**The impact of legislation on empowering women**

**A comparative study between the effective Iraqi Penal Code No. 111 of 1969 and the new draft Iraqi Penal Code**

**1****Dr. Bushra Salman Husain Al-Obaidi**

*1Law Department, Al-Rafidain College, d\_bushra\_alaubadi@yahoo.com*

## Abstract

Women have occupied a distinct social, economic, political, and religious position in Iraq since the time of its inception. For example, the Hammurabi Sharia has created several texts regulating the family and preserving its status and the role of Babylonian women in ancient Iraq. Women had the right to divorce from husbands, had the right to care for their children, had the right to engage in business, she has legal capacity and financial liability independent of their husbands, and she has the right to care and alimony. It also imposed harsh penalties on a person who mistreats a woman or violates one of her rights established in the aforementioned law. In modern times, women in Iraq have enjoyed relatively better protection than in other countries of the region during most of the last century. The beginning of the rapid deterioration of women's rights in Iraq after the 1991 Gulf War could be monitored, with the former regime using the traditional tribe as a political tool to mobilize loyalty to its weak authority. The United Nations sanctions imposed on Iraq following the 1991 Gulf War also contributed to the exacerbated problem. For example, the gap between males and females in school enrolment (and therefore women's illiteracy) has increased considerably with families under financial pressure that has made them choose to keep girls at home. Iraqi women have also suffered from a variety of violence against them and these practices are growing with the deterioration of humanitarian and security conditions in Iraqi society. Whatever type of violence against women, it constitutes an offense and cannot be derogated from as an offense that must be characterized to achieve its reduction and treatment. Every crime had its cornerstones, which are the material and moral cornerstone, and it has a perpetrator and the victim, all of this was available in violence against women. The aim of the research is to create a legislative environment that is friendly to women, respects their rights, identity, and humanity, prevents any violation of their human rights, criminalizes any act that constitutes a violation of these rights, and prevents impunity. and this, in turn, will pave the way for their empowerment in all respects. Discriminatory legislation is a frightening challenge to women's empowerment and to any societal, political, economic, or cultural reforms that are intended to advance the reality of women and enhance their status and their role in building society and the country. The problem of the research is that the most violent weapons or means against women are adopted by men when they commit violence against them (law or legislation). There are a significant number of laws and legislation that constitute violence and discrimination against women and allow or justify men's violence against women, as well as, the absence of legislation criminalizing acts committed by men against women constitutes violence and a violation of women's rights, human rights, and dignity, which poses a serious threat to women's advancement and empowerment. The most serious of this legislation is the Iraqi Penal Code in force No. 111 of 1969, and that's what we'll learn through our study.

Keywords: Women, Violence against women, legislation, and Iraqi Penal Code.

**INTRODUCTION**

Importance of research

Women have occupied a distinct social, economic, political, and religious position in Iraq since the time of its inception. For example, the Hammurabi Sharia has created several texts regulating the family and preserving its status and the role of Babylonian women in ancient Iraq. Women had the right to divorce from husbands, had the right to care for their children, had the right to engage in business, she has legal capacity and financial liability independent of their husbands, and she has the right to care and alimony. It also imposed harsh penalties on a person who mistreats a woman or violates one of her rights established in the aforementioned law.

In modern times, women in Iraq have enjoyed relatively better protection than in other countries of the region during most of the last century. The beginning of the rapid deterioration of women's rights in Iraq after the 1991 Gulf War could be monitored, with the former regime using the traditional tribe as a political tool to mobilize loyalty to its weak authority. The United Nations sanctions imposed on Iraq following the 1991 Gulf War also contributed to the exacerbated problem. For example, the gap between males and females in school enrolment (and therefore women's illiteracy) has increased considerably with families under financial pressure that has made them choose to keep girls at home.

Iraqi women have also suffered from a variety of violence against them and these practices are growing with the deterioration of humanitarian and security conditions in Iraqi society. Whatever type of violence against women, it constitutes an offense and cannot be derogated from as an offense that must be characterized to achieve its reduction and treatment. Perhaps the most obstacle to empowering women in Iraqi society is violence protected by law. When this violence is established and legislated within laws, this makes the legislative environment an environment that stands against the empowerment of women.

Research objectives

Presenting women-friendly legislative proposals to help create a women-friendly legislative environment that respects women's rights, identity, and humanity, prevents any violation of its human rights and criminalizes any act that constitutes a violation of these rights, and prevents impunity.

This, in turn, will pave the way for their empowerment in all respects. Discriminatory legislation is a frightening challenge to women's empowerment and to any societal, political, economic, or cultural reforms that are intended to advance the reality of women and enhance their status and their role in building society and the country.

Research problem

The most violent weapons or means against women are adopted by men when they commit violence against them (law or legislation). There are a significant number of laws and legislation that constitute violence and discrimination against women and allow or justify men's violence against women, as well as, the absence of legislation criminalizing acts committed by men against women constitutes violence and a violation of women's rights, human rights, and dignity, which poses a serious threat to women's advancement and empowerment. The most serious of this legislation is the Iraqi Penal Code in force No. 111 of 1969, and that's what we'll learn through our study.

**Research Methodology**

We have followed the method of analyzing the provisions that constitute violence and discrimination against women contained in Iraqi Penal Code No. 111 of 1969 and comparing them to the international conventions ratified by Iraq, as well as to the permanent Constitution of Iraq of 2005, as well as to the draft Iraqi Penal Code prepared by the Supreme Judicial Council and contributed to the preparation of a committee of experts in the Presidency of the Republic and now is in the Iraqi Council of Representatives.

Research plan

The research was divided into the preface and requirements, each requirement concerning the title of texts that impede the empowerment of women because they constitute violence, discrimination, and violation of women's rights as contained in the Iraqi Penal Code.

As we devote the first axis to texts that are one of the reasons for permitting, the second focus of the texts is on family crimes. The third axis of the texts regulates the provisions of crimes related to filiation, care of a minor, endangerment of children and the elderly, and abandonment of the family. the fourth axis we devoted to the texts on murder, and the fifth axis of the texts on crimes against morality, human freedoms, and inviolability.

Then the conclusion included the recommendations. In all this, we have compared the corresponding texts contained in Iraq's new draft penal code.

Preface

Violence against women is a source of suffering for thousands of women, who are humiliated by discriminatory laws and arbitrary practices based on their vulnerability to sex, such as raping them, sexual harassment - in the family, street, workplace, insult, kidnapping, incest, infidelity, abuse... etc.

All these manifestations constitute violence. How can violence, oppression, and persecution take its authority, credibility, and legitimacy?

Laws already existed to protect the rights of members of society and women as citizens of society, but it was regrettable that rather than being fair to rights and protecting them, the law was a violation of those rights. This itself distances States that pursue democracy from being the rule of law in which all individuals are without discrimination equal before and in law to feel their citizenship and belonging. The state of the law is the state in which the pillars and elements of the institution of law are available, and as a result of the emergence of the modern state of law, man has known what is called the (rule of law) or (the principle of legitimacy).

The rule of law has three concepts:

1. Absolute sovereignty over the law applied by the courts.

2. Equality before the law means that all castes are subject to the country's law, which is applied by the courts. It is based on the fact that no one is above the law and applies to the general public as it applies to employees. The law is a duty of everyone. Freedom requires a legal system that protects fundamental freedoms.

3. The Constitution is not the source of individuals' (human) rights but the result of these rights. This leads to: -

a) The absence of arbitrary authority.

b) Effective oversight by Parliament of legislation passed by the executive branch with its authorization (thus constitutionally permitted).

c) Any person is accountable to the law, whether an employee or a private citizen.

d) The determination of special rights by impartial and independent courts.

e) Law protects fundamental individual freedoms.

Although we seek to be a state of law, there is a disparity in the protection and absence of women's rights in Iraqi legislation, in particular the Iraqi Penal Code in force No. 111 of 1969.

It had incorporated many legal texts that neglected women's rights and overlooked the granting of many of their rights and ensuring legal protection for them. This law, whose legislation is supposed to be for the protection of rights and freedoms, constitutes violence and discrimination against women. This is what we will be looking at in the following axes:

First axis: texts that are one of the reasons for the permissibility

The reasons for pornographic are those which, if presented to conduct subject to a provision of criminalization, remove it from the scope of this provision and remove it from the wrongful character of the act and return it to legitimate and unpunished conduct.

For example - Article (41) of the law: No offense if the act takes place in the use of a right established by law and is deemed to be in the use of the right - 1 - to discipline the husband of his wife within the limits of what is legally, legally or customarily established. This article violates a woman's right to physical integrity and wastes her dignity and humanity by allowing a husband to beat his wife. (for discipline). The limits of such discipline may amount to a high degree of physical and psychological abuse if the custom prevailing in the area, family, or clan of the husband or wife permits such as beating with a stick or belt, tying to a pole, or tree, confinement in a dark room or deprivation of food, and other methods and means of so-called discipline according to custom that will prevent the husband from being prosecuted for permitting the law to do so (for the purpose of disciplining his wife). As well as the introduction to the article explicitly suggests that the husband's disciplinary act would constitute an offense when the article began with the words "no crime". The law also presupposes that only a wife deserves discipline as if she were always wrong and disobedient, etc, and the husband does not.

If the wife disciplines her husband, then she will be presented before the court and sentenced for the crime of abuse under Articles (410-416) because the law did not give her, like men, the right to discipline her husband, no matter how bad his character and behavior may be, which deserves to be disciplined on her behalf .

Such discriminatory rhetoric is contrary to the law and the provisions of article 14 of the Iraqi Constitution, which establishes that "Iraqis are equal before the law without discrimination on grounds of gender......"

They are also contrary to the provisions of article (29) of the Iraqi Constitution, paragraph (4) which states that "all forms of violence and arbitrariness in the family, school, and society shall be prohibited" . In particular, there are steps to legislate the Law on Protection against Domestic Violence. Would it be legally logical to exclude the husband's discipline of his wife from the provisions of this law?

This article also violates article (7) of the International Covenant on Civil and Political Rights, which provides that "no one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment", an article (2 -c) of the Convention on the Elimination of All Forms of Discrimination against Women. Both the Covenant and the Convention have been ratified by Iraq by Lows No. (193) of (1970) and No. (66) of (1986), respectively. It also contravenes the (1983) Convention against Torture, to which Iraq acceded by the Low on Iraq's accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment No. (30) of (2008) .

These criticisms apply to the disciplinary process of parents and teachers, including the minor children provided for in the same article. We add to the series of violations of international legislation that violate the Convention on the Rights of the Child, which Iraq ratified by Law No. (3) of 1994 .

We, therefore, recommend that this paragraph of article (41) of Iraq's Penal Code be repealed. In particular, the draft Iraqi Penal Code submitted by the Supreme Council of the Judiciary to the Presidency of the Republic, including to the Iraqi Council of Representatives in 2021, abrogated article (42) on the use of the right to do so. This confirms the illegality of this paragraph of the article (41).

The second axis: texts related to crimes affecting the family

The Iraqi legislature classifies family crimes as social crimes and has singled out a section for what it calls social crimes. This means that the legislature counts family crimes as crimes against society and that the interest of criminalization is a social interest, It must therefore be thoroughly reviewed and evaluated because the controls of the offenses of the complaint are relative matters that vary from one legislator to another and differ from the same legislator from time to time. This requires a review of the legislative priorities relating to the procedural exercise of the right to complain, especially in cases of offenses that affect the family and keeping it in the narrowest range, and release of the prosecution's hand in respect of any such offenses.

Section One / Article (377) of the Law:

"The adulterous wife and whoever committed adultery with her shall be punished with imprisonment. The same penalty shall be imposed on the husband if he commits adultery in the marital home," meaning that if the husband commits fornication in a place other than the marital home, he is not considered an offender or a perpetrator of a crime and that his work is lawful. While the wife wherever she adultery, is a criminal offender and a perpetrator of the crime of adultery. This violates the principle of equality between women and men before the law established in the article (14) of the Iraqi Constitution and article (2) of the Constitution, which establishes in paragraph (First/a) that "no law shall be enacted that is incompatible with the constants of the provisions of Islam" . A clear and explicit constant in the Holy Quran is the punishment of the crime of adultery. ("The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes") that is, the God Almighty did not discriminate in the punishment of the crime of adultery between women and men, as well as that the above article constitutes a violation of the article (26) of the International Covenant on Civil and Political Rights, which states: "All persons are equal before the law and enjoy, without any discrimination, an equal right to its protection. In this regard, the law must prohibit any discrimination and ensure that all persons alike are effectively protected against discrimination on any grounds such as race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or other reasons .

Just as the man has dignity and honor, so does the woman. Therefore, it is assumed that this article is amended to punish the man with the same punishment, without specifying the place where the crime occurred. This is what was stated in the draft Iraqi Penal Code submitted by the Supreme Judicial Council to the Presidency of the Republic and from there to the Iraqi Council of Representatives in 2021. Article (368) of the Code stipulates that: "First, the adulterous wife and her adultery shall be punished by imprisonment. The perpetrator's knowledge of the marriage is presumed unless he proves that he was unable to learn of it.

Second: The punishment provided for in section (First) of this article shall be the spouse of the offender and his adherence thereto. " The same act is punishable without specifying a particular place for the commission of an offense for any of the offenders according to their gender.

Section Two / Article (380) of the Law

“Any husband who incites his wife to commit adultery and she commits adultery based on this incitement shall be punished with imprisonment.” In this article, the husband will not be punished for inciting his wife to commit adultery unless the act of adultery that he incited his wife to commit takes place. This is a serious matter, as merely inciting her to commit adultery is a serious crime in itself. If she wants to complain about the husband because he is inciting her to fornication and he is stifling her to do so and she refuses to carry out his instigation, he will not hear her complaint because she must first commit adultery and then complain. This is logically and legally rejected, as the law is one of its most important duties to prevent the occurrence of crime, and if it does occur, it is punishable, and it is not one of its tasks to prepare for the occurrence of the crime .

This also constitutes a violation of Article (6) of the Convention on the Elimination of All Forms of Discrimination against Women, which states that “States Parties shall take all appropriate measures, including legislative ones, to combat all forms of trafficking in women and exploitation of the prostitution of women.” In addition to the fact that the punishment prescribed in this article is of little importance and impact and is not commensurate with the seriousness of the crime and its exclusion. The meaning of absolute imprisonment without specifying the period is from 24 hours to five years, which means that the sentence may be issued against him for a short period and may be issued with a stay of execution if the sentence is imprisonment as a period not exceeding one year as stipulated in Article 144 of the law. While a crime like this deserves the most severe punishments as it is a crime that affects dignity, morals, and honor and degrades the value of women and the sanctity of the relationship between them and the husband, and frustrates family values, which is reflected even on children and their psychological and moral formation. In addition to this article, the description of the victim has been limited to the wife, while there are many cases in which the victim was the daughter or granddaughter of the offender, so she also deserves to be covered by protection. This crime is a crime of brokering with women and has serious dimensions.

We, therefore, recommend that the penalty be increased to a minimum of three years imprisonment and a fine. We also recommend that this penalty be applied to mere incitement without waiting for the act instigated by adultery to be punishable by the gravity of the act and its social, family, personal and moral dimensions. The wording of the article is as follows.: (A term of up to three years imprisonment and a fine shall be imposed on any husband who incites his wife to adultery. The penalty shall be a term of up to three years' imprisonment or a term of up to seven years' imprisonment and a fine if the victim is a branch of the offender. The punishment shall be a term of imprisonment of not less than seven years and a fine if the wife adultery based on such incitement and the penalty shall be at least 10 years imprisonment and a fine if the victim is a branch of the offender). The draft Iraqi Penal Code submitted by the Supreme Judicial Council to the Presidency of the Republic and from there to the Iraqi Parliament in 2021 went towards punishing incitement without waiting for the inciting act of adultery to occur, but the punishment it decided does not constitute a real deterrent to its insignificance.

Article (371) of the draft stipulates: “First- Any husband who incites his wife to fornication, and she fornicates, based on this incitement, shall be punished with imprisonment for a period of no less than three years. Second - he shall be punished with imprisonment for a period of no less than one year if the act of adultery did not occur based on this incitement.

Section Three / Article (385) of the Law:

“He shall be punished with imprisonment for a period not exceeding ten years or imprisonment if someone has sexual intercourse with one of his female relatives or has had intercourse with her consent and she has completed eighteen years of age. It is considered an aggravating circumstance if the victim became pregnant or had her virginity removed or contracted a venereal disease as a result of the act, or if the offender was in charge of raising the victim. over it or its observation or those who have authority over it. It is not permissible to initiate a lawsuit for this act or take any action in it except based on a complaint from the victim or from her ascendants, descendants, brothers, or sisters".

The punishment for this heinous act is not commensurate with the seriousness of its material and moral effects on the victim and society at all. It is a light punishment if the judge goes to the optional punishment, which is (imprisonment), which is mentioned here in absolute, which means, as we explained earlier, from 24 hours to five years, and the punishment was supposed to be severe and harsher than that, as if it is imprisonment for life, especially since the punishment for the crime of rape and sodomy as stated in Article 393 of the Penal Code is life imprisonment or temporary imprisonment and has made the relationship of the offender with the victim to the third degree an aggravating circumstance. In addition to the necessity of deleting the last part of the article on initiating the criminal case and making it a public right case, which does not wait to move the complaint from the victim so that the offender can take his punishment, but rather for everyone who knew of the occurrence of this crime. The public prosecutor also has the right to initiate a criminal case, and it is not permissible to waive it under any circumstances. This act does not only affect the victim but also affects the community because of the criminal and value risks that it carries.

We, therefore, propose that the amended text should read: "Life imprisonment or temporary imprisonment shall be punishable by a term of not less than ten years from the fact of a person who commits adultery and sodomy with her consent and has attained the age of 18 years. It is considered an aggravating circumstance if the victim is pregnant, removed from her virginity, or contracted a venereal disease as a result of the act or if the perpetrator is a person involved in the victim's upbringing or observation or who has authority over her. This offense is a crime of public right and may not be waived. The proceedings may also be initiated for this act or any action taken by the Public Prosecutor or on the basis of a complaint from the victim or her ascendants, branches, brothers or sisters "

 The draft Penal Code contains Iraq's article. (383) The punishment for the offender's intercourse with one of his mahrams to the third degree is the death penalty and the same penalty if she is 18 years of age, 15 years of age, or she has not completed it, and if the intercourse is with her consent or without her consent, also if the act leads to her death, removed her virginity or pregnancy. (paragraphs. First, a, b, c, d). whereas the paragraph (Second - A) of this article prescribes a punishment of life imprisonment or temporary imprisonment imposed on whoever has sexual intercourse with one of his mahrams or sodomy with her consent and she has completed 18 years of age, and the victim's pregnancy, removal of her virginity, or a contracted a venereal disease as a result of this act, or the perpetrator was one of those who raised or observed her or who had authority over her under an aggravating circumstance of punishment.

The third axis: the texts regulating the provisions of crimes related to filiation, care of a minor, endangerment of the young and the elderly, and abandonment of the family

The primary interest is the preservation of the family entity as the nucleus of society. This is why the legislature provides for the preventive criminalization of the situation of endangering its members but fails to deter them from committing it in accordance with article 384 of the Low: "Whoever has been sentenced to an enforceable court order to pay maintenance to his spouse or any of his assets or branches or any other person or to perform nursery, breastfeeding or accommodation fare and refrain from performing with the ability to do so within the following month to inform him of the execution; he shall be punished by imprisonment up to one year and/or a fine of up to 100 dinars shall be imposed. ". The paucity of the penalty is disproportionate to the seriousness of the consequences of the act, especially when it is issued with a suspended sentence. Furthermore, in order to protect the rights of the maintenance, nursery, breastfeeding, or housing beneficiaries, this article should have included the provision for the performance of alimony or fare, with compensation for all damages suffered by the maintenance or fare beneficiaries as a result of the failure to perform such maintenance or fare on time, also warned that if he repeated the act in the future, he would also be subject to a severe penalty of at least one year's imprisonment.

Regrettably, Iraq's new draft Penal Code did not differ in its minimal punishment for this act from that provided for in this article, except for its abolition of the choice between imprisonment and fine and their imposition as a penalty. As stated in Article (375) of the draft that: "First - a term of up to one year's imprisonment and a fine shall be imposed on anyone who has been sentenced to an enforceable court order to pay alimony to his spouse or any of his assets or branches or any other person or to perform nursery, breastfeeding or accommodation and refrain from doing so during the following month to inform him of the execution. Second: the proceedings provided for in section (First) of this article may not be instituted except based on a complaint from the person concerned. The proceedings shall cease by waiving his complaint or by freezing the complainant if the waiver or performance occurred after a judgment was handed down in the case and the execution of the sentence was suspended. "

Fourth axis: texts related to premeditated murder

Causing another human being to die illegally (also known as a crime) is one of the most serious crimes of assaulting people because it is aimed at taking the life of a human being. However, although the Iraqi legislator made his sentence life imprisonment or temporary imprisonment in accordance with article (405) of the Code and execution in accordance with article (406) of the Code of Criminal Procedure, however, the offense of honor killings of women was intimidating leniency. Article (409) of the Law states: " "A term of up to three years' imprisonment shall be imposed on anyone who surprises his wife or a person incest in the event of her wearing adultery or being in a single bed with her partner, killing them immediately or assaulting them or one of them, or an assault resulting in death or permanent impairment". This article grants the offender's husband or mahram pardon and may not be punished even if he kills his wife or a mahram person and is sentenced to one year suspended. This excuse is granted only to men without women. If the image is reversed and it is the woman who surprises her husband or incest in case of adultery, she kills him or hurts him, she carries a full penalty depending on the results of her actions. As if only a man provoked his dignity and aroused his honor, a woman was not affected. This is a grave violation, discrimination, and inequality before the law and justice, as well as the abolition of their dignity, humanity, and feelings, which is therefore contrary to the provisions of articles (14) and (29-Forth) of the Constitution and article (26) of the International Covenant on Civil and Political Rights .

The legislator was also supposed to include a woman by this mitigating excuse or originally abolishing this article because a person may not be the judge and executor of the sentence and this is the function of the judiciary. Allowing individuals to pass death sentences or harm each other for whatever reason means returning to the era of power and to the Law of the jungle. Moreover, there are alarming statistics on the number of women killed under the guise of this excuse and there was no justification and they were innocent of the charge, Today's global trend towards the abolition of the death punishment is one of legislation, as it may result in errors in sentencing innocent people. This article, which allows others to sentence and execute a death sentence against each other, should also be repealed.

Furthermore, this article is contrary to the legislator's orientation in the article (407), which provides that the mother who kills her child, with whom she is pregnant in incest, to avoid disgrace should be given a mitigating excuse that may exempt her from punishment. How is it originally allowed to kill her if she adultery and discovers her husband or mahram at the same time, if she commits adultery in secret and gets pregnant and kills her newborn, she is excused and deserves to commute her punishment? This is a legislative contradiction. All this is in great contradiction with the principles of human rights and international instruments that provide for human rights and the Iraqi Constitution .

Noting that there were some decisions issued by the dissolved Revolutionary Command Council, which are still in effect until now according to the rule of Iraqi legislation and what some lawyers have approved and which are supposed to be rescinded according to Coalition Provisional Authority Order No. (7) of 2003 states:

1. The decision of the Revolutionary Command Council (Dissolved) No. 49 of 2001 not to consider the crime of a person killing a rapist or coercing one of his mahrams: First / 1 - There is no crime if a person kills or attempts to kill a raped or coerced one of the murderer's incest. 2- It is considered an aggravating circumstance that the killing of the killer stipulated in Paragraph(1) of this item was taken for revenge. Second, this decision shall be implemented from the date of its publication in the Official Gazette.

2. Revolutionary Command Council Decision No. 6 of 2001 regards the murder of a wife or any of mahrams in the creativity of Sharif as a mitigating excuse. Article 130 punishments: First: A mitigating legal excuse shall be deemed for the purposes of the application of article 130 of the Penal Code, No. 111 of 1969, who kills his wife or one of his mahrams with an honorable cause, or a relative of the victim killing someone who reproaches either of them for the outrageous behavior for which she was killed. Second: The death punishment shall be imposed on anyone who deliberately kills for the use of the murderous vendetta provided for in section I of this resolution and shall not be imposed on him by legal excuses or mitigating judicial circumstances, and shall not include any general or special amnesty. Third: whoever separates or attempts to separate clans from the crime stipulated in sections first and second of this decision shall be punished with imprisonment for a period not exceeding 7 seven years or imprisonment for a period of not less than 3 three years. Fourth: this decision shall be implemented from the date of its publication in the Official Gazette.

Also, in order not to exploit article (128-1) of the Penal Code, which stipulates that (excuses shall be exempt from or mitigated by punishment and shall not be excused except in circumstances specified by Law. Except in such cases, a mitigating excuse shall be deemed to have been committed on honest grounds or the basis of serious provocation by the victim). So that this article is not exploited for the same provisions and subject matter of the above decision and reinstated based on this article, we suggest that a phrase be added to this article deciding that (No honorable motive is murder or wounding, beating and abuse is washing of shame). This article, in its own form, contradicts the provisions of article (45-2) of the Iraqi Constitution, which stipulates that: (The State is keen to promote noble Iraqi tribes and clans in order to contribute to the development of society and to prevent clan customs that are contrary to human rights.) .

As the act of killing or harming under the guise of washing shame are the product of clan customs and tribal traditions that are incompatible with human rights, particularly on the basis of international instruments ratified by Iraq, such as the Convention against All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

Therefore, here we draw the attention of the Iraqi legislator to the fact that there should be quick action to amend the penal texts and to pay attention to what we have referred to as texts that are dangerous to the rights of women, the family, and society, and to resort to the language of the law without paying attention to the outdated customs and traditions in which there are many violations of human rights and there are no Islam, values, principles, justice or fairness is one thing, so we recommend the abolition of this extenuating excuse and the treatment of this crime as a crime without an excuse or extenuating circumstance, in which the offender deserves the full punishment stipulated in the article that includes his committed act.

But what the new Iraqi draft penal code said in Article (400) of it is equal to mitigating the punishment between the spouses if one of them kills the other spouse and his partner who is dressed in adultery or sodomy or is in one bed. But he singled out the male for this mitigation in relation to his surprise to one of his incest to the third degree, wearing adultery, sodomy, or being in one bed with her partner. It stipulates: First: A term of up to seven years' imprisonment shall be imposed on either spouse if he kills his spouse and his partner or assaults them or one of them, leading to death in the event of surprise, in the event of adultery or sodomy or their presence in one bed. This provision applies to a person who is surprised by one of his relatives of the third degree red-handed with the crime of adultery or sodomy, or their presence in the same bed. Second: If the act stipulated in item (First) of this Article results in permanent disability or harm, the penalty shall be detention. Third: The victim is not entitled to adhere to the right of legitimate defense against the perpetrator, and the provisions of aggravating circumstances stipulated in this law do not apply to him.

Fifth axis: texts related to offenses against morality and human freedoms and sanctity

 The right to reputation, morality, and freedoms is one of the highest rights to be protected. It is one of the fundamental elements of society. Most constitutions and laws protect the human person's right to reputation, morality, and freedoms from being infringed in any way and to respect the privacy of citizens. However, our Iraqi legislature has severely failed to protect women's rights.

Section One/Article (398):

If a valid marriage is entered into between the perpetrator of one of the offenses set in this chapter (chapter of rape, sodomy, and indecent assault) and the victim, the proceedings shall be discontinued and investigated. If a judgment has been rendered in the proceedings, the execution of the judgment has been suspended. Proceedings of enforcement shall be resumed as the case may be if the marriage ends with a divorce issued by the spouse on unlawful grounds or a divorce ordered by the court on grounds of the spouse's error or misconduct three years before the suspension of the proceedings. The prosecution, the accused, the victim, and any interested person shall have a stay of proceedings, investigation, proceedings, execution of the judgment, appeal, or execution of the judgment. According to the circumstances (noting that this article has been amended by Law No. 91 of 1987 to make such marriage a mitigating excuse to apply the provisions of articles 130 and 131 of the Penal Code. However, with the promulgation of CPA Order No. 7 of 2003 in section two, item (1) of which decided to apply the 3rd edition of 1985 of the Penal Code. This means the disruption or suspension of the Act following the 3rd edition of 1985. Consequently, Amendment No. 91 of 1987 of the Revolutionary Command Council, which promulgated the offender's marriage to the victim as a mitigating excuse and not an exemption from punishment, was repealed by Coalition Authority Order No. 7 of 2003 and returned as an exempt excuse) .

This article constitutes the most serious type of violation of women's rights. It is an egregious affront to their dignity, humanity, and human rights. At the same time, it is grotesque enshrinement of the long-held customs and traditions to which women fall victim and have nothing to do with the provisions of Islam, any other religion, or noble values. In addition to being the victim of an anomaly and corrupt person with no values and no jealousy over his honor and presentation, she must (compulsorily) be his wife in order to be rewarded for his guilt and exemption from punishment ((It is enough that you prefer, generous to marry her to Lester in the family which is his defilement)). And I say compulsorily because her family will force her to be his wife, rather this family will beg the offender to marry his victim in order to save their honor and reputation, and pay him for it, his freedom, and the impunity that he will receive under this exempt excuse. As for this victim, how does she feel, what is her position, how will she accept the matter, all of this is unimportant and is not paid attention to, the important thing is that the family acknowledges her reputation and social appearance, which in the result and any case, the perpetrator stepped on him with his foot. Nevertheless, everyone, even the legislator, seeks to please him and present temptations to him until he agrees to marry his victim. Rather, she is notified that he will live with her for three years, and God knows how he will treat her during these three years of imprisonment only so that he is the offender who enjoys this exemption. If the victim refuses to marry him, her family will kill her. On the one hand, on the other hand, what if they have children during this period, how will the parents feel about them when they are the fruit of forced marriage resulting from the crime of rape?

The international community is counting crimes of rape and violation of supply, crimes against humanity, and war crimes whose perpetrators deserve the harshest punishment. We rewarded and take care of the perpetrator for tradition. We hoped that this article would include by emphasize the punishment imposed by the Coalition Authority's Order No. (31) of 2003 on the amendment of the Penal Code and the Code of Criminal Procedure, which in section three establishes the imposition of life imprisonment for the perpetrator of the offense of article 3 and imposition of life imprisonment for the perpetrator of the offense of article 393 and 15 years imprisonment for the offender of article 396, but this does not take into account the gruesome and serious nature of this violation of women's rights, dignity, and humanity.

But now we are alerting him to the dangers and the unfairness of this article not only for women but for society as a whole. The Iraqi legislature must heed the seriousness of this article and must not allow such an insulting circumvention of the law to eliminate punishment. It must remove this excuse from the law so that it is not exploited to the detriment of human beings and society. It is with great regret that the new draft Iraqi Penal Code on this subject was shocking and frustrating and did not address this humanitarian breach but deepened it. Article (389) states: "If a valid marriage is entered into between the perpetrator of an offense set forth in this chapter and the victim, it shall be deemed a mitigating legal excuse. If the marriage contract ends with a divorce issued by the husband on unlawful grounds or a divorce ruled by the court for reasons of the husband's fault or misbehavior, and before five years of the judgment in the proceedings. The proceedings shall be resumed and the sentence shall be reviewed to be aggravated at the request of the public prosecutor, the victim, or any other interested person. " We do not know whether this new provision is a double punishment for the victim or a means of retaliation. This provision means that the victim will be liable to fewer years' imprisonment than those provided for in the rape articles. In the judgment of the trial judge, the law makes him a mitigating excuse until the offender terminates his sentence and gets out of prison. Moreover, this article regards the subject of the offender's marriage to the victim on the ground that it does not refer, as article 398 of the law in force did, to (consent) the victim to the marriage, but here the legislature has made the subject of the marriage a foregone conclusion. This is a double violation of the victim. Even if the mitigating excuse based on the offender's marriage to the victim was linked to her (formal) consent, it was at least taken into account the victim's opinion and will. Moreover, the period (linking the victim's fate to the spouse's offender) is longer if it becomes five years instead of the three provided for in article (398) of the law in force. This provision constitutes a double offense against the victim and a double infringement of the victim's rights and an affront to her existence and identity. Its purpose is only to alleviate the deterrence and punishment that the perpetrator must have, i.e., in the interest of the perpetrator and not of the victim. We, therefore, renew our call to repeal this excuse (whether the exemption in force or the mitigation in the Law) and not to allow impunity.

Section Two/Article (402):

States: "1. A term of up to three months imprisonment and/or a fine of up to 30 dinars shall be imposed or one of these two penalties: "(a) Anyone who requests an indecent order from another male or female. (b) Anyone who is exposed to a female in a public store with words, actions, or references in a way that scratches her life. 2. penalty shall be a term of up to six months imprisonment and a fine of up to 100 dinars if the offender returns to another offense of the same type for which he was sentenced within one year of the date of the previous sentence. " .

This article is contained in chapter three on crimes of the indecent act, this article is usually referred to in connection with the offense of sexual harassment. While sexual harassment is generally defined as "undesirable behavior involving a range of sexual hazing, whether verbal, non-verbal or physical, emanating from the harasser anywhere - public, private or road- causing the harasser negative psychological, social or material effects. This term is used to denote a person's behavior to seduce and provoke another person and to induce him to commit immoral sexual acts. Whoever engages in this act shall be subjected to provocation by the other party by any means such as meditation, scrutiny, winking eyes, touching the hand and the limbs of the body, smiling and flirting, to define the date and set the meeting in an attempt to achieve a benefit of a sexual nature. " .

This article does not cover all behaviors that are considered or may be regarded as sexual harassment, nor does its punishment serve as a deterrent to this crime, as measured by its seriousness and its catastrophic effects on the victim, since the perpetrator can escape such punishment as we explained earlier. The difficulty of establishing the fact of harassment, especially since its burden falls on the victim. Regrettably, Iraq's new draft Penal Code provided for penalties similar to that of minimal and also non-exhaustive provisions for everything that constitutes sexual harassment. If it is somewhat better in its content than the provisions of article 402 of the Penal Code in force - within the article (393) of the draft. It stipulates: "First. A term of up to six months imprisonment or a fine shall be imposed: (a) Anyone who asks for an indecent order from another male or female, (b) Anyone who harasses words, actions, or references on a face who scratches modesty. Second: the punishment shall be a term of up to six months imprisonment and a fine if the offender returns to another offense of the same type for which he was sentenced within one year of the date of the previous sentence. Third: if the perpetrator has functional family or educational authority over the victim or exerts any pressure on him to exercise it or commits the crime from two or more persons or someone carries a weapon other than an aggravating circumstance. "

We, therefore, recommend the inclusion of all forms of harassment, especially those that may be electronic, in order to increase the phenomenon of such harassment, and that the penalty is more severe than in the law in force or in the draft law, thereby preventing impunity for the perpetrator and establishing accessible procedures for establishing the act of harassment.

Section Three / Article (427):

Decides that "if a valid marriage is entered into between the perpetrator of one of the offenses set forth in this chapter (chapter of detention and abduction of persons) and the victim, the initiation and investigation of the case and other proceedings shall be suspended and if a judgment has been rendered in the case, the execution of the sentence shall be suspended. The proceedings or execution shall be resumed - as the case may be - if the marriage ends with a divorce issued by the spouse on unlawful grounds or a divorce ruled by the court for reasons of the spouse's error or misconduct three years before the suspension of the proceedings." .

The Coalition Provisional Authority Order No. (31) in 2003 was issued regarding the amendment of the Penal Code and the Code of Criminal Procedure, and it was decided in Section (2), Paragraph (3) of it that “the implementation of the provisions of Article (427) of the Penal Code shall be suspended according to this order. to stop the judicial proceedings against the accused of the crime if he marries his victim .

In fact, that we have shown that women's rights are violated under article (398) applies to article (427), because the offence is the same and the effect is the same and the injustice and the equitable is the same in both articles. But it is a good thing here that the Coalition Provisional Authority (CPA) has turned this around only here in this article and suspended it, i.e. it has not abolished it, but only suspended it. This in itself means paying attention to the gravity of this article's consequences for humanity and society. This will, however, enable the perpetrator of the crime of abduction to escape punishment by raping the abductor and then offering to marry her so that he enjoys the exempt excuse of the article (398), which is not covered by the Coalition Authority's decision to suspend the exempt excuse and punish the perpetrator with the punishment he deserves .

Similarly, article (421) of Iraq's new draft Penal Code contains the same provision as article (389), but on the subject of the marriage of the perpetrator to the victim of the crime of rape. This article of the draft states: "If a valid marriage is entered into between the perpetrator of an offense set forth in this chapter and the victim, it shall be deemed a mitigating legal excuse. If the marriage contract ends with a divorce issued by the spouse on unlawful grounds or a divorce ordered by the court for reasons of the spouse's error or misbehavior five years prior to the judgment in the proceedings, the proceedings shall be resumed and the penalty shall be reviewed to be aggravated by request of the public prosecutor, the victim or any other interested person. "Here we make the same remarks as we made on article 389 of the Law.

In addition to our explanation of the effects of these near and long-range negative substances, We would like to draw attention to the formal seriousness of article (427), which will generate an even more substantive risk: that the amendment to this article is based on an order issued by the Coalition Provisional Authority. Article (130) of the Iraqi Constitution stipulates that: "The legislation in force shall remain in force unless it is repealed or amended in accordance with the provisions of this Constitution." Here's the danger. That is, this article is very possible to return to what it was before the issuance of the laws and decisions of the amendment and return to the excuse that is exempt from punishment for the perpetrators of the rapists and kidnappers if the House of Representatives decided under Article (130) of the Constitution to cancel everything that was issued by the Revolutionary Command Council or the Coalition Authority temporary.

In addition to all that we mentioned in the Iraqi Penal Code No. 111 of 1969. There are crimes against the honor of the job found in the Internal Security Forces Penal Code No. (14) of 2008, including Article (16) which states: “Anyone who marries a woman of moral disrepute or keeps her with knowledge of that shall be punished by imprisonment and expulsion.”

We suggest the following amendment: "Any person who knowingly marries or keeps a morally notorious husband shall be punished by imprisonment and expulsion."

**Conclusion**

 When talking about the treatment of these violations and the development of a solution to them, the law must be the other party. Without a law that protects human beings and women, that clarifies the limits and provisions of these violations, and sets an appropriate punishment for their images in a manner that does not allow the perpetrators to escape from punishment, there will be no benefit from all that is said, and written about violence against women.

The recommendations emanating from this study are key to advancing the process of eliminating violence against women through legislative reforms This, in turn, will pave the way for their empowerment in all respects. Discriminatory legislation is a daunting challenge to women's empowerment and to any sociopolitical, economic, or cultural reforms that are intended to advance women's realities, their status, and their role in building society and the State.

These recommendations are interrelated and necessary to take an effective and comprehensive approach to end violence against women. The main points that should be focused on concerning the legislative aspect are the following:-

First: - What should be amended

1. Article (377) " Punishable by imprisonment of the adulterous wife and the person who commits adultery with her. The same penalty shall be the same if the husband commits adultery in the marital home.”, amend to "The adulterous husband and who the adultery with her and the adulterous wife and who the with her shall be punished with imprisonment and the punishments shall be increased if the act of adultery is in the marital home. "

2. Article (128 – 1) "Excuses are either exempt from or mitigated by punishment and only in circumstances specified by law. Except in such circumstances, a mitigating excuse shall be considered a mitigating excuse to commit an offense for honest motives, or the basis of serious provocation by the victim wrongfully. "We suggest that a phrase be added to this article stating that (Killing, wounding, beating, or harming shall not be considered an honorable motive to wash one's shame). Especially since this article, in its form, contradicts the provisions of Article (45-2) of the Iraqi constitution, which states: “The state is keen to advance the noble Iraqi tribes and clans in a way that contributes to the development of society, and forbids clan customs that are inconsistent with human rights.”. Killings or abuses under the cover of the wash of shame are the product of clan customs and tribal traditions that are incompatible with human rights, particularly on the basis of international instruments ratified by Iraq, such as the Convention against All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

3. Article (380) of the Law: " Any husband who incites his wife to adultery and is adulterated based on such incitement shall be punished by imprisonment." Amend to: "Any husband who incites his wife to adultery shall be liable to two years' imprisonment. The penalty shall be a term of up to seven years' imprisonment if it is weighed based on such incitement. "

4. Article (384) of the Law: "Whoever has been sentenced to an enforceable court order to pay maintenance to his spouse or any of his assets or branches or to any other person or to perform nursery, breastfeeding or accommodation fare and refrain from doing so with the ability to do so within the following month to inform him of the execution. A term of up to one year's imprisonment and a fine not exceeding 100 dinars shall be imposed or one of these punishments". The paucity of the penalty is disproportionate to the seriousness of the consequences of the act, especially when it is issued with a suspended sentence. As well as that as a protection of the rights of those entitled to maintenance, nursery, breastfeeding, or housing - This article should have included the provision for the performance of alimony or fare, with compensation for all damages suffered by the recipients of alimony or fare as a result of the failure to perform such alimony or fare on time, also warned that if he repeated the act in the future, he would also be subject to a severe penalty of up to one year's imprisonment.

5. Third: Article (385) of the Code: "A term of up to 10 years' imprisonment shall be imposed by person intercourse or sodomy with one of his mahrams with her consent and she has attained the age of 18 years. It is considered to be an aggravating circumstance if the victim is pregnant, removed virginity, or contracted a venereal disease, as a result of the act, or if the perpetrator was the one who raised or observed the victim or who had authority over her. The proceedings may not be initiated or any action taken in this act, except based on a complaint from the victim or her ascendants, branches, brothers, or sisters. ". We suggest that the amended text should be: "Life imprisonment or temporary imprisonment shall be imposed for a term of not less than ten years for a person who sexual intercourse with one of his mahrams or sodomy with her consent and she has completed 18 years. It is considered an aggravating circumstance if the victim is pregnant, removed from her virginity, or developed a reproductive illness as a result of the act. Or if the perpetrator is a person one of those responsible for raising the victim, observing her, or having authority over her. This offense is a crime of public right and may not be waived and the proceedings may also be initiated for this act or any action taken by the Public Prosecutor or based on a complaint from the victim or her ascendants, branches, brothers, or sisters "

6. Article (402) stipulates: "1. A term of up to three months imprisonment and a fine not exceeding 30 dinars shall be imposed or one of these two penalties: "(a) Anyone who requests an indecent order from another male or female. (b) Anyone who is exposed to a female in a public store with words, actions, or references in a way that scratches her life. 2. penalty shall be a term of up to six months imprisonment and a fine of up to 100 dinars if the offender returns to another offense of the same type for which he was sentenced within one year of the date of the previous sentence. ". We recommend the inclusion of all forms of harassment, especially the electronic ones, to increase the phenomenon of perpetrating this type of harassment, and that the punishment be more severe than what it is, whether in the law in force or in the draft law, and in a manner that does not allow the offender to escape from punishment, and that easy procedures are put in place to prove the act of harassment.

7. Article 16 of the Internal Security Forces Penal Code: Anyone who knowingly marries a woman of moral disrepute or keeps her is punishable by imprisonment and expulsion. Amendment // Any person who knowingly marries or keeps a morally notorious husband shall be punished with imprisonment and expulsion.

Second: What should be canceled

1. Article (41) of the law: - There is no crime if the act takes place in the use of a right established in accordance with the law and is considered a use of the right: 1- The husband's discipline of his wife.....within the limits of what is prescribed by Sharia, law or custom.

2. Article (409) of the law: “Whoever surprises his wife or one of his mahrams in a state of adultery or her presence in the same bed with her partner, and kills them on the spot, kills one of them, or assaults them or an assault that leads to death, or permanent disability shall be punished by imprisonment for a period not exceeding three years.

3. Article (398): If a valid marriage is entered into between the perpetrator of one of the offenses set forth in this chapter (chapter of rape, sodomy, and indecent assault) and the victim, the initiation and investigation of the case and other proceedings shall be suspended. The proceedings or enforcement shall be resumed as the case may be if the marriage ends with a divorce issued by the spouse on unlawful grounds or a divorce ordered by the court on grounds of the spouse's error or misconduct three years before the suspension of the proceedings. The prosecution, the accused, the victim, and any interested person shall have the right to cease the initiation of proceedings, investigation, proceedings, execution of judgment, appeal, or execution of judgment, as the case may be.

4. Article (427) If a valid marriage is entered into between the perpetrator of one of the offenses set forth in this chapter (chapter of detention and kidnapping of persons) and the victim, the initiation and investigation of the case and other proceedings shall be suspended. The proceedings or execution resume - as the case may be - If the marriage ends with a divorce issued by the husband unlawfully or with a divorce ordered by the court for reasons of the husband's fault or misbehavior before three years have elapsed since the stop of the proceedings).

Third: What should be legislated?

1. Legal texts relating to the crime of sexual harassment ((it is possible to use the legal texts in the laws of the countries whose laws dealt with this act of criminalization)),

2. The Law on Protection from Domestic Violence ((It is in the form of a draft law, and we must push to speed up its enactment))

3. Iraqi Women's Protection Law.

4. A law regulating women's work and protection in the private sector.

Fourth: What should be activated?

There are a number of penal texts that exist to protect women’s rights, but they are not enforced, including:

1. Article 9 of the Personal Status Law No. 88 of 1959 ((1- No relative or non-relative has the right to coerce any person, male or female, to marry without his consent, and the forced marriage contract shall be considered invalid if it is not entered into. Neither the relatives nor non-relative have the right to marry preventing those who are qualified to marry under the provisions of this law from marrying.

2. Anyone who contravenes the provisions of paragraph 1 of this article shall be punished to a term of up to three years imprisonment and a fine or one of these two punishments if he is close to the first degree. If the offender is not such, the penalty shall not exceed ten imprisonments or not less than three years' imprisonment.

3. The Shariah Court or the Personal Material Court shall notify the investigating authorities to take legal comments on the violator's rights under paragraph 1 of this article and may arrest him to ensure his presence. The aforementioned authorities have the right to review directly the investigative authorities in this regard. " with the need for adjustment.

4. Articles 400 - 404 of the Iraqi Penal Code No. 111 of 1969 related to indecent and indecent acts.

**References**

1. A Holy Quran
2. The Permanent Iraqi Constitution of 2005
3. Iraqi Penal Code No. 111 of 1969.