

DISCRIMINATION AGAINST WOMEN IN THE PROVISIONS OF PUNITIVE TEXTS (A comparative study between the Iraqi and Lebanese laws)

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ABSTRACT--The United Nations Charter, adopted in 1945, is the first to refer to the equality of men and women in rights. The United Nations has consistently eliminated discrimination against women and international resolutions have been passed to improve the status of women and promote their rights. Equality is the cornerstone of any democratic society that aspires to justice Social and human rights. In this context, States have sought to achieve equal rights under their laws by joining international conventions and passing their texts which approved the rights of women and at other times by amending their domestic laws which did not provide for adequate guarantees for women. To apply its legal texts without paying any attention to the domestic and international demands, including the elimination of forms of discrimination against women, but its application was in its provisions on the interpretation of legal texts with narrow limits so that its provisions were in favor of women. On the other hand, other countries have sought to amend the laws in favor of women. However, this amendment was not voluntary, but was done as a result of international and internal pressures on international organizations and human rights organizations, as well as on women's efforts and civil society organizations. Women and subjected to serious violations amounting to murder or permanent disability

Keywords— discrimination against women in the provisions of punitive texts a comparative study between the iraqi and lebanese laws

I. INTRODUCTION

Article 1 of the Convention (CEDAW-1979) provides a definition of discrimination as: (any distinction or difference in treatment, exclusion, or restriction on the basis of sex, and one of its effects or purposes is to impair women's recognition on an equal basis with men of human rights, or to influence Their enjoyment of political, economic, social, cultural and civil rights and any other rights, or that it would prevent women from exercising basic rights and freedoms, regardless of marital status) 0

This agreement obliged the states parties to condemn all forms of discrimination against women and take all measures to eliminate it through their constitutions and legislation to prohibit all discrimination against women and was among the countries that Iraq and Lebanon joined.

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The fact that Iraq and Lebanon acceded to this agreement without making reservations that obligate them to eliminate any discrimination against women is contained in its constitutions and laws, including eliminating the exploitation of women, establishing equality in political and social life, laws of nationality, education, work, health care, and eliminating violence against it, whether it is community violence or Familially, but both countries created their reservations to the agreement, so we will discuss the position of Iraqi and Lebanese laws regarding the application of this and the extent to which their punitive texts on discrimination against women are consistent by dividing the research into three sections, the first topic Discrimination against women in the disciplinary provisions of the wife, and through it the concept of discipline of the wife and the position of the Iraqi and Lebanese legislator are clarified from that. As for the second topic, we will deal with discrimination against women in the provisions of her killing as a shame for the third topic. Adultery, and what is the position of the Iraqi and Lebanese legislator regarding the crime?

II. The importance of the research

The importance of the research appears by highlighting the position of the Iraqi and Lebanese laws regarding the issue of discrimination against women in light of their punitive laws for the increase in cases of family and societal violence against women in a large way, so the topic should be discussed with the position of the judiciary as well.

III. Research problem

The research problem lies in the similarity of the two laws in some of the punitive texts and their difference in other texts on this topic, as well as the difference in the position of the judiciary in both countries regarding the same crimes with the different role of women's and civil society organizations in facing cases of discrimination and violence against women in The two countries 0

IV. RESEARCH METHODOLOGY

The research relied on the method of scientific analysis of the texts of the law with the adoption of the idea of a comparative study of cases achieved in practical terms in the two countries in accordance with the judicial decisions issued therein.

V. THE FIRST TOPIC

discrimination against women in the disciplinary provisions of the wife.

The clarification of what is meant by discrimination against women in the texts contained in the penal code for disciplining a wife requires clarifying the concept of disciplining the wife as well as stating the position of the Iraqi and Lebanese legislator on the subject according to the nature of the study. My agencies:

VI. THE FIRST REQUIREMENT: THE CONCEPT OF DISCIPLINING A WIFE.

A misunderstanding of the wife's discipline includes the husband's actions of physical, psychological or sexual violence, including beating and other harmful practices for the woman, as physical violence occurs by using sharp machines or hands, and this may amount to the degree of the husband's killing of his wife, or causing disability or deep wounds, or it may be Violence morally includes insulting the woman, insulting her, or ignoring her presence. (1)

The husband hitting his wife is one of the most hidden forms of violence against women, and it is widespread in all societies. "Women are subjected to abuse and severe beating, which constitutes a direct and explicit assault on human rights, which is stipulated in respecting the Universal Declaration of Human Rights, which came in its preamble (if For all members of the human family of inherent dignity in them and equal and inalienable rights that forms the basis of freedom, justice and peace in the world) as indicated by this.

The International Covenant on Civil and Political Rights in its Article (26) stipulates that (all people are equal before the law and enjoy without discrimination an equal right to enjoy its protection. In this regard, the law must prohibit any discrimination and ensure that all persons equally have effective protection from discrimination for any reason whatsoever. Such as race, color, sex, language, political or non-political opinion, national or social origin, or other reasons) (2)

Human rights organizations have expressed objections to the topic of the husband's right to discipline his wife if she considers it a form of discrimination against women on the basis that granting this right to the husband over his wife without the wife having over her husband is discrimination in the interest of the husband at the expense of his wife, and that restricting the disciplinary right to the husband On his wife, not on her husband, it is considered a practice that degrades the wife's dignity. (3)

As for the position of Islamic Sharia, we find that the husband's disciplining of his wife differed opinions regarding him, as some believe that this right is associated with certain conditions which is that his report by the legislator by virtue of his being the head of the family and that this right was not granted to his personal interest but because it represents in our Arab and Islamic culture a symbol Leadership in the family in order to achieve a more general and comprehensive interest, which is the interest of the family in preserving its unity and harmony, and then to achieve the interest of society, which derives its strength from the power of families in it (4). As for the other direction, he sees that discipline should be preceded by good advice, so if it does not work, abandonment will be done in bed, then it does not work. With it, exceeding that was a crime punishable according to conditions and results (5).

This is the most correct view of jurisprudence, since the husband's disciplining of his wife according to Islamic law must be with good advice and gentle treatment based on goodwill, so if that does not help, the second method is to be used, which is abandonment in the bed. If that does not work, then resorting to the last method, which is light beating is not Harmful that does not degrade the dignity and humanity of women and that the purpose of it as a whole is to preserve the unity of the family and its cohesion, and not to achieve a personal interest for the husband, as violence against women is one of the ugliest and most dangerous aspects of discrimination against her because of the deprivation of her rights and the penetration of her privacy and the psychological, physical and social consequences it causes Dire.

The second requirement: the position of the Iraqi and Lebanese legislator regarding the issue of disciplining the wife.

The Iraqi legislator stipulated in Chapter 4 of the Penal Code (No. 111 of 1969) that the right to discipline be used as a reason for legalization (6) as it was mentioned in Article (41) of it

(No crime if the act occurred using the right under the disciplinary measure and is considered a use of the right: 1- The husband disciplines his wife within the limits of what is prescribed by Sharia, law, or custom).

Dr. Dari Khalil believes that it was more appropriate for the Iraqi legislator to merely endorse the general principle of the use of the right without mentioning a picture, including the husband's right to discipline his wife (7) and the law requires that his discipline to achieve discipline is legitimate in itself as being derived from the origin of the right that you want to achieve, as it is not permissible to override it with any In any case, otherwise, the means is not appropriate, and its owner deserves to be punished without legalization, the penalty for not observing the limits of this right, in addition to the necessity of the following conditions:

- Having the right.
- The commitment of the limits prescribed by law in its use.
- A commitment to good faith in the use of the right.

It should be noted that the claims are still outstanding from NGOs for the purpose of adopting the law against domestic violence, which has been enacted since 2015 to reduce the phenomenon of violence against the wife in particular and the family in general, as the Iraqi criminal law may include provisions criminalizing physical abuse, but it did not include any explicit reference To domestic violence, however, the Iraqi parliament did not approve this law until now, unlike the situation in the Kurdistan Region of Iraq, as Parliament passed the Law against Family Violence in the Kurdistan Region No. (8) for the year 2011.

As for the position of the Iraqi judiciary, it has settled on important principles embodied in its decisions issued in this regard in which it restricted the use of this right and these principles were that the purpose of the husband's use of the right to discipline was to reform and correct the wife (8) In addition, he recognized that it is not permissible for the husband to insult his wife or insult him during He has disciplined her, and has forbidden the infringement of her body, such as cutting hair, wound, fracture, or harm that has an effect

In spite of the judiciary restricting the husband's right to discipline his wife, we believe that this position is not sufficient as it requires the cancellation of the legal text that requires that the husband's disciplining of his wife be one of the reasons for legalization, because the existence of this text has created clear and explicit discrimination against women and constitutes a violation of their rights as long as this It is justified for a man to discipline her without observing certain restrictions and without there being a specific penalty imposed on him in the event that he exceeds the legitimate limits and as the practical reality shows that the husband crossed the legal and legal limits that lead to a violation of the dignity of the woman as well as serious injury and in most cases Yan she died.

In Lebanon, it is difficult to estimate the true size of violence practiced by the husband over his wife, in 2009 statistics of the General Directorate of Internal Security indicated that there were (1302) cases of assault on women, including verbal and physical violence, and in 2017, (12) Lebanese women died, compared to (7) Women in 2016, and most of the cases were killed by the husband or ex-spouse or fiancée, in addition to beating, burning and torture. The battered woman also faces many difficulties due to her ignorance of the principles to be followed to file the complaint and the difficulty of obtaining a forensic report and its cost, as well as the lack of shelter for battered women to escape violence Her husband or when presenting Here is a complaint against him.

The Lebanese legislator did not provide a special text on the right to discipline a husband for his wife, as did the Iraqi legislator, nor did he provide a special text that addresses this type of violence. Rather, he merely mentioned general provisions related to the beating and abuse to which any male or female may be subjected (10), As it merged the provisions of abuse on the body of a battered woman with the provisions of abuse in general without singling out a special chapter for them and this is what called the Lebanese Authority for Violence against Women to the importance of the text of the penal law on provisions guaranteeing protection of the family from violence in implementation of the Lebanese constitution and the agreements concluded by Lebanon in this regard (11).

The second topic: Discrimination against women in the provisions of the crime of killing her, as a means of shame.

In order to find out what is meant by discrimination against women in the provisions of the crime of killing them for shame, we will clarify in this intended intention to wash shame, and then we will look at the position of Iraqi and Lebanese legislators regarding this crime.

The first requirement: the concept of washing shame.

The jurists differed in their statement of the meaning of shame, as some say that the word shame goes to the obscene and indecent acts committed by a woman, for shame is a defect that affects the honor of the human being or his consideration and dignity, a matter that requires a person to despise his family and the people of his people. (12)

While others go to define it as disgraceful immoral acts that occur in some societies and are considered noble emitters in them without other societies (13)

On the other hand, we find the term emitter or honorable motive known to the jurists as the passion that drives a person to commit a criminal act and is different from one crime to another, and even in one crime it may differ, as jealousy, fear, hatred, or love (killing mercy) may be a motive to The commission of the crime (14) and the motive is determined

Whether it is honest or slander according to the circumstances, circumstances and conditions of each society, as it differs from its reality to another, the emitter may be honest in the eyes of a certain society at a certain time, but it is not like that in another society or another time (15) so we find that the motivator to commit the crime is washing Shame may not involve a single concept even in societies

Asymmetric in its social value as Arab society, as punitive laws may not stipulate that the honorable emitter is considered a mitigating excuse and this is left to the discretionary authority to eliminate unlike other laws that stipulate that the honorable emitter is considered one of the general mitigating legal excuses for punishment such as the Iraqi and Lebanese penal law (16).

Therefore, the concept of killing a woman for shame may be an honorable emitter, as a certain society believes at a certain time, and it may be considered a slander emitter in another society or another time. The question that arises here is that killing a woman for shame is considered an honorable emitter in the Iraqi and Lebanese societies?

Punitive laws did not address that. Rather, estimating this matter is due to the discretionary authority of the judiciary. We find that the Iraqi judiciary issued many decisions that stipulated that the killing of a woman is a dishonor, and therefore a legal excuse reduced as the Iraqi Court of Cassation concluded that washing shame is

considered an excuse. Mitigating the death penalty legally as it indicated in another decision that if it is proven that the victim is bad behavior, then the motivator for killing her is honorable and the penalty is reduced according to Article 130 penalties, and that if the accused kills his cousin for practicing prostitution then his punishment is commuted in reason of Article 130 penalties and it came in a century The last year that killed harlot is a shame for Honor her family and her tribe, which emitter Sharif requires mitigation of punishment for the offender in accordance with Article 132 penalties as a circumstance mitigating judicial not a legal excuse. (17)

As for Lebanon, we find that the position of the Lebanese judiciary embodied by the decisions of the Lebanese Court of Cassation, which defined the honorable motivation as the motivation that is devoid of all selfishness and individualism, so that it is one of the abstract and general matters that occupy the entire society, and by which we mean an entire environment, and from this side it differs from what was customary to call it crimes Honor or revenge crimes in defense of honor, so we find that the Lebanese criminal courts have differentiated between the honorable motive and the killing in retaliation (for revenge). The Lebanese Court of Cassation went so far as (revenge, revenge for honor or discipline) is a selfish and personal motive and is not considered honorable, if the killing is a discipline For a girl who claims the murderer is her brother because she went out of the ordinary traditions, this is not an honorable motive and where the honorable motive is not where the intention of revenge, discipline or healing appears, but the cause must originally be due to an honorable cause in itself) (18) As the Criminal Court of Lebanon reported Al-Shamali stated in the content of its decision that (what is meant by the honorable motive stipulated in Article 193 penalties is that he who compelled the perpetrator to commit his crime is characterized by womanhood and magnanimity, and it is devoid of all selfishness and personal considerations and material benefit. Otherwise, he does not deviate from the motive concept stipulated in the aforementioned article is clear among the personal factors and as the principles The established legal opinion is that the honorable motive is due to the absolute authority of the court and in light of the facts of each case separately, and since the court does not see an honorable motive that led to the murder of the victim in order to apply the provisions of the article against the accused because the purpose of the killing as established in the investigation was based on considerations Personality, which is the disciplining of his adulterous sister and changed him over his family's reputation, so that his work is actually revenge because he considers his sister's misconduct a reflection of his personal reputation, and therefore this desire of the accused does not devote a good social or moral principle in order to be dyed by his honorable emitter. (19)

We believe that the Lebanese judiciary has rightly stated judgments when estimating that killing is an act of shame that should not have personal and selfish motives specific to the killer and we hope that the Iraqi judiciary will have a similar position to the Lebanese judiciary to reduce the killing of women motivated to wash unjustified shame only for personal interests and as a result of customs and traditions that are The victim is a woman, as the Iraqi judiciary has a different position regarding the same crimes, if the victim is a man, not a woman.

The second requirement // The position of the Iraqi and Lebanese legislator regarding the murder of women is a shame.

Article (409) of the Iraqi Penal Code No. 111 of 1969 in force stipulates that (he shall be punished by imprisonment for a period not exceeding three years from the surprise of his wife or one of his mahrams in the case of her committing adultery or being in a single bed with her partner, killing them on the spot or killing one of them or assaulting them Or one of them assaults that led to death or permanent disability ...) This text divided the

legal jurisprudence into several directions in its interpretation of this article. Some of them believe that the legislator did not give the right to the husband or the forbidden to kill his wife or one of his forbidden ones as punishment for her. Or for her lover, but because he was surprised by the appalling scene, which reduces his awareness and discrimination (20) When the other side considers that the dangerous provocation to which the husband and the mahram are exposed due to the fact that the act constitutes an attack on the offer of the husband or the mahram (21) and that this provocation is considered a mitigating excuse for the punishment, as it has reached a degree of seriousness, and this is due to the court.

The position of the Iraqi legislator regarding considering the husband's killing of his wife or the mahram is not one of his prohibition in the event of their adultery, constitutes a clear discrimination in the punishment of the woman without the man, as he specified the mitigating circumstance of the man in the event of that incident and did not stipulate that the wife's surprise for her husband who committed the crime of adultery and killed him or Beating him that led to his death is a mitigating excuse, while achieving this incident for women is also an element of surprise, provocation, loss of awareness and discrimination, as if the husband's act of marital infidelity is a justified excuse for assaulting him, therefore we call on the Iraqi legislator to amend this text as it came in violation of the Constitution of the Republic of Iraq, specifically the text of what Article (14) of it, which stipulates that (the Iraqis are equal before the law), in addition to the fact that the legislator directed a number of criticisms for him to include the man with this excuse without the woman towards the husband or the forbidden in the event he wears adultery, and some believe that despite the existence of the Iraqi constitution on Equality and attention of NGOs and Amnesty International to obligations in support of women's issues. Violations are still practiced in a marked manner, as the policy of violence and oppression against women exceeded in some of its harsh aspects the policy of the primitive Afghan Taliban government to eliminate women's rights as human beings with human rights. (22)

The existence of the punitive text that permitted the loss of the soul of girls and women by the husband or male relatives in the name of honor without any consequence to that, or any reduced punishment or punishment that is absolutely incompatible with its loss of the act committed against women.

Also, the Iraqi society's perception that women alone violate the sexual behavior law would destroy its system of honor. Women do not have the right, under society, to defend themselves if they are accused, and unlike the federal government's position on the issue, we find that the Kurdistan Regional Government has a position Better as she worked hard to curb the phenomenon of violence against women in the region. In 2002, the Iraqi Penal Code was amended and killings committed against women on the pretext of shame washing were considered premeditated and the perpetrator was sentenced to the most severe penalties, despite the region's government's position on the issue that Evidence of increased awareness The community in general and women in particular when they file legal cases and record the cases of violence they are exposed to, but statistics still indicate the high rates of violence directed against women under the pretext of washing shame. (23)

In Lebanon, we find that the punishment for these crimes went through two stages:

The first is before amending the text of Article (562) of the Lebanese Penal Code, as the above article stipulates that "the benefit of the excused case will take advantage of those who surprised his wife, one of his assets, branches, or sister in the crime of fornication or witnessed in the case of unlawful sexual intercourse, and then he killed one of them or harmed him without Whoever commits the perpetrator of the killing or harm from

the attenuated excuse if he surprised his wife, one of his assets, branches, or sister in a suspicious situation with another

This text constitutes a legal violation of the rights of women, as it clarifies injustice and duplication in dealing with men and women, it also constitutes discrimination against them and permits arbitrariness in the relationship of men to women and contradicts the text and spirit of the Lebanese constitution which affirms that "all Lebanese are equal to the law ..." and that this exists. The text represents one of the violations of the principle of equality for all citizens before the law, as this article is permissible and cannot be excused, and within specific conditions, the perpetrator of these crimes shall be exempt from punishment (24).

As for the second stage, which is the stage that was achieved after the social and women's movements launched a long struggle for the abolition of Article (562) of the Lebanese Penal Code, as the Administration and Justice Committee approved a draft law in which the substituted excuse was replaced by the attenuated excuse and the paragraph relating to the suspicious case was canceled and the text became as follows: "He takes advantage of the attenuated excuse of surprising his wife, one of his assets, branches, or sister in the crime of adultery.

Or in the case of unlawful sexual intercourse, proceed to kill one of them or harm him unintentionally. "Under this last amendment, (the excused excuse was replaced by the reduced excuse). The amendment gave the reduced excuse to the perpetrator of one of the aforementioned crimes and canceled the paragraph on the suspicious case and that the beneficiaries of the excuse are all of "The husband, the male branch, no matter how descended, the original male is important to the brother who commits the killing and harming of his sister," provided that the element of surprise is available and that the crime is committed immediately (25)

The existence of these texts in the Iraqi and Lebanese laws constitutes a clear and clear contradiction with the provisions of the Iraqi and Lebanese constitution that enshrined the principle of equality between all citizens. It also violates the Universal Declaration of Human Rights and its conventions to eliminate all forms of discrimination against women, which stipulates that all appropriate measures must be taken, including Legislative changes or amendments to existing laws, regulations, customs and practices that constitute discrimination against women. It was more appropriate for our Iraqi legislator to take effective action to amend or repeal texts that contradict the constitution and which violate women's rights.

The third topic // discrimination against women in the provisions of the crime of adultery.

The search for discrimination in the provisions of the crime of adultery requires recognition of the concept of adultery as well as an indication of the position of the Iraqi and Lebanese legislator on the subject.

The first requirement: the concept of the crime of adultery.

Adultery is one of the infamous acts that society denounces and forbids divine laws and punishes them with the most severe penalties, as it involves violating symptoms and assaulting the marital relationship and preserving human beings, and we find that Islamic law has organized sexual orientation in humans, male or female, with practical rules of saturation and an ethical system that regulates their legitimacy and order. The results of the solution, sacrifice, filiation, and inheritance (26)

As for the concept of adultery in Islamic law, it means every unlawful direct relationship between male and female, and this unlawful sexual initiation involves the mention of a female sexual intercourse a deliberate forbidden step, although the Islamic law jurists differed in the inclusion of the act of sodomy in the concept of

adultery (27), but the special provisions Adultery is common for both men and women, as the scope of criminalization and punishment includes both women and men.

VII. DISCUSSION

Dr. Abdel-Khaleq Al-Nawawi believes that there are significant differences in the punitive treatment between women and men in the crime of marital infidelity without being limited to adultery, as the crime of marital infidelity, which was called in punitive legislation, the crime of adultery is a special crime in the Arab punitive laws and the situation differs greatly in its meaning Its content and its punishment for the crime of adultery as stated in the provisions of Islamic Sharia. It is proven that the rules of Islamic Sharia have stipulated in the framework of adultery the complete equality between men and women in the scope of criminalization and punishment, and that most of the consideration that Islamic Sharia takes in the treatment The punishment between a man and a woman is that she differentiated between the extent of adultery, which is immune from the extent of adultery, which is not immunized, because the guardian has no excuse in committing this crime other than the unvaccinated for not marrying (28) just as the reason for the criminalization of adultery in the law differs from Islamic law, so the concept of adultery under Punitive laws mean sexual intercourse with a man or woman without a wife, and the law punishes the crime for protecting the marital relationship and because marriage is the basis of the family, which is the first cell in society, as most of the punitive laws indicate the violation of this crime to the family (29), but the punitive laws have been divided into Several sections in the punishment for this crime, we find N some difference between men committing this crime for the commission of women in while others refused to categorically distinguish between men and women and equality between them decided to impose the provisions of one without discrimination between them (30)

The second requirement: the position of the Iraqi and Lebanese legislator regarding the crime of adultery.

The Iraqi Penal Code stipulates in Article (377) of the Iraqi Penal Code No. 111 of 1969 amending in force that "1 - a woman who commits adultery shall be punished by imprisonment and who commits adultery, and the offender's knowledge is assumed that the marriage will take place unless it is proven from his side that he was not in a position to know about her 2 - and he is punished with the same penalty If the husband committed adultery in the marital home, "From this text, we find that the Iraqi legislator tends to differentiate between the man's committing this crime from the woman's committing to her, because the Iraqi legislator has decided the inequality between the man and the woman in the crime of adultery. In terms of the scope of criminalization, we find that the text of paragraph (1) of the article Above, it becomes clear that the three elements of the crime of adultery are adultery (Alo Intercourse, marriage by deed or verdict, criminal intent), as adultery is achieved by the wife through intercourse with her consent with other than her husband, i.e. complete sexual contact between her and a man other than her husband, so the crime is not achieved except by intercourse (31) and therefore there is no initiation of adultery (32) and sees some The fuqaha that the initiation can be accomplished in the crime of adultery and based on that to the text of Article (30) of the Iraqi Penal Code as long as the adultery was a misdemeanor, then proceeding with it is permissible (33).

For the occurrence of the crime whenever the other conditions are met and there is no difference in whether or not the pregnancy has been achieved, as the purpose of the imposition of the punishment is to protect the sanctity of marriage. (34)

As for the fulfillment of the second condition of marital or actual marriage, as it is necessary to achieve the crime of having a valid marriage contract, then the invalid or corrupt contract is not considered, and there is no punishment for the crime if there is no existing marital bond, then there is no fornication before marriage or the dissolution of the marital bond by death or divorce (35) Also, the crime is not complete by making all the mistakes

And the establishment of the marital bond, as it is necessary to have a criminal intent, which is the knowledge and will of the wife, or the crime is considered rape, so the criminal intent of the wife is negated, and in all cases, the motive for committing the crime is not counted, whether the motive is to obtain money or another emitter (36)

As for the position of the Iraqi legislator regarding the issue of adultery for the husband, the second paragraph of Article (377) of the Iraqi Penal Code No. 11 for the year 1969 amended to "punishes the same punishment for the husband if he committed adultery in the marital home" and this text has clarified the same conditions that are achieved in the crime of adultery of the wife except It is (intercourse) and the establishment of the marital bond as well as the criminal intent, but it added another pillar to achieve this crime, which is that the act was committed in (the marital home) and means in the marital home all the houses in which the spouses reside mostly and is not limited to where they are together in a house One is for them (apartment or other house in the resort or in the In) may be the work of the pair is Mstqrvi one place is here realized the crime if the act was committed in one of the above-mentioned places above (37)

It is clear from this paragraph that the Iraqi legislator mentioned an unacceptable distinction that included inequality in punishment between women and men, as it allows the husband to commit adultery in a non-marital home and there is no punishment for him if he does so and here the legislator creates negative results that include the impunity of the husband and leads to the absence of the crime of criminalizing adultery that is represented By protecting the wife's right to her husband's loyalty to her, sincerity must not be attached to the marital home, as it is considered a traitor, whether he committed adultery inside or outside the marital home (38)

As for the position of the Lebanese legislator regarding the punishment for adultery, it also differentiates between husband and wife. Article (487) stipulates that adulterous women shall be punished by imprisonment from three months to two years "As for Article (488) of the Lebanese Penal Code, it stipulates that" The husband is punished with imprisonment from one month to one year if he commits adultery in the marital home or his boyfriend took it openly in any place and the same penalty is imposed on the partner woman. (39) When the foregoing we find that the Lebanese legislator has a similarity with the Iraqi legislator in referring to a fourth condition to achieve the crime of adultery, but it is Adultery is in the marital home, but it also added to him taking the wife out loud, and this was not mentioned by the Iraqi legislator.

This text received many criticisms, as it exempts the husband from punishment in the event that he committed adultery outside the marital home and also if he committed adultery once with many women, so that none of them is considered a boyfriend for him, so he is not considered adultery, and thus we find that the Lebanese legislator did not achieve equality between women and men In this crime, conditions fulfilling the crime of adultery by the husband combined are difficult to verify in terms of reality, which leaves him unpunished in most cases. As for the married woman who committed the act of adultery, she is criminalized and inevitably punished even if she

committed it once and in a veiled manner (39) and by comparison between the direction of the legislators, we find that the direction of our legislator Closer to the right, but they are All the cases recounted clear distinction and unfair against women in favor of men.

VIII. CONCLUSION

After completing our research, we reached a number of the following results and recommendations:

First: the results

1- The Iraqi legislator and the Iraqi judiciary have settled on restricting the husband's right to discipline his wife, unlike in Lebanon, as the Lebanese legislator has not singled out a special chapter for crimes against a battered woman, but merged provisions for victimization with provisions for victimization on the body of a battered woman.

2- The Iraqi law stipulates a reduced sentence for anyone who destroys the spirit of girls and women by the husband and male relatives in the name of honor without resulting in any severe punishment, and this contributes to clear discrimination against Iraqi women. As for the Lebanese legislator, he worked to replace the (excused excuse Diluted) after many claims.

3- There is a clear distinction between the woman and the man in the punishment of the crime of adultery through the position of the Iraqi and Lebanese legislator, but the Iraqi legislator was the closest to the right when he added one condition for the crime of adultery to be committed, unlike the case in the position of the Lebanese legislator who approved conditions for the crime to be achieved from the difficulty achieved This is a clear discrimination against women.

4- Well, the legislator did in the Kurdistan Region of Iraq when he stipulated the amendment of the text on a reduced sentence for the perpetrator of the crime of washing shame to a severe punishment, in addition to adopting the Law against Domestic Violence in the Kurdistan Region No. 8 of 2011

Second: Recommendations

1- The necessity of speeding up the adoption of the law against domestic violence by the Iraqi parliament, like the Parliament of the Kurdistan Region of Iraq to reduce abuse against women and combat verbal and physical abuse, as it constitutes a necessity for women in particular and the family in general to increase cases of violence in the family, which leads to the disintegration of a basic building block of society Security, stability and the emergence of the new generation begin with the family, being the basic nucleus in society.

2- We call on the Iraqi legislator to amend the text contained in the Iraqi Penal Code, which provides for a reduction in punishment for males in the event of committing the crime of killing as a means of shame.

3- We call on the Iraqi legislator to equality with conditions that achieve the crime of adultery for the husband and wife and the abolition of the condition that the crime be realized for the husband when he committed adultery in the marital home, as it constitutes an allowance to be achieved outside the home to get rid of the punishment and this is a negative indication, as the family is based on an equal equation between The couple achieved mutual sincerity between them.

4- The necessity of holding educational sessions and awareness lectures that show the importance of respect for women within society as a whole and the family in particular by the competent authorities and departments and

civil society organizations and to move away from the authoritarian and masculine view and violence in all its forms towards women.

REFERENCES

1. Dr. Randa Al-Fakhry, Discrimination against Women in the Most Important International Conventions, A Comparative Study, Zain Human Rights Publications, Beirut, Lebanon, 2013, p. 85.
2. Dr. Randa Al-Fakhry, previous source, pp. 86-87.
3. Dr. Dari Khalil Mahmoud, The Difference of Criminal Protection between Men and Women in Arab Laws and Islamic Sharia, A Comparative Study, Ma'arif Al-Maaref, Alexandria, 2008, p. 110.
4. Dr. Mahmoud Naguib Hosni, Explaining the Penal Code, General Section, Sixth Edition, 1989, Arab Renaissance House Cairo, p. 100.
5. Dr. Dari Khalil Mahmoud, previous source, p. 110.
6. Article (41) of the Iraqi Penal Code No. 111 of 1969, as amended.
7. Dr. Dari Khalil Mahmoud, previous source, p. 99.
8. Dr. Dhanoon Ahmad Rajo, Explaining the Iraqi Penal Code, Part I, first edition, Dar Al-Nahda Al-Arabiya, Cairo, 1977, p. 266.
9. Resolutions 115 are discriminatory, the date of resolution 11/6/1974 and 1042 / discriminatory / 1973, date 21/8/1973, the set of judicial rulings, the second number, the seventh year 1977, pp. 273 and 274 mentioned by d. Dari Khalil Mahmoud, previous source, p. 110.
10. Dr. Randa Al-Fakhry, previous source, p. 89. See also the report issued by the Lebanese organization "Kafa" published in the German channel (DW) entitled Women victims of domestic violence on 01/26/2018.
11. Dr. Dari Khalil Mahmoud, previous source, p. 110.
12. .Dr. Ali Al-Sammak, The Criminal Encyclopedia of the Iraqi Criminal Judiciary, Part Three, First Edition, Al-Irshad Press, Baghdad 1966, p. 77.
13. Dr. Dari Khalil, previous source, p. 87.
14. Dr. Muhammad Marouf Abdullah, the researcher in the Iraqi Penal Code, a comparative study, a master's thesis drawn on the Runio, Baghdad University, 1975, p. 23.
15. Dr. Hassan al-Fakhani, Encyclopedia of Judiciary and Jurisprudence of the Arab Countries, Part One, The Arab House for Legal Encyclopedias, Cairo, 1977, p. 397.
16. Dr. Dari Khalil, previous source, p. 87.
17. The rule stated by Dr. Randa Al-Fakhry, previous source, p. 38.
18. Fadi Mughaizel and Abdul Sater Mirla, Honor Killings, Legal Study, The Joseph and Lawr Mughaizel Foundation, Beirut, Lebanon, 1999, p. 102.
19. Decisions 2174 / Felonies / 1973 Date of Resolution 19/11/1973 and 2077 / Felonies / 1973 of 4/4/1973 and 2968 / Felonies 1974 dated 16/1/1975 mentioned by Ibrahim Al-Mashhadi, Legal Principles in the Court of Cassation, pp. 54, 83 and 84.
20. Dr. Abdul Sattar Al-Jumaili, Blood Crimes, Crimes Against People, Part One, Second Edition, Dar Al-Salam Press, Baghdad, 1973, p. 320.

21. Dr. Mahmoud Naguib Hosni, Explanation of the Penal Code, The Special Section, Arab Renaissance House, Cairo, 1988, p. 396.
22. Dr. Munther Al-Fadl, Violations of women's rights in Iraq, article published on the website www.m.ahewar.org> s.asp
23. Abdul-Hamid Zebari Articles Violence Against Women in the Kurdistan Region of Iraq, published on the website <https://www.iraqhurr.org>>
24. Dr. Randa Al-Fakhry, previous source, p. 31.
25. Dr. Randa Al-Fakhry, Previous Source, P. 40.
26. Dr. Dari Khalil, previous source, p. 39.
27. Dr. Abdul Khaleq Al-Nawawi, Criminal Legislation in Islamic Sharia and Positive Law, Second Edition, Dar Al-Thaqafa, 1974, pp. 23-24.
28. Dr. Dari Khalil, Previous Source, p. 43
29. Dr. Dari Khalil, previous source, p. 26.
30. Dr. Tafkeh Abbas Tawfiq Al-Bustani, Women's Protection in Criminal Law, A Comparative Study, Zain Human Rights Publications, Beirut, Lebanon, First Edition, 2017, p. 106.
31. Ahmed Amin Bey, Explaining the National Penal Code, Volume II, 3rd Edition, The Arab Encyclopedia, Beirut, Lebanon, 1982, p. 668.
32. Dr. Tafkeh Abbas Tawfiq Al-Bustani, previous source, p. 108.
33. Dr. Mahmoud Najib Hosni, Explanation of the Penal Code, Special Section, previous source, p. 463.
34. Soldier Abdul-Malik, Criminal Encyclopedia, Part 4, Legal Literature House, Beirut, Lebanon, 1941, p. 71.
35. Ahmad Amin, Explanation of the Penal Code, Special Section, 3rd Edition, Al-Nahda Library, Baghdad, without a year of printing, p. 496.
36. Dr. Mahmoud Mahmoud Mustafa, Explanation of the Penal Code, The Special Section, Eighth Edition, Cairo University Press, 1984, p. 343.
37. Dr. Mahmoud Najib Hosni, Explanation of the Penal Code, Special Section, previous source, p. 492
38. Laure Moghaizel, Know Your Rights at Work, Second Edition, edited by Fadi Moghaizel, 2001, Lebanese Association for Human Rights, Beirut, p. 194. Sources // First: legal books.
39. Ibrahim Al-Mashhadi, The Legal Principles in the Court of Cassation, Baghdad, without a year of printing
40. Ahmed Amin Bey, Explaining the National Penal Code, Volume II, 3rd Edition, The Arab Encyclopedia, Beirut, Lebanon, 1982.
41. Ahmed Amin, Explanation of the Penal Code, Special Section, 3rd Edition, Al-Nahda Office, Baghdad, without a year of printing.
42. Dr. Abbas Tawfiq Al-Bustani, Protection of Women in Criminal Law, Comparative Study, Zain Human Rights Publications, Beirut, Lebanon, first edition, 2017.
43. Soldier Abdul-Malik, Criminal Encyclopedia, Part 4, Legal Literature House, Beirut, Lebanon, 1941.
44. Dr. Hassan al-Fakhani, Encyclopedia of Judiciary and Jurisprudence of the Arab Countries, Part One, The Arab House for Legal Encyclopedias, Cairo, 1977.
45. Dr. Dhanun Ahmad Ahmad Rajo, Explaining the Iraqi Penal Code, Part I, first edition, Dar Al-Nahda Al-Arabiya, Cairo, 1977.

46. Dr. Randa Al-Fakhry, Discrimination against Women in the Leading International Agreements, A Comparative Study, Zain Human Rights Publications, Beirut, Lebanon, 2013.
47. Dr. Dari Khalil Mahmoud, Difference in Criminal Protection between Men and Women in Arab Laws and Islamic Sharia, Comparative Study, Origin of Knowledge, Alexandria, 2008.
48. Dr. Abdel-Khaleq Al-Nawawi, Criminal Legislation in Islamic Sharia and Positive Law, Second Edition, Dar Al-Thaqafa, 1974.
49. Dr. Abdul Sattar Al-Jumaili, Blood Crimes, Crimes Against People, Part One, Second Edition, Dar Al-Salam Press, Baghdad, 1973.
50. Dr. Ali Al-Sammak, The Criminal Encyclopedia of the Iraqi Criminal Judiciary, Part Three, First Edition, Al-Irshad Press, Baghdad 1966.
51. Fadi Moghaizel and Abdul Sater Merlla, Honor Killings, Legal Study, Founder Joseph and Lawr Moghaizel, Beirut, Lebanon, 1999.
52. Laure Moghaizel, Know Your Rights at Work, Second Edition, prepared by Fadi Moghaizel, Lebanese Society for Human Rights, Beirut, 2001.
53. Dr. Mahmoud Mahmoud Mustafa, Explanation of the Penal Code, The Special Section, Eighth Edition, Cairo University Press, 1984
54. Dr. Mahmoud Naguib Hosni, Explanation of the Penal Code, Special Section, Arab Renaissance House, Cairo, 1988.
55. Dr. Mahmoud Naguib Hosni, Explanation of the Penal Code, General Section, Sixth Edition, Arab Renaissance House Cairo 1989.
56. Dr.. Muhammad Marouf Abdullah, the researcher in the Iraqi Penal Code, a comparative study, a master's thesis drawn on a runio machine, University of Baghdad, 1975
57. Dr. Abdul Hamid Zebari Articles Violence against women in the Kurdistan Region of Iraq, published on the website <https://www.iraqhurr.org>>
58. Munther Al-Fadl, Violations of women's rights in Iraq, article published on the website www.m.ahewar.org> s.asp
59. The Constitution of the Republic of Iraq for the year 2005.
60. The Lebanese Constitution of 1926 as amended.
61. Iraqi Penal Code No. 111 of 1969, as amended.
62. The Lebanese Penal Code No. 1960, as amended.
63. The Law against Domestic Violence in the Kurdistan Region No. 8 of 2011.