks on the credibility of the reports of the Forensic Medicine Service on cases of violence against women.

In the case of the victim, Aya Baradya, the forensic report included a major imbalance in terms of its components and details, as well as containing large fallacies that helped in the acquittal and release of the accused. In addition, a number of the victim's bones disappeared and then they appeared later without any explanation⁵⁹⁷. In this context, Dr. Essam Abdeen believes that through linking a number of crime scenes to murdering women, it is found out that there is a repeated defect in forensic medicine is represented by interventions from conservatives and from elements of the security services that are not understood⁵⁹⁸. The opinion of Dr. Essam can be explained because of the absence of a well-established and clear procedural legal policy by the legislator so as not to leave room for personal diligence in doing the necessary legal action.

In the case of the child victim Fadi al-Muhtaseb, whose traces were lost on 28/02/2011, who was later found drowned in the spring water, the Public Prosecution ordered the transfer of the corpse to forensic autopsy due to the existence of criminal suspicion in the

⁵⁹⁶ S. Assi, Collective resignation of forensic doctors in conjunction with waiting for the medical report of Israa Gharib, Alhaddath, <https://www.alhadath.ps/article/105192/%D8%A7%D8%B3%D8%AA%D9%82%D8%A7%D9%84%D8%A9-%D8%AC%D9%85%D8%A7%D8%B9%D9%8A%D8%A9-%D9%84%D8%A3%D8%B7%D8%A8%D8%A7%D8%A1-%D8%B4%D8%B1%D8%B9%D9%8A%D9%8A%D9%86-%D8%A8%D8%A7%D9%84%D8%AA%D8%B2%D8%A7%D9%85%D9%86-%D9%85%D8%B9-%D8%A7%D9%86%D8%AA%D8%B8%D8%A7%D8%B1-%D8%A7%D9%84%D8%AA%D9%82%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D8%B7%D8%A8%D9%8A-%D9%84%D8%A5%D8%B3%D8%B1%D8%A7%D8%A1-%D8%BA%D8%B1%D9%8A%D8%A8-%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D9%8A-%D9%8A%D8%B5%D9%84-%D8%AD%D8%AA%D9%89-%D8%A5%D9%84%D9%89-%D8%A7%D9%84%D8%AC%D8%AB%D8%A7%D9%85%D9%8A%D9%86>

⁵⁹⁷ M. Ali, Failure of Palestinian Forensic Medicine ... Administrative Corruption Reaches Even the Corpses, The New Arab, <https://www.alaraby.co.uk/investigations/2019/10/6/%D8%A5%D8%AE%D9%81%D8%A7%D9%82%D8%A7%D8%AA-%D8%A7%D9%84%D8%B7%D8%A8-%D8%A7%D9%84%D8%B4%D8%B1%D8%B9%D9%8A-%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A-%D8%A7%D9%84%D9%81%D8%B3%D8%A7%D8%AF-%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D9%8A-%D9%8A%D8%B5%D9%84-%D8%AD%D8%AA%D9%89-%D8%A5%D9%84%D9%89-%D8%A7%D9%84%D8%AC%D8%AB%D8%A7%D9%85%D9%8A%D9%86>

⁵⁹⁸ Radio Nisaa FM, Murder of Women between the Judiciary and the Tribal Solution, Interview with Issam Abdeen, https://soundcloud.com/radionisaa96fm/bcgpvmpbnwde?fbclid=IwAR1-zs22O9dn0xPXd2cnHPRGtDaVuyAMq6ZxZwx3cT3fevLB_obgVOikLEc

death of the child⁵⁹⁹. The forensic report showed that the child was killed and then his corpse was thrown in the spring water. However, the child's father was surprised by the request of a forensic physician to exhume the body to take samples that had not been taken previously, despite his assurance to the doctor that all the samples were taken. Later, the father was surprised that a second forensic report was issued, contradicting the first report and indicating that the death of the child was accidental.

When the parents asked the Public Prosecution to assign another medical committee to examine the corpse and the samples again, it turned out that the Public Prosecution did not assign any medical committee other than the first medical committee, and the signature on the second forensic report attributed to the deputy prosecutor was forged. The victim child's father was prompted to file a complaint to the Anti-Corruption Commission against the forensic doctor who issued the forged forensic medical report. When the father of the deceased child learned the name of the coroner in charge of the autopsy of the victim Israa Gharib, he came out through the mass and social media warning against manipulating the victim's forensic report^{600 601}, especially that it is the same doctor who participated in the writing of the forensic counterfeited report related to the case of the murder of his child. This is a fact that needs to be taken seriously by the state, human rights and women's organizations so that the right of women victims to access justice and to prosecute and hold perpetrators accountable is not lost.

The issue of the disappearance and damage of samples is very important and is viewed with great concern, especially as they are considered one of the basic criminal evidence on which the Public Prosecution bases its investigation file to prove the crime and link it to the accused. The loss of the samples means that the Public Prosecution is unable to establish the forensic evidence in the incident. In addition, its damage means that the evidence is spoilt, and the chain of evidence is interrupted, an issue which is exploited by the

⁵⁹⁹ Palestine TV, Flick, Fadi Al-Muhtaseb 4 Years on Crime, <https://www.youtube.com/watch?v=3a0wtKsbgXg>

⁶⁰⁰ M. Al-Muhtaseb, Israa Gharib and Fadi Al-Muhtaseb, "Anatomy of Forensic Medicine in Palestine" and Corruption of the Judicial System, <https://www.youtube.com/watch?v=bOzfR5wm4-E>

⁶⁰¹ The father of the child Fadi Al-Muhtaseb, Hadith Al Balad Radio Marah, <https://www.facebook.com/Marah.100.7/videos/369923477243352/UzpfSTE3NDE4ODUzNDU6MTAyM DU5NTU4MzY1MzE5Nzk/>

defendants' lawyers to counteract the prosecution's evidence and pronounce the innocence of their clients. This happens in the case of the victim, Aya Baradya, when the forensic report requested by the defendants' lawyers to administer in Jordan showed that the body of the victim first decomposed in the soil before decomposing in the water, which destroyed the prosecution's evidence before the court, and abolished the suspects' confessions as evidence, especially as they confessed to killing her and immediately throwing her body into the well. The forensic report of the Palestinian Forensic Medicine Department, which examined the body at first, was supposed to show that the body of the victim was buried in the soil before being transferred to the well, which challenges the credibility of these reports in cases of violence against women again⁶⁰². These suspicions in the Palestinian Forensic Medicine Department require recommending a broad and comprehensive national investigation, informing the public of it, and taking legal measures against violators and holding them accountable according to the law, in order to rebuild trust in this significant department, especially in the field of combating violence against women.

The researcher recommends that the speedy issuance of the Palestinian Forensic Medicine Act. It is also recommended that the law makers should include a legal provision in the Forensic Medicine Act to assign forensic experts from other governorates other than the governorate where the incident occurred in order to avoid being affected by personal, mediating, and patronage relations when writing forensic medical reports. It is also necessary that the law should include a legal provision that mandates a medical committee composed of at least three forensic doctors to examine the bodies in cases of criminal suspicion of the deaths of women and girls. It is essential to recommend that the need to include in the law a provision for the independence of the Department of Forensic Medicine from the Ministry of Justice and consider it an independent institution in administrative

⁶⁰² M. Ali, Failure of Palestinian Forensic Medicine ... Administrative Corruption Reaches Even the Corpses, The New Arab, <https://www.alaraby.co.uk/investigations/2019/10/6/%D8%A5%D8%AE%D9%81%D8%A7%D9%82%D8%A7%D8%AA-%D8%A7%D9%84%D8%B7%D8%A8-%D8%A7%D9%84%D8%B4%D8%B1%D8%B9%D9%8A-%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A-%D8%A7%D9%84%D9%81%D8%B3%D8%A7%D8%AF-%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D9%8A-%D9%8A%D8%B5%D9%84-%D8%AD%D8%AA%D9%89-%D8%A5%D9%84%D9%89-%D8%A7%D9%84%D8%AC%D8%AB%D8%A7%D9%85%D9%8A%D9%86>

and financial terms by itself. This is part of the procedural criminal justice system to combat violence against women.

Here, it should be noted in the area of specialization in forensic medicine to the need for female doctors specializing in the field of forensic medicine, taking into account the specificity of women and gender in order to serve the application of women's right to privacy through disclosure by a female doctor. Therefore, it is necessary to recommend that the Ministry of Health should send female doctors to specialize in forensic medicine to prevent male monopoly of this area and take into account the specificity of gender. It is also recommended that the staff working in this institution including administrators, doctors, and technicians should be involved in participation in awareness and training programs in gender issues.

2.2.2. Stage of Trial

The trial stage is a revealing stage of truth. Its procedures are characterized by confrontation, i.e. verbal and public. The public trial sometimes publicly strikes the gender specificity that is not observed. Women often need legal aid that is absent whether for their financial weakness or because of their lack of legal expertise.

2.2.2.1. Non-observance of Gender Specificity

The manifestations of non-observance of gender privacy at the trial stage are illustrated by the publicity of the trial and the lengthy litigation proceedings.

2.2.2.1.1. Public Trial

Trial hearings shall be held before the Palestinian courts in accordance with the Criminal Procedures Code No. 3 of 2001 as Article 237 of the Code stipulates: "The trial shall be held in public unless the court decides to hold it confidentially due to considerations of maintaining public order or morals. In all cases, juveniles or a certain group of persons may be prevented from attending the trial." What meant by the publicity of a trial is the right of every person to attend the trial without any conditions or restrictions so that they have the opportunity to witness the trial proceedings⁶⁰³. It also means allowing the media to publish

⁶⁰³ M. Najm, 1991, p. 318.

the proceedings of the trial, which requires the announcement of the date of the trial sessions to the public in advance, in addition to facilitating their attendance at the hearings⁶⁰⁴. The court cannot decide to hold its hearings in private unless it is to maintain public order or morality⁶⁰⁵. The publicity of a trial also includes the pronouncement of judgments in a public hearing even though the court has decided to have the hearing held confidentially as judgments shall always be pronounced in public⁶⁰⁶, according to Article (97) of the Palestinian Basic Law, which states: "The judgments shall be announced and effected in the name of the Palestinian Arab people."

the amended Basic Law of 2003 and its amendments and the Code of Criminal Procedures No. 3 of 2001 go, in their adoption of the principle of public trial hearings, along with the UDHR, as per its Article (10) states that, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

This is because the principle of public trial is one of the most fundamental guarantees necessary to guarantee the right of the accused to a fair trial. It protects him / her from the arbitrariness of the judicial authority by allowing the public opinion to take control over the integrity, impartiality, and independence of the judges. It is also considered one of the most important means to achieve the objectives of the Penal Code in society by satisfying the public sense of justice, achieving confidence in the criminal justice agencies; and their ability to detect crimes, trace the perpetrators, arrest, and prosecute them in accordance with the law to achieve justice, restore security and tranquility to society, in addition to achieving the element of public deterrence and disseminate legal awareness in the society⁶⁰⁷.

Despite the importance of the public trial principle for the accused and the community, it is considered as an impediment to the woman victim to access to her right in justice. The principle of public trial includes a clear exposure of the issue of women to society, since

⁶⁰⁴ Z. Boussaid, (n.d.), p. 246.

⁶⁰⁵ Public order is defined as the set of foundations on which the group is founded, whether political, economic, social, financial or moral. M. Al-Ghareeb, 2006, p. 7.

⁶⁰⁶ F. Al-Kilani, 1985, p. 565.

⁶⁰⁷ See M. al-Halabi, 1996, p. 15, 16.

the publicity of the trial can only be achieved through the oral proceedings of the trial, which include calling for litigants, reciting the indictment, discussing the litigants' claims and motions; and hearing witnesses, experts and all evidence⁶⁰⁸, including the statement of the woman victim and to discuss with her the most embarrassing details, which makes women feel humiliated, ashamed, and shocked to be forced to re-narrate the details of the crime she suffered from in public with the absence of complete elements of confidentiality and privacy during the time that courts are packed with lawyers awaiting their files to be looked through and other trainee lawyers as well as the accused, their companions, and members of the judicial police. Therefore, the publicity of the court hearings is one of the most significant obstacles that women face in their dealings with the judiciary and motivate them to remain silent about their cases rather than taking the risk of exposing the matter⁶⁰⁹. That is in particular when the case is related to a sexual crime that public trials cause a social stigma that stamp the woman and her family with scandal, shame and disgrace for life-long. The publicity of the trial also includes having women victims put in a confrontation with society with its patriarchal customs, traditions, and its patriarchal inheritance. The woman is subjected to a popular trial that cannot be done without former impression and prejudice according to societal stereotypes involving the questioning of women's behaviors, deeds, and blaming her and making them hold fully responsible for the crime. Thus, the victimized woman becomes socially condemned, which exacerbates her psychological pressures and puts her in confrontations with enormous challenges that push women to think long and hard before taking the step of resorting to justice.

It could be concluded that the principle of public trial is one of the fundamental principles enshrined in the Penal Code to protect the right of the accused to a just trial. However, the right of the victim to justice and equity deserves special consideration and caring, especially in cases of violence against women and sexual violence specifically. This issue requires working to be involved with guarantees to allow the possibility of being exercised for women victims. Therefore, the researcher recommends that the woman victim shall be legally entitled to request the holding of confidential court hearings in order to preserve the

⁶⁰⁸ Article 207 of Criminal Procedures Code No 3 of 2001 states: "The judgment shall be based solely on the evidence presented during the trial, which was discussed in public before the audience."

⁶⁰⁹ UN Women, 2014, p. 18.

privacy of her case, her life, and to protect her from unjust social convictions and judgments. It is also important to recommend including the provision of a legal text requiring the judge in cases of sexual assault to hold secret court hearings. It is also recommended that representatives of the ICHR, the Bar Association, or women's institutions specialized in cases of violence against women should attend the non-public hearings, in order to ensure justice, integrity, and impartiality of the trial, which ensures that the victim has the right to access to justice and the accused has the right to a fair trial.

2.2.2.1.2. Length of Litigation Procedures

The slow pace of litigation before Palestinian courts is attributed to a number of reasons related to insufficient material and human resources of the judiciary, and the weak capacities of the supportive bodies of judicial work, such as the police and the public prosecution⁶¹⁰. In addition, the inadequate number of magisterial and first instance courts, the shortage of judges and staff⁶¹¹ including informants of judicial papers, clerks, and data entrants are in a disproportionate manner with the large number of cases filed to the judiciary annually⁶¹². This issue is considered the main reason for the slow pace of litigation proceedings and the late adjudication of cases. Furthermore, the shortage in the number of fingerprint experts, forensic medicine, forensic evidence, and the poor distribution of judges to the courts⁶¹³ as well as the ineffectiveness of judicial inspection, lack of respect for deadlines and repeated postponement of cases, in addition to the difficulty of transferring detainees to the courts add to such reasons⁶¹⁴. Difficulties arising from the notification of judicial papers to parties of litigation residing outside the cities⁶¹⁵, and the delay in the execution of witness subpoenas and the memorandums of habeas corpus intensify that reason⁶¹⁶.

⁶¹⁰ ICHR. Annual Report, 2008, p. 95.

⁶¹¹ ICHR. Annual Report, 2004, p. 99. It should be noted that the lack of judges has caused the closure of three courts. For more information see ICHR. Annual Report, 2006, p. 52.

⁶¹² I. Obaidullah, 2006, p. 187.

⁶¹³ ICHR. Annual Report, 2003, p. 101.

⁶¹⁴ ICHR. Annual Report, 2006, p. 65.

⁶¹⁵ ICHR. Annual Report, 2004, p. 99.

⁶¹⁶ ICHR. Annual Report, 2014, p. 104.

The Israeli invasion of the West Bank in 2002 and the imposition of curfew inside the cities for several days, restricted freedom of movement, and isolating villages and towns through military checkpoints, which are still in place today,⁶¹⁷ add to disrupting the work of the judiciary and crippling criminal justice agencies. On the one hand, the courts have stopped working because judges, lawyers, litigants, witnesses, and experts have difficulty accessing the court⁶¹⁸. On the other hand, the destruction of many official institutions, including correctional and rehabilitation centers, resulted in the flee of dozens of criminal and security prisoners accused of serious crimes, resulting in the disruption of interrogation and postponement of their cases and creating confusion with the criminal justice institution⁶¹⁹ which still encounters its consequences until today.

As a result of these difficult circumstances, the Palestinian judiciary suffered from judicial bottlenecks that resulted in the accumulation of cases for many years without the possibility of adjudicating them by issuing fair judgments to their parties. This affair has constituted a blatant violation of the right of citizens, women in particular, to the right of litigation guaranteed by international conventions, especially the UDHR, of which Article (8) states: *“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”*

In addition to violating the right of litigation guaranteed in the amended Basic Law of 2003 and its amendments, article (30/1) stipulates that "litigation is a protected right and guaranteed to all people and every Palestinian has the right to resort to his natural judge. The law regulates litigation procedures to ensure prompt adjudication of cases". The natural judge means that the accused does not appear before a court that is not established by a law defining its jurisdiction before the crime takes place⁶²⁰. It is noted that the Basic Law has combined the right of litigation with the timely adjudication of cases in a clear reference to the importance of achieving justice in a timely manner. Justice is not achieved by fair judgment and equitable solution only but also to be judged in the demanded timing;

⁶¹⁷ ICHR. Annual Report, 2008, p. 93.

⁶¹⁸ ICHR. Annual Report, 2004, p. 99.

⁶¹⁹ On 14/3/2006, the Israeli occupation forces destroyed the Palestinian Correction and Rehabilitation Center in the city of Jericho and on 19/7/2006 they destroyed the Correction and Rehabilitation Center in the city of Nablus. See ICHR. Annual Report, 2006, p.57.

⁶²⁰ T. Al-Dirawi, 2005, p. 287.

otherwise, if the fair judgment comes too late, it may not lead to the elimination of injustice⁶²¹. However, the law has not contained until now clear standards and time limits to determine the course of the case before the judiciary, from registration to the final adjudication⁶²².

In this context, women, like other members of society, suffer from delays in adjudicating cases and issuing judicial rulings. In particular, women victims who have resorted to justice have been subjected to constant frustration due to long-standing litigation⁶²³. The slow trial process and the delayed pronouncement of judicial verdicts place her in constant confrontation with the perpetrator, who may be a member of her family, which means turning the victim's environment into a hostile environment rejecting her, which exposes her to further violence and exploitation⁶²⁴. Their suffering is exacerbated, especially in light of the inability of the judiciary to issue decisions that guarantee the protection and safety of women victims in the absence of the necessary legal texts to issue them. Furthermore, women remain in the crossfire of the society and its harsh sentences against them throughout the duration of the proceedings. This contributes to exacerbate her isolation and multiply her suffering and making her regret for resorting to the judiciary as a result of failing to be fair and achieve justice⁶²⁵, as delayed justice is a form of denial⁶²⁶.

Based on the foregoing, the researcher recommends that the text of article (30/1) of the amended Basic Law of 2003 and its amendments should be put into effect. and the amendment of the Palestinian Penal Procedures Code by adding a legal text that sets a certain time limit for adjudicating cases of violence against women. Thus, the resolution of cases of violence against women within a reasonable period and without delay or procrastination enhances women's confidence in the judiciary and encourages them to resort to it. It also expresses the seriousness of the State's efforts to combat and eliminate violence against women.

⁶²¹ N. Y. Sedira, 2014, p. 232.

⁶²² ICHR. Annual Report, 2006, p. 65.

⁶²³ UN Women, 2014, p. 35.

⁶²⁴ ESCWA, 2014, p. 43.

⁶²⁵ UN Women, 2014, p. 50.

⁶²⁶ ICHR. Annual Report, 2009, p. 127.

2.2.2.2. Inadequate Legal Aid

Legal aid which should be granted to women as a fragile element is absent, excluding victims accused of crimes and the consequences of this.

2.2.2.2.1. Exclusion of the Accused Victim

Legal aid is based on the International Bill of Human Rights and national constitutions; article (3/14) of ICCPR states that:

"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

Legal aid means the provision of a lawyer to defend litigants free of charge and to exempt them from all trial costs because of their inability to cover the expenses and costs of litigation⁶²⁷. The amended Basic Law of 2003 and its amendments is in line with the International Bill of Human Rights with regard to guaranteeing his right to defense of which Article 14 states: "The defendant is innocent until proven guilty in a legal trial in which he is guaranteed the right to defend himself." Legal aid is a guaranteed right for a materially incapable defendant as it comes within the framework of ensuring the exercise of the constitutionally protected right of defense. It is also a fundamental guarantee of the rights and freedoms of the individual vis-à-vis the authority of the public prosecution of the State, and a factual guarantee of the principle of presumption of innocence, which can only be refuted by a final court judgment issued by a competent court in accordance with the provisions of the law, provided that the defendant shall have the right during the proceedings and stages of the trial to have the right of defense in order to be able to dismiss

⁶²⁷ N. Sibai, how does the Beirut Bar Association provide judicial aid? loading Its burdens to Graduates without any censorship, <http://www.legal-agenda.com/article.php?id=592>

the accusation, refute the prosecution's evidence, and provide evidence and data supporting his innocence⁶²⁸.

In many cases, the accused cannot defend himself by himself on the basis of his lack of knowledge of their legal rights or the disruption of their status and conditions, especially in light of the serious accusations against him⁶²⁹. Therefore, the law initiated them to hire a lawyer to carry out the defense proceedings on their behalf³, requiring the presence of a lawyer to represent the accused of a felony, According to Article 244 of the Code of Criminal Procedures: "The court shall ask the accused if they had elected a lawyer to defend them; if they have not done so due to their financial inability, the chairman of the court shall assign them a lawyer who has practiced the profession for a period of not less than five years, or has practiced before obtaining the license of the lawyer to work in the Public Prosecution or the judiciary for a period of not less than two years." This legal provision indicates that the State is under an obligation to ensure the right of defense of the defendant who is not financially capable, since the right to counsel is an inherent right of the accused to guarantee his right of defense⁶³⁰. It is also evident that legal aid must be actual and non-fictitious. It is not enough to assign or appoint a lawyer for the accused unless the lawyer is of certain competence because the lawyer is assigned to give legal assistance and not merely a procedural formality⁶³¹. His presence is considered one of the essential procedures that aim to provide a real defense opportunity before the judiciary in a positive manner, represented by his presence in all trial procedures, making requests and defenses, discussing the evidence presented against his client, and conducting the proceedings.⁶³² Accordingly, article 245 stipulates that "the court shall, at the conclusion of the trial, decide on the fees of the lawyer assigned under the previous article, and the fees shall be paid from the treasury of the court."

The obligation of the court to assign a lawyer to the accused in certain serious crimes such as felonies leads to justice and equality of citizens in legal protection⁶³³. However, the

⁶²⁸ I. Al-Kayali, 1983, p. 175.

⁶²⁹ A. Al-Buainain, 2006, p. 755.

⁶³⁰ O. Al-Hadithi, 2010, p. 162.

⁶³¹ M. Tarawneh, 2014. P. 120

⁶³² A. Al-Buainain, 2006, p. 769.

⁶³³ O. Al-Hadithi, 2010, p. 160.

scope of legal assistance for the assignment of a lawyer representing a financially incapable defendant does not include women accused of abortion for pregnancy resulting from the crime of rape, nor of women accused of committing the crime of incest, which includes multiple legal injustice. In addition to the injustice of the charge of abortion as a result of the failure of the Penal Code to address the consequences of the crime of rape and lack of respect for the specificity of gender, the injustice of the crime of incest due to the failure to take into account the nature of power, and control relations existing in the legal adaptation of rape within the family⁶³⁴, the Code of Criminal Procedures No. 3 of 2001 deprives women accused of abortion and incest from benefiting from legal aid to a financially incapable defendant, mainly because of the legal classification of abortion and incest as a misdemeanor⁶³⁵, while the Code of Criminal Procedures No. 3 of 2001 provides legal assistance to the accused of a crime of felony classification only⁶³⁶.

The legislator's failure to provide legal assistance to a person accused of a criminal offense can be explained by the seriousness and severity of the offense where the penalty for felonies ranges from capital punishment, to hard labor, to life imprisonment, or temporary detention. This puts the rights, freedoms, and future of the accused before a decisive stage, which requires the right to defense in an urgent manner. However, crimes of a misdemeanor are considered to be of moderate gravity due to the determination of the Penal Code of the imprisonment penalty or a fine against the perpetrator; and therefore the law does not require the presence of a lawyer to defend the accused. In addition, it does not decide to grant him the right to obtain legal assistance. The accused may take charge of his own defense and he may also authorize a lawyer to take charge of his defense if he is financially capable.

In this context, the legislator ignores the fact that women are victims at first and that their conviction in a patriarchal society for the crime of abortion or incest is extremely dangerous because it endangers the life of women as a result of attempts of honor killing to preserve

⁶³⁴ See ICHR. Annual Report, 2015, p. 85.

⁶³⁵ According to the provisions of Article 321 concerning the crime of abortion and the Article 285 concerning the crime of incest, the penalty prescribed for each crime is imprisonment, which is a misdemeanor penalty according to the Article 15 of the Jordanian Penal Code No. 16 of 1960.

⁶³⁶ According to the provisions of articles 244 and 245 of the Criminal Procedure Code No. 3 of 2001.

the family's reputation, as well as exposing women to violence and double exploitation as a result of her case being publically exposed in her case. In addition to the consequences of her detention in correction and rehabilitation centers because of the legally prescribed imprisonment for these crimes, as well as the social penalties imposed on women that promote community's rejection and exclusion against them.

Therefore, it could be concluded that the legal aid for women accused of committing a criminal offense such as abortion or incest is as important as legal assistance for the accused of committing a felony based on the need to take into account the specificity of women in the patriarchal society and her fragile economic and social status. It is recommended that the Code of Criminal Procedures No. 3 of 2001 should be amended in such a way as to provide for the provision of legal aid for women at all stages of litigation, in particular before the Public Prosecution authorities, given the seriousness of this stage on women's rights, and the possibility of shifting their legal status from a victim of rape to an accused of incest crime. It is necessary to recommend that legal aid be maintained throughout the proceedings until the final judgment is rendered in such a way as to ensure that women have the constitutional rights of presumption of innocence and the right to defense regardless of the legal classification of the offense. It is also important to recommend that the provision of a legal text requiring women to be informed of their right to legal aid and to alert them to the legal consequences of waiving this right. In tune with the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems⁶³⁷, of which the third principle (20) indicates: "States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process." In its tenth principle, (32), it refers in particular to guaranteeing the right to legal assistance for vulnerable groups such as women, children, and groups with special needs.

2.2.2.2.2. Consequences of Inadequate Legal Aid

⁶³⁷ Resolution adopted by the General Assembly [on the report of the Third Committee (A/67/458)].

The exclusion of women victims of sexual violence accused of abortion or incest from legal aid has serious negative repercussions on their right to enjoy fair trial guarantees. On the one hand, women with little knowledge of their legal rights are left alone in a disproportionate confrontation with the state prosecuting authorities. The vast majority of women in detention does not have sufficient economic access to authorize a lawyer, but are often illiterate and ignorant of their legal rights⁶³⁸. On the other hand, the family abandonment of women and the absence of support and back up increases the likelihood of her inability to authorize a lawyer with a degree of efficiency and legal skill due to the high costs involved in using it⁶³⁹. In addition, the late payment of part of the attorney's fees prevents him from following up the case file well or attending court sessions, which negatively affects her legal status in the criminal case and weakens her right of defense. It should be emphasized that the Code of Criminal Procedures No. 3 of 2001 does not require the presence of a lawyer obligatory as a legal requirement for the veracity of trial proceedings in cases of misdemeanors before the magisterial courts⁶⁴⁰. This means that the legal proceedings will continue in a proper manner even in the absence of her defense lawyer, which makes the right of women to defend themselves, depended on their financial ability to pay the attorney costs which often exposes women to abuse and exploitation by them⁶⁴¹.

In light of the above data, the accused woman is obliged to seek legal assistance from other bodies such as women's institutions where civil society organizations support her through legal aid programs by providing the right or legal representation for women⁶⁴². Nevertheless, these institutions rely on external funding for their programs. Therefore, they lack the sustainability component of legal aid in a way that makes the right of women beneficiaries of that service unstable and threatened with interruption during litigation proceedings.

⁶³⁸ UNODC, 2014, P.8.

⁶³⁹ Penal Reform International, 2014, P. 20.

⁶⁴⁰ M. Tarawneh, 2014. P. 121.

⁶⁴¹ UN Women, 2014, p. 44.

⁶⁴² ICHR. Special Reports, 2017, p. 27.

On the other hand, the accused woman may also resort to the Bar Association, which in turn assigns a lawyer to follow up the case of women in the case of proven financial inability. Article (44) paragraph (2 / a) of Act No. (3) of 1999 on organizing the legal profession states, “The Bar Association chairman may assign any lawyer a free professional service provided to the Bar once a year. This free service is limited to one of the following: 7) defending someone who was proven to the chairman of the Bar Association their poverty and incapability of paying fees to the lawyer.” However, the contribution of the Bar Association in the provision of legal assistance suffers from inadequate supervision and control over the quality of service and the extent to which the lawyer in charge of the case is following up and is committed to performing his duties in defending her fully. In particular, since the assignment by the Bar is free, the lawyer prefers to follow up the files that provide revenues⁶⁴³. Women may resort to the legal training clinics of the faculties of law in the Palestinian universities; nevertheless, legal clinic staff are often new graduates, trained lawyers, or new contractors, which means they are unable to represent women in court and often limit their role to providing legal advice, which significantly affects the effectiveness of women's legal assistance that women will receive in securing the right of defense in particular⁶⁴⁴.

In conclusion, a woman standing in the face of violence in a male society that denies their human rights is not easy and requires women a lot of courage, especially in light of the legal loopholes and patriarchal criminal justice systems. It is the responsibility of human rights defenders, human rights institutions and individuals, to provide all forms of support and advocacy for women victims in support of human rights and justice. Therefore, it should be recommended that the human rights and women's institutions adopt the legal aid programs for women permanently as one of the foundation's principal programs and services. It is also recommended extending their programs and services to rural and remote areas rather than limiting them in some major cities. It is also important to recommend that

⁶⁴³ See A. Al-Qaisi, why does the public view the lawyer as a swindler? How was this vision formed?, <https://www.raialyoum.com/index.php/%D9%84%D9%85%D8%A7%D8%B0%D8%A7-%D9%8A%D9%86%D8%B8%D8%B1-%D8%A7%D9%84%D8%B1%D8%A3%D9%8A-%D8%A7%D9%84%D8%B9%D8%A7%D9%85-%D8%A5%D9%84%D9%89-%D8%A7%D9%84%D9%85%D8%AD%D8%A7%D9%85%D9%8A-%D8%A8%D8%A7%D9%86/>

⁶⁴⁴ See ESCWA, 2014, p. 42.

the Bar Association, especially its Women's Committee, to follow up the legal assistance files for the women victims. give them great attention in terms of communicating with lawyers assigned to represent women, follow up the actions taken by them in these files, the extent of their commitment to provide legal assistance to them, and its seriousness and effectiveness.

It should be recommended that the legal clinics at the Palestinian universities to allocate programs to provide legal assistance to women and not only to provide legal advice, but extend it to include legal representation services in the courts and to get rid of the problem that the members of these clinics are mostly new graduates or trainee lawyers who cannot plead before the courts. It is also recommended that the teaching staff of the law faculties practicing the legal profession in the universities affiliated to these clinics be assisted with regard to the functions of representation before the criminal justice services and courts. It is also recommended that legal clinics hire contracted lawyers to represent women legally and create a permanent budget for this purpose.

3. THE NEED TO STRENGTHEN THE CRIMINAL PROTECTION OF WOMEN'S RIGHTS IN THE FACE OF VIOLENCE

Violence faced by women constitutes a challenge to both the international community and the private societies seeking to guarantee the rights of women as human beings with a physical and moral entity that must be protected. In addition, legislations must be adopted to protect such rights through policies, in addition to human rights institutions, the institutions of the international community, which should exert pressure on states to uphold women's rights, avoid violence, and achieve their human dignity. Women must not only be equal to men, but they must also be enabled to obtain positive discrimination through which they can fulfill their mission and task in the society. This could be accomplished through legal empowerment and through empowerment in other aspects.

3.1. Legal Empowerment

Tyranny begins when the law expires. To further strengthen women's rights and protect them from violence, respect for women's rights must be the legislative norm at the international and local levels. Preventing any form of assaults on women is a duty incumbent upon those proposing legislations and legislative initiatives. Any legislative endeavor that does not create harmonization of legislation with the international principles and standards of women's rights should be erased from the minds of the peoples. Thus, a legislative should be imposed, starting from the conformity with the rights of women, in order to enable society to redress the victims of violence.

3.1.1. Legislative Harmonization

By legislative harmonization, it is meant that the compatibility of past, current, and future legislations with the rights of women as adopted by international conventions and agreements on women's rights and human rights, as the latter have values and principles that guarantee women's rights. This is evident in the justifications with the obstacles that can be overcome.

3.1.1.1. Rationales for enacting a law to confront violence against women

The rationales for enacting a law to confront violence against women are illustrated by the need to protect both women and the family from violence.

3.1.1.1.1. Women Protection from Violence

The efforts of the feminist movement and human rights institutions to put an end to the phenomenon of violence against women have opened the door for official and societal debate about the required image of the state's intervention with its criminal legislative tools to put an end to the phenomenon of violence against women. The main focus of the debate is on the need for a law to protect women from domestic violence or the need for a law to protect the family from violence⁶⁴⁵. The difference between the two laws is not a formal one, but it is rather a fundamental difference, as represented by the purpose and objective of the law, as well as the expression of the strength of the State's direction in its endeavors to eliminate the phenomenon of violence against women in a real manner aimed at the environment that generates and fosters it.

The trend towards the adoption of a law on the protection of women against violence expresses the State's serious and sincere stance in its intentions to confront the phenomenon of violence against women in a clear and unequivocal manner in a way that leaves no doubt that acts of violence against women constitute criminal acts that require criminal accountability and a deterrent punishment on its perpetrator. It also declares to all members of the community that violence against women within the family and community as a whole is no longer such as acts permissible by law or acts that are sympathetic to the perpetrators by the criminal justice system and the judiciary authority. Furthermore, they shall not show understanding and support for their violent behavior in a way that exempts them from punishment or requires mitigation. It is a clear and explicit message that violence against women is no longer the one that the state legislates or tolerates, but it is rather seriously seeking to eradicate it. Similarly, it is a courageous public recognition on the part of the State of the independence of the woman's entity from the family in a manner that ensures respect for her human rights and freedoms on an equal basis with other members of the family. Her character is visually reinforced and promoted, she is no longer

⁶⁴⁵ A. Al Dawla, 2007, p. 58.

a family affair and an incubator for their honor. Therefore, her legal protection is no longer dependent on the extent of her behavior to the habits of and traditions of the community, and the acceptance and satisfaction of male family members.

The trend towards the adoption of the Law on the Protection of Women from Violence is a true expression of the depth of the penal policy of the State in its understanding of the nature of the phenomenon of violence against women and the main motive for its perpetration. Women are victims of violence because they are women per se, where discrimination against them on the basis of sex contributes primarily to the victim of violence in all its forms and images within the walls of the family and society alike. Therefore, the legislative treatment of this phenomenon must come in the form of a clear specialized law whose criminal and punitive policy is consistent with the essence of the legislation and its aim in eliminating violence against women on the basis of sex in the short term and rejecting discrimination and achieving equality among all members of society in the long run⁶⁴⁶. Lessons can be learned from Morocco's legislative experience. After 15 years of waiting, Although Morocco has passed the law against violence against women, the new law has come under strong criticism from associations working to combat violence against women. Most notably, the new law did not talk about protecting women as an independent entity, but generally speaking about protecting public order, the family, and morals, while women's associations sought to pass a special law protecting women from gender-based violence⁶⁴⁷.

On the ground of reality, the enactment of a penal code for the protection of women from violence, whether within the family or outside it, with a special chapter dealing with crimes of domestic violence against women, will lead to the uniqueness of criminal policy, punitive treatment, and rehabilitation correction programs. It will also lead to the abolition of all provisions contained in the Jordanian Penal Code No. 16 of 1960, which discriminate against women on the basis of sex, which allowed violence against women in all its images and harshest forms, and enacted under multiple names and texts. This state of affairs will

⁶⁴⁶ A. Khalil, 2007, p. 76.

⁶⁴⁷ BBC NEWS, who protects women from violence in Arab societies?
<http://www.bbc.com/arabic/interactivity-43134935>

help fill the gap created by Jordan's penal code over decades of legal discrimination against women. In addition to its abolition of the conflicting legal texts contained in the various penal laws, in a manner that ensures the good implementation of the new law, it shall achieve its objectives in the elimination of violence against women without confusion in legal texts that impede the process of its application. In this way, it will contribute to achieving equal protection against violence among all citizens and reflect embody them on the ground without discrimination against them on the basis of sex, starting the desired process of societal change towards the expulsion of violence against women from its legal incubator, cultural education, and uprooting its roots from society.

The official trend towards the adoption of the Family Protection Law against Violence can be explained by the continuation of the legislative policy of the State in following the footsteps of the Jordanian Penal Code No. 16 of 1960, by overriding the interests of the family at the expense of achieving equality, justice, and victory for women's rights and freedoms. Domestic violence is the violence that arises in the lap of the family association and is practiced by a family member against another member regardless of gender. Victims may be women, men, or children covered by the family association⁶⁴⁸. However, statistics show a high rate of violence within the family walls targeting women⁶⁴⁹, reflecting the contrast between the data of violence on the ground, and legislative and penal policy of the state destined to be addressed through denial and considered as directed against family violence as a whole.

In addition, the motive behind this trend can also be explained by the unwillingness of the state to address the phenomenon of violence against women within the family in a public way or to highlight it socially in a clear manner that may provoke the ire of the male mentality in the society and its discontent. The adoption of a special law to protect women from violence, especially domestic violence, will shock the cultural system in the society and it shall work to destabilize the patriarchal masculine authority, which views the family as the last strongholds of patriarchal authority and castles of dominance in light of openness to western culture and influenced in various aspects of life.

⁶⁴⁸ M. Farhat, 2007, p. 66.

⁶⁴⁹ A. Khalil, 2007, p. 76.

This trend can be explained by the fact that the adoption of the Family Violence Protection Act will strike a balance between its international obligations and its local culture. On the one hand, this law will reflect a civilized face of the State and show its respect for human rights standards and the extent to which it fulfills the obligations of the CEDAW in conformity with the legislation in a manner that achieves equality. On the other hand, it will remain in a hidden away from the spotlight that ensures the protection of family violence forces in the society equation remains the same in favor of the patriarchal male authority. The existential purpose of this law is to deal with violent crimes against all members of the family, both males and females, without specializing in dealing with violent crimes that target women in the family as a woman as a result of discrimination against them on the basis of sex. In addition, the law does not include a preventive, protective, therapeutic, and special rehabilitation policy to assess the behavior of the perpetrator of violence against women that takes into account the sensitive relationship between the perpetrator and the victim. Thus, the law adopted to combat the phenomenon of domestic violence against women becomes a formal law void of its essence, and far from achieving its goals in protecting women from domestic violence. In this context, lessons and benefits can be taken from the Lebanese legislative experience, as a result of convergence between the Palestinian and Lebanese social environments. In 2014, the Lebanese parliament passed Law 293/2014 to protect women and other family members from domestic violence⁶⁵⁰. Despite the importance of this law and the significant leap in favor of Lebanese women, before its promulgation, there was no specific law on domestic violence. Although it is perceived as an enhancement of women's rights and safety, it is deficient in pivotal aspects⁶⁵¹. This law has been marred by numerous gaps that have been reviewed by civil society. It does not consider violence against women as a stand-alone crime, and therefore does not devote women to protection; although violence against women is specific as an expression of power relations that discriminate against women within and outside the family, and therefore deserve special treatment. In addition, when the law covered other members of the family, they were not provided with additional

⁶⁵⁰ See BBC NEWS, how women can be protected from domestic violence, https://www.bbc.com/arabic/interactivity/2014/04/140402_comments_female_domestic_violence

⁶⁵¹ HRW, Lebanon The Domestic Violence Law good but incomplete, <https://www.hrw.org/news/2014/04/03/lebanon-domestic-violence-law-good-incomplete>

protection, but sometimes deprived women and other members of the family of the protection that had been recognized in previous laws⁶⁵². Furthermore, it granted the husband the right to cohabit with the wife rather than criminalize it, which critics say is essentially legalizing rape⁶⁵³.

3.1.1.1.2. Family Protection from Violence

Serious thinking began to work towards the enactment of a law to protect the family from violence, especially children and women, in 2005, when WCLAC introduced the idea of the law in conjunction with a parallel Arab movement that included Jordan, Egypt, Lebanon, and Palestine⁶⁵⁴. The aim of this law was to go beyond the familiar and prevalent scope of the generalization and impartiality of laws, taking in consideration mixing the legal aspect with the social aspect of domestic violence issues within the family. It includes provisions that have the legal obligation and social flexibility to meet the needs of abused women and children, and maintains privacy and confidentiality rules that are necessary to maintain the family from the risk of disintegration that may result from abstract legal intervention. Its provisions must contain sanctions aimed at achieving social deterrence without ignoring the importance of the process of reform and rehabilitation aimed at the perpetrators and victims of violence. This is part of a cumulative process that seeks to reduce the phenomenon of violence decisively in the long run⁶⁵⁵.

Following that, the NGO Forum against Violence against Women adopted the idea of the law draft as a main demand of the Forum in the face of violence against women⁶⁵⁶. In 2008, WCLAC held a national conference in cooperation between civil society institutions and the Ministry of Women's Affairs entitled "Towards the adoption of the law to protect the family from violence" to introduce the law draft on the protection of the family from

⁶⁵² M. Zelzal, 2016, p.2.

⁶⁵³ See BBC NEWS, how women can be protected from domestic violence, https://www.bbc.com/arabic/interactivity/2014/04/140402_comments_female_domestic_violence

⁶⁵⁴ R. Nazzal, Family Violence Protection Act on Hot Fire, Ma'an News Agency, http://www.al-ayyam.ps/ar_page.php?id=128292ccy310547148Y128292cc

⁶⁵⁵ WCLAC Challenges and Hopes, (n.d.), p. 7.8

⁶⁵⁶ Al-Haq Foundation's remarks on a draft law on protection of the family from violence 2016, http://www.alhaq.org/arabic/index.php?option=com_content&view=article&id=845:-2016&catid=86:2012-05-09-07-29-49&Itemid=201

violence, networking, and to build relations with the competent authorities of the official and civil parties in order to sustain pressure on decision makers for the purpose of enacting this law⁶⁵⁷.

The cross-sectorial strategy document for the promotion of gender equality and justice, 2011-2013, prepared by the Ministry of Women Affairs in the context of the preparation of the Palestinian Development Plan in its third strategic objective on reducing the incidence of violence against women in all its forms and protecting them from all forms of domestic violence, adopted the law to protect the family from violence. The strategic plan to combat violence against women for the years 2011-2019 included in the overall objective to "strengthen the principle of the rule of fair justice for women and improve institutional mechanisms in dealing with abused women to reach a society based on the principles of equality and justice for all members of society without discrimination". The second strategic objective is that the Law on Protection of the Family from Violence should be adopted in order to strengthen the legal framework for the protection of battered women by developing and amending domestic laws to protect women from violence.

In 2012, the National Committee to Combat Violence against Women represented by the Ministry of Social Affairs and the Ministry of Women's Affairs placed the law draft to protect the family from violence to the Cabinet⁶⁵⁸. In 2013, the Cabinet listed the law draft on the protection of the family from violence on the government's legislative plan, and referred the law draft to all ministries to make observations on the draft. The ministries of Justice, Women's Affairs, and Social Affairs also held a national conference to discuss the law draft and collect observations from the civil society⁶⁵⁹. In 2016, the Palestinian cabinet decided to forward a draft law by decree on family protection from violence to the cabinet

⁶⁵⁷ WCLAC Challenges and Hopes, (n.d.), p. 8.

⁶⁵⁸ R. Nazzal, Family Violence Protection Act on Hot Fire, Ma'an News Agency, http://www.al-ayyam.ps/ar_page.php?id=128292ccy310547148Y128292cc

⁶⁵⁹ Al-Haq Foundation's remarks on a draft law on protection of the family from violence 2016, http://www.alhaq.org/arabic/index.php?option=com_content&view=article&id=845:-2016&catid=86:2012-05-09-07-29-49&Itemid=201

members for consideration and comments⁶⁶⁰. In 2018, it was referred to the President's office for approval⁶⁶¹.

The need is increasing to enact a law to protect the family from violence especially after setting up many gender specialized departments in ministries and criminal justice agencies, both at the Ministry of Social Development, the police, and the Public Prosecution, which face great challenges in the absence of a law that provides a frame of reference for their work. This caused many of these competent authorities to issue procedural evidence to facilitate their work in the absence of the adoption of a law on the protection of the family from violence⁶⁶².

We are faced with an important law that has been followed by different drafts, not only indicates its importance, but also entails the tensions between the different titles of interest in the content of the law, of the caliber of intellectual and cultural differences⁶⁶³. Nevertheless, until today, the law has been confined to the files of successive governments and has not seen the light, ignoring the demands of the legal and feminist civil society associations and other related parties and their relentless pursuit of approval. In the aftermath of the murder of the girl, Israa Gharib, in 2019, the voices were strongly demanding that the President should speed up the process of adopting the Family Protection Law against Violence.

It is possible to explain the tendency of civil society institutions to propose a bill to protect the family from violence instead of proposing a bill to protect women from violence for fear among the feminist movement against the societal and official rejection of the idea of presenting the last bill explicitly and clearly, considering that the idea of the bill is foreign to Palestinian society, and the legal and feminist civil society associations mimic and

⁶⁶⁰ Meeting of the Palestinian Council of Ministers at its 90th Session, <http://www.palestinecabinet.gov.ps/WebSite/ar/ViewDetails?ID=31716>

⁶⁶¹ See Position Paper Towards Adoption of the Law on Protection of the Family from Violence, MIFTAH, <http://www.miftah.org/arabic/Display.cfm?DocId=15372&CategoryId=4>

⁶⁶² Position Paper Towards Adoption of the Law on Protection of the Family from Violence, MIFTAH, <http://www.miftah.org/arabic/Display.cfm?DocId=15372&CategoryId=4>

⁶⁶³ R. Nazzal, Family Violence Protection Act on Hot Fire, Ma'an News Agency, http://www.al-ayyam.ps/ar_page.php?id=128292ccy310547148Y128292cc

imitate the western culture in regard to the demand for a law to protect women from violence. This state of affairs led the feminist movement in light of the legal vacuum and the increasing violence in its pace and severity against women to float the goal of the law in its general form on the pretext of its acceptance by the community⁶⁶⁴. The objective of this trend is to achieve some legal gains for the benefit of women and protect them from violence by finding a legal ground to reinforce the position of the legal and feminist civil society associations and other related parties in defending the rights of women and demand the elimination of violence against them although the law was marred by some provisions that may be amended later. It should be noted that a deficient protection is better than a complete legal absence. However, it is believed that the legal and feminist civil society associations and other related parties should have pressed right from the beginning to adopt the law to protect women from violence instead of seeking to adopt the law to protect the family from violence for the following reasons:

The passing of a law on the protection of women from domestic violence, although it ensures shedding light on such crimes clearly achieve the community resonance required as a result of the commotion that accompanies the passing of the law and the people's awareness of its texts. However, at the same time, it means that crimes of violence committed against women outside the family are kept away from clear and deterrent legal treatment and that women remain in public life, the work environment, the street, and society, apart from the criminal protection of their rights since they remain subject to the Jordanian Penal Code No. 16 of 1960, which did not guarantee them the slightest protection of their rights. On the other hand, the demand to enact a law that addresses all forms of violence against women will save the legal and feminist civil society associations and other related parties the trouble of continuing to demand the amendment of penal laws to achieve legal protection for women against violence. This is not easy, especially as the achievement of gains and achievements in terms of women's rights is often difficult to achieve in a patriarchal male society. Fairly often, amending the provisions of the penal laws that are unfair to women requires painstaking efforts such as awareness-raising, advocacy, and support campaigns that deplete the capacities of women's institutions. In most cases, these

⁶⁶⁴ A. Al Dawla, 2007, p. 59.

campaigns do not change anything and do nothing for officials and decision-makers but they remain in place without any noticeable achievement. Experiments have proved that the amendment of the unjust laws against women can only come after offering sacrifices and painful immolations filled with the blood and lives of women⁶⁶⁵.

It is also believed that the enactment of a single law that addresses all forms of violence against women, with a section on domestic violence, will give the feminist movement a greater opportunity to focus on other substantive demands that contribute to achieving equality and the elimination of gender-based violence. Examples of this attitude include demanding the amendment of personal affairs laws that are prejudiced against women within the framework of the rights of marriage, divorce, alimony, and child custody. Another example is the amendment of laws related to inheritance, labor, and civil service to ensure women's rights. In addition, it is necessary to increase the proportion of women's participation and representation in decision-making centers and important leadership positions because of its importance in maintaining gains and achievements.

It should be emphasized that the women's movement needs to exert a lot of efforts to put pressure on decision-makers and officials in order to allocate the sufficient state funding to put the law into effect. In this regard, it is worth to cite the Tunisian experience, where the Tunisian parliament unanimously adopted the law against violence against women. This has been considered a major gain for Tunisian women, as it has provided women with the necessary measures to obtain protection from violence committed against them by their husbands, relatives, or others. It also strengthened the protection of victims of violence, especially domestic violence. In addition, the law provided for new criminal provisions and increased penalties for various forms of violence when committed within the family. It also criminalizes sexual harassment in public places and includes preventive measures, such as directing the Ministry of Health to develop training programs for medical personnel on how to detect, assess, and prevent violence against women; and teachers on the requirements of the Tunisian and international law for equality and non-discrimination and how to prevent and respond to violence, in order to help them deal with violence in schools;

⁶⁶⁵ See the case of Aya Baradeia mentioned in the first chapter of this study.

and other legal texts that reflect the seriousness of the state's attitude to confront the phenomenon of violence against women in the Tunisian society and its endeavor to eliminate it⁶⁶⁶. However, the law was flawed by the lack of funding mechanisms to fund protection shelters for women, and did not include provisions to provide the government with timely financial assistance to meet its needs or help it find long-term housing⁶⁶⁷, which threatened the essence of the law to collapse.

Furthermore, the legal and feminist civil society associations and other related parties need to exert many efforts to put pressure on the political will of the state to ensure that the law is applied on the ground in a sound manner that achieves its essence in protecting women from violence and eliminating discrimination on the basis of sex. It will also undertake more efforts such as awareness-raising, training, and law education campaigns aimed at eliminating the male mentality established in criminal justice systems, which will help ensure proper implementation of the law and without tolerance, complacency, or indulgence with perpetrators of violence against women. There is still a long way to go to confront violence against women in Arab societies because it may be easy to change the law, but it is difficult to change mentalities, in light of the culture of discrimination against women and the inferior view of women, which is still common in society⁶⁶⁸.

It could be concluded by saying that this law, which has long been awaited for by impatient battered women, with their hopes for protection, justice, and fairness, should not come faint and void of substance, camouflaged with protection to achieve harmony with international human rights standards in its apparent general form, or a law incapable of recognizing women as an independent entity in the society, and providing protection for themselves and without linking them to the family or the honor of men. Abused women do not need to have a new disappointing law added to the legal system, causing them more legal confusion

⁶⁶⁶ For more about the law on the protection of women from violence in Tunisian law see: Tunisia: Landmark Step to Shield Women from Violence, New Law Offers Protection, but Needs Funding, HRW, <https://www.hrw.org/news/2017/07/27/tunisia-landmark-step-shield-women-violence>

⁶⁶⁷ Tunisia: Landmark Step to Shield Women from Violence, New Law Offers Protection, but Needs Funding, HRW, <https://www.hrw.org/news/2017/07/27/tunisia-landmark-step-shield-women-violence>

⁶⁶⁸ BBC NEWS, Who protects women from violence in Arab societies? <http://www.bbc.com/arabic/interactivity-43134935>

and creative chaos of legal loopholes that deprive them of the desired protection. They rather need to stand on a solid legal ground that provides them, in addition to the legal texts criminalizing violence and punishing it, preventive programs, and other protectionist, therapeutic and rehabilitation programs, to use as a weapon for them in their difficult battle in the elimination of violence.

Here, it is possible to propose a national consultation that starts from sorting out ideas from the base of society until a comprehensive national strategy is put in place to eliminate all forms of violence against women and enable them to human dignity and individual freedom.

3.1.1.2. Obstacles to the adoption of the law until today

Political and cultural obstacles constitute the most significant obstacles to the passage of a law to confront violence against women.

3.1.1.2.1. Political Obstacles

Women reap the scourge of the Palestinian split between the West Bank and Gaza Strip which Hamas seized in 2007. After winning the 2006 legislative elections and forming the 10th Palestinian government, Hamas was unable to govern due to international external pressures by cutting off financial support and assistance to the Palestinian people, and the internal difficulties as none of the Palestinian factions participated in the government that was formed later by the movement alone. The situation was made more difficult when the PLO Executive Committee rejected the government's program, where the situation became more intense at the various political, security, and social levels. Following armed clashes between Fatah and Hamas⁶⁶⁹, the Gaza Strip seceded from the West Bank. Subsequently, those events were followed by the disruption of the Palestinian Legislative Council since 5/7/2007, causing lack of the Palestinian political system of the existence of the legislative authority represented in the Legislative Council charged with drafting laws as a representative of popular sovereignty. Since its election in 2006, the Legislative Council

⁶⁶⁹ S. Bani Odeh, 2017, p. 44.

has held only one session⁶⁷⁰, which has had a significant impact on the legislative system in Palestine. The legislature was then entrusted with the President of the Palestinian National Authority in accordance with the provisions of Article 43 of the amended Palestinian Basic Law⁶⁷¹. Since then, the situation has remained the same until today.

The struggle of women in the field of legislation and laws is negatively affected by the split which has contributed to the paralysis and disruption of the work of the PLC and its various committees. This situation has hampered the enactment of much legislation in the interest of women's rights, especially the enactment of a law to protect them from violence⁶⁷².

The lack of political will was the most significant obstacle to the adoption of a law to protect women from violence. The specificity of the Palestinian woman makes any national overlap with the social level lowers the issue of her human rights to a secondary issue, where the society and its political and social structures have turned to the total preoccupation with dealing with the results of the occupation at the expense of their issues and rights⁶⁷³. Fairly frequently, women-related issues are marginalized and pushed to the bottom of the list, on the grounds that the time is not appropriate, and that the legal and feminist civil society associations and other related parties are diminishing the national issues⁶⁷⁴. The significance of women's issues is always denied or dealt with in an official apologetic manner, that has increased in recent years under pressure from the United Nations institutions and donor countries until the governmental approach has come to match the rhetoric of feminist movements but without substantial steps in the adoption of laws and legislation that may protect women from violence. The legal and feminist civil society associations and other related parties strive to put pressure on officials and decision-makers to seek support when drafting laws to address violence against women and the family. However, national and liberal movements, including those that advocate democracy and equality, rarely support the struggles of the feminist movement, considering

⁶⁷⁰ Supreme Constitutional Court, Application No. 10 for 3 Jurisdiction of the Supreme Constitutional Court "Interpretation" 10/2018

⁶⁷¹ T. Touqan, 2008.

⁶⁷² H. Awwad, 2017, p. 68. And Miftah "Ray Akher", 2016, p. 2.

⁶⁷³ H. Awadallah, 2011, p. 29.

⁶⁷⁴ H. Kazaz, 2007, p.

that women's issues are specific to the feminist movement and women's institutions⁶⁷⁵. This position is only an expression of the male approach that dominates the programs and policies of these parties, reinforced by the weak ability to influence the political movement of the feminist movement because of the low percentage of women in the leadership positions and decision-making centers in those parties and the lack of their influence.

It could be concluded that it is necessary to empower women politically and socially and enhance their participation in public life strongly. It is also vital for them to hold senior government positions because of their prominent role in supporting the demands of the feminist movement and follow-up through the competent government channels and pressure towards achieving them. In this context, the researcher recommends that the legal and feminist civil society associations and other related parties shall strengthen their involvement in party work and the coordinate their mass base within political parties, forces, and national movements in order to have an audible and influential voice within those frameworks to push for the feminist movement's demands and support in adopting draft laws, other campaigns and community education programs.

Until the popular demand is achieved to overcome the crisis of the division, the disruption of the Legislative Council through reconciliation and democratic elections that produce representatives of the people who are in charge of legislation, the issuance of penal laws that protect women from violence, and the necessity to review and amend other laws from a gender perspective to ensure the commitment of the State of Palestine to equality and non-discrimination in accordance with CEDAW; the legal and feminist civil society associations and other related parties are advised to continue pressure and advocacy campaigns to get the President to pass the Family Protection Law against Violence.

3.1.1.2.2. Cultural Obstacles

Calls by the women's movement and its campaigns to pass penal laws that protect women from violence contradict with the patriarchal and dominant male culture of the community. This culture does not accept the idea of allowing women under the jurisdiction and guardianship of male family members to revolt against and reject violence, demanding

⁶⁷⁵ H. Kazaz, 2007, p.46.

their right to protection and safety, resorting to the criminal justice institutions of the State to hold the perpetrator liable and punish him, and allowing the state to interfere with its various official institutions in family affairs and its privacy in support of women. This patriarchal mentality, which permeates the culture of the community to the core and is passed down through generations, has proven its power through the penal laws that discriminated against women on the basis of sex and stripped them of the most basic and simplest human rights that established their inferior status in the society in favor of male dominance and status. Therefore, it has been working hard with all its strength to preserve the legal legacies and rejects the idea of adopting any laws that equate women and restore their position in the community on the basis of equality, justice, and international human rights standards. In particular, the adoption of such laws will disrupt the balance of power in the community and will contribute to changing its culture. Women, by state recognition and legislation, will become victims of violence even if they occur within the family. State institutions and criminal justice agencies are obliged by law to protect the abused woman, listen to her complaint, and report it to the judiciary for litigation. Consequently, the abuser, whether the woman's father, brother, husband, or male family member, will be liable to criminal accountability and punishment, as well as his obligation to undergo rehabilitation and correction programs, and abide by protection orders. These are new things that are difficult for the patriarchal mentality to accept easily, especially after it was the abused woman in their eyes and the consideration of the community responsible for violence practiced against her as she violated in her behavior the traditions and honor of the family. In this context, the male aggressor is seen only as a victim suffering from the violation of his feelings of masculinity and reputation. Therefore, the efforts of the legal and feminist civil society associations and other related parties and their demands to adopt penal laws that protect women from domestic violence are often confronted with accusations of threatening the stability of Palestinian families and contributing to their disintegration, especially since these laws constitute a weapon in the hands of women to face the violence and reject it, which is contrary to the customs and traditions of the community that are imposed on women to submit and accept the violence of the male and coexist with it, which will create a state of escalation and confrontation within the family leading to the disintegration and collapse of families.

In addition, the demands to adopt laws that aim at confronting violence against women and the elimination of its sources in the family provoke the strict religious tide that works to consecrate the prevailing culture and nurture it by demanding women to submit and accept this reality and abstain from challenging it as a religious duty. The religious tide is spreading within difficult economic and social conditions that make religion a suitable haven for fanatical ideas without highlighting the values, fairness, and equality of religions, including the need to re-read the texts related to women⁶⁷⁶. Religion is exploited to strengthen the male authority to control the rights and freedoms of women in the family. Furthermore, religion is used as an effective and powerful means to control the minds of members of the community and direct them to reject those laws on the grounds that they are contrary to the principles of the Islamic law and constitute a departure from them, especially when it comes to legal provisions that seek to criminalize the physical and sexual violence of husbands against their wives. Religion is a major factor that contributes to the formation of public opinion convictions and attitudes towards many issues, particularly when raising women's rights and freedoms for societal debate, where they are always rejected in the name of religion.

Moreover, the legal and feminist civil society associations and other related parties campaigns that seek to mobilize community support towards the adoption of criminal laws that protect women from violence, especially domestic violence, and bring justice and equity, provoke the anger and fears of males. The demand for women's rights and freedoms in the minds of the Arab citizen in general and the Palestinian people in particular is often related to the western culture and ideas emanating from the emancipation of women, the removal of her veil, stripping her body, her rebellion against her male guardians, and her departure from the customs and traditions of society. Therefore, every time the issue of the adoption of the law to protect the family from violence is raised for societal discussion, it is found out that the fingers pointing at the feminist movement and the civil society institutions on charges of promoting western culture and introducing it into the home of Arab families through laws and legislation under the pretext of protecting women from violence that has been exaggerated in size, so as to pass an external agenda aimed at the

⁶⁷⁶ H. Kazaz, 2007, p. 47.

disintegration of Arab families and the corruption and dissolution of societies. This position is reinforced, especially since the funding of the programs of these institutions and campaigns is often from western countries or institutions, which reinforce those fears and lead to the social rejection of these laws⁶⁷⁷.

The limited societal awareness of the rights of women, especially the right to life, equal protection from violence, and safety, in a society that legitimizes violence and the violation of women's rights, has denounced the adoption of legislation to protect women from violence. In this aspect, the blame is not limited to the penal legislation that permits violence against women and has entrenched its roots in the culture of the community, but it rather extends to the feminist movement and civil society institutions, which limited their awareness programs and activities to some major cities, while neglecting the rest of the regions, without clear and systematic targeting of different segments of society. In addition, women constitute the majority of participants, if not all participants, in such programs, creating a state of disconnection between the demands of the legal and feminist civil society associations and other related parties and its pressure towards the adoption of the Family Protection Law against Violence and the awareness of citizens of the social need for such legislation and their importance. The legal and feminist civil society associations and other related parties have not succeeded in conveying the idea of the law, its content, and its importance to a broad mass base that supports the demand for its adoption rather than denouncing it.

It should be recommended that the legal and feminist civil society associations and other related parties should work to remedy these mistakes by expanding their public base to include all segments and categories of society including males, females, children, and youth; and in various governorates, cities, villages, and camps. They should also prepare awareness and educational programs tailored to the age and cognitive level of the targeted groups, with a focus on the issues of women and girls who are victims of violence; work to clarify the truth to the public opinion through displaying the tragedies of the victims and what they are exposed to including injustice, abuse, exploitation, violence, abandonment,

⁶⁷⁷ See N. Katerji, project on “Protecting Women from Domestic Violence” Project to demolish the family, <http://www.saaaid.net/daeyat/nohakatergi/112.htm>

and legal, official, and societal negligence; because of the critical importance of that in shaping the public opinion base in favor of laws that protect women from violence. In order to ensure that its message reaches as many individuals as possible, it is also important to recommend that the legal and feminist civil society associations and other related parties should intensify their campaigns through various audio-visual and print media, while at the same time, they should not overlook the importance of social media in achieving this purpose.

In view of the importance of religion and its effective role in paving or complicating the way of draft laws presented by the legal and feminist civil society associations and other related parties with the aim of eliminating violence against women in the family and society, it is necessary to recommend that they should cooperate with clerics who hold a moderate religious ideology to refute the claims of the radical religious trend, to enlighten the public opinion, and win its support in supporting the laws that protect women.

It is essential to recommend that the legal and feminist civil society associations and other related parties to intensify their efforts and lobbying for the enactment of the Family Violence Protection Act because of its importance in putting an end to the lax and encouraging cultural tide of violence against women and initiating the process of social change by force of law.

3.1.2. Redress for victims of violence

In order to avoid the waste of the rights of victims, the loss of human rights, and to heal the battered women whose rights are violated, redress must be achieved in certain manifestations, and enable the prosecution for reparation caused by violence.

3.1.2.1. Manifestations of Guarantee of Redress

The process of harmonizing penal laws including the punitive and procedural laws in line with the International Bill of Human Rights, the international conventions that protect women 's rights, first and foremost the CEDAW Convention and the Declaration on the Elimination of Violence against Women, whether through amendments to existing laws or

through the adoption of special penal laws, constitutes the main pillar for launching the process of combating and eliminating violence against women in society. Such laws will lead to the creation of solid legal foundations for the feminist movement, human rights defenders, lawyers, and hundreds of women victims to demand their protection from violence and the equal right to protection, justice, and equity without discrimination against them on the basis of sex. However, limiting the process of combating violence against women to amending and developing laws without being accompanied by a comprehensive development in the penal justice facility sector would limit and undermine the effectiveness of such efforts. The essence is not about enacting model laws that mimics what international obligation impose formally and verbally, but the essence lies in the will and the ability to translate the content of those texts into reality, whose credibility is witnessed by the battered women who notice the difference and change of the way that the law enforcement officials of the criminal justice and judicial authorities deal with cases of violence against women. To achieve this, it is necessary to impartially and professionally apply the new texts and laws on the ground, and on the simplest crimes of violence against women before the most serious and dangerous, so as to revive the right to protect women in the legal system and in the culture of society and its attitude in a way that achieves lively integration between the substantive provisions and procedural texts.

Based on the procedural shortcomings in dealing with cases of violence against women as shown in the second chapter of this study, the criminal justice services represented by the police as the judicial police, the Public Prosecution as the competent authority to investigate crimes and initiate criminal proceedings, and courts as the competent authorities to issue judicial decisions in order to achieve justice in the name of the people, reflected negatively on the desire of women to resort to the judiciary to claim their right to protection, justice, and retribution from the violent offenders and deter them from continuing their violent behaviors. This has made her lose confidence in the criminal justice system and prefers to live with invisible violence over attempts to cope with the scandal left behind by the pursuit of justice. In this context, it is worth to present a proposal to establish a model of "justice to face violence against women", "Gender Justice", which is based on the idea of establishing an integrated facility that includes the Department of Family and Juveniles Police Service; the Family Protection Prosecution Department; the

Family Court Department which is competent in family cases and violence against women; a clinic to provide health services including first aid services, forensic medicine, mental health, pediatrics, and special examinations for women, as it cooperates with the Ministry of Health to cover the needs of the clinic of medical supplies and medications, and to provide specialized doctors whenever needed, and nurses who are available to provide permanent medical services and provide victims with medical reports; an office of the Ministry of Social Development for the presence of social workers and psychologists; and an office to provide legal services such as awareness, counseling, and legal representation in coordination with the Ministry of Justice and the Bar Association. The proposed facility should include a section to temporarily shelter abused women and their children to preserve their lives until coordination with the competent authorities to find a just, fair, and satisfactory solution for their issues.

The researcher suggests that this facility be built separately and independently from the police building, the public prosecution, and the court. It is recommended that providing a suitable place environment for the facility to achieve maximum privacy and comfort for the abused women. At the same time, accessibility should be taken into account in each city, as well as the need to provide a free national telephone line to receive communications from battered women who are unable to reach it in order to provide immediate protection for them. This requires the allocation of permanent police personnel with official vehicles to meet emergency appeals and rapid intervention to rescue battered women.

In this model, it is necessary to recommend that relying on police, judicial (prosecutors and judges), medical, and legal staff, qualified and trained to deal with cases of violence against women efficiently, professionally, and humanely; and able to understand the sensitivity and seriousness of the issues of violence against women and the extent of overlapping their legal, social, and cultural dimensions, and adopting the mechanism of the work as one team in the study of the issue and discussion with various authorities to come up with the best solutions and results that are in the interest of protecting women's rights. So that the first rule for the work of these crews is to respect the dignity and privacy of the abused woman and to promote her personality and her foresight with all her legal rights. It is also important

to recommend focusing in this model at the highest percentage of women staff to create a comfortable non-masculine environment for the battered women and their children.

The need for such model is that it makes the abused women avoid the difficulty generated from reporting to many departments including police departments, the Public Prosecution Office, the courts which are overcrowded with the accused, their companions, and the public, as well as the complexity generated by the multiplicity of documents, requests, and staff to be reviewed and inquire from them. In addition, it is cumbersome to reach those departments, which are often scattered within cities in an unorganized way, in different places, and far from each other, which makes it more difficult for victims to follow up their complaints and cases. Besides, this would double the financial costs of women seeking to achieve their right to justice. However, this proposed model brings together all the official parties concerned with the cases of violence against women under one roof. Most importantly, it aims to bring comfort, a sense of security and reassurance to the women victims who would not need to testify many times before the police, prosecutors, and the court, in a way that they are subjected to shock, humiliation, sorrow, and abuse by male employees. Rather, this model respects the psychological state of women exhausted by violence and respects the sensitivity of the case and the extent of its specificity, especially in sexual crimes that require medical examinations and reports of proving the assault. The female staff who are competent to supervise and implement this model, deal with abused women from the moment they arrive in this building to the moment of justice and fairness through the process of taking statements, conducting investigations, and issuing judicial decisions must have a high level of competence, professionalism, and humanity in dealing with issues of violence against women and domestic violence. This requires that they should undergo intensive programs of awareness, training, and education in the issues of social gender and tests to choose the best and most efficient to take on this difficult and sensitive task, which requires a high level of humanity, the ability to take responsibility, recognition, and assessment of the risks, good behavior, and compliance with laws.

This model saves the woman from being obsessed with fear of exposure to the public, and the lack of confidentiality and privacy. It also saves her from contact with police officers who have nothing to do with her case, or friction with the general public. In addition, the

family court, which is competent in taking into account the specificity of gender, is based on the idea of completed justice for decisiveness in cases without delay or procrastination. This encourages women to reject violence and build confidence in the criminal justice system, and provides a solution to social and cultural obstacles that denounce women to deal with justice agencies because they are male services, which contributes to change the culture of society towards the right of women to justice because of the appropriate means and ways to devote this right on the ground.

The researcher also proposes that the Ministry of Women's Affairs undertake the task of setting up a database on violence against women, in cooperation with the Ministry of Justice, the Ministry of Social Affairs, and the police, in order to avoid distractions in official statistics issued by the police, the Public Prosecution, and the courts, and conflicting statistics issued by civil society institutions. This is essentially due to the absence of a unified approach agreed upon by all parties working in this field in the classification of cases and issues of violence against women and documenting them in a way that it can be used to track this phenomenon and measure the extent of its spread, study, and analysis, to seize the defects in the objective and procedural penal laws, and using these data in lobbying and advocacy campaigns to amend the laws and strengthen the rights of women in society.

3.1.2.2. Enabling Prosecution

Empowerment of prosecution emerges through empowerment of civil rights claim and through the social duty of the state.

3.1.2.2.1. Civil Rights Claim

Two claims arise from crimes against women as illegal acts: The first is penalty by which the state commences, using its right, punishment on behalf of the community that is affected by the crime represented by the Public Prosecution; it hence is called the public right claim. The other is civil which is brought by the woman affected by the crime whether she was the victim or any other person so that they claim compensation for the damage resulting from the crime; it, hence, is called Personal Right Claim. Article 194 of the Palestinian Penal Procedures Act No. 3 of 2001 states that: “(1)Any person who has

suffered from damages as a result of a crime may apply to the Public Prosecutor or the court which looks into the claim in which such a person takes expressly the competence of a claim of civil rights to obtain compensation for the damages resulted from the crime." The claim of a civil right is intended to grant the person affected by the crime to seek compensation for the injury they suffered from⁶⁷⁸. The Penal Procedures Code permits under this legal provision for the victim of the crime to file a claim for compensation for the damages caused by the crime before the Criminal Court, which granted this jurisdiction on an exceptional basis⁶⁷⁹ without causing the cancellation or withholding the inherent jurisdiction of the civil judiciary⁶⁸⁰. The case is then called a civil consequential lawsuit, "direct claim" or "personal right claim".

To accept the consequential civil lawsuit before the penal judiciary, it is stipulated to prove the damages that must have been resulted directly from the crime⁶⁸¹. This means that women must be directly affected by acts of violence against them in order to be legally entitled to claim compensation, and this damage is considered a special harm to the woman as a member of society. It is different from the public damage caused by crime, which is the cause of criminalization and punishment, which is also carried out by the public right. In addition, the woman affected by the crime must apply to the civil court before the court of first degree⁶⁸², after paying the judicial fees and expenses unless the court decides to exempt them or postpone them⁶⁸³. She must also file an application with the prosecutor or the court of first degree⁶⁸⁴, in which the plaintiff is entitled to the personal right and determines the amount of damage and the amount of compensation claimed. Civil lawsuits brought before the criminal courts are limited under Article (194) to cases resulting from crimes, the only subject of which is the claim for compensation for the damages caused by

⁶⁷⁸ N. Saleh, 2006, p. 204.

⁶⁷⁹Article 195/1 of the Palestinian Penal Procedures Act No. 3 of 2001 states that: "Civil action may be initiated according to the penal case before the competent court and it may also be filed separately before the civil judiciary."

⁶⁸⁰ See A. Ghannam, 2012, p. 2.

⁶⁸¹ See M. Abdul Baqi, 2015, p. 134.

⁶⁸² See Article. 196 of the Criminal Procedure Code No. 3 of 2001.

⁶⁸³See Article. 198 of the Criminal Procedure Code No. 3 of 2001.

⁶⁸⁴ It is not permissible to claim civil rights before the court of second instance, See Article. 196/1 of the Criminal Procedure Code No. 3 of 2001.

the crime, even if the damages that are claimed take place as a result of a crime of a felony, misdemeanor, or violation. The legal text did not limit it to only serious crimes other than crimes of misdemeanors and violations due to the text which comes generally and absolutely.

It is also equal whether the damage is physical or moral. The physical damage happens to the human body, money, leads to financial loss, waste, or loss of profit. The moral damage "ethical" is damage to the human honor, reputation, emotion, or social status, as a result of breach or prejudice to the interest or non-financial right⁶⁸⁵. Physical or sexual violence against women leads to the physical damage of disability, disease, and mutilation, as well as the expenses and costs of treatment, absence from work, or loss of employment; whereas the moral damage is represented by pain which is caused by tangible pain in addition to the internal and psychological pain caused by anxiety, fear, oppression, frustration, and weakness, notwithstanding her feeling of shame and social stigma scandal. According to Article (275) of the Code of Criminal Procedures, "If the court decides to convict, the sayings of the public prosecutor and the plaintiff of the civil right shall be heard. Then the convicted and his lawyer shall be heard, and then the Court shall pronounce the sentence and provide for punishment and civil compensation⁶⁸⁶". The Criminal Court is granted this competence because by its examination of the public claim, it becomes more capable than others to assess the damage as being acquainted of all the details of the incident before it and informed of the circumstances of the damage. It has the powers and means of evidence that help to uncover the truth during the criminal investigation better than the authorities of the civil judiciary, as well as the role of this in reducing the time, effort, and expenses incurred by women if they choose to claim compensation through the civil judiciary.

Compensation for damage resulting from the crime is primarily due to the provisions of the Penal Code which does not distinguish between materialistic damage and moral damage⁶⁸⁷. According to Article 42 of the Code, which states that: "Obligations that the Court may rule are: 2. Dysfunction and damages." Whether the damage is material or

⁶⁸⁵ G. Al-Adawi, 1977, p. 425.

⁶⁸⁶ See Article 275 of the Criminal Procedure Code No. 3 of 2001.

⁶⁸⁷ See the judgment of the Jordanian Court of Cassation as a criminal court, No. 29/1968 (pentagram), published on page 456 of the Journal of the Bar Association on 1/1/1969.

moral, it requires compensation and does not only depend on monetary compensation, but also can be moral, such as in the case of publication of the verdict in the newspapers or public apology to women affected by the crime⁶⁸⁸.

In a judicial precedent, the Jordanian Court of Cassation upheld a verdict issued by Amman Criminal Court to require defendants to compensate the estimated amount of 250,000 JD for a 20-year-old girl who was subjected to the crimes of disgracing and rape. This is after the response of the Court of Cassation rejected the appeal of the offender's agent, taking into account the ugliness of the crime and the victim subjected to physical harm described in the examination report by the Department of Family Protection and Forensic Medicine, in addition to her moral and psychological suffering, whether during the assault or monitoring her and her loss of confidence in people or during the investigation, disclosure, and trial, wounding her modesty, people's views, and rumors, whether in the press or among individuals. All of the foregoing plagued the plaintiff no less serious harm than the physical damage, impaired dignity, and degraded her social status, disgrace, and integrity⁶⁸⁹.

The judgment issued by the Criminal Court to compensate the victim of crimes of violence, whether morally or materially is of great importance and impact in the defiance of violence against women and eliminate it, by burdening the perpetrator full civil criminal responsibility for the acts of violence that he has committed against women, so as to achieve the full concept of deterrence.

The verdict issued by the criminal court also includes compensating women affected by violence crimes with the concept of psychological satisfaction for them and attempts to bring back a part of their dignity that has been insulted by assault, violence, their privacy being revealed to the public, and their social rehabilitation, especially for victims of sexual

⁶⁸⁸ B. Qabha, 2009, p. 8.

⁶⁸⁹ See Ahdath 24, compensation "usurped" quarter of a million dinars, <http://www.ahdath24.com/article/162068>

crimes, in a way that helps to eliminate the effects of social stigma, shame, and the inferior look upon them.

The compensation awarded by the court ruling also implies the meaning of the economic and social empowerment of the victim women in a manner that avoids dependency, family supremacy, destitution, and economic exploitation, and provides her and her children with a decent independent life away from the violent environment in a way that protects her from further violence. It also contributes significantly to commencing the process of changing the societal culture towards establishing the legitimate right of women to resort to judiciary, access to justice and equity on an equal basis with men, and without discrimination against them on the basis of gender. All these benefits contribute to dispel women's fears from resorting to justice, encourage them to claim their rights, reject violence, and address the cessation of it. The consequences of resorting to justice are no longer confined to the negative consequences of exposures and scandal without any desired benefits; but now include positive results represented in restore the honor and compensation as well as proving the innocence of women from the rumors of social accusation of racial discrimination against her on the basis of gender.

Despite the importance of claiming civil rights before the criminal justice system for women affected by violence, resorting to this legal option is not the norm in cases of violence against women. Perhaps the most prominent reasons that explain why this option is not exploited can be that the majority of violence cases against women do not reach the judiciary except in cases of serious and considerable violence whose perpetrator is not a family member. For social reasons, the police are reluctant to respond to women's complaints against fathers, husbands, and other male family members in order to protect family ties and social fabric⁶⁹⁰. This deprives women from their right of access to justice and prevents their equity. It makes it difficult for them to access their right to compensation for the damage caused by acts of violence. Although the law does not limit the demand for compensation for damage caused by the crime to the criminal justice, where the claim for compensation remains open to the civil judiciary, the absence of a penal sentence

⁶⁹⁰ See chapter II of this study

established for the incident of violence deprives women of the basic proof of evidence on which the civil judgment is based on compensation. It prolongs the proceedings and increases the hardship and expenses for the victim in such a way that she refrains from claiming it. Many cases of physical violence also fall within the right of parents and husbands to discipline their daughters and wives in a way that leaves them out of criminalization, criminal accountability, and compensation, in addition, cases of sexual violence committed by the husband to his wife, because of the absence of legal criminalization. This makes it impossible to resort to this judicial option.

On the other hand, women victims of violence, as other victims in general, suffer from marginalization of their role and status in the Code of Criminal Procedures, which focuses mostly on providing the perpetrator with guarantees to protect his rights against state authorities to prevent their arbitrariness and brutality. First and foremost are guarantees of fair trial and the right to defense, while the criminal law treats the victim as a marginalized party during public proceedings and omits many of her fundamental rights, such as her right to protection and to legal assistance, While the Criminal Code treats the victim as a marginalized party during public proceedings, it neglects many of its core rights, such as its right to protection and its right to legal assistance, which negatively affects her legal status and undermines her access to the rights enshrined in the Code of Criminal Procedures No. 3 of 2001 of the victim, including the right to redress and the claim of civil right to the penal judiciary to demand compensation for the damage caused by the crime of violence. The woman's ignorance of the provisions of the Criminal Procedural Law and her lack of knowledge of the litigation procedures, as well as her lack of timely legal awareness by the criminal justice agencies, prevents women from using the possibility of claiming compensation for the damage caused by the perpetrator's violence in conjunction with the Criminal Court's consideration of public action.

Therefore, it is worth recommending that women's institutions, which have a responsibility to address violence against women, conduct awareness campaigns for the right of women to demand compensation for the damage caused to them by violent crimes before the penal judiciary and highlight the benefits to them of conducting this legal option. The foremost

among these is to affirm the right of women to reject and resist violence by all available legal and judicial means and their right to access equity and full justice.

The researcher recommends that the need to amend the Code of Criminal Procedures No. 3 of 2001 and establish a clear and specific legal text to alert the right to expedite and strengthen the procedures in cases of women compensation, which highlights to the judiciary that there must be quick procedures in the cases of compensation for women victims of violence so as to achieve the compensation judgment's objectives of deterrence and improve the economic situation of abused women.

It is also recommended that the right of women affected by violence to compensation be ensured under strengthened legal rules to require court-ordered compensation so that the award of compensation will have a privilege over other civil rights and exclude compensation for women who are subject to non-custodial things, such as a house of residence; since a wife who is subjected to violence in the marital home must be entitled to require compensation, even in those cases where the husband does not have a house other than the residence. So, it's more adequate to be required for the benefit of women and their children as victims of violence and the husband the perpetrator of violence be homeless.

3.1.2.2.2. Social Duty of the State

Article (32) of the amended Basic Law of 2003 stipulates that "any assault on any of the personal freedoms or inviolability of the private life of man, other public rights, and freedoms guaranteed by the Basic Law is a crime which neither the criminal action nor the civil action arising from prescription shall be lapsed. The National Authority also guarantees fair compensation for those who have suffered from damages." Public rights shall mean those rights established by the branches of the general law such as the constitutional law and criminal law for all members of society, regardless of whether they are citizens or foreigners; they represent the minimum freedoms that must be recognized by the individual in modern societies; they are the indispensable rights of a human being, but are definite once they exist and do not live without them. Therefore, they are called

adhesive personal rights or natural rights⁶⁹¹. These rights are numerous and difficult to enumerate. At the same time they expand as far as the progress of civilization, including the advancement of human rights. However, the jurisprudence of these rights attributes them into three categories: rights aimed at protecting the physical entity of the human being as a human right to life, physical integrity, and freedom. The second category includes those rights aimed at protecting his morals or moral entity such as the right to honor, respect for confidentiality and privacy. Finally, the third category includes the rights that aim at enabling a person to carry out his activity and to play his role in life such as the right to movement, work, marriage, belief, and freedom of expression⁶⁹². Together, these rights constitute fundamental pillars that cannot be touched, exceeded, or violated. Their protection and security are a prerequisite for the realization and enjoyment of other human rights. Therefore, states have ensured that they are incorporated into their constitutions and protected by their national laws. International declarations, covenants, charters, and agreements have affirmed the universality of these rights and their comprehensiveness on the basis of equality and non-discrimination.

By activating article (9) of the Basic Law which established the rules of equality and prohibited discrimination among members of society on the basis of sex, it is concluded from Article (32) that any assault on any of the rights of women adhesive to the personal rights constitutes a crime by virtue of the Constitution. The lawsuits resulting wherefrom shall not be dropped in both its penal and civil parts due to the prescription of dropping by lapsing of time. Article (12), Paragraph (1) of the Palestinian Code of Criminal Procedures No. 3 of 2001 states that, "Criminal action and civil right case shall expire for ten years in felonies, three years in misdemeanors, and one year in infractions unless otherwise provided by law" does not apply to lawsuits arising from the violation of any of the basic rights of women protected by the Constitution. On the other hand, the Basic Law guarantees fair compensation to those affected by the violation of these rights and freedoms, which means that the state is obliged to ensure fair compensation to women victims of violent crimes as a serious violation of women's right to preserve and protect

⁶⁹¹ See A. Al-Far, 2006, p. 139.

⁶⁹² M. Qassem, 2006, p. 50.

their physical entity, whether the assault occurs by the State or by individuals. Article (32) of the Basic Law is an absolute general one; the general text is taken for its generality until it is restricted and the absolute text is taken on its absoluteness until it gets restricted⁶⁹³.

By virtue of the Constitution, the state is obliged to compensate battered women as a party responsible for the persistence of such violations and assaults because of the persistence of discrimination against them on the basis of gender in criminal laws, and the inability of the state's official institution to protect women from violence, especially within the family. This responsibility is enhanced with the accession of Palestine to many international conventions and covenants that call for the protection of women's rights in the face of violence and discrimination, especially CEDAW. The Committee on the Elimination of All Forms of Discrimination against Women finds that the absence of specific legislation to combat domestic violence and sexual harassment violates human rights and basic freedoms⁶⁹⁴. This requires that the state shall grant compensation as approved by Article 32 of the Basic Law. Whereas in General Recommendation No. 19 (24) (t) on violence against women issued by the Committee on the Elimination of Discrimination against Women at its eleventh session, 1992, "States shall take all legal and other measures necessary to provide effective protection for women against gender-based violence, including, *inter alia*: (i) Effective legal measures, including criminal sanctions, civil remedies, and compensatory provisions to protect women from all types of violence, including, *inter alia*, domestic violence and abuse, sexual assault and sexual harassment in the workplace."

On the other hand, it is the responsibility of the State to compensate women victims of violence in addition to compensation for those affected including their children, relatives, or husbands, as a result of the failure of the state represented by criminal justice officials to protect them on the basis of the principle of equality and prohibition of gender-based discrimination, which resulted in failing to deal with battered women who resort to the state institution for protection, justice, and redress. However, they were subjected to

⁶⁹³ A. Abdel Wahab and I. Ahmed, 2018, p. 56.

⁶⁹⁴ UN, In-depth study on all forms of violence against women: Report of the Secretary General, 2006, p. 102.

discriminatory treatment against them and unfair prejudice to their right of protection, access to justice in a way that exposed them to more violence and injustice. Some of them were subjected to assault on their right to live as a result of the failure of the police to provide protection for them, failing to take their claims seriously, and not to follow the legal assets to their complaints to arrest the attackers and bring them to the competent judicial authorities for trial. An example of this happened with the victim (Nancy) from Bethlehem, who was killed despite resorting to the police for protection and justice.

The right of battered women to fair compensation for moral damages resulting from the violation of their moral entity and their right to honor and confidentiality as a result of the diversion of their cases to the community and unlawful access to the various members of the community, as well as exposure to the public because of the unprofessional conduct of police and other members of the criminal justice. In addition, the lack of consideration of gender specificity and confidentiality of women during litigation and trial proceedings resulted in stigmatization of women victims with social stigma, which returned to them and their families with negative results. They were also subjected to degradation, humiliation, insult, and contempt as a result of what they stamped with by using abusive and unethical words during interrogation sessions to pressure them to confess to committing sexual crimes instead of treating them as victims of such crimes.

It is also the responsibility of the state to compensate women who have been arbitrarily detained in correctional and rehabilitation centers by the governor or in safe houses by compulsory police transfer. This constitutes a blatant assault on their right to freedom and their right to practice human activities such as the right to movement, work, study, and other basic rights. Article 9, Paragraph 5, of ICCPR states: "Everyone who has been the victim of unlawful arrest or detention shall be entitled to compensation."

The importance of state compensation for women victims of violence is an expression of the state's responsibility towards women victims as a result of the failure to protect them from violence and discrimination against them on the basis of gender in the criminal law system, which is still ongoing before Palestinian courts. As a result of confusion in dealing with cases of battered women and women threatened with violence by criminal justice agencies, it has exacerbated the seriousness of their situation and worsened their tragedy,

causing them significant moral and societal damage. Furthermore, it is essential to empower victims economically and socially, to protect them from exploitation in all its forms, especially economic and sexual exploitation, to help victims to move away from the violent environment, and take independence from it and start a life free from violence. In the long run, it would force the state to act at all levels and firmly to end violence against women because of the costly economic consequences resulted from permitting it, turned a blind eye from it and its failure to combat it.

However, up till now, the Palestinian Authority has not issued any law on compensations for human rights violations, making this constitutional principle unworkable in practice. The Palestinian judge cannot rule on obliging the state to compensate women who are victims of violence or who are affected by violence as a result of the absence of applicable law in these cases. The researcher, therefore, recommends that civil society organizations and the feminist movement should exert pressure on the decision makers and legislators to enact a law to compensate those affected by human rights violations so that abused women can invoke this law in their Judiciary battle towards the state that failed to protect them from violence.

3.2. Empowerment in other aspects

Given the difficulties faced by women in most aspects of their lives, especially violence against them, since they constitute a socially vulnerable group in economic and social terms, under circumstances in which male power prevails, they must be empowered to strengthen their social status, to exercise their constitutional rights, and to ensure commitment to equal rights, duties, and principles that ensure respect for women, their human dignity, and individual freedom. All of these will reinforce their position in the face of violence and its elimination; therefore, they must be empowered politically and economically.

3.2.1. Political Empowerment

Women, their rights, aspirations, and wiping violence off against them shall be one of the first political agendas of society and political parties. All of the state policies must be put forward on the basis of respect for women's rights on an equal basis with men and on the

basis of positive discrimination due to the constructive element of women starting from the small community of the family that constitutes the whole society with all its spectra. There can be no rise of the state without taking into account the rights of women, ridding them of the scourge of violence, and empowering them in public policies. The Palestinian woman have been standing by man in all the various stages of resistance and the national struggle, sharing his concerns, his hope for liberation and independence, and the establishment of his independent state. However, this participation has not been reflected positively on the reality of the political participation of Palestinian women⁶⁹⁵. Neither has it been materialized in increasing her participation in decision-making positions. Despite the strenuous efforts exerted by the feminist movement and civil society institutions to increase the representation of women in decision-making centers and enhance their political participation, the realm of political life remained the exclusive domain of men in all what that means of continued digestion of women's rights, neglecting their issues and their omission from the state agenda, legislation and policies, especially ignoring the issue of confronting violence against women and the priority of eliminating it.

The Israeli occupation and its repressive policies against activists and the fear of attacking the honor of women engaged in resistance and politics have been the main cause for the marginalization and exclusion of women from political life. Partisan, family, and tribal considerations⁶⁹⁶. and the socio-cultural legacy dominated by violence, stereotypes and discrimination against women on the basis of gender⁶⁹⁷, have reinforced this exclusionary approach, which has been exacerbated by the Palestinian division between the West Bank and Gaza. In addition, the severe economic situations have as well played a main role in rooting it in the society due to the preoccupation of women with their economic and social concerns than participating in the political life⁶⁹⁸.

However, this discrimination and the fragility of the political rights of Palestinian women are incompatible with the provisions of the CEDAW Convention, to which Palestine has

⁶⁹⁵ To know more about the political role of Palestinian women and their struggle against successive occupations on Palestine. See N. al-Hindi, 1995.

⁶⁹⁶ Shams, Political Participation of Palestinian Women http://www.shams-pal.org/?page_id=63

⁶⁹⁷ See H. Gadallah, 2007, p. 69.

⁶⁹⁸ W. Joudeh, 2017, p. 35. And H. Adly, et al., 2017, p. 18.

acceded. By joining of the CEDAW Convention, Palestine has assumed before the international community the responsibility to abide by all its provisions, including Article 7 of the Convention, which obliged States members to take all appropriate measures to eliminate discrimination against women in both the political and public life of the country. This requires the Palestinian government to eliminate all manifestations of discrimination against women in the field of political rights, and to enhance the ability of women to exercise these rights on an equal basis with men, including the adoption of various positive discrimination methods to accelerate equality. Therefore, it is necessary to enable women to participate in the electoral process, and to ensure their participation in decision-making.

3.2.1.1 Participate in the electoral process

National constitutions are keen to recognize the right of individuals to participate in the political life of their countries. Hence, in order to make this participation possible, the constitutions establish a set of political rights for their citizens, above all to ensure the right to nominate and vote in elections⁶⁹⁹. The international covenants for human rights including the UDHR in 1948 and ICCPR affirm the importance of elections be free and fair happening periodically on the basis of secret ballot and ensure freedom of voting on an equal basis for all⁷⁰⁰.

The importance of the right to nominate and vote rises from the importance of the electoral process itself, because the elections are one of the most important pillars of human rights. Furthermore, it is one of the most important political cultural practices in modern democratic states, which are based on citizenship and equal rights and duties among all citizens without discrimination on the basis of gender. Elections constitute the essence of citizenship and the way it is practiced; since the controlling power in a country gains the support of the democratic legal basis through it, wiping off suspicions of despotism and dictatorship. As a half of society, women contribute with their political participation to widening the base of political participation to include all segments of society including both women and men, in a way that gives full legitimacy to the formal institutions of the state. At the same time, it creates a conviction for women that the society recognizes their

⁶⁹⁹ See Article 26 of the amended Basic Law of 2003 and its amendments.

⁷⁰⁰ See Article 21 of the UDHR, and Article 25 of the ICCPR.

political rights on an equal basis with men⁷⁰¹. It gives them a sense of community recognition that they enjoy full citizenship without discrimination; thus reinforcing their belonging to society and feel the importance of their exit from the private sphere and their participation in the public sphere, achieving their self-confidence and their ability to confront and combat violence at all levels.

In addition to the importance of the role played by elections in creating representatives of the people to assume the affairs of governance and legislation through the drafting of laws, the formulation of public policies, and their implementation, women must be representative and strongly present in order to ensure the presentation of their issues, especially the issue of violence projected upon them, so that effective legislative and executive steps be taken to eliminate it. In this context, the importance of guaranteeing the right of women to stand for nomination and elections in the presidential and legislative elections and local elections is evident, especially in light of the recent Palestinian democratic experience.

3.2.1.1.1 Legislative and Presidential Elections

Palestinian women practiced their right in nomination and election when they participated in the legislative and presidential elections that took place for the first time in the history of the Palestinian people under its national authority and under the Palestinian Election Law in 1996. The elections were held in accordance with the Palestinian Election Law No. 13 of 1995, issued by the President of the Palestinian National Authority⁷⁰². Mrs. Samiha Khalil was nominated as the first Palestinian woman to run for office on the basis of this law, which granted the right to stand for nomination and election to all Palestinians, men or women, equally and without discrimination on the basis of gender⁷⁰³.

The wide participation of Palestinian women in those elections, some estimates indicated that the participation rate of women in the voting was 85.7%. In some areas, the percentage of women registered to vote exceeded that of men⁷⁰⁴. Nevertheless, the result of the elections was the success of only 5 women out of 88 members of the Legislative Council,

⁷⁰¹ A. Baraka, 2016, P. 19.

⁷⁰² T. Awad, 2004, p. 1.

⁷⁰³ See Articles 6.9 and 13 of the Electoral Law No. 13 of 1995 on Elections.

⁷⁰⁴ Jerusalem Center for Women, 1996, p. 11.

or 5.6%⁷⁰⁵. Without ambition, it is a small percentage that does not match the size of the struggle waged by women for the cause of Palestine besides men. The Election Law is considered one of the obstacles that adversely affected women's political participation in the elections, as it adopted a multi-constituency system rather than a single-constituency system, allowing family and clans to emerge as a basis for success. This is an obstacle to women in a male society⁷⁰⁶.

The 1995 Election Law was based on a simple majority system, meaning that a quarter of the West Bank and Gaza Strip was allocated one or two seats in the council⁷⁰⁷. The limited number of these constituencies has reduced the possibility of women being nominated by political parties, or even merely considering nominating women, believing that men are more likely than women to win. Neither families nor parties are in many cases ready to nominate a woman for that constituency, which has only one or two seats. In their view, the nomination of a woman weakens her competitiveness; and thus causes her to lose that constituency's seat.

Although the 1995 Election Law allowed women to run for political office in the country, the law itself was not sufficient to increase women's participation in the context of real inequality on the ground⁷⁰⁸. Since the election law was not gender sensitive, it did not contain any positive discrimination in favor of women, in order to ensure the minimum representation and participation of women in the Legislative Council. Its articles did not include the provision of quotas for women by allocating a certain percentage of seats in favor of women's representation as it did with the Christian and Samaritan religious groups; despite the suffering of women of various forms of discrimination and marginalization at the official and popular levels⁷⁰⁹. This coincided with the decline in the status of the pro-women's parties, their emancipation and their equality with men on the Palestinian arena, the growth of conservative parties. In addition, the political parties were not inclined to nominate women on their electoral lists⁷¹⁰. In light of Arab ideals and social attitudes, that

⁷⁰⁵ R. Kittaneh, 20006, p. 19.

⁷⁰⁶ Jerusalem Jerusalem Center for Women, 1996, p. 20.

⁷⁰⁷ Jerusalem Center for Women, 1996, p. 24.

⁷⁰⁸ F. Barghouti, 2008, p. 86.

⁷⁰⁹ See Article 5/2 of Law No. 9 of 2005 on elections.

⁷¹⁰ See H. Shib, 2011, pp. 84-87.

raises the role of women in the private field while putting barriers to their participation in the public domain⁷¹¹.

On the other hand, the marginalization of women was not limited to the provisions of the 1995 Election Law, which also did not include the provision that women should be represented in electoral districts, in the Central Elections Office, and in polling stations⁷¹². It rather also extended to the electoral process itself where women were excluded from participation in the bodies supervising the management and follow-up of the electoral process. Only one woman was involved in the Central Election Commission out of 10 members⁷¹³, and this is a psychological pressure that women are a deficient element in society and is a form of violence against them.

Women benefited from their first democratic experience and learned the lessons. As a result of lobbying campaigns organized by the feminist movement, the Legislative Council amended the Election Law to ensure wider participation of women, as the amended law adopted a minimum female representation⁷¹⁴, by introducing women's quota to ensure women reach the legislative council in a higher percentage of representation to accumulate towards the importance of the presence of women in parliament in the mind of Palestinian society⁷¹⁵. Article (4) of Law No. (9) of 2005 on the elections states: "Each electoral list nominated for proportional elections (lists) shall include a minimum representation of women, not less than one woman from each of the following: 1- The first three names in the list. 2 - the four names that follow, and every five names after that".

The legislative and presidential elections were held for the second time ten years after the first elections under the Palestinian Election Law No. (9) of 2005, which reorganized the elections on the basis of a mixed electoral system divided between the relative majority system (multi-constituency) and the lists system (proportional representation) i.e.(50% constituency, 50% lists)⁷¹⁶. The Palestinian women have achieved about 13% of the

⁷¹¹J. Ballington et al., (n.d.), p. 53.

⁷¹²See D. Hassouna, 2016, P. 100.

⁷¹³F. Wazifi, 2016, p. 10.

⁷¹⁴See Article 4 of Law No. 9 of 2005 on Elections.

⁷¹⁵H. Shib, 2011, p. 80.

⁷¹⁶See Article 3 of Law No. 9 of 2005 on Elections.

number of members of the Palestinian Legislative Council, which is better than it was in the previous council, but it remains below the required level demanded by women⁷¹⁷. The main reason for this is attributed to the Election Law No. (9) of 2005 that guarantees a minimum representation of women in only half of the electoral system by stipulating the introduction of women's quota in the list system rather than the constituencies system⁷¹⁸. This prompted the political parties to include women's quota in their electoral lists because they are obliged to do so by law, but reluctance by virtue of the control of cultural heritage specific to the nature of gender roles in society and coupled with the inferior view of women for the nomination of women within the electoral districts for lack of legal obligation. Therefore, the masculine mentality and power in the political parties had the most prominent role in weakening the participation of Palestinian women in the political and party life. Therefore, most parties did not present any women on their list of constituencies⁷¹⁹. This comes at a time when most women who aspire to an elected position rely on the structures of political parties to nominate and support them in the election campaign and after they are elected⁷²⁰. Due to the weak economic empowerment of women, women wishing to run for office cannot run independently of political parties. The economic factor plays a pivotal role in this field, where the financial burden of campaign costs prevents women from running without being adopted by a political party⁷²¹.

This behavior of political parties expressed the extent of marginalization and discrimination experienced by women in the framework of their right to stand for election, especially if the law does not guarantee them the minimum representation. The political parties would not have nominated any woman without the presence of legal compulsion as clearly demonstrated the depth of the role played by the law in ensuring greater participation of women in the political life⁷²². In this context, it should be noted that the issuance of the Law by Decree No. (1) of the year 2007, on the general elections, which amended the electoral system to abolish the mixed system and the introduction of full

⁷¹⁷A. Baraka, 2016, P. 65.

⁷¹⁸See Article 4 of Law No. 9 of 2005 on Elections.

⁷¹⁹See K. al-Shafei, N. Awwad, 2010, p. 39.

⁷²⁰Office of Democratic Institutions and Human Rights, 2012, p. 27.

⁷²¹K. al-Shafei, N. Awwad, 2010, p. 46.

⁷²²K. al-Shafei, N. Awwad, 2010, p. 47.

proportional representation (lists) as one method of elections⁷²³, while retaining the quota of women as prescribed by Law No. (9) of the year 2005. This means the inclusion of women's quota within the entire electoral system⁷²⁴, which would double the representation of women within the Legislative Council due to the high rate of women participation in the lists of their parties to double. The new legal orientation forces the various political parties and electoral lists to incorporate women into the ranks of their senior leadership because, in all cases, they will be represented in the Legislative Council by law⁷²⁵.

Since it is often easier to change the electoral system realistically than to radically change the perception of women⁷²⁶, the researcher recommends the adoption of an electoral system based on full proportional representation in the conduct of future elections.

It is also important to recommend that the legal and feminist civil society associations and other related parties to work hard in order to qualify and prepare a number of young women leaders that are qualified to engage in political work, to strengthen their grassroots and social impact, to arm them with the knowledge and experience that are necessary to run for election with a feminist agenda and clear goals to ensure winning seats that enable them to make the desired official and societal changes in favor of women's rights, and to protect them from violence away from the maze of party agendas.

It is also recommended that it's necessary to conduct awareness campaigns in order to raise the awareness of the electorate public especially women of the necessity to support women candidates, to vote for them, and to enlighten them with the importance of the impact of strong female representation in elected councils on their lives, rights, status, issues, and future.

3.2.1.1.2. Local elections

Both women and men have long been waiting to take part in the Palestinian local elections held for the first time under the Palestinian National Authority in 2004/2005. Notwithstanding the adoption of the Palestinian Local Councils Law No. 1 of 1997 by the

⁷²³See Article 4 of the Decree-Law No. 1 of 2007 on General Elections.

⁷²⁴See Article 5 of the Decree-Law No. 1 of 2007 on General Elections.

⁷²⁵K. al-Shafei, N. Awwad, 2010, p. 47.

⁷²⁶J. Ballington et al., (n.d.), p. 53.

Palestinian Legislative Council, and despite organizing the issue of the election of the Palestinian local councils by the Law No. 5 of 1996, the law remained a dead letter. Under the pretext of political justifications, the law was suspended in favor of the appointment of heads and members of local government by the Ministry of Local Government⁷²⁷. The local elections were replaced by the appointment of municipal councils in the majority of municipalities in the West Bank and Gaza Strip. The Palestinian Local Councils Union was set up as a body that coordinates the work between the councils and the Ministry of Local Government⁷²⁸. Regarding women representation in these councils, the Minister of Local Government Saeb Erekat issued in 1998 a circular stipulating that at least one woman should be appointed to all local and municipal councils. However, the wording of the circular was not binding as a minority of the councils responded by appointing (61) women out of (3739) appointed members, a number that did not exceed the humble percentage 1.6% of the members⁷²⁹.

Despite the criticism of the entire appointment policy for its exclusion of the democratic process and its violation of the right to nominate and vote for citizens; in addition to the absence of the principle of equality of opportunity and discrimination against women on the basis of gender, due to the small number of women appointed compared to men; as well as the resignation of seven of them as a result of negative attitudes towards women, where the male mind sees that work in the municipal and village councils is only for men, and the negative attitudes, marginalization, and deliberate exclusion by which the membership of women in some village and municipal councils, the general results achieved by their membership of appointment were positive, crystallized by changing the prevailing traditional concepts. This experience has shown that attitudes have changed for the better when women held positions that enabled them to achieve supervision and assume responsibility, and to maintain direct contact with society at all levels. The experience of appointed women contributed to enhancing their personalities, and refining their

⁷²⁷ T. Toukan, 2001, p. 8.

⁷²⁸ See D. Hassouna, 2016, P. 103.

⁷²⁹ F. Wazifi, 2016, p. 12.

experience and ambition in a way that served the idea of women's participation in local elections and confirmed their eligibility for the task⁷³⁰.

On 10/05/2004, the Cabinet decided to start conducting elections for the local councils in stages starting from August 2004 and finishing them within one year as of the date of their commencement⁷³¹. As a result of the pressure of the feminist movement, on 01/12/2004, a law was passed to amend the Law of Local Councils Elections No. 5 of 2004, allocating at least two seats for women candidates in local council elections⁷³². On 15/08/2005, the Local Councils Elections Law No. (10) of 2005 was passed, whereby the legislature approved a quota of women with 20% of the seats⁷³³.

The legal adoption of the women quota has encouraged women to run for elections more confidently and steadfastly with their decisions and chances of success⁷³⁴. Adopting the quota has also given women a greater impetus to participate in the election since they sense the chances of winning have got more than before. This change was also a spark for families and parties to screen women candidates to secure positions through them, as long as the law guaranteed winning for two women⁷³⁵. This was clearly reflected in the number of female candidates. Before the quota was adopted, 51 women were nominated, which is a low turnout of women to run compared to the male number (6125), bringing the number of female candidates to (150) women after adopting the quota system⁷³⁶.

It should be noted that the number of women candidates would have been greater if families and clans did not intervene, on the pretext that customs and traditions prevent families from being represented by women. Women were barred from running and some were forced to withdraw under the threat of denial of inheritance or divorce in six constituencies. In one case, family members stormed the center of the election commission and withdrew women applications and shredded them on the last day of the date of withdrawal of nomination

⁷³⁰ R. Kittaneh, 20006, p.28.

⁷³¹ J. Harb, 2005, p. 2.

⁷³² J. Harb, 2005, p. 2.

⁷³³ See Article 17 of the Local Councils Election Law No. 10 of 2005.

⁷³⁴ R. Kittaneh, 20006, p.30.

⁷³⁵ F. Wazifi, 2016, p. 13.

⁷³⁶ See Central Election Commission, 2004-2005 Local Elections Results and Statistics, <http://www.elections.ps/tabid/641/language/ar-PS/Default.aspx>

applications. Some women candidates were subjected to social pressure to withdraw in favor of their husbands⁷³⁷. Therefore, women were suppressed and prevented from practicing her right of nomination, which is one type of violence practiced against them.

It is believed that these discriminatory practices against women are evidence that the legal provision to set a minimum representation for women on the boards of local institutes is not enough on their own to ensure their participation in political life freely and without restrictions. The right of women to stand for election and the possibility to enjoy it on the ground on an equal basis with men must be protected. Therefore, the researcher recommends that the electoral law be amended by adding a legal provision guaranteeing the right of women to stand for election freely by criminalizing the prohibition of women from running or coercion and threatening them to force them to withdraw, as well as criminalizing all acts involving infringement of this right or assaulting it as the withdrawal of their applications from the CEC headquarters and tearing them apart as these acts of violence against women, insulting their personality, their decision and minimizing them in front of society and denying their right to practice her political rights on an equal basis with men. It is also important to recommend that innovative and alternative penalties be introduced in relation to traditional penalties that are commensurate with the discriminatory ideology that motivated these crimes against women, such as requiring aggressors to promote the campaign of the abused candidate or to help support campaigns for women candidates.

Obstacles placed by the male mentality in the way of women were not limited to the denial of the right to stand for election, but also extended to include the restriction of this right by shackling customs and traditions in a way that established, in mind, the inferior view of women and deepened the size of the gender gap in favor of male superiority over women. These acts were crystallized by preventing female candidates in some electoral districts from presenting their pictures on election campaign posters, leaving them empty without a personal photo that serves to identify her by the electorate. In some conservative villages, women were not allowed to place their names primarily in the electoral campaign. They

⁷³⁷ R. Kittaneh, 20006, p. 32.

were identified by using the male i.e. she is someone's wife or sister⁷³⁸, which reinforced her dependence and subordination to men and showed that allowing women to practice their right to run was not the result of a change in the mindset of society and its understanding of the importance of women's participation in political life, but rather a formal invocation to meet the legal conditions and requirements.

It is believed that women practicing their right to run in this restrictive, incomplete, and shameful way, has been counterproductive for women in the form of degrading and showing them to a lesser degree than men, and contributed to the strengthening of the prevailing societal perceptions that women need to be protected from exposure to the public. It also played down their chances of winning because their characters were not clear to the electorate and because of the inferiority look upon them.

Therefore, the researcher recommends the need to find legal and practical solutions that take into account the development of media, the Internet, and social media and their role in ensuring the right to campaign for female candidates on an equal basis with male candidates.

On the other hand, women's right to vote was not immune from family and clan domination, which dealt with it as a trump card and considered it an electoral weapon to help them win their male candidates. The rise in the percentage of women participating in local elections does not really mean the free voting, since women's votes are restricted by the opinion of the male power⁷³⁹, which was manifested by violence, the threat of divorce, and deprivation of inheritance, as well as the exploitation of women's lack of awareness of their political rights and lack of awareness of the importance of their voice in shaping the political, social, economic, and cultural life of the society in general and women in particular. So they strip women of their electoral vote and confiscate it, making it an additional voice subordinating the voice of the man through which he manages the electoral process in his favor to choose political leaders and decision makers from a male perspective that is not gender sensitive. This is considered as a psychological pressure that women are an imperfect element of society and is one of the forms of violence that is brandished against them. In addition to

⁷³⁸ See J. Kiswani, 2018, p. 55. And General Union of Palestinian Women, 2017, P. 12.

⁷³⁹ F. Wazifi, 2016, p. 13.

being a falsification of women's participation in the political life, her voice was not an expression of women's conviction and political orientation. This may be one of the reasons that reduced the chances of women candidates to win more seats in municipal and rural councils. Women votes were not cast in their favor based on the conviction of the audience of female candidates with the importance of their winning and consequently their representation of their cases in the local councils, but they rather voted in favor of candidates imposed by male family. This will reconstruct the pillars of the male culture in society, dispel the efforts of the legal and feminist civil society associations and other related parties to support women's rights, and eliminate violence against them through social change by enhancing the role of women in the political life and increasing the proportion of representation in decision-making positions.

Therefore, it is recommended raising awareness among women voters, and working on increasing knowledge of the importance of practicing their right to vote in order to express their decision and personal choice based on their own conviction of the electoral candidate program away from family dependency. It is also necessary to make it clear to them that the process of voting is confidential, which guarantees the secrecy of their choice away from any coercion or threat.

The results of the elections showed that women have won about 19% of the total seats compared to 81% for men. Although the percentage of women represented is 1% less than the percentage ensured by the women quota, the analysis of the elections' results showed that the female winners through competition were more than those guaranteed by the women quota. Women have won 11% of seats through competition but 8% through the quota⁷⁴⁰. This may indicate a beginning of change in the society's culture in favor of women as they proved their ability to run well in spite of the barriers and obstacles, to share the management of the public issues, and to make a change in the society⁷⁴¹. However, this does not deny the favor of quota that ensured representing women, away from the attempts of the family exclusion or parties' marginalization, encouraging them to take the run in the elections.

⁷⁴⁰ F F. Wazifi, 2016, p. 14.

⁷⁴¹ F. Wazifi, 2016, p. 19.

The experience of women in the first local elections was reflected positively on their desire to run in the second elections of the local councils which took place in the years 2012/2013, as per Law No. (1) of 2011. It was noted that the number of female candidates increased significantly compared to the 2004/2005 elections⁷⁴². The number of female nominees reached (1612) compared to (4878) of male candidates⁷⁴³. The continuation of the disparity in the numbers of candidates between women and men is attributed to the family and tribal role, which again left its effects in the administration and election of local councils, which weakened the chances of women running⁷⁴⁴. Nonetheless, political parties have little confidence in nominating women for local councils⁷⁴⁵. This has cast a negative impact on not only the percentage of women participating in the local councils but also the results of the elections, which were described as disappointing for women, where 739 female candidates won the election and 467 by acclamation, or only 21.5% of the membership of local councils⁷⁴⁶, despite the efforts of the feminist movements to root the participation of women in the political life. However, winning the election of many electoral lists by acclamation, which is not subject to the quota system, as stated in the law⁷⁴⁷, the absence of a monitoring mechanism on the implementation of women's quota, where a number of women who won a large number of votes, who received the first, second and third ranks, were counted on the quota system by the Supreme Elections Commission, because the provisions of the law are unclear in this regard⁷⁴⁸. This has led to a reduction in the number of women winning the membership of the local councils. Therefore, it should be recommended that amending the legal provisions related to women's quota system within the Local Elections Law by explicitly stipulating that the first place candidates should not be included in the quota ratio.

The results of the elections also showed the low level of representation of women at the decision-making level in the local councils as a result of the noticeable decline in women

⁷⁴² Ministry of Local Government, Miftah, 2012/2013, p. 6.

⁷⁴³ Central Election Commission, 2013.

⁷⁴⁴ Ministry of Local Government, Miftah, 2012/2013, p. 7.

⁷⁴⁵ National Sectoral Strategy for Promoting Gender Equality, Equity and Empowering Women 2017-2022, p. 28.

⁷⁴⁶ Central Election Commission, 2013.

⁷⁴⁷ F. Wazifi, 2016, p. 17.

⁷⁴⁸ F. Wazifi, 2016, p. 3.

taking the position of head of the local authority, which was enjoyed by only one woman, while four women won in the previous local elections⁷⁴⁹. This is a negative indicator that threatens the progress achieved in the political participation of women at the local level as well as its role in losing the positions gained to men and deepening the gender gap in decision-making positions.

The constraints of women's political participation in local councils are not limited to prejudice and abuse of the right to vote and to be elected, but also to women, who are members of village and municipal councils. The relative access of women to local councils in the context of both tribal and elected bodies or formed by acclamation does not mean that their political and community participation is readily available⁷⁵⁰. Despite the data indicating that Palestinian society accepts the participation of women in politics, cultural and social differences continue to negatively affect the exercise of women's right to rule, since her voice became weak and less effective than it should have been⁷⁵¹. On the one hand, the obstacles related to the reproductive role of women, the care of the family, and household burdens have contributed to limiting the ability of the female member to concentrate on her tasks to run the local councils or devote themselves to them⁷⁵². Lack of practical experience of the female members due to the novelty of their experience in this field, has contributed to the lack of the required knowledge and skills that are necessary for the management of local councils⁷⁵³, especially that the local government sector is distinctively a service sector that needs qualified personnel⁷⁵⁴. On the other hand, the female members were subjected to a fierce campaign called the male monopoly of decision-making and the deliberate or unintentional marginalization of elected women, such as not inviting the female members to the council meetings or choosing inappropriate times for them - by virtue of customs and traditions - to convene⁷⁵⁵ or not to inform them

⁷⁴⁹ Palestinian Working Women's Society for Development, Anti-Corruption Commission, 2017, p. 17.

⁷⁵⁰ Ministry of Local Government, Miftah, 2012/2013, p. 7.

⁷⁵¹ F. Barghouti, 2008, p. 88.

⁷⁵² F. Wazifi, 2016, p. 4.

⁷⁵³ F. Barghouti, 2008, p. 88.

⁷⁵⁴ F. Wazifi, 2016, p. 19.

⁷⁵⁵ MIFTAH, 2017, p. 7.

of the decisions taken and give them traditional roles in the various committees⁷⁵⁶, which has emptied the participation of women in local bodies of its role in enriching the experiences of female members and giving them the skills necessary to serve the public, especially the women sector. The female members of the local councils did not succeed in expressing women's issues and their needs or working on proposing feminist projects so that women would notice the difference between the presence of female members in the local councils and their absence. Partisan affiliation have diminished the feminist agenda and caused to lose its content⁷⁵⁷. Therefore, it is necessary to recommend that women's organizations should work to adopt and support the female members of the elected councils and inform them of women's issues, needs, and ways of providing services to them.

It is also important to recommend that the Ministry of Local Government work should create a gender sensitive environment within the local councils through awareness programs, guidance, and seminars for all members of the local councils on women's right to political participation and decision-making on an equal basis with men, and to develop a program to receive and follow up on complaints of the female members. Moreover, it is essential to take disciplinary measures against members who practice policies of discrimination, marginalization, or exclusion against female members.

It is also recommended that the Ministry of Local Government, in cooperation with women's organizations, should work to enhance and strengthen the experience of women in local councils by providing female members with the skills and expertise necessary to participate in the management of local councils and decision-making, grant them opportunities that are equal to male members in training and participation in conferences, seminars, scientific, technical, and administrative workshops, and other activities related to the scope of their work in the management of local councils. This is to ensure that the experience of women in local government does not fail, which has a negative impact on the chances of their future participation in various aspects of the political life.

3.2.1.2. Participation in decision-making

⁷⁵⁶ National Sectoral Strategy for Promoting Gender Equality, Equity and Empowering Women 2017-2022, p. 28. And Miftah and the Ministry of Local Government, 2014, p. 2.

⁷⁵⁷ F. Barghouti, 2008, p. 88.

The importance of the women participation in the process of decision-making is evident because of the adoption of another kind of ideas that integrates with the ideas of men to ensure the representation of all members of the society and expressing their needs and issues in an honest manner. This participation enables women to highlight their fundamental cause as represented in respecting their freedom and dignity and renouncing violence against them. However, the reality seems different from this, which calls for trying to change it by strengthening the participation of women.

3.2.1.2.1. Reality of women participation in decision-making

In comparison to man, the Palestinian woman suffers from limited participation in public life in general, and justice institutions and decision-making positions in particular. In terms of participation in the civil public sector, women make up 43% of civil servants in the public sector compared to 57% for men. The gap is evident when it comes to those who hold the rank of director general and higher as the percentage reached 12% for women compared to 22% for men in the same category⁷⁵⁸. In addition, only 6% of the ambassadors of the State of Palestine are women⁷⁵⁹. There are only three female ministers in the current Palestinian government compared to 21 men⁷⁶⁰. There is only one female governor of 11 male governors⁷⁶¹.

At the level of political parties, the participation of women in the leadership of political parties is described as low, ranging between (5% -20%) of the leading positions of the political parties. The Democratic Front is the most representative party for women in the Central Committee (20%), whereas the women percentage of participation in the Fatah Movement constitutes only (5%), although it is the largest political party⁷⁶². Eleven women won the membership in the Fatah Revolutionary Council, which is considered the parliament of the Movement, in the 2016 elections, in comparison to 69 men⁷⁶³. The representation of women in the National Council is only 12%. Women in the Central

⁷⁵⁸PCBS, 2019. <http://www.pcbs.gov.ps/post.aspx?lang=en&ItemID=3406>

⁷⁵⁹PCBS, 2018, Men and Women in Palestine Issues and Statistics, p. 65.

⁷⁶⁰The government of Dr. Mohammad Shtayyeh is sworn in before the President, http://www.wafa.ps/ar_page.aspx?id=oFiSm5a853310331951aoFiSm5

⁷⁶¹Dr. Laila Ghannam, Governor of Ramallah and Al-Bireh Governorate.

⁷⁶²Referred at in W. Awad, 2008, p. 66.

⁷⁶³See The names of the winners of the 2016 Revolutionary Council elections. <https://www.aljazeera.net>

Committee of Fatah are represented by one woman compared to 18 male members⁷⁶⁴. There are no women members of the political bureau of Hamas, which is made up of 15 political and military leaders, despite the large public presence of women in the ranks of the movement⁷⁶⁵.

It should be emphasized that the marginalization suffered by Palestinian women today in terms of political participation is not new. Women were previously excluded from participation in permanent status negotiations between the Palestinians and the Israelis. The participation of women was limited to the technical staff of the Madrid conference for peace, where these crews included 66 women out of 366 participants⁷⁶⁶.

As for the reality of popular federations and trade unions, it is no better than the factions and political parties. Many of them have not held elections for a long time, and many of them do not represent any woman in their administrative bodies. There are no binding systems that set the rules of regular elections according to laws guaranteeing the implementation of a quota of women in the elections⁷⁶⁷.

At the level of the official justice institution, women make up 18% of the judges compared to 82% of the male judges⁷⁶⁸; and two female judges out of 45 male judges in the legal (*sharia*) judiciary⁷⁶⁹. The percentage of women participating in the military judiciary is 2%⁷⁷⁰; whereas there are no female judges among the judges of the Supreme Constitutional Court⁷⁷¹, and five of the 21 judges of the Supreme Court are women. The composition of

⁷⁶⁴Centralized Fatah distributes tasks and Al-Aalol Vice President.

<https://paltoday.ps>

⁷⁶⁵A. Abu Amer, Hamas Women Broad public presence and modest leadership representation, <https://www.al-monitor.com/pulse/ar/contents/articles/originals/2015/02/women--role-hamas-gaza-leadership-social-mobilization.html>

⁷⁶⁶Political Participation of Palestinian Women, Shams, p. 14, http://www.shams-pal.org/?page_id=63

⁷⁶⁷MIFTAH, 2017, p. 5.

⁷⁶⁸PCBS, 2019.

⁷⁶⁹UNDP, 2011-2016, P. 63.

⁷⁷⁰Ministry of Women Affairs, 2017-2022, p. 28.

⁷⁷¹ See Official website of the Supreme Constitutional Court: https://www.tscc.pna.ps/members?type=vice_presidents

specialized judicial courts, such as the courts competent to deal with cases of corruption, customs, and tax, is free from the presence of any female judge⁷⁷².

Members of the Public Prosecution consist of 80% men and 20% of women⁷⁷³; the number of female chief prosecutors is 6 to 34 men⁷⁷⁴; and there are 8,017 Palestinian civilian police in the West Bank, including 300 female police officers, 18 of these are women in leadership positions⁷⁷⁵. In the law profession, 73% of lawyers practicing the profession are men compared to 27% women⁷⁷⁶, whereas there are no women among the current 9 members of the Bar Association⁷⁷⁷. The percentage of women in the security forces is low and does not exceed 4%⁷⁷⁸.

These data show the huge gap between the positions held by women in the State, especially senior administrative and political positions, and the positions held by men in these positions, in a way that demonstrates the extent of the violation of the right of women to hold public office and the extent of discrimination that they have occupied in equality with men due to her sex. This state of affairs contradicts with international human rights declarations and covenants which guarantee everyone the same right as others to hold public office in the country and to have equal access to public service⁷⁷⁹, which requires taking all necessary measures to eliminate discrimination against women in the political and public life in order to enable them To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government and represent their Governments at the international⁷⁸⁰.

⁷⁷²See the decisions of the President of the Supreme Judicial Council on the formation of courts in Palestine, <https://www.courts.gov.ps/userfiles/file/%D8%AA%D8%B4%D9%83%D9%8A%D9%84%D9%87%D9%87%D9%87%D9%87.pdf>

⁷⁷³PCBS, 2019.

⁷⁷⁴Ministry of Women Affairs, 2017-2022, p. 28.

⁷⁷⁵Palestinian Civil Police, Gender Strategy of the Palestinian Civil Police, 2016.

⁷⁷⁶PCBS, 2019.

⁷⁷⁷ See The official website of the Palestinian Bar Association, <http://erpmain-001-site14.ftempurl.com/customtype/viewdetail/30>

⁷⁷⁸Ministry of Women Affairs, 2017-2022, p. 28.

⁷⁷⁹See Article 21/2 of the Universal Declaration of Human Rights. And article 25 (c) of the International Covenant on Political Rights.

⁷⁸⁰See Article 7 of the CEDAW Convention.

The reasons for the low participation of women in decision-making positions are attributed to the focus on the political struggle, the prioritization of the idea of liberation, and neglect of the social struggle, which led to the consolidation of male dominance in all decision-making positions⁷⁸¹, controlling the administrative processes and executive procedures, creating a male hierarchical environment that encourages males rather than females⁷⁸², based on the culture that women are partners in the struggle but not partners in decision-making⁷⁸³. On the pretext that men are stronger and more capable than women to manage the public affairs and political action, the stereotyping of the definition of the role of women in society that limited it to the reproductive role in care as a wife and housewife spread widely. Furthermore, the political parties played a role in reducing the role of women and limiting their participation to small committees⁷⁸⁴, rather than occupying leadership positions within those parties. This situation has led to the withdrawal of women from party work and so they turned to the leadership of women's organizations, which reduced women's access to decision-making positions at the state level.

On the other hand, the weakness of the practical translation of the government will in the institutionalization, the integration of gender, the culture of justice and equality in the government sector, reflected on the percentage of women occupying public positions in the country, especially the higher ones. The current employment system does not take into account efficiency and there are no clear systems for holding senior positions in the country⁷⁸⁵, as well as insensitive employment and promotion policies and opportunities for training and rehabilitation of gender issues and women's rights⁷⁸⁶. In addition, the appointment and promotion committees lack the presence a gender unit or technical expertise in gender⁷⁸⁷. Furthermore, there is no budget specified for gender and empowerment of women, as well as the absence of special government programs to encourage and support women in decision-making positions and develop their leadership

⁷⁸¹MIFTAH, 2017, p. 4.

⁷⁸²B. al-Naji, 2016, p. 9.

⁷⁸³MIFTAH, 2017, p. 28.

⁷⁸⁴Miftah, Public Policy Papers and the Reality of Women and Young Leaders, 2013, p. 16.

⁷⁸⁵Palestinian Working Women's Society for Development, Anti-Corruption Commission, 2017, p. 18.

⁷⁸⁶Ministry of Women Affairs, 2017-2022, p. 28.

⁷⁸⁷B. al-Naji, 2016, p. 8.

capacities⁷⁸⁸. There is also no system to monitor compliance, follow-up, and surveillance of gender-based discrimination in the civil service, recruitment, training, rehabilitation, promotion, and other career opportunities⁷⁸⁹, in addition to the absence of any legal provisions that criminalize and punish women when subjected to discrimination on the basis of sex within the right to hold public office and senior positions.

In this context, the researcher recommends that national strategies should include creative mechanisms to activate the role of women in political life, create initiatives at the level of the civil society institutions to highlight the ability of women to participate in political life, to contribute to the change of social thought, to eliminate the idea that women are not capable of management and leadership. In addition, it is essential to demand equal rights and functional duties before the public facility.

3.2.1.2.2 Enhancing women right in the process of decision-making

Women's political participation is one of the most important means of redistributing power relations between genders in the society⁷⁹⁰. It transfers women from the position of marginalization and stereotypes to the level of participation in the enactment of legislation, decision-making, and governance. This serves the efforts exerted to confront and eliminate violence against women.

On the one hand, the participation of women in the Legislative Council highlights their issues and enables them to defend their rights guaranteed by international conventions and agreements, especially the right of equality in protection from violence. That is by reviewing the laws in force and submitting proposals to amend their provisions that discriminate against women on the basis of gender, as well as the role of women parliamentarians in proposing law bills that target promoting and protecting women's rights in society, such as the law to protect women from violence and the law of free legal assistance act for women⁷⁹¹; as well as their role in building parliamentary alliances in support of passing these laws. In the Palestinian context, the participation of women in the

⁷⁸⁸B. al-Naji, 2016, p. 9.

⁷⁸⁹B. al-Naji, 2016, p. 8.

⁷⁹⁰ H. Al-Danaf, (n.d.), p. 3.

⁷⁹¹ See Article 56/ 2 of the amended Basic Law of 2003 and its amendments.

Legislative Council is of particular importance in order to preserve and accumulate the legal gains achieved under the presidential decrees amended in the penal laws in favor of achieving equality and protecting women from violence, which the Basic Law required to be presented to the Legislative Council in its first sessions for approval; if not approved by the Legislative Council, they lose what they have of the force of law⁷⁹². This should be alerted to and taken seriously by the feminist movement⁷⁹³. The importance of women's participation in the Palestinian Legislative Council is highlighted through their role in exercising parliamentary control from a gender perspective on government actions, plans, programs, and public policies, and its commitment to the principle of equal protection from violence and the prohibition of discrimination on the basis of gender⁷⁹⁴. This would create enough confidence and awareness for women to be able to cope with violence against them. They, through this, transcend the limits of confrontation to be an attacking element in society through their ability to raise rights and demand duties and thus achieve the empowerment of women at various levels.

In addition, the importance of women's political participation in the Legislative Council is also highlighted through the role played by the Legislative Council in discussing and approving the public budget as one of the most important means of control by the parliamentary councils that enable them to supervise the government's public policy and intervene in directing it through amendments to its provisions and giving development priorities to some sectors rather than the others, by monitoring and reviewing their implementation⁷⁹⁵. This will lead to the adoption of a gender-sensitive public budget and direct it towards serving vulnerable sectors in the provision of services to abused women such as safe houses, health, and psychological care services, social counseling, rehabilitation services, and social reintegration of victims, as well as the importance of

⁷⁹²Article 43 of the amended Basic Law of 2003 and its amendments.

⁷⁹³ It is worth noting that the weak representation of women in the Legislative Council reduces the effectiveness of their role in enacting laws and lobbying towards activating a positive vision towards women and their issues. The quota system has enabled women from conservative religious parties in Palestine to enter the House of Representatives, but they often support laws and regulations that undermine women's rights. See UNDP, Arab Human Development Report 2016, p. 79.

⁷⁹⁴ See Articles 56/3, 57 and 58 of the amended Basic Law of 2003 and its amendments.

⁷⁹⁵See Article 61 of the amended Basic Law of 2003 and its amendments. And A. Majdalani, 2002, p. 118.

directing them to support development programs that contribute to the achievement of economic empowerment for the marginalized women.

The importance of women's participation in the Legislative Council is enhanced due to its role in approving the general development plan. Representing women in the council would ensure the adoption of a general development plan aimed at involving all segments of society so that they would not only be reserved for men. This ensures women's success in achieving their objectives to activate and invest all the energies of society⁷⁹⁶.

On the other hand, the participation of women in the membership of local councils is one of the most important means that lead to the process of integrating women in the main path of development and enhancing their role at the community level. Their participation would contribute to changing the stereotyped societal roles that restrict them in the private sphere and paving the way for them towards public space, especially that the local government councils play a main role in providing vital services to the members of the community, which positively reflects the idea of accepting the existence of women in the public life on equal basis with men.

Women's experience in the membership of local councils is also reflected positively on women in terms of developing their capacities and expertise in decision-making positions, and enhancing their self-confidence in a way that contributes to socially effective and competitive women leaders in political life. Women's participation in local councils also allows them to participate in local decision-making, and gives them an opportunity to reflect their needs and priorities from a gender perspective within the policies and plans of local government councils⁷⁹⁷ as well as an access to financial resources and services provided by local councils⁷⁹⁸ in proposing projects that favor positively for women and contribute to their support in their fight against violence, such as proposing to exempt women victims of violence who support their children from taxes and fees collected by local councils from citizens for the services they provide them, and proposing to give them

⁷⁹⁶ See Article 59 of the amended Basic Law of 2003 and its amendments.

⁷⁹⁷ F. Wazifi, 2016, p. 11.

⁷⁹⁸ F. Wazifi, 2016, p. 2.

the priority in employment opportunity within local councils to help them achieve economic empowerment.

The importance of equality for women in occupying senior jobs and positions in the state allows women to participate effectively in the formulation of public policies of the state, to formulate government plans, anti-violence programs, to participate in their implementation, supervision, and direction⁷⁹⁹, and to assess them from a gendered point of view. This importance is reinforced in the context of women assuming decision-making positions within the penal justice system, including the police, the public prosecution, and the judiciary due to the importance of taking into account the specificity of gender issues within the mechanisms of the work of these bodies. It should be noted in this context that the exclusion of women from participation in the composition of the judiciary panel of the Constitutional Court has denied them the opportunity to participate in controlling the constitutionality of laws and regulations by considering the conformity of legislation with the Basic Law, and In particular, the extent to which such legislation guarantees the rights of women, as established by the Basic Law.

It could be concluded by calling for the need to empower women politically by ensuring that they enjoy their political rights, especially the right to elect and run for elected councils and bodies, the right to hold senior positions and access to decision-making positions, and to participate in public life on an equal basis with men. Particularly, empowering women politically is no longer a requirement of democracy, justice, and equality only, but also is a necessary condition for achieving a society free of violence and discrimination against women and building generations that respect the rights of women capable of advancing their future and actively participating in the development process.

3.2.2. Economic Empowerment

Most of the economic resources of women in the society are reflected in the inheritance rules, their right to work, and in joint funds. However, all of these rights are violated and persecuted because of women's weak position and the violence they suffer from that prevent them from claiming and obtaining these rights in full. Therefore, they must be

⁷⁹⁹Shams, (n. d.), p. 14.

empowered to claim their right to inheritance, their right to work, and their right to joint funds.

3.2.2.1. The right to inheritance

The Palestinian legislations derive their inheritance provisions from the Islamic law (*the Islamic Shari'a*), according to which the heirs and their shares are identified and established⁸⁰⁰. Almighty Allah says, "*For men is a share of what the parents and close relatives leave behind, and for women is a share of what the parents and close relatives leave behind, be it little or much - an obligatory share*"⁸⁰¹. Inheritance is defined as the entitlement of a person to something passed on by another person after his death⁸⁰². Marriage and pedigree are grounds for inheritance agreed on by the Islamic law (*the Islamic Shari'a*), according to which women and men deserve inheritance⁸⁰³. Legal (*Shari'a*) courts have absolute jurisdiction in all matters relating to Muslim legacies⁸⁰⁴, whereas courts of religious sects have jurisdiction over matters of inheritance to non-Muslims⁸⁰⁵, as per the Law of Inheritance of 1923, as amended by Law No. 19 of 1944, in force in the West Bank, enacted by the British High Commissioner during the British Mandate of Palestine.

Since inheritance is considered as means of distributing wealth among people⁸⁰⁶, it is one of the most important sources of proprietorship of the money around which people deal with each other in their transactions⁸⁰⁷. It is also considered as means of economic empowerment of heirs, including women. However, patriarchal male authority in the community has always used inheritance as a means of preserving the balance of power in society in favor of males by depriving women of their legal and *Shari'a* share of inheritance. Despite the issuance of many legal religious decisions (*Shari'a fatwas*) issued

⁸⁰⁰ For more information on the legacy of women in Islamic law, please see M. Makki's, 2012.

⁸⁰¹ Holy Quran, 4/7

⁸⁰² WCLAC, 2014, p. 27.

⁸⁰³ See F. Al-Azzawi, inheritance: concept, pillars, causes, contraindications, <https://www.alukah.net/sharia/0/117579/>

⁸⁰⁴ See Article 6 of the Inheritance Act 1923, as amended by Law No. 19 of 1944.

⁸⁰⁵ See Article 8 of the Inheritance Act 1923, as amended by Law No. 19 of 1944.

⁸⁰⁶ See K. Al-Hattab, 2002, p. 299.

⁸⁰⁷ S. Ahmed, 2006, p. 288.

by the religious establishment, which prohibit the denial of the right of women to inheritance as consuming people's money wrongly⁸⁰⁸, which is forbidden and prohibited by Islam, as per the saying of Almighty Allah in the Holy Quran in 4:28, "*do not consume one another's wealth unjustly*⁸⁰⁹", media reports published by a number of media organizations highlight the extent to which such practices are rampant, hidden, and disturbing in the society⁸¹⁰. Furthermore, a number of statistical studies carried out by women's institutions revealed the extent of the entrenchment of this phenomenon in the culture of the society. In a study conducted by WCLAC entitled "Palestinian Women and Inheritance," the findings showed that 62% of parents refused to grant women their right to inheritance, 25% stalled and postponed, 9% suggested settling for less than women deserve, and only 3% agreed to grant women their rights in inheritance⁸¹¹.

In a study conducted by the Center for Women's Affairs entitled "Women's Inheritance Causes and Effects", the findings showed that the first reason for depriving women of inheritance lies in ignorance of the provisions of Sharia and religion, as indicated by 51.6%, followed by the male culture in the society which prefers males to females in the second place and very close by a percentage of 51.2%. The family's fear of diversion of property to the husband and their desire to preserve the family funds and wealth in the hands of male family members by depriving women for being a woman and a weak element in the society, among the reasons for depriving women from inheritance⁸¹².

There are many ways that are used to rob women of their inheritance rights. Sometimes, the method of embarrassment, shame⁸¹³, and settlement is used to deceive women to concede their share of inheritance in return for a small amount or a property whose value

⁸⁰⁸ See the ruling of the brother who prevents one of his sisters from the right to inherit circumvention and manipulation, Fatwa No. 624, jurisprudence of inheritance and personal status, Dar al-Iftaa Palestinian <http://www.darifta.org>

⁸⁰⁹ Holy Quran, 4/29.

⁸¹⁰ See R. al-Ghaf, Consent and Denial of Inheritance, a New Type of Persecution Against Palestinian Women, Dunia Al-Watan, 3/5/2014, <https://www.alwatanvoice.com/arabic/news/2014/05/03/531907.html> And See R. Sweiti, how long most Palestinian women are deprived of their inheritance rights, http://www.alhayat-j.com/arch_page.php?nid=248225

⁸¹¹ WCLAC, 2014, p. 61.

⁸¹² H. Shimon, 2009, p. 46.

⁸¹³ M. al-Fifi, 2001, p. 19.

is not equal to the real value of the share of women in the estate known as “ Takharuj”⁸¹⁴. Pressure, coercion, the threat of abuse, abandonment, boycott, and even violence that amounts to murder may be used. Women may be given the choice between giving up their share of inheritance and their right to get married. In many times, they are often forced to marry relatives to preserve the inheritance within the family. At other times, the inheritance right of women is stripped by deception and circumvention, such as the division of the devisor's wealth in his life to males rather than females, with the intention of depriving females of inheritance after his death, either through gift, ownership by ghost sale, by excluding the mention of some heirs often females in the official documents to limit the succession, the claim that there is a will to some relatives to own a larger part of the estate, or the acquisition of sons on the estate, especially the eldest son under the pretext of his contribution to its formation⁸¹⁵.

Depriving women of their inheritance reinforces their sense of inferiority complex because the family favors male sons to females and discrimination against them on the basis of sex, as well as frustration with the injustice and oppression they suffer from by the closest people to them, their sense of isolation and loneliness due to the disintegration and deterioration of the social relations. This may be accompanied by tension in her relationship with her husband and her offspring, an addition to increase in violence on them if the claim of inheritance comes as a result of pressure by them.

It is not easy for women to claim inheritance. The social obstacle is the biggest obstacle that prevents women from claiming their right to inheritance since they do not want to lose parents; they are afraid of their abandonment and the absence of their support and protection. Therefore, women do not claim the right to inherit because of fear of the reaction of parents reprehensible and accusing them of breaching the family relations. In addition, women fear being accused of cultural and popular heritage by violating and disintegrating such ties⁸¹⁶. Consequently, the fear of parents is combined with the fear of

⁸¹⁴ Takharuj is intended to reconcile one of the heirs, some of them with some others, or with another, to leave their share in the inheritance in exchange for money given to the one out of the estate. See M. Qaddoumi, 2010, p. 311.

⁸¹⁵ See O. Radad, 2017, p 71-73.

⁸¹⁶ S. Ahmed, 2006, p. 295.

society's view in preventing women from claiming their right to inheritance⁸¹⁷. Women's sense of danger or threat to their family status, their relationship to their family or social reputation, and people's perception of them, or even a sense of safety for her life and the lives of her children in the event of her claim to inheritance compel her to give up her right of inheritance. The implementation of the right of women to inheritance on the ground remains difficult and constrained by the restrictions placed by customs and traditions on the right of women to claim their right to inherit. And what can be obtained from the estate. Therefore, women may never get their rights and they may get only a fraction of it⁸¹⁸.

Furthermore, women fear being harmed, especially since the claim to their right inflicts great problems starting with estrangement and ending with murder sometimes. In some cases, women were killed in connection with their inheritance claims, and families pretended that the killings were on the pretext of preserving honor⁸¹⁹.

Here, it is worth mentioning the case of the victim Amal from a village in the Governorate of Nablus, who was murdered in 2012 by her brother by more than ten stab wounds in the chest in the presence of her mother and nephews and his sister-in-law. The murder was committed after a verbal altercation occurred between the victim and her murderer against the background of the victim's claim to her right in inheritance⁸²⁰. Nevertheless, local media reported that it was an honor killing based on the victim's social status as a divorced woman⁸²¹. In addition, there is also the case of Mona from the Gaza Strip who was killed by her nephews for refusing to renounce her right to inheritance, while the perpetrators confessed to killing her on the pretext of honor⁸²².

The legal system which does not include texts that protect the right of women to inheritance constitutes a key factor in depriving her right and failing its achievement on the ground.

⁸¹⁷ R. Abu Jalal The right to inheritance, the battle of women against the injustice of tradition and the inability of the law, Meem Magazine, Gaza, <https://meemmagazinet.wpcomstaging.com>

⁸¹⁸ O. Radad, 2017, p 49.

⁸¹⁹ UNDP, 2018, p. 18.

⁸²⁰ See R. Hamdan, In Nablus: killed his sister In front of his mother, his wife and his brother's children with several stabs in a row and the reason .., Alfajer TV, <http://alfajertv.com/news/38552.html>

⁸²¹ See S. Al Aghbar, Prevent the killing of women under the pretext of honor crimes, <http://www.ahewar.org/debat/show.Articleasp?aid=305078&r=0>

⁸²² WCLAC, 2013, p. 40.

On the one hand, the provisions of the Penal Code or other special laws do not explicitly criminalize cases of fraud and coercion against women to deprive them of their inheritance. On the other hand, the absence of severe penalties for those who deprive women of their inheritance constitutes a legal deficiency in the absence of the necessary legal deterrence to ensure that this right is not violated and that women are not deprived of it⁸²³.

The efforts of women seeking to claim their right to inherit face a solid economic obstacle. The financial costs including legal fees, attorneys' fees⁸²⁴, transportation costs to follow up on the case, and the resulting applications, transactions, appeals, and the pursuit of court rulings are high and surpass the woman's ability to cover them, especially in the absence of free legal services⁸²⁵. In addition, the court proceedings take a long period of time as a result of complex legal procedures, and frequent delays and adjournment since the courts are overloaded, and the backlog of cases due to the lack of qualified staff, limited budgets, weak infrastructure and logistical support. Recourse to regular courts to enforce sentences is an additional burden on women⁸²⁶. This causes women to abstain from pursuing their claim and so they give up their rights.

Women's claim to their right to inherit constitutes a double-edged sword. On the one hand, their claim may be a reason for violence against them and pressure on them to give their claim up or to be satisfied with what the males offer to them of unfair settlement.

On the other hand, it may save them from violent relationships. Fear of the specter of poverty and want and the need for people. The achievement of women's inheritance is one of the most important pillars of their economic empowerment since their inheritance constitutes an essential source for women to own money and real estate in a way that enhances their characters and their abilities to decide to break away freely from the violence perpetrator or the abusing environment; to achieve self-determination for them and their children independently and without economic dependence or fear of the specter of poverty and the need for people. Women's inheritance raises their economic safety reserves and

⁸²³ WCLAC, 2014, p. 7-10.

⁸²⁴ See General Union of Palestinian Women, 2017, p. 23.

⁸²⁵ M. Al-Jouba, (n.d.), p. 10, 11.

⁸²⁶ M. Al-Jouba, (n.d.), p. 23.

enhances their ability to reject violence and prosecute the aggressor. The demand for the realization of the right to inheritance for women is therefore not only to ensure that immediate material needs are met, but also to reshape the unequal power relations between the two sexes on the grounds that there is a fundamental link between violence and discrimination against women and the denial of their inheritance, property, and other rights in various aspects⁸²⁷.

In view of the seriousness of women claiming their right to inheritance and at the same time the importance of obtaining it, it is recommended that the inheritance law should include a legal provision that requires the division of inheritance within a certain period of time from the date of the death of the heir, in order to ensure the right of women to inherit by force of law. It is also important to recommend that the Law on the Protection of the Family against Violence include provisions that criminalize and punish coercion or defraud women to waive their right to inheritance. In particular, punishment for perpetrators of inheritance-related killings of women should be intensified.

It is necessary to recommend the establishment of a special inheritance court with special judges and staff, to adjudicate cases quickly and easily away from delays and adjournments. It should be recommended that work be done on the establishment of an execution department for the inheritance court to implement its judgments without delay or complexity.

The researcher also calls on women and human rights institutions to intensify community awareness campaigns on the right of women to inheritance, targeting women and men alike. It is recommended that the Ministry of Islamic Endowments (the official religious institution) to launch awareness campaigns and guidance in mosques on the right of women to inheritance and demonstrate the sanctity of religious assault and deprivation of women from inheritance. It is essential to recommend that the Ministry of Education work to include the right of women to inherit within all stages of the school curricula.

⁸²⁷ WCLAC, 2014, p. 27.

3.2.2.2. The right to work

The right to work, which is one of the most important economic and social rights guaranteed in international conventions and treaties, is a fundamental right to ensure a decent life. Article (23/1) of the UDHR states that "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment". The issuance of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) has devoted a wider space to the right to work and gives it a broader legal dimension, particularly in terms of subsequent legal obligations⁸²⁸.

In terms of ensuring the right of women to work, The CEDAW Convention obliged the member States to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same right to work as an inalienable right of all human beings, the right to free choice of profession and employment, the right to enjoy the same job opportunities and conditions of employment, the right to equal remuneration for the same work, and equality of all employment benefits. It also required taking appropriate measures in order to prevent discrimination against women on the grounds of marriage or maternity to ensure their effective right to work⁸²⁹. As for the national law, the amended Basic Law of 2003 and its amendments stipulates in article (25) that work is a right for every citizen.

The labor legislations in force were issued by the Palestinian National Authority. The Civil Service Act No. (4) of the year 1998 and its amendments regulate the public service with its obligations and rights, whereas the Labor Act No. (7) of the year 2000 regulates the relationship between workers and employers in the private sector. Despite the Palestinian Authority's remarkable progress in promoting women's participation in the labor market through the enactment of labor legislations that include the principles of equality and non-discrimination in order to achieve harmony and compatibility with international human rights principles, the gender gap is still evident at the level of labor force participation, wage rates, and unemployment⁸³⁰. This is strongly reflected in the labor force survey issued

⁸²⁸ Palestinian Center for Human Rights, 2003, p. 12.

⁸²⁹ See Article 11 of the CEDAW.

⁸³⁰ L. Shabana and J. Al-Saleh, 2008, p. 4.

by PCBS, where the female labor force participation rate was only 20.7%, while the unemployment rate for females was 51.2%⁸³¹. Although the minimum monthly wage was set at 1,450 ILS⁸³², 40% of working women received less than the minimum wage⁸³³.

There are many reasons for the low participation of women in the labor market. Some of these factors are related to the Palestinian economic situation, which suffers from structural distortions in several areas, including its weak capacity to absorb labor⁸³⁴ due to its direct link to the economy of the Israeli occupation. Other reasons are related to the policies of the occupation including blockade and closure restrictions on the movement of individuals and goods and commodities, the confiscation of land, the loss of water and natural resources, the expansion of settlements, and the construction of the apartheid wall⁸³⁵. For these reasons, which caused the weakness of the Palestinian economy and instability and fragmentation⁸³⁶, the Palestinian labor market has been negatively affected the ability to absorb the supply of female labor force.

Other factors are linked to interrelated social, cultural, and religious reasons reflected in the view of society to the work of women as being suspended on the consent of the husband or guardian. This year, the issue of the citizen Mahla Alawneh from Jenin has provoked the Palestinian public opinion because she was severely beaten by her brother with an iron hammer on her feet in such a way that she might lose her feet, for seeking work⁸³⁷. The Personal Affairs Code reinforces this perspective. Under article (68) of the Code, a woman who goes out to work without her husband's permission does not deserve alimony. The society also limits the work of women to specific fields and professions such as secretarial, education and health professions, which are socially classified as commensurate with the

⁸³¹ PCBS, Palestinian Labor Force Survey, Annual Report 2018.

⁸³² See Cabinet Decision No. 11 of 2012 on the adoption of the minimum wage in all areas of the Palestinian National Authority.

⁸³³ Economic statistics in Palestine Ministry of Women Affairs, <https://www.mowa.pna.ps/studies-statistics/economic-statistics>

⁸³⁴ G. Khaled, 2008, p. 1171.

⁸³⁵ UN General Assembly, 2016, p. 27/6.

⁸³⁶ A. Hajj Mohammad and H. Qarayreh, 2013, p. 5.

⁸³⁷ Alhurra, Maha Alawneh was hit with an iron hammer ... Alhurra reveals a crime similar to the case of Israa Gharib, <https://www.alhurra.com/a/%D9%85%D9%87%D8%A7-%D8%B9%D9%84%D8%A7%D9%88%D9%86%D8%A9-/513802.html>

role and capabilities of women, Therefore, it is found out that the services sector occupies 70.7% of the employment rate of working women⁸³⁸, in a way that increases the limited occupations and economic activities that women compete for⁸³⁹. The society does not perceive the right of women to work as an independent right that women should enjoy on an equal basis with men, but rather makes it a right subject to the economic need of the family⁸⁴⁰. According to the culture of society, which does not appreciate the work of women because of customs, traditions, and beliefs that perceives that the responsibility of women is the home and children and that the man is in charge of managing the expenses of the house and the lack of economic returns to her work, which contributes to her reluctance to join the labor market⁸⁴¹.

Deficiencies and legal discrimination are factors that deter women from the work environment. In spite of the qualitative shift achieved by the issuance of the Palestinian Labor Act, which has led to the improvement of working conditions in many aspects, since many of its provisions are keen to protect the rights of female workers as the weakest category of workers in labor relations⁸⁴², the shortcomings of some of its provisions reduced the level of protection for women's rights, especially in the practical application of the law⁸⁴³.

The Palestinian Labor Act No. (7) of the year 2000, excluded in article (3/3) the members of the employer's family of the first degree of the scope of application, as "the provisions of this Act apply to all workers and employers in Palestine except: (3) the first class family members of the employer", whereas the vast majority of women work on the basis of unpaid family members on family-run projects or farms⁸⁴⁴. This article excludes a large group of women, especially rural work force, from the legal protection of the labor act, devoting stereotypes that do not see the work of women at home as part of productive work

⁸³⁸ PCBS, Palestinian Labor Force Survey, Annual Report 2018.

⁸³⁹ L. Shabana and J. Al-Saleh, 2008, p. 4.

⁸⁴⁰ I. Mahameed and S. Boutoutan, 2013, p. 2.

⁸⁴¹ A. Hajj Mohammad and H. Qarayreh, 2013, p. 5.

⁸⁴² The Labor Law devoted Chapter 7 to regulating the work of women.

⁸⁴³ See ILO, 2016, p. 10.

⁸⁴⁴ A. Hajj Mohammad and H. Qarayreh, 2013, p. 7.

that entails rights and obligations⁸⁴⁵. On the other hand, the law did not grant working women maternity leave for three months, but was limited to 70 days⁸⁴⁶; neither nurseries were provided for women working in their work field⁸⁴⁷. Consequently, this has led to high costs of facilities that are required for women work such as day nurseries and care⁸⁴⁸; as well as discrimination against women in wages on the ground, exploitation in long working hours, harassment in the workplace⁸⁴⁹, and the absence of legal protection for women working in the face of sexual harassment in the workplace.

Women working in the public sector face discrimination within the Civil Service Act No. 4 of 1998 and its amendments, which grants a child allowance in favor of the father but does not give it to the working mother despite the work of both spouses in the civil service sector⁸⁵⁰. Article 53, paragraph (3) stipulates: "If the spouses are civil servants, the social allowance shall be paid only to the husband." Thus, the Civil Service Act establishes discrimination against women on the basis of sex within the context of the public service in contravention with Article (9) of the Palestinian Basic Law, which guarantees equality before the law without discrimination on the basis of sex. At the same time, it also contravenes with Article (11) of the CEDAW Convention, which requires state parties to take all appropriate measures in order to eliminate discrimination against women in the field of employment. In addition, the Civil Service Law promotes societal perceptions that view the man as the head of the family in a manner that detracts from women's rights and promotes her inferiority. Studies indicate also that there are cases of discrimination against women in fact. Women in the civil service are concentrated in the lower positions of the hierarchy, giving indications of discriminatory applications of the law in terms of promotion and equal opportunities in various areas⁸⁵¹.

Judicial barriers also play a prominent role in the exit of women from the labor market empty-handed, as the lack of provision in the Labor Act to establish labor courts competent

⁸⁴⁵ R. al-Batma, 2012 p. 23.

⁸⁴⁶ Article 103 of the Labor Law No. 7 of 2000.

⁸⁴⁷ F. Salhab, 2017, p. 77.

⁸⁴⁸ L. Shabana and J. Al-Saleh, 2008, p. 5.

⁸⁴⁹ A. Hajj Mohammad and H. Qarayreh, 2013, p. 6.

⁸⁵⁰ S. Al-Kafri and K. Nasr, 2011, p. 89.

⁸⁵¹ R. al-Batma, 2012 p. 24.

to deal with labor disputes led to the subjection of labor cases to the rules of ordinary jurisdiction in the Code of Civil and Commercial Procedure Law and the formation of regular courts⁸⁵². This is accompanied by a backlog of labor cases and a long delay in their adjudication. Workers, including women workers, lost confidence in recourse to the courts to demand labor rights. It prompted many of them to accept an unfair settlement with employers at the expense of their labor rights⁸⁵³.

In fact, working women face difficult challenges on the real grounds. In spite of the positive results of her participation in the economic activity and the labor market, that have strengthened the personality of the woman and increased her self-confidence as a result of the experiences and skills that she has gained⁸⁵⁴, expanding her circle of knowledge in the society, achieving financial independence, and freeing her from economic dependency, raising her value within the family and society, and restructuring the distribution of authority within the family that has allowed women to participate in decision-making⁸⁵⁵, since she has raised the economic and social level of the family to contribute equally to men in carrying the financial burdens of the family and meet the needs of its members, as well as the importance of her participation in the field of work in advancing the economic development of the State, the work of women outside the home has not remove dthe burden of the obligation to perform household chores and duties of the family to the fullest. This doubled the size of the burdens placed on her in a way that exceeded her energies and capabilities. By virtue of gender stereotypes⁸⁵⁶, customs and traditions hold women responsible for taking care of the family and carrying out the numerous household chores, whereas man bears the responsibility to work outside the home to spend on the family. Even after women have participated in the economic life, gone out to work, and supported the man in the responsibility of spending on the family, they still bear alone the burden of the largest household chores. As the husband refrains from adhering to traditional labor

⁸⁵² Palestinian Judicial Authority, 2013, p. 12.

⁸⁵³ Ma'an News Agency, The Ramallah Court of First Instance decides on two labor rights cases, <http://www.maannews.net/Content.aspx?id=221562>

⁸⁵⁴ T. Hassoun, 1993, p. 63.

⁸⁵⁵ M. Hammad, 2009, p. 65.

⁸⁵⁶ It is a generalized view or preconceived idea of characteristics or attributes that men and women have or should have, or what roles they or should play. See gender stereotyping <https://www.ohchr.org/AR/Issues/Women/WRGS/Pages/GenderStereotypes.aspx>

division standards⁸⁵⁷ and intransigent to maintain his top position at the top of the hierarchy of power from participation in such chores, women may have to sacrifice their productive role in the society to care for their families.

Therefore, the researcher recommends to intensify community awareness campaigns to break down gender stereotypes drawn by society that determine the nature of the responsibilities of both men and women and their role in the family and society in order to ensure the promotion of women's participation in the economic activity, participation in the development process, and to prevent women, especially married women, from the work field in order to perform their reproductive role at the expense of empowering them economically, in a way that deprives them of self-defense weapons in the face of violence, so that they become isolated and unable to make decisions or take any action to get rid of it under their economic dependence on the violence perpetrator.

The researcher recommends that it is necessary to attempt to create a work environment free of discrimination against women on the basis of sex, safe, and supportive of women rather than expelling them from the labor market. It should be recommended to activate the role of the Labor Inspection Department to carry out its role in following up the application of the Labor Law, especially with regard to the terms and conditions of work. It is necessary to recommend that amending Article (53) of the Civil Service Act No. (4) for the year 1998, to repeal paragraph (3) of it, which limited the social allowance to the employed husband rather than the employed wife. It is also important to recommend that the Labor Code be amended to include a legal provision that criminalizes the violation of minimum wage standards in women's work and punishes with deterrent penalties. The researcher also proposes to guarantee the right of women to work, as stipulated in the wording of the marriage contract, under the special conditions permanently.

3.2.2.3. The right to joint funds

The Jordanian Personal Affairs Act No. (61) of 1976, in force in the West Bank, fails to recognize the wife's economic contributions during marriage, whether the wife contributed directly from work income or salary, her inheritance, gifts, or any other giveaways, gifts,

⁸⁵⁷ S. Al-Arifi, 2011/2012, p. 44.

or rewards, or those that she has indirectly contributed by supporting her husband and being by his side by caring for family affairs, child care, and household chores. The Personal Affairs Act does not recognize the concept of joint matrimonial property and does not include a legal regulation in its articles, which makes the wife's economic rights without any legal protection. There are no legal provisions that preserve the wife's right to these funds, neither there is any lawful system that clarifies the mechanism of sharing it depending on social justice and equality in a manner that contributes to the economic empowerment of women, raise their social level, and avoid violence and economic injustice.

In the light of the legal vacuum, the issue of shared funds collected after marriage is referred to the general rules of the Islamic law as a main source of legislation, which means applying the principle of financial independence of spouses because the rules of the Islamic law take into account the principle of separation of financial assets of the spouses and their independence from each other⁸⁵⁸. This means that the money earned by the spouses during their marital life of real estate, movables, and others are independent of each party for themselves, as there is no mandate for the husband on the money of his wife, and he is not entitled to take her money or dispose of it without her consent. All that the husband acquires during the marital life is purely restricted to him with his obligation to support his wife and children, and all that the wife earns during the marital life is supposed to be purely restricted to her without obligating maintenance on her husband or children⁸⁵⁹.

Community customs, traditions, and culture constitute an impervious barrier that prevents the fair application of the Islamic law principles concerning the financial independence of the spouses, as an unfair barrier against the wife and discriminated against her on the basis of gender, where societal norms play a patriarchal masculine role against the wife's right to preserve her own money after marriage. Customs and traditions often prevent the wife from registering property acquired during the marital period in her name in order to preserve her right from loss, as the society looks down upon the husband who allows his wife to register or preserve her rights to joint ownership. In addition, men insist on

⁸⁵⁸ General Union of Palestinian Women, 2017, p. 18.

⁸⁵⁹ R. Kenzi and W. Lamouche, 2015/2016, p. 15.

registering joint ownership exclusively in their names as a sign of masculinity and power, taking advantage of the negative role of women, their vulnerability, and fear of violence on the one hand, and their ignorance of the law and its provisions in this regard on the other⁸⁶⁰. These factors combine to deprive women of their rights to own property under Article (17/1) of the UDHR, in contravention of the provisions of the amended Basic Law of 2003 and its amendments in Article (21/3) of its maintenance of private property of individuals. Instead, it provides the husband with the wife's properties on a plate of gold and places such properties with the wind in case the marital relationship ended with divorce, death, or if the husband desired to marry another woman.

In the case of the death of the husband, the woman loses the money that she participated in its acquisition with her husband but registered under his name as the husband's family often overrun the money and property of the deceased husband and in the best case the wife gets her share of the inheritance ranging between the eighth and the quarter⁸⁶¹, without recognizing her right to have a share from the joint funds that she contributed in making it with her husband⁸⁶².

Marital disputes, which are often the result of a husband's seizure of his wife's properties, control, and sole decision-making and disposition of such properties, in which divorce is present, reveal the abused wife's almost empty-handed exit from her legal battle. The moral barrier between the spouses, presented in the considerations, moral values, and psychological factors, prevents either of them from obtaining written evidence to prove their right to confront the other, as provided for in Article (71/2) of the Civil and Commercial Evidence Act No. 4 of 2001, which authorizes the testimony of witnesses when it should have been proved in writing. It is not valid to rely on it if the value of the obligation exceeds two hundred Jordanian dinars or its equivalent in the legally traded currency or if the value is uncertain, as the testimony of witnesses may not prove its

⁸⁶⁰ See H. Ayoub, 2019, p. 31.

⁸⁶¹ In accordance with the provisions of Islamic law on the share of the inheritance of the wife of the estate of her husband, See R. Sanjak, the wife's share of her husband's inheritance, https://mawdoo3.com/%D9%86%D8%B5%D9%8A%D8%A8_%D8%A7%D9%84%D8%B2%D9%88%D8%AC%D8%A9_%D9%85%D9%86_%D9%85%D9%8A%D8%B1%D8%A7%D8%AB_%D8%B2%D9%88%D8%AC%D9%87%D8%A7

⁸⁶² See General Union of Palestinian Women, 2017, p. 23.

existence or expiry⁸⁶³. This means that the wife will not be able to prove her right to joint marital property based on the moral barrier and witness testimony. Moreover, the stipulation of the wife to her husband in the special conditions in the marriage contract to her right to share the joint marital funds will not constitute a legal solution to ensure the right of women as judge Ahmed Al-Ashqar says "the divorce leads to terminate whatever is agreed upon in the marriage contract, including the stipulation to share the joint funds⁸⁶⁴".

As a result of the absence of legal regulation, social norms, customs, and traditions dominated the consideration of marital disputes arising out of the dispute over the management and disposition of joint funds, with all the diminishing of women's rights, as a result of presenting the issue of the dispute to the unfair tribal reform committees or judiciary⁸⁶⁵.

The lack of legal protection of the right of women to joint marital property has also contributed to strengthening the male dominance and control over the fate of women in a manner that makes them feel humiliated, degraded, and frustrated as a result of disregarding their personality and depriving them of their right to own, make decisions, and dispose of their property freely, thus enhancing women's subordination and inferiority in society. It also encourages the husband to practice various forms of violence against her to force her to give up the money in his favor. Women appeared in front of society in the appearance of being unable to manage their funds or use them, which gives negative societal examples of the results of the entry of women into the working life, most notably the corruption of marital and family life and collapse in a way that may lead to the reluctance of other women to participate in the economic life.

On the other hand, the lack of legal regulation of the marital joint property reinforces the parents' determination to deprive women of their share of inheritance because they are certain that the money will be transferred to the husband with no ability for the wife to

⁸⁶³ Article 68 of the Civil and Commercial Evidence Law No. 4 of 2001.

⁸⁶⁴ See H. Ayoub, 2019, p. 23.

⁸⁶⁵ See Ministry of Women Affairs, Policy Paper, "Financial Disclosure of Working Women," p. 7 http://www.mowa.gov.ps/img/20181204_10_3553_8.pdf

benefit from it or to dispose it. Legal inequality, discrimination, and societal injustice against women have made their ability to enjoy their financial and economic rights formally incomplete, and a curse that has resulted in their exposure to many types of violence. Whereas when the enjoyment of women's financial rights by economic empowerment and supporting them was supposed to contribute to confront violence and its elimination, it introduces a new cycle of violence and discrimination against women.

In conclusion, the change that has taken place in the economic and social lifestyle which required a greater degree of sharing between the spouses in carrying the family burdens, including spending on the marital home and the family by a working couple, requires that it should have been accompanied by a development in laws and legislation to protect the rights of spouses from abuse and injustice that may be created by one who may penetrate one another and strip of their economic rights. Since women in patriarchal male societies are the weakest party in the economic and social equation, the legislator must intervene with his legal legislative tools to put an end to the injustice suffered by the wife and to eliminate both violence and discrimination against her in the field of economic rights in order to achieve equality and justice, in line with international declarations and covenants on human rights, especially the UDHR that guarantees equal rights for women and men at marriage, during marriage and at its dissolution⁸⁶⁶; the ICCPR that requires states members to take appropriate measures to ensure equal rights and duties of spouses when marrying, during marriage and at its dissolution⁸⁶⁷; in addition to the CEDAW Convention, which obliges states members to take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, in particular to ensure, on a basis of equality of men and women, the same rights of both spouses in respect of the ownership, acquisition, management, administration, and disposition of property⁸⁶⁸. Therefore, the researcher recommends that it is necessary to establish a legal regulation for the joint matrimonial property, whether by amending the Personal Affairs Act in force, by adding legal provisions guaranteeing the right of the wife to share the money she contributed with her husband in a fair manner, or to enact a new and modern Personal

⁸⁶⁶ Article 16 of the UDHR.

⁸⁶⁷ Article 23/4 of the ICCPR.

⁸⁶⁸ Article 16/1/h of the CEDAW.

Affairs Act that would regulate the issue of marital property sharing⁸⁶⁹, like many Arab and Muslim countries that have followed this approach. It is also recommended that their legal experience in this field be guided and utilized; among these countries are Tunisia⁸⁷⁰, Morocco⁸⁷¹, Algeria⁸⁷², and Malaysia. In particular, it is recommended to follow the Malaysian Islamic Family Law(Federal Territory) Act No 303 of 1984, which does not limit the right of women to share the common property on the parting because of either death or divorce, but added to it a new case i.e. the husband's desire to remarry. The woman has the right to claim her financial right under the name of shared funds between the spouses by half of the money made during the marital period or less according to the court decision based on the amount of her contribution to this money⁸⁷³.

These legal amendments are very important in combating and eliminating violence against women. On one hand, it makes women avoid being a victim of violence and extortion of the husband to force her to register her property under his name because he realizes that it is not economically feasible, as long as the law guarantees the fair division of money earned after marriage between the spouses. It also has no social impact as the application of the law in reality will undermine and abolish the legacy of community ideological legacies focused on the importance of having property in the custody of the husband's financial as an element of power and superiority over the wife. On the other hand, the law will contribute to the modification of the husband's violent behaviors and recondition them as he realizes that if his wife demands divorce because of violence, this will lead to the sharing of joint funds between them. At the same time, it will end forcing the abused wife of being unceasingly engaged in violent relations for fear of being in need because of the absence of a breadwinner or lack of income and abandonment of parents. These amendments will also help protect women from arbitrary divorce and reduce polygamy.

Such amendments are very important in the protection of women's financial rights, which contributes to the enhancement of women's personality, their ability to make decisions, and

⁸⁶⁹ In particular, the establishment of a legal regulation for the sharing of joint funds does not constitute a departure from the rules of Islamic law.

⁸⁷⁰ See Law No. 94 of 1998 Related to the system of property sharing between spouses.

⁸⁷¹ See Article 49 of the Family Code, January 25, 2016.

⁸⁷² See article 37 of Law No. 84-11 of 1984, which includes the Family Code as amended and supplemented.

⁸⁷³ See the study of M. Shahid, 2016, p. 5.

act freely. They also strengthen her community presence as an individual capable of conducting legal acts and transactions on an equal basis with men, and eliminate the inferior view of women from the dictionary of community culture.

These amendments are important in promoting the economic rights of women by encouraging them to enter the labor market and the battle of the economic life. They are no longer just a machine in the production wheel, which is only in favor of the man who controls her destiny with the weapon of customs and traditions and the threat of divorce. These amendments will also lead to appreciation of men and society to the productive role of women taking care of the family, upbringing the children, and doing household chores.

In order for the feminist struggle to resonate with the community and reach its voice to the decision-makers, and indicators of the process of legal change start to appear, which may take decades, which may take decades, only if it has achieved success to issue a law of dividing the matrimonial property in light of the male domination of various decision-making centers in the official institutions of the state, it is necessary to recommend that, in the short-term, to amend the Law of Evidence in Civil and Commercial Articles No. (4) of 2001, by providing a legal text allowing women to prove financial transactions between them and their husbands in all legal ways of proof, including witness testimony, even if the value of the obligation exceeds JD 200 due to the existence of moral barrier.

It is essential to recommend that the elimination of social obstacles that deny women the right to own property by raising community awareness about women's right to own property legally on an equal basis with men, and their right to share joint marital property obtained post marriage. One of the most important challenges facing the consolidation of common marital property rights is the absence of this issue from public opinion and controversy in relation to low awareness and culture⁸⁷⁴.

It is also important to recommend that women's institutions conduct studies, research, and opinion polls on the impact of the absence of the law on the sharing of marital funds on the

⁸⁷⁴ See H. Ayoub, 2019, p. 29.

phenomenon of violence against women, in terms of its impact on women's choices in the face of violence or coexistence with it.

CONCLUSION

Criminal protection is considered as one of the most important pillars in the creation of a better future for women in Palestine for the fact that spreading criminal protection on the public and basic rights of women is an urgent necessity so as that such rights may not remain dead letter and hollow slogans dropped here and there.

The present study has raised numerous topics and issues dealing with the fundamental rights of women and the criminal protection of these rights from substantive and procedural aspects. This is done in many ways from physical violence to women, whether physical or sexual or assault on the right to life. Recognizing the role played by the criminal justice agencies in achieving justice for women and girls who are victims of violence, the study ended with the need to empower women legally, politically and economically as a basic prerequisite for strengthening their protection and eliminating violence. Consequently, this study has reached a set of findings that can be stated as follows:

- The study concluded that the protection prescribed in the penal legislation of women against violence does not fully respect international human rights covenants, foremost among them is the CEDAW Convention. It has been noted that the Penal Code has dropped its criminal protection of women's right to life and physical integrity by means of domestic and mitigated legal excuses for murder and abuse of women on the grounds of so-called honor. This is considered as a legal permission and encouragement for individuals to engage in violence against women in its severest and hardest forms. In this context, it has also been noted that discrimination against women on the basis of sex within the provisions of the Penal Code, which provided for male rather than female with full protection of the right to life and physical integrity. However, they granted full protection, in addition to the legal benefits that are denied to women. This is in breach of Palestine's obligations that are imposed by the CEDAW Convention. Thus, the legal system in force in Palestine has reflected inequality with the human rights system in protecting women from violence. It has also been noted that there are legislative loopholes at the level of the Penal Code, the Code of Criminal Procedure and

specialized legislation, which prove the absence of an integrated legislative system to ensure the full protection of women from violence.

The study revealed that the legislator seeks to cover the waste of punitive laws applied in the Palestinian territories to the right to life and the physical integrity of women by adopting some ordinances that include higher protection of women's right to life and physical integrity. However, they are considered temporary legislations that can be challenged by various appeal methods, which constitutes a shortage of criminal protection for women's right to life and physical integrity.

Therefore, it is worth recommending that the Palestinian legislator should approve comprehensive Palestinian penal legislations for crimes and various rights, which establish an integrated legislative system that enjoy both internal consistency and external alignment with international conventions and charters through the adoption of a modern Palestinian penal law that takes into account social changes and development in general. In addition, it is recommended to adopt a law that specializes in the protection of women from violence and takes into account the gender to be an advanced step in the defense of women's rights.

- The study also concluded that the role of criminal justice agencies in protecting women from violence is insufficient. This is due to the absence of criminal legal texts in both its substantive and procedural aspects, on the one hand, and the inadequacy of the work and powers of the criminal justice agencies on the other. Furthermore, these bodies do not take into account the specificity of gender in their mechanisms. Nevertheless, the study revealed that criminal justice agencies are seeking to develop their mechanisms to provide better services to abused women through the establishment of the Family Protection Unit in the police force and the Family Protection Prosecution in the Public Prosecution. However, the specialized departments of the family have not yet reached the scope of the courts where there is still no court or department specialized in family issues. Moreover, the existence of these departments is temporary as a result of the lack of law on which their establishment was based, as well as the continued male domination of the cadres of those agencies and the way they work.

Therefore, it is worth calling for the need to develop the criminal justice systems so as to become more sensitive and effective in responding to and dealing with cases of gender based violence (GBV) by enacting the necessary legal legislation to enable the criminal justice agencies to play the required role in providing women with full protection against violence. It is also worth calling for the institutionalization of the departments and prosecutions specialized in protecting the family from violence in order to ensure the sustainability and stability of those departments in providing services for the protection of battered women and girls, as well as working to provide justice sector with more women cadres. In addition, there is an urgent need to involve all workers in this sector in awareness and training programs on GBV and mechanisms to deal with victims and perpetrators alike.

- The study reached the conclusion that there is a weakness in the political and economic empowerment of women due to their limited capacity in decision-making and political participation. There is also the question about the economic independence of women within the family and society from the family and social environment, which is reflected in its entirety on the achievement of women's self-immunity and which affects confronting violence in all its forms. Therefore, it should be recommended to reinforce the criminal protection of women's rights in the face of violence, which is achieved through political and economic empowerment along with legal empowerment in order to harmonize Palestinian legislations with international conventions and charters on women's rights.

It should be recommended to increase the representation of women in the legislative, executive, and judicial decision-making centers. It is necessary to ensure their participation in the formulation of public policies of the State, the development of programs, participation in the implementation and evaluation of such programs, so as to achieve their political empowerment. Moreover, economic empowerment of women can be achieved by freeing them from economic dependency and enhancing their economic independence; by ensuring that they have the right to inheritance, work, and shared funds.

Here, it is possible to propose prospective prospects for researchers and scholars to conduct further research and studies in the following areas: The role of forensic medicine in achieving criminal justice for battered women; and studying the experience of women's participation in decision-making centers and their impact on the issue of violence against women. Furthermore, the experience of the model of the governor of Ramallah and Al-Bireh, Dr. Laila Ghannam, should be studied since it can be considered as a pioneer of women empowerment in the political field so as to benefit from it in the areas of empowerment for women in the face of violence in particular and in improving the situation of women in general.

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