Legislations on Women's Rights & Gender Based Violence (GBV)

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Introduction

There are many forms of violence against Iraqi women, besides these forms almost occupy most aspects of her life, a matter that lead to violate their rights. That's why there will be something missing if we did not say that will lead women to have their humanitarian rights. The discrimination against women is the reason behind such violence, despite there should be equality between men & women in order to generalize the human rights principles for everyone. Mostly the laws issued by the government unveil discrimination and violence against women; these laws are based on common and inherited concepts in dealing with women. Despite the humanitarian principles that contradict with discrimination & violence against women are included in the Iraqi constitution, besides the efforts frequently implemented by the governmental foundations & some of NGOs interested in human rights, but women in our society are still facing the discrimination & violence nowadays.

Both discrimination & violence against women are included in draft bill & laws in force, a matter that lead women & girls to be victims of unjust penal codes & rights. There are some of these issues that will be discussed.
Chapter -1-

Discrimination

Discrimination is ideologically defined as exclusivity, isolation and all what looks like fairly a certain & specific position (The Dictionary of Meanings). Special thing means that a thing is different than others. While, the concept of discrimination practically means that everyone who isolates or determines things and impose them on a group of people or class than others, for example, deprive of young women from education under the pretext of they will get married or force girls who are under the marriage age to get marry.

Discrimination against women is a violation of human dignity, for dignity is one of the individuals' rights that cannot be prevented or violated. If so, that will be violation on human rights in general & women rights in particular besides it will be an obstacle set ahead of the growth of the society. Discrimination leads to restrict women's rights & freedom adopted by international standards of human rights and included in the constitutions of the countries that respect human rights. It also restricts women rights & freedom insured by the national legislations and protected by international conventions. Moreover discrimination restricts women civil, political, cultural, economic and social rights, a matter that lead them away from the growth of the society. Discrimination can be seen clearly when it is included in the government laws and the government try to make it sustainable through GBV, a matter that lead the generations over the years influenced with discrimination that is based on disrespect of human rights & violating them. That's why more efforts to eliminate such violations through systematic policies & mechanisms consisted with human
approaches are required. It depends on the legislations that take into the consideration eliminate GBV.

Part –1–

International attitude on Discrimination

Discrimination against women comes as a result of inequality between men & women over the years. That was behind women dominated by men as well as it became an obstacle set in the head of women progress. Violence against women is one of the social mechanisms that led them to give up positions equal to those occupied by men. Admission on discrimination and violence against women went through important historic developments; the admission came through hard work over the years on the various levels including the efforts implemented by women movements in all over the world that led to serious & binding position internationally taken such as international conventions & United Nations Charter.

United Nations Charter

Women issue and the violations against them were considered as a great challenge of human rights, a matter that led them to be interested by the United Nations Organization, so the UN supported women rights because of the inequality of human rights among the nations and inequality between men & women on the other hand. The article 1(3) included in UN charter says: “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and
encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.

One of the UN charter’s goals is to achieve equality among all human beings in all over the world. It focuses on basic human rights, dignity of individuals and the equal rights for all regardless gender or age.

During the first year, Economic & Social Council established Commission on the Status of Women (CSW), for it is an international body that draws policies related to achieve equality between men & women and raise women as well. The first achievement made by the CSW is the neutral language adopted in the Universal Declaration of Human Rights (UDHR).

**Universal Declaration of Human Rights (UDHR)**

“All human beings are born free and equal in dignity and right”. These few famous words established the basic introduction for the UDHR 60 years ago. However, millions of people are still fighting in all over the world against discrimination every day. The historic UDHR, adopted in the UN National Assembly in 10th of November 1948, confirms the equality among all the individuals in all over the world, “All human beings are born free and equal in dignity & rights, they all have the right and freedom included in UDHR regardless skin color, sex, language, religion, national or social origin…etc.”

(UN document s & publications)

**The two International Covenants on Human Rights**

The two International Covenants on Human Rights are described as the most important binding basis of the International legitimacy in the field of human
rights. They both included legislations against discrimination on the rights among all the people and gender as well. The article 2 of the International Convention on Civil & Political Rights, issued in 16\textsuperscript{th} of December 1966 & enforced in 23\textsuperscript{rd} of March 1976, says as follows:

"1– Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

2– Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant".

While the International Convention on Economic, Social & Cultural Rights, issued in 16\textsuperscript{th} of December 1966 & enforced in 3\textsuperscript{rd} of January 1976, focuses also on equality of rights according to the article 2 (2) as follows:

‘The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The two international conventions obviously unveil seriousness, monitoring and development of mechanisms on women’s human rights taken carefully by the United Nations. They aimed at respect & implement human rights for women
in order to eliminate gender based discrimination, a matter that led to reach to more binding laws to be issued, that's why such conventions were issued.

**Convention on Elimination of all forms of Discrimination against Women (CEDAW)**

Discrimination against women many years ago was an obstacle set ahead of the equality between men & women. Discrimination focused on violence against women. Such discrimination is more familiar where women suffer from, so it's an obvious violation on human rights. Often discrimination is accepted & supported by the policies adopted by some countries, a matter that led the international society to work hard in order to overcome it in the civil, political, cultural, economic and social life through establish international criteria such as binding conventions & declarations that insure the respect & implement human rights for women besides eliminate the gender based discrimination. The conventions are:

1– Convention on Political Rights for Women issued in 1952.


3– Convention related to satisfaction on marriage & the minimum marriage age issued in 1962.

Despite of these conventions, women's rights were still violated, a matter that led the UNO to work more hard to eliminate discrimination between men and women, and then to create concepts that aim at eliminate all the form of discrimination against women.
For the reasons mentioned above, the Universal Declaration on the Elimination of Violence against Women was drafted in 1967, but the declaration wasn't binding. Although the declarations previously mentioned were not legally binding, for they were not drafted as conventions, but that doesn't mean we underestimate such declarations that include moral lessons for humanity. So that's why there was a need for a binding convention to be issued in order to be obligated by the member states. So the Convention on Elimination of all forms of Discrimination against Women (CEDAW) was adopted in the UN General Assembly in 18th of December 1979 and enforced in 1981 after being gained 20 approvals required to be an international part of human rights. In 1986, Iraq became a member state, so Iraq has become obligated to implement CEDAW's provisions & principals. CEDAW's principals will be explained in details as follows:

1– The term ‘discrimination’ was defined & determined in CEDAW.

2– All the Member States are obligated to include CEDAW's principles in their constitutions, Moreover they are obligated to achieve CEDAW principles on the ground through legislative measures taken & legal protection provided for women rights as well as eliminate all the forms of discrimination against them.

3– All the Member States are obligated to take the measures required to overcome discrimination against women through legislative measures that amend or rescind the laws & traditions that violate women rights.

4– CEDAW didn't refer to the legislations as a tool to eliminate discrimination only, but it also calls for measures to be taken including legislations. That's why it
differs than other interim measures that focus on accelerate the equality, besides other principles related to equality.

5– CEDAW focused on the importance of taking the positive procedures related to the social and cultural structure of both men & women in order to eliminate discrimination against women.

6– Member States are obligated to change social customs and practices that focus on inferiority against women or superiority of men against women including gender roles for both men & women in addition to the government must include the social motherhood obviously in the family education, the mutual responsibility should not be neglected and children should be given the priority as well.

7– All the measures that combat women trafficking & prostitution are required to be taken by the Member States. That comes as a respect to the humanity of women insured by CEDAW.

The Declaration on the Elimination of Violence against Women

The Declaration on the Elimination of Violence against Women was adopted by the UN General Assembly in accordance with the resolution 48/104 dated 20th of December 1993. The concept of violence against women was defined in the declaration and all the forms of violence against women were included as well. The article 1 says: ’violence against women means any act of gender–based violence that results in, or is likely to result physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’. The definition
Eliminate of discrimination and violence against women

mentioned above unveils mistreatment against women whether in the family or society they live in.

This research shed the light on the reasons behind violence which has been legitimated & protected in accordance with the policies & legislations adopted by the government that reflect discrimination against women & permit to act violently against them including honor killing, abandonment and beating of wives, while perpetrators mostly will be sentenced reduced penalties. On the other hand, the violence was described in article 2 (c) of the Declaration on the Elimination of Violence against Women as follows: "Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs". So the violence committed in the government institutions is included in the constitution, laws or decision issued by the government institutions. All that may occur with the policies, violence or distribution against women, adopted by the government institutions.

The principle "Violence against women" is one of the forms of discrimination against them" was adopted by the Committee of the Elimination of Discrimination against Women in the recommendation 19/1 concluded during the session 11 in 1992 that says: "gender based violence is one of the forms of discrimination that violate women's rights & liberties on the base of equality between men & women".
Part 2

The equality in Iraqi Constitution

The article 14 of the Iraqi constitution focused on that Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.

All Iraqis, according to the article 14, supposed to be equal in the rights & duties in accordance with their citizenship which is the base of equality, that concept refers to how the society is conscious & developed, for it believes & implements the equality on the ground. Equality means acknowledge the rights of others & their active political participation. So the equality is the pillar of the democracy in Iraq, and so the strong country is built on legal bases.

Thus, all Iraqis are equal before the law for any of the reasons included in the constitution; all the Iraqis are equal in the rights insured the law. The violence or whether in the family or society were included in the constitution. The article 29 (4) says: ‘All forms of violence and abuse in the family, school, and society shall be prohibited’.

Discrimination in the Iraqi legislations

The actual equality is neither found in the laws nor the executive procedures by the government institutions, while it is important for the law to insure protection for the victims of gender based violence. All that will be discussed consecutively in the next chapters.
Chapter –2–

The penal code

The idiom of "crime" is called when somebody criminalizes. It means an attack, felony and guilt. A crime also means an act based on criminal intention that lead to socially bad consequences that are insured by the laws where perpetrators should be punished.

While punishment is a judgment delivered by the criminal court, on behalf of the people, on perpetrators for the crimes they commit. Penal codes were drafted to punish the penetrators and prevent anybody who intends to commit a crime, so penal codes will help the perpetrators to correct their behaviors and prevent individuals to commit crimes, thus they contribute in keeping the society safe.

The individuals will be either subject to the laws legislated or violate them to cause the harm in the society they live in neglecting all the humanitarian principles and the Iraqi constitution. This topic will be discussed in details in this part.

Part –1–

Legal provisions on actus reus

The term of actus reus or guilty act is included in the law, but it is expected from being a criminal act. The article 41 (1) says: ‘The punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom’.
According to the article mentioned above, the violence against wives and children can't be controlled before the law, so such violence will be permitted in accordance with religious provisions "sharia" & tribal habits that differ according to individuals and the area they live in. Moreover the cultural background of the judges are also different, a matter that lead to different judgments delivered by them in this regard. Moreover the introduction of this topic express that disciplines the wife by her husband is considered a crime. The law unveils that only wives are subject to discipline, for they abuse treating, while when the wives discipline their husbands, they will be sentenced, for that will be considered a hurt crime of according to the articles 410 – 416, because wives don’t have the right of discipline, while husbands have it regardless how hurt they treat their wives. Inequality between men & women included in the law contradicts with the article 14 that approves all Iraqis are equal before the law without discrimination based on gender…etc." It also contradicts with the article 29(4) that says: 'All forms of violence and abuse in the family, school, and society shall be prohibited'. The law on elimination of the family violence is not issued so far. The family violence in Iraq doesn't contradict with the constitution only; it also contradicts with the article 7 of the International Covenant on Civil and Political Rights that says: ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment’. It also contradicts with the article 2 (c) of CEDAW that says: “States ratifying the Convention must also establish tribunals and public institutions to guarantee women effective protection against discrimination”, despite Iraq has ratified the International Covenant according to the law 193 (1970) and CEDAW according to the law 66 (1986). The domestic violence in
Iraq contradicts with Convention against Torture (1983) that has been ratified by Iraq as well.

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**Part -2-**

**Legal provisions on family crimes**

**The article 377**

The article 377 says: (1) "An adulteress and the man with whom she commits adultery are punishable by detention". The offender is assumed be aware of the marriage unless he can prove that he was not capable of being aware of it, while the paragraph (2) says: "The same penalty applies if the husband commits adultery in the conjugal home".

Adultery considered a forbidden act in accordance with the religious, humanitarian and legal values, for its serious consequences on the family. It seems that wives are absolutely subjected to punishment, for committing adultery, while husbands are subjected to punishment only when they commit adultery at home in accordance with Iraqi law. Thus, the article previously mentioned contradicts with the article 14 and the article 2, the paragraph 1 (a) that says: No law may be enacted that contradicts the established provisions of Islam, for it' is written in Holy Quran "The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes", the punishment is equal for men & women in the Holy Quran. The article 377 contradicts with the International Covenant on Civil & Political rights, the article 26 that says: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color,
sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The article 380
The article 380 says: "Any husband who incites his wife to commit adultery and she does so on the basis of such incitement is punishable by detention". That means a husband will not be subjected to a judgment if his wife refused to obey him, while the incitement itself is a crime, whether she ordered him or not, but the law neglect that. So the complaint submitted by the wife will not be taken into the consideration. Thus, the article previously mentioned violates women's dignity, it contradicts with the article 6 of CEDAW that says: “State parties are obliged to take all appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women”.

On the other hand, the judgment for the crime mentioned above is not less than 24 hours nor more than 5 years, a matter that may lead to jail a husband for a day or a couple of days, then the court order may suspend the execution of the court judgment, while such a crime that violate the dignity & morals of women besides their family values should be treated with tougher penalties. Moreover the article 380 mentioned the word "wife", while the victim may be a daughter or granddaughter of the culprit who needed to be protected by the law, for the crime of women or girl trafficking has serious subsequences.
Part –3–

Legal provisions on the crimes against sons, daughters, care of minors, expose children & disabled to danger and the family abandoned

The article 384

According to the article 384, the husband is subjected to be jailed not more than one year or pay a fine 100 Iraqi dinars as a maximum unless he pay alimony, such a judgment doesn't enforce a husband to pay alimony for his wife & children or even to take care with all what have been previously mentioned, known that the article 384 says: 'Any person who is issued with a legal order to provide support for his wife, parent, child or other person or to pay nursing, suckling or accommodation charges and refrains from carrying out such order within a month of its issue, while being able to do so, is punishable by a period of detention not exceeding 1 year plus a fine not exceeding 100 dinars or by one of those penalties'.

An action may only be brought on the basis of a complaint by the person concerned and that action ceases with the withdrawal of the complaint by such person or with the discharge by the defendant of his indebtedness to the complainant. If the withdrawal of the complaint or discharge of the debt occurs after any judgment is made in the case, the penalty will not be carried out.

Part –4–

Legal provisions on the crimes of murder willful

The article 409

The article 409 says: ‘Any person who surprises his wife in the act of adultery or finds his girlfriend in bed with her lover and kills them immediately or one of
them or assaults one of them so that he or she dies or is left permanently disabled is punishable by a period of detention not exceeding 3 years. It is not permissible to exercise the right of legal defense against any person who uses this excuse nor do the rules of aggravating circumstance apply against him”.

According the article mentioned above, a minimum custodial sentence not more than 3 years will be issued on a husband who kills or harms his wife, one of his wives and/or the man she was with. The minimum custodial sentences are not determined in details in the penal codes, so the killer, in this case, can be subjected to only one day or even released with stay of execution according to the court order. Thus, there's no equality regarding the sentences issued by the court on men & women. The discrimination on the sentences previously mentioned is also found in the laws of Egypt, Jordan Morrocco, Syria, Lebanon and Libya. While the sentences are imposed equally on men & women according to the law of Algeria, the article 279 of the Algerian penal code says: "Murder, wounding and beating shall be subject to excuse if committed by one spouse against the other spouse or against his/her partner at the moment of surprising them [in flagrante delicto] in the act of adultery”.

The article 409 of the Iraqi penal code unveils that the male offender is the only one who decides & implements the crime & remain unpunished, just like law of the jungle, that contradicts with articles 14 and 29 (4) of the Iraqi constitution that prevent all the forms of violence & arbitrariness inside the family, school and society. It also contradicts with the article 26 of the International Covenant on Civil and Political Rights previously mentioned.

The majority of the countries are working for cancellation the death penalty from their legal provisions in order to protect innocents who are trailed by mistake in such a serious punishment, so it's better to cancel the article 409 that permit
individuals to kill others and so on. Moreover the article 409 contradicts with the article 407, for it unveils that the mother who kills her newborn baby is subjected to minimum custodial sentence, but the question is how can be subjected to such a minimum punishment, if her husband knew that she had committed adultery? Thus, this is considered legally contradictory. So such laws contradict with the principles of human rights & international covenants on human rights & Iraqi constitution.

Part –5–

Crimes related to human moral, freedom and sanctity

The most unfair thing that unveils discrimination against wives & violates their humanitarian dignity is toleration with husbands when they misuse their body, in other words, they remain unpunished. The article 398 of the penal code says: "If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed. Legal proceedings will resume or the sentence will be reinstated, according to the circumstances if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of the proceedings. The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may, according to the circumstances, make application for the proceedings, investigation, procedures or execution of the sentence to be stopped or for their resumption or for the reinstatement of the sentence". (The crimes referred to can be seen in Sixth: Crimes against Moral Indecency – Public Etiquette). It's
worth mentioning that the article 398 was modified by the law 81 (1987) that lead to consider marriage as a justification to implement both articles 130 & 131 of penal codes, but these both articles were pended in accordance with the order 7, the part 2, the clause 1 issued by Coalition Provisional Authority (CPA) issued in 2003. It was also decided to adopt the 3rd edition of the penal code (1985); it means that all the penal codes amended after issuing the 3rd edition (1985) mentioned above were pended. So the decision 91 (1987) issued by the Revolutionary Command Council (RCC) that considers the marriage between the perpetrator & victim is an excuse that reduce not to cancel the punishment. Thus, according to the order 7 mentioned above, the marriage was considered an excuse that can cancel the punishment

Thus, the article previously mentioned is the most serious kinds of violations against women's rights, for it violates their dignity and humanity, it also unveils the old habits & traditions, that have nothing to do with Islamic provisions (sharia), provisions of other religion or any human values, violate women as well. Moreover woman, in such cases, is considered a victim of a man without morality or values, she has to marry him in accordance with the habits & traditions, for the disgraceful act she has done by force.

Harassment was considered crime by the international society a crime against humanity just like the war, so the perpetrators deserve to be sentenced the tougher punishment, while the Iraqi penal code reduce the punishment for the perpetrators in accordance with the traditions and habits.

It was supposed that the order 31 issued by CPA to impose tougher punishment on perpetrators regarding penal code & rules of criminal procedures, the part 3 that imposes a life imprisonment on a perpetrator who violate the article 393, while a 15 years prison punishment will be issued on a
perpetrator who violate the article 396, but the punishment doesn't take women's dignity & humanity into the consideration. So it's an opportunity to call for the punishment included in the article is unfair not for women only but for the whole society, that's why Iraq legislators shall review the article and prevent the perpetrator to remain unpunished via cancelling the excuse of marriage.

The article 427
The article 427 says: "If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, the sentence will be quashed. Legal proceedings will resume or the sentence will be reinstated according to the circumstances if the marriage ends in a divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of the proceedings".

In 2003, the article 427 was amended by CPA order 31, section 2(1), the order says: ‘Penal code the article 427 providing for the cessation of actions in the event the offender marries the victim is hereby suspended’.

In fact, the violation on women's rights included in the article as 398 can be found also in the article 427, for the indignity, bad influence, inequality and discrimination are the same in both articles, but the only difference is that the article 427 was suspended, while the article 398 was cancelled by CPA, so it means that serious consequences on humanity and society are obvious. Anyway the perpetrator can remain unpunished when he marry the victim after
he had harassed her in accordance with the article 398. Thus the perpetrator can benefit from the excuse of marriage to stay away from punishment.

There's one more thing that needed to be taken into the consideration is the article 427 has been amended by CPA, it's also amended not cancelled, so the serious consequences will be as follows:

The article 130 of the Iraqi constitution says: "Existing laws shall remain in force, unless annulled or amended in accordance with the provisions of this constitution".

It's dangerous, for in according to article 130, the perpetrator whether abductor or rapist can be excluded from the punishment just as before the laws & decisions being amended, in the case of the laws & decisions issued by RCC & CPA were cancelled by the parliament. Moreover that there should be noticed that the decision 6 (2001) issued by RCC says:

1- 'A husband who kills his wife or one of his wives, for honor killing will be sentenced with reduced punishment according to the article 111 issued in 1969,

2- A man who commits a murder crime, for revenge reasons, he will be sentenced a death penalty, he will not be subjected to the legal excuses, reduced punishment and released by a general or special amnesty in accordance with the clause 1 of the same article,

3- 'A perpetrator who commit a (fasl) tribal judgment is sentenced not more than 7 years, nor more than three years imprisonment in accordance with the clauses 1 & 2 of the article 130'.

The decision mentioned above is no longer valid, for it was cancelled by an order 7 (2003) issued by CPA, but the parliament issued a decision that resume the article 130, the orders issued by CPA will be cancelled, besides the amended decisions including penal code that violate women rights will be valid.
It's suggested to amend the article 128 (1) of the penal code mentioned later in order not to be misused, the article says: 'Legal excuse either discharges a person from a penalty or reduces that penalty. Excuse only exists under conditions that are specified by law. Notwithstanding these conditions, the commission of an offence with honorable motives or in response to the unjustified and serious provocation of a victim of an offence is considered a mitigating excuse'. It is suggested to be added as following: 'honor killing, beating, causing injury or harm is not considered an honor excuse', in order not to be misused, besides the article contradicts with the article 45 (2) of the constitution that says: 'The State shall seek the advancement of the Iraqi clans and tribes, shall attend to their affairs in a manner that is consistent with religion and the law, and shall uphold their noble human values in a way that contributes to the development of society. The State shall prohibit the tribal traditions that are in contradiction with human rights', for killing & causing harm are tribal habits that considered a violation of the human rights principles especially that included in CEDAW, International Covenant on Civil & Political Rights and the Universal Declaration on Human rights that were all ratified by the Iraqi government.

While in Kurdistan Region, the resolution 14 was issued by the National Council of Kurdistan in 14th of August 2002 that says: ‘the offender of honor killing is not subjected to the reduced punishment, for the honor killing is considered like other crimes’.

The efforts implement on cancellation the articles that violate women's rights related to penal code haven't succeeded. The Ministry of Human Rights and the State Ministry for Woman Affairs that have been both dissolved in cooperation of NGOs have taken active & positive measures to submit the articles that
violating women's rights to legal stakeholders via legal studies done in order to be cancelled or amended, for the article 14 says: "Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status", but the habits & traditions were set ahead of these efforts, for all that needed more efforts & time to be done. That was included in the 4th, 5th & 6th official report prepared by Iraqi government submitted to CEDAW committee.

Part –6–

Crimes against Moral Indecency – Public Etiquette

(Rape, sodomy, indecent assault)

The article 393

(1) "Any person who has sexual intercourse with a female without her consent or commits buggery with any person without their consent is punishable by a temporary or life imprisonment. The paragraph was amended by the decision 91 issued by the Revolutionary Command Council (RCC) in 21st of January 1985 and published in the Official Gazette in 28th of January 1985.

(2) The following are considered to be aggravating circumstances for this offense:

(a) If the victim at the time of the act was under 18 years old.

(b) If the offender was a relative of the victim to the third generation, or if the offender is the guardian, protector, or custodian of the victim or has authority over the victim or the victim is the offender’s servant.

(c) If the offender was a public official, religious leader, or doctor and used the power of his position or the trust in him.

(d) If the offense is committed by two or more people in order to prevail over the resistance of the victim or if they commit the offense multiple times
(e) If the victim contracts venereal disease as a result of the offense.

(f) If the victim loses her virginity or became pregnant as a result of the offense.

(3) If the offense leads to the death of the victim, the penalty will be life imprisonment.

(4) If the victim was a virgin, the court must order that she receive appropriate compensation. According to the decision 488 issued by the RCC in 11th of April 1978, if the 15–year victim was assaulted by one of her relative to the third generation by force and then, as a result of criminal act, she became pregnant, deflowered or died, the offender will be sentenced to death. It is worth mentioning that death penalty was suspended in accordance with the order 7(3) issued by CPA in 10th of July 2003, so the perpetrators of the crimes mentioned above were sentenced to life imprisonment according to the decision 31(1) issued by CPA in 17th of September 2003. After Iraqi government was formed, the death penalty was included again in the Iraqi law according to the order 3 issued by the government in 2004".

The article 394

1– "Any person who, outside of marriage, has sexual intercourse with a woman with her consent or commits buggery with a person with their consent, is punishable by a period of imprisonment not exceeding 7 years if the victim is between the ages of 15 and 18. If the victim was under the age of 15, the offender is punishable by a period of imprisonment not exceeding 7 years.

2– It will be considered an aggravating circumstance if the act occurred under circumstances described in Paragraph (2) of the article 393.

3– If the victim was a virgin, the court must order that she receive appropriate compensation".
Eliminate of discrimination and violence against women

The article 395

"Any person who seduces a woman over the age of 18 with a promise of marriage, has sexual intercourse with her and subsequently refuses to marry her is punishable by detention".

The article 396

1- "Any person who sexually assaults a man or woman or attempts to do so without his or her consent and with the use of force, menaces, deception or other means is punishable by a term of imprisonment not exceeding 7 years or by detention.

2- The penalty will be a term of imprisonment not exceeding 10 years if the person against whom the offence is committed is under 18 years of age or the offender is a person described in paragraph 2 of article 393. According to the order 31 (3/2) issued in 13th of September 2003 by the CPA head, the sentence has been increased to 15 years imprisonment".

The article 397

"Any person, who sexually assaults a boy or girl under the age of 18 without the use of force, menaces or deception is punishable by detention. The penalty will be a term of imprisonment not exceeding 7 years or detention if the offender is a person described in sub–article 2 of Article 393".

The article 398
If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed. Legal proceedings will resume or the sentence will be reinstated, according to the circumstances if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of the proceedings. The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may, according to the circumstances, make application for the proceedings, investigation, procedures or execution of the sentence to be stopped or for their resumption or for the reinstatement of the sentence.

Chapter –3–

Law of Personal Status

Iraqi was an occupied by an Islamic Ottoman empire, so the Islamic provisions (sharia) were adopted at that time. All the legislations were based in sharia. Thus the Mecelle–ı Ahkâm–ı Adliye was issued that included Islamic provisions based on Hanafi doctrine & rules of legitimacy procedure. After the Ottoman forces withdrawal, The British forces occupied Iraq, the first Iraqi government was established, but the provisions previously mentioned were still adopted especially that related to personal status.

After a revolution of 14 July 1958, the regime was converted from monarchy to republic. A law of personal status 188 (1959) was issued and 17 articles
included have been amended; besides many of decisions were annexed to it. The law of personal status 188 unveils equality among all the members of the family, for the humanitarian principles included. All Iraqis were subjected to the law previously mentioned except Non-Muslims who were subjected to the provisions based on their beliefs & religions. Despite all that, the amended law of personal status included legal loopholes that unveil discrimination and violence against women. The legal loopholes are as follows:

**Part –1–
Marriage**

The marriage is defined in the Holy Quran as follows: "And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy", (Verse 21 of Surah Ar-Rum). While it is defined in the law of personal status 188 (1959) as follows: "Marriage is a contract between a man and a woman who is lawfully permissible to him, the purpose of which is to establish a bond for a mutual life and procreate children". The paragraph 1 of the article 3 included in the law mentioned above is not included the humanitarian concept to the permanent relationship – marriage – for there are legal loopholes included the definition mentioned above, as follows:

1- The woman is lawfully permissible for a man while it was supposed that both man & woman are lawfully permissible to each other, for marriage is a lawful contract between them.

2- The marriage aims at building a mutual relationship and having children as well. It means that a sterile men or barren women can't live mutual life, for they will not have children. The paragraph mentioned above defined a marriage as building a mutual relationship & having children at the same time, but it didn't
eliminate of discrimination and violence against women

separates between the mutual relationship & having children. So it's understood that both thing previously mentioned are both the marriage aim that can't be separated.

There demands that should be taken into the consideration are as follows:

- **Polygamy**

  It is included in the law, the article 3 (4) that says: 'Marrying more than one woman is not allowed except with the authorization of the qadi (judge). Granting this authorization is dependent on the fulfillment of the following two conditions:

  (a) The husband should have the financial capacity to provide for more than one wife.

  (b) There is a legitimate interest'.

That's why the paragraph mentioned above unveils discrimination and violence against women, for acceptance of the first wife is not taken into the consideration at all, but according to the judiciary procedures, the first wife is called for the court to express acceptance or not. Sometimes wife's acceptance is not taken in to the consideration. The new wife & her husband will be subjected to session with a social worker besides she will be subjected to medical examinations in order to verify that she can live a marital life normally & bring children, in accordance to the reasons submitted by her husband. These are legal procedures adopted in the court related to the new marriage to verify that there legal reasons behind the marriage. A written pledge by a husband is not required to insure the equality he can do for both his wives. The acceptance of the first wife, according to the judiciary procedures, is not taken into the consideration on the second marriage of her husband, but she is informed to
attend to the court only, if she didn’t, the husband will be authorized by the court to marry.

The number of authorizations given for husbands to marry for the second time, in accordance with quarterly report issued by the Higher Judicial Council for the first six months in 2015, is 2094 cases, including 593 in Basra, 27 in Najaf, while 350 cases were reported in Baghdad.

The Holy Quran, Surah An-Nisa, the verse 129 says:

"And you will never be able to be equal [in feeling] between wives, even if you should strive [to do so]. So do not incline completely [toward one] and leave another hanging. And if you amend [your affairs] and fear Allah - then indeed, Allah is ever Forgiving and Merciful".

The verse mentioned above unveils disability of husband to be fair with his wives. The clause "you will never be able" was explained that inequality is related to money spent & things required, while love is not taken in to the consideration, despite the verse 21 of Surah Ar-Rum, previously mentioned, emphasized on love, for the equality on a husband's treatment with his wives is based on love. So the wife is not live to eat and wear only but she needs to be respected & loved by her husbands.

- **The marriage of mentally disabled**: Such marriage was dealt with by the law in accordance with the article 7 (2) that says: "The judge can authorize the marriage of a mentally ill person if it was confirmed in a medical report that his marriage entails no harm to society and that it is in his personal interest, provided that the other person accepts the marriage expressly". The law ignored that the woman should know the truth including her partner case and
the consequences in order to be included in the contract of marriage, so woman in this case will not be a victim of such marriage.

- **Marriages outside civil courts**: It means all the marriages that occur outside civil courts, so such marriages will not be reported in the court, a matter that lead them to lose their rights & their children rights as well. In such cases, wife also will not be reported in the Directorate of the Civil Status, a matter that leads her husband to ignore her or go somewhere else without telling her. Moreover the children will not have national identity cards, so they will be deprived to go to school and they will be deprived from health insurance as well.

Marriages outside civil courts are held either inside the offices of religious leaders or with the presence of persons who are familiar with the legitimate versions of the marriage. Anyway, such marriages should be reported in the courts for legal reasons in accordance of the article 10 (4) of the law of personal status that says: "The content of the documents duly registered is to be put into effect. In addition, they are applicable in what concerns the dowry as long as they are not subject to an objection before the competent courts", while the paragraph 5 says: "Any man who concludes his marriage contract outside the court is punished with a period of imprisonment that is no less than six months and no more than a year, or charged with a fine that is no less than three hundred Dinars and no more than a thousand Dinars. If he concludes another marriage outside the court when he is already married, the imprisonment penalty shall range between a minimum of three years and a maximum of five years".
Marriages outside civil courts can be reported in the courts, in accordance with the article 10 (4), in order to not to underestimate with the contracts issued by the religious leaders, prevent losing it, a matter that lead to prevent dismantling of the family, losing the woman's rights and depriving the children from going to school. So the punishment of imprisonment and fine included in the law are so minimal punishment that can't insure woman's rights, if she married outside civil courts. According to the quarterly report issued by the Higher Judicial Council, the data reported are as follows: 6383 cases of marriages outside civil courts were reported in all over Iraq including 1372 in Basra, 19 in Nineveh. While in Baghdad 732 were reported in Rusafa & 331 were reported in Karkh.

- **Early marriages**: it means that one of the married couple or both is/ are not legally qualified or less than 18.

Early marriages are familiar, despite the negative consequences resulted. Often the poorest & uneducated communities prefer early marriages. This kind of marriage is increasingly spreading by the time with any measures adopted by the government to eliminate it, despite that Iraq ratified the covenants that eliminate such marriages, known that early marriages mostly lead to divorce, abandonment or legal separation. Early marriages can be held through the legal measures adopted:

(a) A spouse who is 15 year old can be authorized to marry by the judge, if spouse is mentally and physically qualified with the acceptance of the legal guardian, if the legal guardian refused, he/ she will be given a time for thinking by the judge, but if he insisted for no legal reasons or agreed, the judge will authorize the him/ her to marry.
(b) A spouse who is 15 years old can be authorized to marry by the judge, if necessary. The spouse must be mentally and physically qualified. The article 5 of the law of personal status No. 188 (1959) amended by the resolution 90 issued in 5th of September 1987.

Early marriage is held according to the acceptance of one or both of the legal guardians of married couple, but it is not included in the law who will attend the ceremony of marriage instead of the legal guardian (father) of one of the spouses. It's supposed to be a mother especially that spouse is still a young. That's why there is a legal loophole, for the law ignored the importance & role of mother in such marriages. On the other hand, it is violence against married girl, for she is still young to be married.

- **Forced Marriages:** it means methods used by a legal guardian in order to enforce his sons/daughters to marry somebody by force. In such case, a patriarchal structure dominates their sons & daughters to marry somebody by force, relatives also may interfere, for they are dominated by the tribal habits & traditions. Mostly women are victims in such non-humanitarian decisions. The forced marriages are considered, according to the law of personal status 188 (1959), a crime.

The article 9 (1) of the law mentioned above says: ‘No relative or non-relative has the right to force marriage on any person whether male or female, without their consent. The contract of a forced marriage is considered void if the marriage is not yet consummated. Moreover, none of the relatives or other people has the right to prevent whoever is eligible for marriage from being married by virtue of the provisions of this marriage law’.
While the paragraph (2) says: ‘A first degree relative who breaches the provisions of paragraph (1) of this article shall be sentenced to no more than three years imprisonment and charged with a fine of a specified amount. If the person who breaches this provision is not a first degree relative, he shall be sentenced to an imprisonment term varying from a minimum of three years to a maximum of ten years’.

It seems that girls are mostly dominated by their fathers or brothers on forced marriages. Moreover, girls are prevented by their fathers and brothers to be influenced or advised by others. So that's why the first-degree relatives supposed to be sentenced with tougher punishment, a matter that leads to avoid such violence on them.

**Part –2–**

**Alimony**

It defined as the costs of living during the marital life including food, clothes, dedications as well as children’s requirements.

The article 23 (1) of the law of personal status says: ‘The wife is entitled to alimony from the husband as of the initiation of the sound contract even if she was staying at her parent’s house, unless the husband asks her to move to his place and she abstains unrightfully’.

According to the article mentioned above, income women are disabled to undertake responsibility of their families; they are ignored to support their families. That's why there's equality on women participation in the responsibilities of marital life, besides their role is legally ignored.

On the other hand, women with no income may leave their homes & file lawsuits in the competent courts for alimony to herself and her children as well.
According to the law of personal status No 188 (1959), women may demand for alimony for a year before the lawsuits filed, even husbands didn't pay for their wives for long time, the court, in such case, doesn't take into the consideration the lawsuit after the period ends. On the other hand, women are responsible for paying money to their children because of the children alimony for the previous period is not taken into the consideration by the courts, they will be taken care by their mothers, so it's not fair that a wife takes care of her children especially if she doesn't have income, while they should be taken care by their father. Behaviors like that are used by husbands in order to make their wives to obey them and endure the violence. The article 24 (1) says: ‘The right of alimony of the obeyed wife, that hasn't been paid for not more than one year from the date of the husband declined to pay, is a debt shall be paid by her husband”, while the paragraph (2) says: ‘The alimony includes food, clothes, housing, medication and living money for the wife’, while the wife will not be paid alimony, according to the article 25, in one of the following cases:

1 – The wife will be deprived from alimony in the following cases:

(a) When a wife leaves her home without legal reasons. There's a violence & discrimination in the sentence previously mentioned against a wife who leaves her home, for marital life is a mutual relationship between a man & a woman together, not for a man alone. So the question comes as following: why a wife leaves her home? There should be a reason behind that behavior mostly between her & her husband or between a wife & her husband's family. The question comes again, is it fair to deprive a wife from alimony because she refused to be insulted? Does the legislator aim at underestimating her? Is it fair to deprive a wife from alimony without taking into the consideration that she may be left her home in order to rethink about how to solve her family issues?
The only answer to all the questions previously mentioned is that a wife is discriminated by the law mentioned above.

(b) When a wife is jailed for a crime committed or a debt. A wife doesn't have the right of alimony if she was sentenced for violating of the penal code or a debt she couldn't pay it back. That will be an extra punishment a wife should endures.

(c) When a wife refuses to travel with her husband without legal reasons. A wife will not have the right of alimony, if her husband refused to pay, as a response to her wife refusal to travel with him. The wife, in such a case, will not have the right of alimony unless there's a legal reason to refuse traveling such as sick, pregnant or doing the exams.

**Insubordination (Nishoz)** means an unfamiliar behavior by a spouse with another spouse, while the law of personal status 188 (1959) considers a wife who disobeys her husband as a insubordinate wife (nashiz), while a husband who behave immorally with his wife, doesn't treat his wife kindly or give her living money is not insubordinate husband. That's discrimination on women included in the paragraph 2 of the article 25 that says:

2– A wife shall not obey her husband order, she is not considered nashiz, if her husband mistreats & hurts her. Abusive treatments are as follows:

(a) If a husband doesn't arrange a legally house of obedience in accordance with their economic & social status.

(b) If a house is far away from the area she works in, so she will not be able to do her duties as required in whether in her house or work.

(c) If the furniture is not possessed by her husband.

(d) If a wife is sick, so she can't obey her husband.
If any of the reasons mentioned above was found, the wife will not be subjected to compliance. The husband, in such a case, is considered as an abusive, otherwise the wife, according the law issued by the court, shall convert to live with her husband in their compliance home & obey him there because her husband paid her a dowry in advance regardless he previously treated her badly.

3– The court shall go easy on the disobedience of wife in order to know whether she is obeyed or not. After procedures conducted by a legal committee inside the obedience home in order to verify whether all the family requirements are available inside the home or not where a wife shall obey her husband. Then the judgment will be issued by the legal competent executive director, so the wife shall be subjected to obedience.

4– The judgment on disobedience of wife shall be issued, if all the efforts that eliminate the obstacles failed. If the wife doesn't accept to be complied with her husband, her husband can file a lawsuit in the court in order to take her back. If all the measures implemented by the courts to take the wife back failed, the judgment on disobedience will be issued by the court.

5– Insubordination (nishoz) is considered as one of the reasons behind legal separation as follows:
(a) The wife has the right of legal separation two years after the decision issued on insubordination has become final on her, so the court shall start procedures. The
wife, in such a case, will not receive the delayed portion of dowry, if she already received all the installments of dowry; she has to pay half a dowry back.

(b) The husband has the right of legal separation after the decision issued on insubordination has become final on his wife, so the court shall start procedures; the court also obligates her to pay the dowry in advance back, while the delayed dowry will not be given to her, if the legal separation occurred after the wedding. So, in such a case, the wife shall pay have the dowry, if she was already received it all in advance.

The article mentioned above considered "obedience" sentence as a one of the reasons behind legal separation between the spouses, but their legal rights equal during the period in which the lawsuits can be filed. According to the article 25 (5/a), the wife can file a lawsuit for legal separation two years after the decision on insubordination has become final, she also shall give up half a delayed dowry.

The paragraph (b) previously mentioned unveils discrimination on wife, for it considered disobedience one of the reasons behind legal separation, so husband can file a lawsuit after the decision issued on insubordination has become final on his wife without waiting for two years, while when a wife can't file lawsuit of legal separation two years before the decision previously mentioned has become final. Moreover, the wife shall give up the entire dowry, including the advanced dowry, after being married & started living a private life with him.

The wife left by her husband: It means that a when husband leaves to live somewhere else, so nobody knows where he lives; besides he doesn't give alimony to his wife. The wife, in such a case, has the right to file a lawsuit of
alimony via documents that proves she is still married, she swear before the law that her husband doesn't give her alimony, she is not divorced, sentenced with disobedience. The court issues an order that the wife, in such a case, has the right to borrow on behalf of her husband when necessary. The paragraph is unfair on wife for the reasons mentioned below:

1- The paragraph mentioned the case in brief, besides the period of the husband's absence wasn't determined whether it is a week, month or year as well as the paragraph also doesn't refer to how the wife live, for she doesn't have money.

2- The reasons behind such a behavior is not mentioned in the paragraph, besides there more cases except that previously mentioned are not included such as the wife who her husband is jailed or detained.

3- The measure of wife who borrows money from others unveils abuse of her dignity.

All what have been mentioned is included in the article 29 that says: "If a husband left his wife without alimony to live somewhere else with no return, the judge will order to the wife's right of alimony from the date of the lawsuit filed after the proof produced, she swear before the judge on being still married & obeyed as well as she doesn't have alimony left by her husband". So the wife has the right of borrow money, on behalf of her husband, from her father, brother or son if they can do so, her husband is the person who pays them back. While if she borrowed money from others, so her husband or she herself may pay them back. The wife, in such a case, may be extorted by the person who lends her. Finally, if there's no one can lend her money, the government will do so in accordance with the article 30 that says: "If the wife is facing financial hardship and she has permission to borrow money according to the previous article, and if there is a person from whom she can ask for alimony
Eliminate of discrimination and violence against women

When a wife borrows money from strangers, that will lead her to big and feel embarrassed before them, so her dignity will be assaulted. So it's better to allocate a salary for her via the Directorate of Social Care, a matter that leads to keep her dignity.

The divorced wife returned to her husband: It means that a divorced wife returns to live again with her husband before the divorce period ends, in such a case, there’s no need for a marriage contract to be held because she is still his wife. Moreover the wife acceptance will not be taken into the consideration in accordance with the article 38(1) that says: “The revocable divorce which allows the husband to return to his wife during her waiting period (iddat) without a contract”. The resumption of marriage shall be established the same way a divorce is established. It means that a husband may return his wife, whether she accepted or not, during the period of divorce with the presence of two witnesses. This is violence and discrimination against woman's will, while it was supposed to take the opinion of both spouses into the consideration to live their life together than to enforce her to return to him.

Compensation for arbitrary divorce: the right of compensation paid to the divorced wife according to a judgment issued by the competent court, while her husband insists to divorce, despite the advices given to him by the court. Often
husband divorce his wife outside civil court while she's away and without asking her. The compensation is paid for her not more than two years through executive methods, so the compensation will help her to buy the needs required after being divorced. It was better if the compensation is paid for three years. The compensation is paid for a divorced wife in accordance with the article 39(3) that says: "according to the order issued by the court, a divorced wife has the right of compensation, if she has been arbitrarily divorced & harmed. The compensation will be estimated in accordance with her husband's economic status & the harm he caused; known that it will be paid for not more than two years as well as other rights will be insured".

The separation lawsuit filed by the wife if her husband married another woman: The husband, according to the law, can marry another woman whether his wife accepted or not. The court has the right to verify the conditions included in the law regarding whether the husband is able to treat his wives fairly & economically or not. According to the law, a husband can marry another woman, but his first wife can't file the lawsuit on separation. Often the wives refuse to live with their husbands who marry again even if they were permitted by the law & legislative provisions to marry more than one wife. So woman, in such a case, suffer from the second marriage of her husband. Moreover she will be suffering from physical & psychological violence. That's why it's supposed to permit a wife the right of separation, if she doesn't want to live with her husband who married another woman, while a husband who marry another woman outside civil court, his first wife can't file a lawsuit of separation, according to the law of personal status 188 (1959), because her husband violated the law. The paragraph 5 of the article 40 says: "If the husband marries another wife without the permission
of the court, In this case, the wife shall not institute the penal suit by virtue of paragraph 1 of item (a) of article 3 of the penal procedure code No. 23 of the year 1971, according to paragraph 6 of article 3 of this law. The clause mentioned above says: "Each person who concludes a marriage contract with more than one wife, contrary to the stipulations of paragraphs 4 and 5, shall be sentenced to no more than one year of imprisonment or charged with a fine not exceeding 100 dinars or both".

**Divorce at instance of wife who pays compensations (Khul')**: Such kind of divorce, published in an article by Faeza Babakhan on the website, happens when the two spouses agree to divorce. All the conditions included in Iraqi law shall be accurately implemented by them both.

The scholars agreed that in such divorce, a man shall be aware & wise, not irresponsible, insane, hated or loony. Moreover he shall not be infected with a dangerous disease, unconscious...etc. The divorce mentioned above happens when a husband agrees; on the other hand, the wife shall pay compensation in accordance with the paragraphs 1,2 and 3 of article 46 that says consequently: (1) "1– Khul' is to sever the bond of marriage by pronouncing the formula of khul' or words of the same meaning. It is to be carried out before the judge through an offer and an acceptance taking into consideration the provisions of article 39 of this law", (2) "In order for the khul' to be sound, the husband must be qualified to divorce his wife and the latter must be worthy of it. The khul' is considered as an irrevocable divorce", and (3) "the husband can divorce his wife through khul' in return for the payment of compensation be him and such compensation could be more or less than her dowry".
The divorce previously mentioned is based on Islamic provisions (sharia), the verse 229 of Surah Al-Baqarah says:

"Divorce is twice. Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself. These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah - it is those who are the wrongdoers".

Moreover al-Bukhari & al-Nesa'e quoted in the hadiths, all what prophet Mohammed has verbally said on any matter, as Ibn al-Abbas said that the prophet said to the wife of Thabit Bin Qais" "Would you return him his garden?" She said, "Yes." He said to Thabit, ‘Take the garden and divorce her once’.

The Egyptian legislator takes such divorce by the wife into the consideration in accordance to the article 20 of the law 1 (2000) that says: “both spouses shall be agreed on khul’, otherwise when the wife filed a lawsuit on khul’ & give up all their financial rights including the dowry, the court will issue an order that divorce her from her husband.

The judgment will be not issued unless there's attempt that aims at leading both spouses to overcome all the problems and go beyond all that. Such attempt last for 3 months according to the paragraphs 1 & 2 of both articles 18 & 19 of the Egyptian law. When a wife insists to divorce her husband after she assures that she can't live with him anymore & insures that she will has the right of custody of her children and the alimony will be paid for her & her children. The legal judgment will be issued on divorcing her from her husband".
Eliminate of discrimination and violence against women

The wife, according to the Egyptian law, has the right to divorce her husband when she feels that she can't live with him more & she suffered a lot. Moreover the law ensured the husband to divorce his wife whenever he wants. While according to the Iraqi law 188 (1959), the wife can't divorce her husband even if she gives up her rights unless her husband agrees, so the discrimination against wives is included in the law. Sometimes husbands insist on not divorcing their wives to affect their dignity negatively, such a procedure contradicts with the principles of CEDAW. The article 16 (1/c) of CEDAW says: "states Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women, (c) ‘The same responsibilities during the marriage of after divorce happen’.

Some of articles included in the civil law are unfair, so they needed to be amended, for instance father is ensured the right of minors’ custody, then grandfather, and then guardian authorized by grandfather & finally the court in sequence, while the mother's role was ignored, her parents' role is ignored as well.

Mother's right in children custody

The wife's father is called corrupt father by legislators (faqeehs), while wife has the right to manage the personal property of the minor children, so mother has the right to manage the personal property of her children after their father death according to the article 34 that says: "Guardian is a person who chosen by a father to take care & manage the properties of his minor children or embryo and then the person chosen by the court taking into the consideration that the
mother has priority to take it, if there’s no one, the minor children & their personal properties will be managed by the Depreciate of Minors' Property Management till the court determines who will take care of them & manage their properties. The article previously mentioned is a response to a mother who is qualified to the custody, besides the benefit of children is taken into the consideration when they are legally taken care by their mother, so that is corresponding with the article 16 (d) of CEDAW that says: ‘The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount’.

Chapter – 4 –

Anti–Trafficking Law

The concept of human trafficking

Human trafficking is an obvious violation of human rights regarding the life, liberty & freedom from slavery. It's a criminal action because a human being is treated as a commodity that can be sold, bought or swapped according to the benefits of dealers, and then they will be used in a method that violate their human rights, dignity & freedom.

The victims of trafficking are exposed to be so physically & psychologically hurt besides they are exposed to be affected or disabled that will be unaccepted by their families & society they live in.

Often trafficking is based on gender discrimination, for the majority of victims are women & girls, that's why trafficking is considered discrimination based on gender not race.
Human trafficking

The idiom 'persons trafficking' was adopted by the International Covenant rather than the idiom "human trafficking", for these laws aim at elimination on human trafficking, a matter that prevent misunderstanding because the word 'persons' means persons and companies, institutions…etc., Known that such laws are issued to avoid considering the persons as commodity that can be sold, bought or swapped, that's why the concept of human in Arab countries is more accurate than it is in Western counties.

It's obvious on how the human trafficking is defined by the international norms of human rights and the way is adopted in eliminating it. It is expressed as below according to the date they were issued:

- The article 4 of the UDHR (1948) says: ‘No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms’. The universal declaration issued to be as an ethical document that unveils human rights.

- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: It was Approved by General Assembly resolution 317 (4) of 2 December 1949. Entry into force: 25 July 1951, in accordance with article 24. Many of international documents that had been issued were included in the introduction of this document: Whereas prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community,

 Whereas, with respect to the suppression of the traffic in women and children, the following international instruments are in force:
Eliminate of discrimination and violence against women

“(1) International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948,

(2) International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the above-mentioned Protocol,

(3) International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947,

(4) International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the aforesaid Protocol”.

- International Covenant on Civil and Political Rights (1966), the article 3 related to human slavery says:
  
  "(1) No one shall be held in slavery; slavery and the slave–trade in all their forms shall be prohibited,

(2) No one shall be held in servitude,

(3) (a) No one shall be required to perform forced or compulsory labor".

- The article 8 of Declaration on the Elimination of Discrimination against Women, according to the UN General Assembly resolution 2263 issued in 7th of November 1967, says: 'An appropriate measures, inch ,ding legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women”.

- The article 6 of CEDAW issued in 1979 & adopted in 1981 says: 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women".
• The article 34 of the Convention on the Rights of the Child (1989) says: "States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials".

• The paragraphs (a, b and c) of the article 2 of Optional Protocol of the International Convention on the Rights of the Child defines the child's selling, using in prostitution and pornography as following:
  
  "(a) Sale of children means any act or action whereby a child by any person or group of persons to another for remuneration or any other form of consideration,
  (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration,
  (c) Child pornography means any representation by whatever means of a child engaged in real or simulated explicit sexual activities or any representation of sexual parts of a child for primarily sexual purposes”.

Thus, the legal efforts implemented by the international organizations analyzed & deprived the human trafficking, they also urged all the countries to eliminate it via adopt all the international conventions. All the international legislations distinguish between the crimes of the use of individuals whether for the purposes of sex, prostitution, removal of organs or compulsory forced works and those related to trafficking for the purposes previously mentioned. It means that human trafficking is a crime that's totally different from the crimes of the use of human in illegal
methods. The relation between both crimes mentioned above is that the perpetrator aims at human trafficking for the purposes previously mentioned. So if the individuals who have been trafficked were used for the perpetrators' aims, the crime will be different than trafficking.

International definition of human trafficking
Although there're many trafficking activities mentioned in the international conventions, but there are still unfamiliar human trafficking activates that are not included. Because of the criminal activities are developed & diversified, that's why they are not included in the international conventions previously mentioned. On the other hand, it was necessary for an international document that includes the most dangerous activities on human trafficking to be issued, for these activities are affected according to economic & social conditions. So the victim is not the only one who is affected with trafficking, but the community as a whole because the victims sometimes are exposed to trafficking without any force or fraud in scared or tough conditions such as sexual abuse, forced labor, begging & removal of organs by force, fraud or seduction, a matter that led the article 3 (a) of protocol to prevent, suppress and punish trafficking in persons, especially women and children (2000), a complementary part to the United Nations Convention against Transnational Organized Crime, to define a human trafficking as follows:

‘The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a
person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs’.

**Iraqi definition of human trafficking**

Iraqi government took the elimination of human trafficking into the consideration, so it issued anti-trafficking law 28 in 2012. The explanatory statement to issue such a law is to combat human trafficking, eliminate its consequences and punishing their perpetrators, for it is a so dangerous action that underestimates human dignity. So the government aims at developing the methods that can support the victims of such a dangerous phenomenon.

The human trafficking in anti-trafficking law was defined in article 1 as follows: ‘For purposes of this law, the term – human trafficking – shall indicate recruiting, transporting, housing, or receiving individuals by force, threat to use force, or other means, including by coercion, kidnapping, fraud, deception, misuse of power, exchange of money, or privileges to an influential person in order to sell and exploit the trafficked individuals by means of prostitution, sexual abuse, unpaid labor, forced labor, enslavement, begging, trading of human organs, medical experimentation, or by other means’.

There were many of the articles on human trafficking included in different laws such as penal code, the articles 392 – 399 and anti-prostitution law, the articles 1 (2) and 5. Thus it was necessary to collect all these articles in a law on human trafficking to eliminate such crimes and developing the best methods that can address its consequences.

**Discrimination & violence in the anti-human trafficking law 28**
Although the humanitarian contents included in the anti-human trafficking law 28 (2012), but some amendments were done by Iraqi legislators in the protocol to prevent, suppress and punish trafficking in persons, especially women and children (2000), so these amendments unveil discrimination & violence on women as follows:

1– The word ‘transferring’, one of the actions committed for crime, has been deleted from the international definition of the anti–trafficking law, known that the word ‘transferring’ differs than “transporting” that is included in both Iraqi & international definitions, for transferring is related to the responsibility of the transportation crews such as plane, ship, bus and so on. So, in such case, kidnapped women can be trafficked and transferred away from the sight of the security forces.

2– The term “abuse of a position of vulnerability” was deleted from the international definition of human trafficking, while the means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person were included. The clause deleted unveils the persons who are dominated by the traditions such as slavery; such a case can be seen in Iraq. Women in Iraq are suffering from tribal uneducated habits. (Judge Raheem al–Egeili – legal loopholes in human trafficking determined by the Judge Raheem al–Egeili, al–Adel News, 25th of May 2015. The phenomenon previously mentioned is widely spread in Iraq, for the community is dominated by tribal habits and patriarchal control.

3– Both practices similar to slavery, servitude included in the international definition of human trafficking, while they are not included in the Iraqi definition, although they very dangerous phenomenon that occur in Iraq such as giving a woman as a compensation for another tribe in order to resolve the conflict between the
tribes that occur because of men who belong to them, that was so called fasil or blood money. Shighaar or quid pro quo marriage also is another example of the phenomenon previously mentioned. It means that a man who gives his daughter or sister to somebody to marry her, while he himself marry the daughter or sister of that man instead.

There are more cases that supposed to be included in anti-human trafficking, but they are not such as:

- Promises given to somebody by woman's parents to marry their daughter for amount of money or gifts given to them.
- A widow is enforced to marry the brother of her husband under the pretext that his children to be taken care by him, not by someone else.

**Penalty included in the law**

The law considered all the actions previously mentioned as crimes & the perpetrators, according to the article 5(1), shall be punished by temporary imprisonment and a fine of not less than five million dinars and not exceeding ten million dinars each commits one of the acts set forth in article 1, while The punishment, according to the paragraph (b), shall be imprisonment for not more than fifteen years and a fine of not more than ten million dinars every person who commits the crime of trafficking in using one of the following means:

(a) The use of any form of coercion such as extortion, threat, taking travel or other official documents away.

(b) The use of fraudulent methods to trick victims or corruption of their own.

(c) Giving or receiving of payments or benefits to obtain the consent of his power or mandate them.
It was supposed to increase the fine imposed on the perpetrator according to the consequences of the crime committed, but it seems that the fine is the same regardless the consequences of the crime committed, it's only 10 million dinars that can be easily paid by the human trafficking perpetrator. On the other hand, the paragraph 2 includes that the fine shall be paid from one dinar to 10 million dinars, so there is a legal loophole because the fine, in the cases according to the 5 (2), can't be decreased to one dinar only.

According to the article 6, the perpetrator is subjected to be trailed life and a fine not less than 15 million & nor more than 25 million dinars in one of the following cases:

1. If the victim is not (18) eighteen years of age.
2. If the victim is female or with disabilities regardless disabled woman was married, unmarried or her age.
3. If the crime is committed by an organized criminal group or had an international character, such groups were not defined by the Iraqi law as it is defined by the international & Arab laws. The organized criminal group was defined by the United Nations Convention against Transnational Organized Crime in the article 2 (a) as follows:

"Organized criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit; while the organized criminal group is defined in the paragraph (c) of the same article as follows:

"Structured group shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally
defined roles for its members, continuity of its membership or a developed structure", (The judge Raheem al–Egeili, women’s rights in the international standards & Iraqi laws).

(4) If the crime was committed by abduction or torture.

(5) If the perpetrator of the victim’s assets, branches, the guardian or spouse.

(6) If the injured victim to disease can't be cured or sustained with permanent disability as a result of trafficking.

(7) If signed trafficking on multiple people or multiple times.

(8) If signed trafficking of costly employee or public service.

(9) Influence peddling or exploit the weakness of the victims or their needs. The misuses previously mentioned are not considered in the Iraqi law as a method that is used to commit a crime of human trafficking, while it's included in the international law according to the content of the article 3 of Protocol of Palermo. Iraqi law contradicts the Arab laws of Egypt, Qatar and Oman as well. It is unfamiliar thing that misuse of influence, vulnerable persons and their needs are not considered methods of committing a crime of human trafficking, it was only considered as a crime committed within exceptional circumstances. Iraqi law considered the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person as methods of committing a crime of human trafficking in accordance with the article 6. That's why Iraqi law contradicts the international laws, (The judge Raheem al–Egeili, women’s rights in the international standards & Iraqi laws). Often many women in the work are treated by their bosses like that, so they misuse influence on the women who are in need for work & money. The admins of the networks on human trafficking are also subjected to be trailed.
The article 7 says: “The perpetrator is punishable by imprisonment for a term not less than three years and a fine of not less than ten million dinars and not exceeding twenty million dinars or any of them:

(1) If established or managed a web information the purpose of trafficking.
(2) Signed a deal relating to trafficking in human beings or easy using the information network.

‘The penalty, according to the article 8, shall be death if the act led to the death of the victim’. The article 9 criminalizes the moral acts of individuals when the crime occurs by participating by somebody, other individuals on behalf of him or for his benefit’. The article 9 says:

'(1) Punishable by a fine of not less than 5 million dinars, exceeding 25 million dinars each person moral proved his involvement to the crime or offense is committed in his name or for its own account or for his benefit and this doesn't contradicts with punishment decided by the right of the managing director or responsible for Administration moral person if it is proved his involvement in the crime.
(2) The Court to resolve the legal person or suspend its activities permanently or temporarily or close its headquarters if it is proved the commission of an offense set forth in this law’.

**The help of the victims of human trafficking**

The article 11 concerned with the help of the victims of human trafficking taking into account the special needs, as follows:

(1) View of the victims to a specialist doctor to check their health status.
(2) To provide language assistance to victims if the victims were non-Iraqis.
(3) To provide assistance and legal advice and guidance information to them.
(4) Insurance contact with their families that found or their State of nationality and civil society organizations to get the necessary assistance to them.

(5) Provide the necessary protection for victims and witnesses.

(6) Maintaining the confidentiality of information relating to the victims and respect for their privacy and dignity.

(7) To provide financial assistance to the victims and to provide a place for temporary housing residence and fits with their sex and age groups.

(8) The rehabilitation of the social, psychological, physical, through the establishment of shelters and rehabilitation centers specialized care or the role of the Ministry of Labor and Social Affairs under the special system for reintegration into society.

(9) Providing jobs, training and education.

(10) To facilitate the process of their stay in Iraq by giving them visas and temporary residence in Iraq and travel documents for this purpose if necessary.

(11) To provide diplomatic support for the victims of non-Iraqis to facilitate the process of their return to their home countries.

Central Committee to Combat Trafficking (CCCT)

Central Committee to Combat Trafficking (CCCT) was established, according to the article 2 of the anti-human trafficking law, to achieve the goals of the law previously mentioned are as follows:

1– Develop plans & programs to eliminate human trafficking.

2– Submit the recommendations required on the elimination of human trafficking and monitor its execution in coordination with the stakeholders.
3– Prepare reports on human trafficking in accordance with the international agreements and submit them to the stakeholders.

4– Cooperate & coordinate with the stakeholders to help the victims of human trafficking and exchange information & experience with the neighboring countries & the concerned international organizations.

5– Adopt the measures required to help the victims of human trafficking & protect the victims and witnesses.

6– Conduct awareness campaigns in cooperation with NGOs, researches centers, academic & religious institutions to raise the awareness of people on this dangerous phenomenon.

7– Issue annual report on the cases of human trafficking as well as the efforts of government that aim at eliminating it.

8– Make efforts that aim at Iraq's accession to international conventions on anti–human trafficking.

CCCT, according to the article 4 of law, is obligated to form anti–human trafficking subcommittees in each territory and province.

Chapter –5–

The Law Project of Protection of Women from Domestic Violence

This part shed the light on discrimination & violence on women because this proposal of law is not perfect as much to protect women, so all that will help the legislators to issue perfect law, if the notes mentioned later were taken into the consideration.
It's important first to define the concept of domestic violence according to the Universal Declaration on the Elimination of Violence against Women that was adopted by the article II of the resolution 48/104 dated 20\textsuperscript{th} of December 1993 issued by the UN General Assembly. It includes, for instance, as follows:

"(a) Physical, sexual and psychological violence occurring in the family including battering, sexual abuse of female children in the household, dowry–related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non–spousal violence and violence related to exploitation".

The concept ‘family’ was not defined by the Universal Declaration on the Elimination of Violence against Women; the concept ‘family’ is defined in accordance with the legislators inside each country. Those in charge of the project ‘protection from domestic violence’ did great efforts till the law reached to its final form. There were trends towards the law by its legislators & decision makers, but on the other hand there was obvious efforts made by NGOs that contributed in completing the project of law, (Notes reported by Baghdad Women Association). NGOs contributed in submitting the proposals of law in 2011, they are still monitoring the issue. NGOs, at the same time, formed alliance & conducted campaigns on protection of women from domestic violence; they also held consultative sessions with members of parliament, so the law can be reached to its ideal form as much as the proposals submitted. Although NGOs are working hard via pressing, participating & conducting awareness campaigns, but their efforts are still away from the decision makers.

**The draft law of protection from domestic violence: aims & needs**

The draft law of protection from domestic violence, if issued, it will contribute in elimination of domestic violence in Iraq, for the violence affects negatively on the
individuals & community as a whole. That's why it's necessary to support the draft law via notes or evaluations submitted, support & monitor the efforts made by the legislators, so the law, in such a case, will reach to its ideal form, a matter that will eliminate domestic violence in Iraq.

The title of draft law

The concept 'protection' means 'prevention', when we say protect something from others means prevented them to come closer to it (Dictionary of Meanings). Prevention means something used for protection. In medicine e.g. all the methods used to prevent illness such as vaccination, cleansing or isolations are called prevention. Preventing somebody from something bad means protected, preserved or saved him.

The idiom 'protection' is the title of the draft law, so that may not contribute as required to eliminate and then combat domestic violence, while if the draft law was entitled combat of domestic violence, the draft law, in such case, will be more comprehensive domestic, thus the violence will be widely eliminated, for the idiom 'combat' means fighting & resisting injustice and tyranny. There're more examples on the idiom 'combat' e.g. the fighter combated his enemy or the people combatted their unjust ruler (Dictionary of Meanings). Thus the idiom 'combat the domestic violence' is more comprehensive & accurate than 'protection from domestic violence'; besides the starting points of draft law shall include all the methods that can be used to eliminate such form of violence permanently.

The family
The family was defined in a comprehensive way than it was defined in the legislations on domestic violence taking into the consideration the majority of families in Iraq who are extended, that’s why a husband, wife, wives, sons, grandchildren, sons of one of the spouses, brothers & sisters of one of the spouses and even the guardian are included in the law, while the father's wife, mother's husband and the servant of the family who work for a fee are not included in order to be the corresponding with the ideal legislations on domestic violence.

Definition of domestic violence crime

The crime of domestic violence was defined in the article 3 of the project law as follows: "a physical, sexual, psychological, economic or intellectual violence committed or threaten by any member of the family against the other; such behavior will be a felony, misdemeanor or infraction according to the law". The crime is not determined in the definition previously mentioned, so it's not determined whether the crime committed against the victim especially woman, in such case, is considered a domestic violence before the law or permissible that will be mentioned later.

On the other hand, the text previously mentioned is completely different than the ideal legislations against domestic violence because the forms of violence were mentioned in order not to ignore the criminal action, so the penalty will be based on the criminal action. Also it was mentioned that all the forms of violence mean physically, psychologically or sexually misuse based on gender that is used inside the family. Below are several examples on domestic violence committed inside the family:

- Attack or severely or simply beating regardless the tool used,
Eliminate of discrimination and violence against women

- Abduction, threatening, scaring or enforcement,
- Slander, insult and disclosure of secrets,
- Entering by force or in a way that is against the law,
- Properties damage,
- Sexual violence or assault against wives,
- Reliance on prostitution in the living by a member of family,
- Incitement, helping and abetting on debauchery,
- Incitement on begging,
- Harassment and humiliation,
  - Forced and shighar (quid pro quo) marriages,
- Child and fasil (blood money) marriages,
- Forced divorce and prevent paying alimony,
- Forced prostitution,
- Quit the job by force,
- Force children to leave school & beg,
- Suicide or abortion as a result of domestic violence,
- Insult & abuse the family,
- Commit psychological violence & violate victim's rights,
- Deprive an individual's liberty,
- Help, contribute or participate in female genital mutilation or female circumcision,
- Violence related to sexual exploitation,
- Enforce wife to sodomy or any other abnormal practices,
- Attempt to do one of the crimes mentioned above.
"The punishment will be tightened on the perpetrator who commits any of the crimes mentioned above, if the victim was physically disabled, aged, child, disable to resist because of being deceived". If the acts of domestic violence were mentioned, the law project would have corresponded with the ideal framework of the legislations on domestic violence, and so it would be obvious for all the stakeholders.

The goals of draft law

The article 2 says: the law aims at preventing, combating & eliminating of domestic violence as well as punishing the perpetrator*. It seems that the goal of the law is more comprehensive than the title of the law itself; while the title shall coincide with the goals that the law was issued for. The title of the draft law shall coincide with objective, prevent doing any criminal act, but there's nothing indicates to the methods or polices that shall be taken to prevent the domestic violence, that's why the law doesn't correspond its declared goals.

There's no article included in the draft law that unveils any method of prevention of any domestic violence act, while all the acts unveil protection. It means that the articles included in the law take into the consideration the event after not before the criminal act occurs. So protection aims at protect & help the victim as well as stop the criminal act or thread till the judgment is issued within 24 hours. Moreover all the directorates concerned with anti– domestic violence such as Directorate of Protection from Violence and the competent courts receive the victims and survivors after being violated and assaulted.

There are several methods that shall be adopted to implement the goals of the law trough assisting and rehabilitating the victims from domestic violence or the perpetrators and providing the care required. As a complementary procedure, the
victims’ rights shall be insured in accordance with the law and each measure concerned with their complaints in accordance with Iraqi laws in force such as periods of appeals and submitting the lists. It is supposed to retain a lawyer per each victim for free (the procedure shall be included in the law), the lawyer and the staff of competent organizations shall protect victims from domestic violence according to the article 3 (1).

The law project seeks for domestic conciliation for the safety of the family & the community as a whole.

It's a positive that there is serious efforts aim at conciliation among the family members to end the domestic violence, but how will that be happening? What are the efforts made & how? The legislators were supposed to include the answers of these questions in the law in order not to oppress the victim, for the victim can't do anything. There are more questions that need to be answered in order to be included as well such as: Will the age & awareness of victim be taken into the consideration? Absolutely the victim will not accept the efforts aimed at conciliation in all cases especially when there's a crime committed whether it was a felony or misdemeanor. That's why all these details were necessary to be included in the article 3 (2).

Capability building & gain experience were not included in the law project as well. Capability building & gained experience are very important for those who work in the field of anti-domestic violence, so they will be able to help & serve the victims as required; it was supposed to be included in the article 3 (2 & 4). How to immediately respond to the communications related to abuse of treatment, how to immediately respond to demand for help and protection, these are the most important experience that shall they being trained, all that is included in the article 3.
Eliminate of discrimination and violence against women

It seems that the draft law is largely influenced by the organized features rather than objective, for the law project focuses on how the law of protection is issued, its period and all other issues that insure the victim such as taking the victim to live in the housing center, conducting all the required medical examinations, monitoring the staffs who working on that as well as planning of the way they shall work that is similar to the work of High Committee of Anti-Domestic Violence through determining the meetings, how to makes decisions and calls for experts if necessary according to The article 4 of the draft law.

The High Committee for Protection from Domestic Violence shall be formed under the chairmanship of the State Minister for Woman Affairs & the membership of Deputy Minister of Human Rights as a Vice President and the representatives, Director General as a minimum, of the other ministries & institutions such as General Secretarial for Ministers Council, Higher Judicial Council, Ministry of Justice, Ministry of Labor & Social Affairs, Ministry of Interior, Ministry of Planning, Ministry of Education, Ministry of Health, High Commission of Human Rights and two representatives from NGO concerned with family protection who will be selected by the committee but they both will not have to vote. Somebody asks: why the committee is headed by the State Minister for Woman Affairs, despite that the victims may not be women? On the other hand, all the family members whether males & females or adults & children are mentioned in the law project, so it was supposed that the committee not to be headed by the State Minister for Woman Affairs, but now everything changed after the State Ministry for Woman Affairs and Ministry of Human Rights were both cancelled.

The role of NGOs was ignored deliberately in the committee, for NGOs representative don’t have the right to vote despite the influential role of NGO in the
Eliminate of discrimination and violence against women

field of elimination of domestic violence so far, so it was supposed to give greater role to NGOs via the right of voting by their representatives in the committee, so they can hold periodical meeting with all NGOs officials, such procedure contradicts with the article 2 (1) of the law of NGOs that calls for enhancing their role, "to enhance the role played by NGOs by supporting their growth, development and independence according to law", so the committee impedes NGOs participation in the process of changing the policies & laws. Moreover the article 4 (4) says: the committee shall call for an expert or more in the field of anti-domestic violence, the chairman has the right to pay incentive bonus for them. It was supposed to pay salary, for the importance of their role. They also supposed to be psychological and social experts as well as their role shall be compulsory not optional, so the article 4 (4) shall be amended.

The committee's tasks: The tasks determined by the draft law are as follows:

1– Mapping the public policy of anti-domestic violence in the legal, cultural, health & service fields.
2– Ratifying the plans & agendas proposed by the Directorate of Protection from Domestic Violence.
3– Approving the necessary mechanisms adopted, in coordination with the ministries & stakeholders, to protect the victims of domestic violence.
4– Supervising the reports prepared on domestic violence in Iraq.
5– Approving the studies & field surveys prepared by the Directorate of Protection from Domestic Violence.
6– Monitoring the performance of the Directorate of Protection from Domestic Violence and housing centers.
7– Exchanging the information, coordinating & cooperating with the competent institutions on the regional and international levels.
Creating a budget, monitoring & evaluating the work of the Directorate of Protection from Domestic Violence and housing centers were very important to be included in the tasks mentioned above, thus the objectives can be achieved. Although the committees was established, according to an order 80 (2009) issued by the State Ministry of Woman Affairs, under the chairmanship of the same ministry and the membership of the ministries previously mentioned, it considered a committee responsible for mapping the public policies related to the family, it monitors their issues and develop the recommendations & outcomes required for it. The Directorate of Family & Child Protection from Domestic Violence was established as one of the results of these recommendations.

The Directorate of Family & Child Protection was formed by the Ministry of Interior before the directorate mentioned above that was established by the Ministry of Woman Affairs. There were two offices, one in Karkh & the other in Rusafa, run by police officers trained on eliminating the domestic violence. The article 7 of the draft law says as follows:

1– The Directorate of Protection from the Domestic Violence is formed & connected with the Ministry of Interior. It will be run by employees (directors general) who are graduated from the colleges of social or humanitarian sciences (bachelor degrees as a minimum), they also shall be experienced in the field of family protection. The employees shall be assigned by the ministry according to the law. This paragraph didn't refer to the Directorate of Family & Child Protection, whether it will go on working or not, after the Directorate of Family & Child Protection from Domestic Violence was formed, for it is belong to the Ministry of Interior and there are 16 departments belonging to it besides two offices in Karkh & Rusafa. So the questions are as follows: Will the directorate continue working after the law coming into force? It will be merged with the Directorate of Protection from Domestic
Violence?, while it was supposed to the staff assigned to be graduated from the college of law than social or humanitarian sciences, for many issues related to protection shall be run according to the law, so the staff shall be well experienced in law.

2- The directorate headquarter shall be located in Baghdad. It also has the right to open more departments in Baghdad & other provinces to monitor its work.

3- The formations & specializations of the Directorate of protection from Domestic Violence shall be determined by the Minister of Interior. The percentage of women staff shall be 70% as a minimum, taking into the consideration to be graduated from the colleges of law, social and psychological sciences. For the majority of individuals vulnerable to domestic violence are women.

There are statistics of domestic violence reported in Baghdad in 2014 & published in the website as follows:

- The violence committed by husbands against their wives 54%.
- The violence committed by wives against their husbands 7%.
- The violence committed among brothers & sisters 5%.
- The violence committed by sons & daughters against their parents 6%.
- The violence committed by parents against their sons & daughters 12%.
- Others 16%.

Thus, the total is 100%.

The statistics above unveils that the violence committed by parents against their children is very high, known that protection of children shall be taken care a lot, for they can't submit their compliant.

One of the tasks of the Directorate of Protection from Domestic Violence staff, according to the article VII of the law project, is as follows:
Develops the public policy to eliminate domestic violence in the legal, cultural, health & service fields, develops plans & agenda to eliminate, prevent & protect individuals from such violence and finally implements the decisions, issued by the coordinative committee, in cooperation with the stakeholders.

It's important to work on database that includes the violence's cases, reasons and the surrounding circumstances. Thus, they shall be included accurately in the database in order to support determining how the violence committed is bad. All these things previously mentioned will support conducting researches & studies that aim at eliminating the domestic violence. Finally it was a good sign that the legislator assured on all the information mentioned above.

The staff of the directorate shall also make efforts to conciliate both conflicted individuals before the compliant being submitted in the court. It will be good sign to behave like that, but on the other hand, it will be bad sign on the victims and the law as well, for the perpetrator will remain unpunished. The perpetrator will be encouraged to commit violence again and again without being punished, so that will be discrimination against the victims & their rights as well.

**Filing a complaint:** The individuals who were exposed to domestic violence have the right to file complaints to the institutions determined by the law project, but those victims can't always go to file complaints because of they can't leave their homes or being sick, that's why everyone who knows such violence occurs, he/she has the right to file a complaint of inform the concerned institution, a matter that insure the victim's rights.

The complaint, according to the article 9 of the draft law, shall be filed to one of the following:

(a) Judge of domestic violence investigation.
(b) Prosecutor.

(c) Directorate of Protection from Domestic Violence or any of its departments in whether in Baghdad or all other provinces.

If there were more than the official figures/ institutions, the victims would be given more opportunity to file complaints. The High Commission for Human Rights (HCHR) and any of its offices in all over Iraq, according to the article V of the law of Commission No. 52 (2008), have the right to receive the complaint filed on human rights violations.

The staff members working in the health sector also have to call the concerned institutions on the cases resulted from domestic violence. There are many cases on victims vulnerable or survived from domestic violence can't reach to the hospitals, clinic centers or even doctors' offices, so such cases of violence will be kept secret unless they will be found out and then informed by someone such as a teacher that finds out the effects of beating on the children or when the women employees come to their works with effects of beating and so on. So all the institutions staffs shall inform or file complaints on such cases of domestic violence.

The investigator shall be told any domestic violence case or any case shall be told in details. According to the article 10 of the draft law, the judge of investigation has the right to issue a judgment, it means that the judge is not obligated, if he was, the perpetrator will not remain unpunished. All the complaints filed shall be taken into the consideration by the judges regardless where the violence occurred or where the victim is. The judges of various courts can investigate on the cases of domestic violence; not only the competent judges as well as the informer will remain unknown for security reasons. The informer will be asked whether wanted to be a witness or not.
Trials: According to the law, the competent courts may keep the legal cases on domestic violence confidential, for such cases include private information related to the families. So it was supposed to make the judges obligated to keep such cases confidential.

Competent courts on domestic violence were allocated by Higher Judicial Council. The judges working in such courts shall take all the reports submitted by the government institutions figures into the consideration, for the competent courts are concerned with protecting from domestic violence and the same with the judges working in (according to the paragraph 6, 7, 8 of the article 1). Often the domestic violence cases occur inside the home, if not inside the room between spouses. So, in such a case, there will not be a witness to support the case before the law, so most of the cases are closed due to the insufficient evidence.

Protection: Housing centers are very important for the victims of domestic violence to live in, for it is impossible for the victim of the domestic violence to live with her perpetrator. According to the article 1 (5) of the draft law, the housing centers are run by the Ministry of Labor and Social Affairs.

The decision, issued by the competent court for protecting & helping the victim while the victim is still being violated & threatened, is issued within 24 hours for 30 days, the decision can be extended not more than 180 days in accordance with the articles 1 (6) & 18. There are reasons behind the decision extended:

1– If the decision issued on protection was violated by the perpetrator according to the article 18 (2/a).
2– If the judge persuaded to protect the victim or any of the family's members for longer time, the article 18 (2/b). The discretionary power is a comprehensive idiom used in the all forms of law. It is based on the judge's mental analysis, it is a mental activity made by a judge to understand the case he was told, so he can reach to results required in accordance with the law. Thus the discretionary power consists of the two factors: the personal factor "judge" & the objective factor "the law", although it was supposed that the Iraqi legislator not to include the judge's satisfaction in law that may be influenced with his own ideology in a way that contradicts with human rights principles.

The victim of domestic violence has the right to file a complaint to the judge in order to be protected inside the housing center via emergency decision issued by the judge. According to the law, the victim has the right to file a complaint whether during being investigated or the case being reviewed by the judge. Although the decision issued by the judge is considered as one of the case's evidence, often the victim and/ or informer is needed to be protected from any violence or threat, such a procedure is not included in the law.

**Housing Centers:** These centers, according to the articles 5 (8) of the law draft, are run by the Ministry of Labor & Social Affairs; they are established to receive the victims of domestic violence in order to be protected & then their life will be rebuilt according the guidelines issued by the Minister of Labor & Social Affairs. According to the law, the victims of such violence are described as those who violated, while it was supposed to be called men and women violated or victims of domestic violence, for such idiom is more comprehensive. The form of rehabilitation inside housing centers was not included in the law whether it will be health, psychologically or socially. The
Eliminate of discrimination and violence against women

articles included in the law, in all cases, shall be correspondent with the international standards of human rights.

The contents of protection law: The contents included in the law of protection shall be taken into the consideration, otherwise they will be violated. The contents are as follows:

1– The perpetrator shall be obligated not to attack, threat or incite any of the family’s members through a written pledge. The witness, informer and others were not taken into the consideration to be protected from the perpetrator, so it was supposed to be included in the pledge. Finally when a wife has to leave her husband, their children, if they are at the custody age, shall go with her according to the law of protection.

2– The victim or anyone acting for her shall be protected while going to her home to take her belongings back according to the minutes.

3– The costs of treatment & alimony for children shall be paid by the offender till the decision on alimony is issued by the competent court.

4– The offender’s gun shall be impounded if necessary.

5– The victim shall not be called by the offender whether at home, work or housing center unless the offender intends to conciliate, while the serious guarantees that protect the victim to be attacked by the offender was supposed to be submitted.

6– The family money, furniture & belongings can’t be controlled by the offender.

7– The victim shall be seen by the medical & psychological teams in order to be referred to the clinic for the treatment required.

According to the law, both victim & offender have the right to file an order for cancelling the protection, but who will do, how, what for? Such a procedure will
not stop the victim from being attacked, while according to the article 18 (3), it was supposed to be included as follows:

1– The order of cancelling the protection shall be filed by the victim only.

2– The removal of reasons behind protection & the conciliation between the victim & offender shall be verified by the court.

Conciliation: According to the Dictionary of Meaning, it means to end the conflict between two disputed individuals. According to the law of Protection from Domestic Violence, the victim is obligated to be referred to the conciliation committee to verify whether the victim and offender can be live together according to conciliation between them. The legal measures shall be stopped against the offender, if they conciliated. So the conciliation shall be conducted according to the Rules of Criminal Procedures, the article 19 (1 & 2).

Penalties: The crime of domestic violence, according to the article 1 (3) of the Law of Protection from Domestic Violence, was defined as any physical, sexual, psychological, mental or economic attack (felony, misdemeanor or violation) committed by any of the family's members against the others, while other form of violence such as beating, insulting or ignoring that lead to bad psychological consequences are not included in the article previously mentioned. Penalties are also all what is contradicted to the law mentioned above.

1– The offender will be sentenced as follows:

(a) one year imprison (as a maximum).

(b) one million dinars fine (as a maximum) will be paid by the offender, if he deliberately violated any of the protections' conditions.
Eliminate of discrimination and violence against women

(c) two million dinars fine (as a maximum) will be paid by the offender, is he violated the Law of Protection from Domestic Violence using violence against the victim, informer or anyone else.

(d) three million dinars fine (as a maximum) will be paid by the offender, is he violated the Law of Protection from Domestic Violence more than two times. The minimum penalties were not determined by the law for those who deliberately violate it, the minimum fine wasn't determined as well, a matter that leads the sentence issued by the judge so reduced that it will not prevent the offender from violating the law continuously.

Substitution of Penalties: According to draft of law, the penalty of one year imprison can be replaced by a 5 million dinars fine, while the most important notes on that are as follows:

1- The fine is considered as a gift for rich individuals who can violate the law & remain unpunished.

2- There are no regulations in order to be adopted on the penalty replaced with fine.

3- The minimum fine was not determined in the law, while the maximum fine shall be 5 million dinars. The article 20 (2) of the law says: "the penalty of one year imprison can be replaced with a fine not more than 5 million dinars".

Family Allowance: The judge, according to the law, may issue an order on allowance given to the victim, if the victims or someone who acts her asked for, while it was supposed to such decision to be fairer according to the article 21 of the law, if the court was obligated to issue such order.

Aggravating Circumstances:
The law draft takes into the consideration the aggravating circumstances while the domestic violence occurs as follows:

1- If the repetition of an offence: it means a criminal act committed by an offender after he had been sentenced, for committing another crime.

2- If a crime committed by sons not by parents: it means that the crime committed by the sons against their parents or grandparents, while the violence committed by parents against their sons was ignored in the law, despite that such violence is more familiar because of the patriarchal control in the society, so the such violence will be out of control, if that wasn't taken into the consideration. The criminal act committed by husbands against their wives wasn't taken into the consideration as well.

3- If the violence was committed against child, young, adult or disabled victim.

It was important also for the offender who carries a gun or harms a victim psychologically as well as the crimes that lead to victim's death or being disabled to be sentenced according to the judgment that considers the criminal acts mentioned above were committed with aggravating circumstances.

How does The Law of Protection from Domestic Violence look at Punishment Law

The crime of domestic violence, according to the Law of Protection from Domestic Violence, was defined as any physical, sexual, psychological, mental or economic attack (felony, misdemeanor or violation) committed by any of the family's members against the others. Despite all that crimes, there's no punishment for the offender included in the law, only protection for the victim is provided. The draft law left the punishment to be taken into consideration by Penal Code 111 (1969), Rules of Criminal Procedure 23 (1971) and Law of
Juvenile Care 76 (1983). When a woman beats her child e.g. it will be included in the article 41 of the Penal Code, so according to the law, beating of both a wife & child will be considered as a discipline, that means such cases will be permissible.

There are many issues included in the draft law that considered very important, for they contribute in achieving the objectives of the law itself:

1– Establish a special fund to help the victims of violence, amount of money will be allocated according to the annual budget.

2– The social worker is obligated to attend while listening to the victim, suspect or witness.

3– If a decision on protection issued by the court has been appealed, the execution will not be stopped till the decision is issued from the court of appeal.

4– The Higher Judicial Council and all the government constitutions are obligated by the law to conduct training courses on the issues mentioned below for those who are concerned with protection of victims from domestic violence:

(a) The domestic violence concept, forms, influence, reasons & consequences.

(b) The legal rights for the victims of domestic violence & the fair methods available.

(c) The centers & services provided for both victims & offenders.

(d) The duties & responsibilities of the figures & institutions, according to the law, in the field of urgent response for declaration, procedures, arrest, provide the protection & help for the victims of domestic violence, investigation, referral, impose the punishment on those who ignore the complaint or press on the victim to withdraw of the complaint that had been filed.

(e) Directing principles related to punishment policy including the orders of serving the society as an alternative punishment or advising the offenders.
The government works on supporting the policemen, judges, victims & of domestic violence through competent consultants & experts who will be in the courts for legal advices. They also help the perpetrators to get rid of their aggressive behavior, so their duties will be as follows:

(a) Help policemen, judges & others on how to deal with issues on domestic violence via vocational experience.

(b) Train the perpetrators of domestic violence on how to get rid of any aggressive act through special programs that lead them to stop such acts & raise their awareness in the field of human rights.

(c) Conduct awareness sessions for the perpetrators to prevent the domestic violence, for it is contradicts with law, ethical values, Islamic (sharia) and other religious provisions and human rights principles.

The consultants shall work for free and they work in accordance with the law only.
Conclusion

- Although the government of Iraq is obligated to work on the principles of the international covenants, but there are still articles included in the Iraqi law that unveil discrimination and violence against women.

- The majority of Iraqi community is still dominated by tribal habits and traditions that contradict with women's human rights, that contradicts with the article 45 (2) of the constitution that says: ‘The state shall seek the advancement of the Iraqi clans and tribes, shall attend to their affairs in a manner that is consistent with religion and the law, and shall uphold their noble human values in a way that contributes to the development of society. The state shall prohibit the tribal traditions that are in contradiction with human rights’. The amendments of the articles related to punishment were included in the penal code included in this research.

- The government institutions concerned with legislations delayed in introduction of necessary legislation on domestic violence.
References

1– Wa’ood Katib al-Anbari, instructor in College of Law – Karbala University.


3– Yousra Awadh, the concept of crime – its legitimate & legal roots, Forum of Arab Lawyers dated in 5th of September 2006.


9– Women rights in Iraqi laws & international standards, other references, the judge: Hadi Aziz.

10– The first quarterly report for the work of courts, 2015.

11– Women rights in Iraqi laws & international standards, the judge: Hadi Aziz.


16– The report ‘Violence against women, its reasons and consequences’ submitted during the 53rd UN session to human rights committee, the moderator: Radica Kumara swami, the report was prepared according to UN resolution 85(1995), UN document, E/CN.4/1996/53/Add.2.

17– The notes reported on the draft of law were collected during the workshops held by both Baghdad Women Association (BWA) and International Rescue Committee (IRC).

18– The notes reported on the law were collected by the legal team of Baghdad Women Association (BWA) during the workshops held.

Eliminate of discrimination and violence against women

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**Project Name:** Eliminate of discrimination and violence against women

**The project's goals:**

Eliminate of discrimination and violence against women in Iraq via implementing the national action plans previously prepared.

**The research's goal:**

Focuses on the legal loopholes included in Iraqi laws mentioned below:

i. Law of personal status,
ii. Penal code,
iii. Draft law of protection of women from domestic violence,

**The political research's goal:**

It focuses on the policies & legislations that hamper the active participation of women in decision making process.

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