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## **The Criminalization Aspects of Domestic Violence In Iraqi Law: An Analytical Study**

**Dhia Moslem Abd Alameer  
Ghaibi**

*University of Kufa*

Najaf, Iraq *E-mail:*

dhiaam.alghaibi@uokufa.edu.iq

**ABSTRACT.** Any women in Iraq are now under the control of their abusers, and domestic violence is still prevalent. While domestic abuse is prohibited, it has never been easy to change the original texts, do away with the laws, and implement new ones. As a result, no other countries will be forced to surrender their right to reject or repeal Iraqi social customs in its application when in the same treaty; neither will the rights of individuals be violated, nor will Iraqi culture be harmed.

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### **Introduction**

Domestic violence is one of the most critical issues facing societies and all countries. Iraqi society is not far from this growing phenomenon, especially in light of the development that is taking place in all areas of life. Interest in them has increased in recent years to develop solutions to the problems and crises generated by this phenomenon due to widespread domestic violence cases. According to international human rights treaties and declarations, Iraqi national legislation was needed to protect against this ongoing phenomenon and safeguard the physical and psychological autonomy and dignity of family members in general and women in particular. Following the establishment of the United Nations in 1945, numerous international human rights documents addressing family issues were released. The defense of the mirror or infant and the 1948 Universal Declaration of Human Rights contained provisions to safeguard human dignity and prohibit inhuman treatment. For men and women of marriageable age, the freedom to marry and create a family without prejudice, such that their rights at marriage are equal, and marriage should only occur with both parties' consent. The 1966 International Covenant on Civil and Political Rights, which contained numerous provisions requiring states to uphold the rights of all persons living on their territories, further demonstrated that the family is a social entity that the state must protect. The pledge's signatories dedicated Badi Khaled to taking adequate steps to ensure spouses' equal rights and responsibilities and the welfare of children. The 1966 International Covenant on Economic, Social, and Cultural Rights stressed this point

further by promising to protect households, especially women and children, from economic and social exploitation, as stated in the 1979 Convention on the Elimination of All Forms Discrimination Against the Mirror. Abolish all forms of discrimination against women and men, ban their abuse and prostitution, and enforce the 1989 Convention on the Child's Rights. It emphasized child safety and the prohibition of harm to the child's honor or reputation or illegal exposure to his or her private life, as well as the 1989 Convention on the Rights of the Child, which emphasized child welfare and the prohibition of harm to the child's honor or reputation or illegal exposure to his or her private life by marriage.

Additionally, the Council of Europe's 2011 Istanbul resolution on the Prevention of Violence Against Women. It entered into force in 2014, three years after ratification, which requires crisis member states to protect women from all types of abuse and non-discrimination of rights between men and women and enhance international collaboration to eradicate mirror and domestic violence. In terms of these declarations and international conventions, countries were required to enact legislation to protect against domestic violence; however, do these statutes require modification in light of Iraqi society's actual realities and the rapid growth occurring in all social sectors? Particularly given that the origins of domestic abuse vary and the approaches used to combat it have evolved.

## **1. Causes and Forms of Domestic Violence**

### **1.1. Causes of Domestic Violence**

Selecting Every phenomenon of society has caused, and family violence has psychological, religious, or social causes and economic reasons, especially in light of the technological development that is taking place at present.

#### **A. Subjective and Social Reasons**

Personal causes are different, either psychologically based on the moral vacuum of the individual or incorrect behaviors [1]. These behaviors express the prevailing customs and traditions and significantly impact the individual. Another subjective cause seen by sociologists is the high level of masculinity hormone and the tendency to be aggressive in men. The mirror is exposed to disorders and stress during pregnancy and monthly habits leading to violence. Mental disorders and alcohol and drug use also affect people with these disorders more violently due to loss of perception and discrimination [2]. In addition to the lack of religious awareness of the correct Islamic instructions, many Muslims do not differentiate between the right of discipline that Islam gives to the husband over his wife and children and family violence [3]. It is twice the educational level of other subjective reasons because many are not good at reading and writing and have no education experience to resort to cruelty, beatings, and intimidation.

#### **B. Economic Reasons**

The deterioration of the economic situation and poor living leads to the individual's practice of violence against the family as experts in sociology believe that domestic violence is also due to the inability of the head of the family to provide the basic needs of his children clothing, food and education because of high prices and unemployment, which may lead to the use of violence by parents in dealing with the reality of life [4].

## **1.2. Forms of Domestic Violence**

We have heard a lot about customer segmentation, where they are divided into segments according to which they are catered to their customized requirements. Similarly, employees can be segmented based on criteria like demographic features, performance or gender, and the like. [4] This can be done with the help of machine learning algorithms like the k-means algorithm. Clusters can be formed using the k-means algorithm according to the characteristics of employees, which are stored in the dataset. [5] The organization can take advantage of this clustering by understanding the requirements of various clusters of employees. This understanding will help the organization look into genuine requirements and ensure employee retention.

### **A. Psychological Violence.**

Psychological violence is one of the most widespread in societies and significantly affects the victim. It includes words such as insults, slanders, or notification of a family member as persona non grata, ignoring it, diminishing his role, or not taking innocence.

### **B. Physical Violence.**

Physical violence is causing pain or harm to others, especially to the family, by killing, pushing, slapping, and repeated beatings, and maybe using tools, burning, pulling hair, putting to the ground, suffocating, and threatening with weapons [5]. Physical violence goes through an earlier stage of argument and psychological violence between the two parties that extends and turns into a conflict and then into a competition [6]. One type of physical violence, physical violence is sexual violence, which is rape, indecent assault, and prostitution [7]. Sex trafficking so when a person is forced to carry out acts that are not tolerated as having sex against his will without considering his or her health or mental condition or forcing him to practice unorthodox methods and methods.

## **2. Legal Protection Against Domestic Violence**

### **2.1. Protection Against Domestic Violence In Current Laws**

#### **A. Iraqi Personal Status Law.**

The Iraqi Personal Status Act No. 188 of 1959 omitted the term "abuse." Nonetheless, it referred to the harm caused to the wife by her husband's conduct [8]. It granted her the right to pursue separation, which is intended to be significant harm to the continuity of married life, such as an assault on money, supply, or self, as well as a sinful assault on children [9]. In addition, a medical committee survey shows that it is deemed detrimental to the consumption of nuts and narcotics. It is also considered harmful to gambling in the marital household.

#### **B. Iraqi Penal Code.**

In conclusion, it should be noted that the Iraqi Penal Code does not have a separate chapter dealing with domestic violence. When it comes to offenses against human beings, each is handled distinctly in Iraq, each is treated as a felony, and these laws can be seen on several posts [10]. Under this Penal Code amendment, some sections provide clauses for women and

their families engaged in criminal offenses, such as Penal Code No. 111 of 1969. Absolving oneself of wrongdoing about crimes such as abortion or homosexuality is an example of absolving oneself from blame. However, the section on violations against human life covers murder, incest, and other crimes listed in Article 4411 of the law. There are no exceptions to this crime. Whether it was exercised while performing a legally stipulated right was the decision-making of the husband's educational responsibility in the home. For example, if you reach the capacity of cultural traditions or adolescent behavior or if these thresholds (just example: with cultural taboos and tightening relatives), external boundaries regarding children's authority include these valid criminal acts [11]. That is an extremely severe punishment. The following was noted in the court's decision in the case of Iraq. The husband's attack on his wife by hitting her in the face and pulling her hair in public or in front of onlookers goes beyond the scope of the husband's right to punish his wife. It is an offense punishable under article 415 of the Iraqi Penal Code. It indicates that someone who has been raped or partially injured must leave no sign on the victim's body or face a maximum sentence of three years in jail. Months in prison and a fine of up to thirty dinars, or either of these penalties). The wife must have been raped To achieve the goal for which the punishment was legislated [12]. It is accomplished by reforming the wife's situation and ensuring she does not deviate from compliance. If he has another motive, such as vengeance or simple assault, his behavior is criminal and deserving punishment. It is punishable under article 413 in beatings, crime, accident, disease, or bone fracture.

1) Anyone who deliberately assaults another by wounding, beating, or violently or committing any other action against the law causes him harm or illness punishable by imprisonment of not more than one year and a fine of not more than 100 dinars or one of these two penalties.

2) The penalty is imprisonment of no more than three years and a fine of 300 dinars or one of these penalties.

A- If the assault is suspected of breaking a bone.

B- If the assault is reported to have been harmed or disease, the victim cannot do his usual work for more than 20 days.

3) The penalty is imprisonment if a firearm or machine is harmed for harm, incendiary substance, food, or harmful

Also, the Court of Cassation ruled that insulting, insulting, and slandering are not within the limits of the husband's discipline of his wife, covered by article 41 penalties. The husband is punishable by article 434 penalties, which states Those who insult others shall be punished by imprisonment of not more than one year and a fine of not more than 100 dinars or one of these penalties. Although these legal provisions exist in the Penal Code, this law must be amended to distinguish between men and women in treatment [13]. Article 409 of the Penal Code has returned the man's killing of his wife or one of his prohibitions in case of surprise by wearing adultery or being in one bed with the partner as a mitigating excuse, which is contrary to the principles of Islam.

Article 377 of the Penal Code enshrines discrimination between men and women, where adulterous wives are punished wherever they are degraded, whether in the marital home or outside the marriage. In contrast, the cheating husband is penalized if he is degraded only in the marriage home, meaning that adultery is permissible outside it, which is an explicit violation of the principles of Islam [14]. Article 380 of the same law also punished a husband who incites his wife to adultery. She won based on this incitement, saying that (every husband who started

his wife cheating and won based on this incitement is punished with imprisonment). In other words, the husband's incitement is not penalized if it does not lead to his provocation [15]. He incitement the law and the legislator to punish him even if he did not commit adultery. The Iraqi legislator has also taken the honorable as a mitigating excuse, particularly the crimes of dishonor and the murder of a mother of her newborn child to prevent shame due to a serial killer pregnancy provided for in article 407 of the same law.

## **2.2. Protection Against Domestic Violence In Anti-Domestic Violence Bills**

### **A. Draft Law Against Domestic Violence in Kurdistan.**

Due to the increase in domestic violence cases in the Kurdistan region, particularly violence against women, which included suicides or killings of women, the burning of women for themselves, and sexual harassment [16]. In response to this phenomenon, the Anti-Domestic Violence Act No. 8 of 2011 was passed in the Kurdistan Region of Iraq. Which included ten articles. Article 1 of the Act defines a family under the law. Accordingly, the family is a group of natural persons with a marital and kinship association to the fourth degree who have been legally included in the family [8]. The same article defines domestic violence as: (any act, statement, or threat based on gender in the context of family relationships based on marriage and kinship to the fourth degree). The government has also taken measures to ensure that the rights of the child are respected:

1. Coercion in marriage
2. Marriage of young people and marriage of the young
- 3- Marriage instead of blood money
4. Divorce under duress
5. Severing the bond of surrogacy
6. Forcing the husband into prostitution and abuse of prostitution
7. FGM
8. Forcing family members to leave the job or work against their will
9. Forcing children to work, begging, and leaving school
10. Suicide following domestic violence
11. Abortion following domestic violence
12. Beating family members and children with any argument
13. Insulting, insulting, insulting parents, showing an inferior view of her direction, harming her, exerting psychological pressure on her, violating her rights, and cohabitation under duress.

Article 3 of the Act empowered welfare, education, and official centers, as well as those involved or lawfully liable, to inform the judge, inspector, police station official, or lawyer of domestic abuse cases [17]. Thus, this legislation outlined a straightforward path for providing news in domestic abuse situations and establishing domestic violence as a public right felony [18]. The law provided for establishing a court specializing in domestic violence cases, the establishment of centers for victims of domestic violence, including social protection network services, the security of health nationals, and their rehabilitation after cases of domestic violence. It required the complainant not to enter the family home until the court ordered him to do so [19]. It should be remembered that the statute differentiates the punishments according to the crimes committed. It punishes someone who commits family abuse with a minimum of six months, a maximum of three years in jail, and a minimum of one million dinars. A maximum

of five million dinars in fine. Female genital mutilation was given a special penalty of at least 1 million dinars and no more than 5 million dinars for anyone who instigated FGM. It is punishable by imprisonment for at least six months and no more than two years, as well as a fine of at least 2 million dinars and no more than 5 million dinars, or some combination of these penalties, for those who performed or assisted in female circumcision. In the event of such jobs, the statute found the status of a doctor, pharmacist, chemist, midwife, or assistant to be an aggravating condition. This law has not been without opposition, as it fails to adhere to the fundamental standards required for passing legislation, especially penal legislation. The bill undermined the concept of criminal and disciplinary validity. It was evident in the text of article (2) of the statute, which cited cases of domestic abuse offenses without referring solely to violent crimes, authorizing the courts to use calculation in enforcing the legislation, something that could not be accomplished by the criminalization and punishment provisions. The practical application of this law created a series of complications and difficulties that significantly impacted the law [20]. It was enacted and approved hastily by the Parliament of Kurdistan province without careful consideration. Several errors might have been avoided if presented to committees and law professors, judges, jurists, and clerics to fill in the gaps.

### **B. Draft Law Vs. Domestic Violence In Iraq.**

In September 2019, the Iraqi Presidency sent a draft law against domestic violence to parliament in preparation for debate and approval, which included forming a high committee by the Council of Ministers to take over executive functions to prevent domestic violence incidents [21]. In August 2020, the Council of Ministers submitted another draft of the Domestic Violence Act to the House of Representatives, whose provisions included more controversial provisions than the Presidential Act [22]. The first paragraph of article 1 of this draft showed the concept of domestic It was described as (any action or refrain from doing or threatening any of them committed within the family entails material or moral harm). In addition, the project recognized the creation of a specialist court with a family abuse judge of investigation. The Ministry of the Interior's Family Protection Directorate. This law aims to protect the family, particularly girls, from all forms of violence based on gender, reducing its spread, preventing it, and punishing it. Perpetrators, compensation for the damage caused, care for their needs, rehabilitation, and family reconciliation. Although the bill has been tried in more than one previous legislative session, Iraq's domestic violence law remains at odds between Islamist forces and civil currents. Incidents of violence, which occur in Iraqi society occasionally, usually drive the need to pass the law and push it back to the forefront. The sites of disagreement over the passage of the Domestic Violence Act are clauses that some beliefs are contrary to the Constitution and Islamic jurisprudence, as well as the claim that they are alien concepts to Iraqi society [23]. "The law did not consider the customs and traditions of society, article 18,222 states that(preventing the complainant from entering the house of the living or approaching his whereabouts). The law in its current form also opens the door to other problems, mainly since the law authorized reporting while maintaining the confidentiality of the amount, considering that such a text may be a means of settling accounts when the communication is not honest and linked to previous disputes.

### 3. Conclusions and Discussions

This essay examines the criminalization of family violence in Iraqi civil law. The findings indicate that family aggression is one of the violent activities that destabilize family relations, diminish one's sense of satisfaction and pleasure, and affect society. These actions occur between partners, parents, children, friends, brothers, or sisters toward infants. The family is a social structure formed by men and women entering into a contract to create a building block that contributes to the construction of society and its three most significant foundations, husband, wife, and children. There are many explanations for abuse, including subjective, ideological, social, and economic motivations and various forms of domestic violence in a world undergoing technological development while adhering to norms and rituals. The Iraqi Penal Code grants the freedom to commit violence on the pretext of exercising a right. Article 41 is a legislative error, as the crimes commit domestic violence under the guise of exercising a right. According to some researchers, adopting new laws criminalizing domestic violence contradicts the constitution and Islamic jurisprudence and represents strange concepts in Iraqi society. As a result, the draft law against domestic violence was rejected by some who believed it would dismantle the family and violate religious teachings, in addition to the difficulty of implementing it in practice. Current laws, specifically the Iraqi Penal Code, should be revised and updated to include article 377, which establishes a vital distinction between men and women; article 380, which prohibits inciting a woman to adultery; and article 409, which forbids a man from murdering his wife. As a result, it is critical to use all available newspapers, community forums, civil society groups, and religious sermons to raise consciousness about the risks of prisoner abuse. Coordination with cultural organizations to discuss the phenomena of aggression and work to analyze and address them scientifically under contemporary educational philosophies by defining the realities associated with the conditions and motivations that contribute to such an occurrence and attempting to reach proposals to society for violence reduction as a prevention measure. We call on Iraq's legislators to expedite domestic violence legislation and learn from the Kurdistan Region's experience while preventing the errors made there.

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