



The Intersection of Socio-Cultural System and Legislation: Family
Protection Laws in Palestine and Gender Equality

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ABSTRACT

Arabic and Muslim societies still fear every new proposition or change that could lead to the enhancement of women’s economic liberation or could undermine male domination over women. The social and religious panic associated with the proposed law on “Family Protection Law from Violence” that has been witnessed in Palestine, is a clear illustration of this fear. **Objective:** The aim of this study is to examine the impact that religious and social culture has on promulgating new laws that are directly connected to issues of women’s rights and gender equality in the Muslim community, where Palestine is the example case of an Arab Muslim society. To do this, **Methodology:** primary and secondary data, including official statistics on the rates of domestic violence, have been collected to illustrate the importance of promulgating a family protection law from violence, and to provide an analytical view on the argument for, and against, such promulgation. Accordingly, this Article will show that

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debates against promulgating family protection law were primarily subject to the patriarchal society which has developed an ethical and cultural system that attempts to contain women and control their power. **Results:** Results indicate that family protection from violence and liberation of women depends on enhancing women's economic empowerment as well as encouraging social acceptance to such empowerment through providing public awareness of its importance and necessity.

Keywords: Domestic Violence, Economic Liberation, Family Protection, Gender Equality, Muslim Society, Women's Rights.

تقاطع النظام الاجتماعي والثقافي مع التشريعات: قوانين حماية الأسرة في فلسطين والمساواة بين الجنسين

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ملخص

لا تزال المجتمعات العربية والإسلامية تخشى من أي طرح أو تغيير جديد قد يؤدي إلى تعزيز التحرر الاقتصادي للمرأة أو قد يؤدي إلى تقويض هيمنة السلطة الذكورية، حيث تمثل حالة الهلع الاجتماعي والديني الذي صاحب قانون "قانون حماية الأسرة من العنف" المقترح في فلسطين أبرز الأدلة الواضحة على هذا الخوف. **الهدف:** يهدف هذا البحث إلى دراسة تأثير الثقافة الدينية والاجتماعية على إصدار قوانين جديدة ترتبط ارتباطاً مباشراً بقضايا حقوق المرأة والمساواة بين الجنسين في المجتمع الإسلامي، حيث تمثل فلسطين نموذجاً لعموم المجتمع العربي والإسلامي. وللقيام بذلك، **المنهج:** تم جمع البيانات الأولية والثانوية، بما في ذلك الإحصاءات الرسمية عن معدلات العنف الأسري، لتوضيح أهمية إصدار قانون حماية الأسرة من العنف، وتقديم رؤية تحليلية حول الحجج المؤيدة والمعارضة لإصدار القانون. وعليه، سيناقش هذا البحث الجدل الدائر حول إصدار قانون حماية الأسرة، ويوضح كيف أثر المجتمع الأبوي، الذي طور نظاماً أخلاقياً وثقافياً لاحتواء المرأة، على ذلك الجدل. **النتائج:** تشير النتائج التي توصلت إليها هذا البحث إلى أن حماية الأسرة من العنف يعتمد بشكل أساسي على تعزيز التمكين الاقتصادي للمرأة وكذلك تشجيع القبول الاجتماعي لهذا التمكين من خلال توفير الوعي العام بأهميته وضرورته.

الكلمات المفتاحية: العنف الأسري، التحرر الاقتصادي، حماية الأسرة، المساواة بين الجنسين، المجتمع المسلم، حقوق المرأة.

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Introduction

The Palestinian social and legal debate regarding the proposed bill, “Family Protection Law from Violence”, has escalated in the last three years after it was approved following its first reading during the Council of Ministers Meeting on 11th May 2020. (Ismail & Abdel Abdullah., 2020) Immediately after the draft was leaked to the media and social networks, it was accompanied by an opposition campaign, where Palestinian tribes and religious leaders, especially Muslim Scholars or *ulama*, who are known to have specialist knowledge of Islamic sacred law and theology, took the lead in criticizing the draft. They claimed that the text of the draft was driven from the CEDAW agreement and that this agreement "contradicts Islamic law" (Quds, 2020). Conversely, human rights and women’s organizations intensified their activism and pressure to pass the bill in light of the rising rates of violence against women. (Hattab M. K., 2020)

Palestine is not the only Arabic or Muslim country where its government faces implicit social and religious protests when trying to promulgate or implement any law that empowers women or gives them legal or social equality. (Bydoon, 2011, p. 52) The pressing patriarchy in Arab society, which is supported by the traditional reading of Islamic rules and teaching, has created a social and cultural presumption that violence against women or children must remain a purely family matter and that it should therefore be dealt with and resolved within the nuclear family or, at most, within the extended family (Nimri, 2016; Wattad & Buder, 2013) Hence, most Arab countries neglect to refer to gender-based violence and domestic violence in their legal systems and jurisprudence, with only a few managing to pass special laws to protect women from domestic violence, albeit on a very limited scale⁽¹⁾.

(1) These countries are Jordan, Saudi Arabia, Lebanon, Algeria, and Bahrain., while the United Arab Emirates, Yemen and Tunisia allocate specific provisions in the Penal Code that address this issue (Nimri, 2016).

However, as will be shown below, the overwhelming effect of the actions and opinions of the Muslim religious scholars and clerics on the social and popular mood in Palestine has been to slow the process of promulgating the law on family protection from violence. Palestine provides an example of the Arab social and cultural debate regarding women's issues, where the debate on any proposed law to protect the family, especially women, from all forms of violence, is not predominantly based on legal discussion to enhance the law. Instead, debate is focused on the purpose of the law and its values where opponents, who are mainly Muslim religious scholars and clerics, rely upon populist demagoguery and moral-phobia to form a public view that the law on domestic violence is a threat to societal values and Islamic morals and principles.

Accordingly, the effort of the government and women's organizations to pass a new legislation to protect family members, especially women and children, from domestic violence, has been shaken by several factors which have forced the government to delay the enactment of the law. As this article will argue, religion and the socio-cultural domains of Palestinian society have been the two main factors that have resulted in the postponement of enforcement of the bill. To understand this, we must first provide a historical background on the legal process, discuss the extent and effects of religion and socio-cultural domains in Palestinian society when passing or pending any legal changes that may affect Palestinian families or cultural norms, and, finally, consider the main Articles of the draft, especially those which created public debate and were most controversial.

Historical Backgrounds

The idea of preparing a draft law to protect the family from violence originated in approximately 2004, after discussions between women's and civil society organizations, representatives of political parties, and specialists in legal and social welfare. (Sada, 2020) Beside the need to provide protection for women and children from domestic violence, and enhance their access to justice, these discussions were also aimed at tackling and combating discrimination against women that might be found in Palestinian law or within social and cultural common practices. (Inabi, 2021)

In 2008 a draft law to protect the family from domestic violence was announced. It was to be presented for community discussion following a national conference which was held in December 2008 under the name, "Towards the Adoption of the Family Protection from Violence Law", and which was attended by different civil society institutions, women's organizations, members of political parties, and the Ministry of Women's Affairs. (UPWC, 2020) The draft law was followed by many other drafts and proposed laws for the same purpose. (Ismail & Abdel Abdullah., 2020) This resulted in an increase in pressure on the government by women's and human rights organizations to adopt such a law, especially after Palestine joined a series of international treaties and conventions in April 2014, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁽¹⁾ without any reservations concerning its articles and clauses. This meant that Palestine was committed to all provisions, articles and texts of the international convention and its charters in the field of equality and non-discrimination between women and men, as well as the obligation to take all means and measures to prohibit discrimination against women and to work to combat it. (UN-CEDAW, 2017, p. 3) While CEDAW convention is not the central focus of this Article, but it must be stated that the convention has been viewed by most Muslim religious scholars around Arabic countries as anti-Islamic values and plainly contradict with Islam. (Englehart & Miller, 2014, pp. 22-24)

The former Council of Ministers, led by the seventeenth government headed by Dr. Rami Hamdallah, attempted to implement the law when it referred the draft law to the President for promulgation. However, the law

(1) The Convention is an international treaty adopted by the General Committee of the United Nations in 1979. Its most important output is equal rights between men and women, and the signatory states to take all appropriate measures to eliminate discrimination against women by persons, organizations or enterprises and to establish tribunals and other public institutions to ensure the effective protection of women against discrimination. The convention is published at the UN official website at the following link: <https://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

was not issued by the Palestinian President since the former government, at the time of passing the law to the President, was a caretaker government which, under the Palestinian constitution, had no right to refer bills to the President. (Miftah, 2019) Under the current government, which was formed in 2019, the draft family protection law was subject to additional reviews and amendments due to the participation of civil society and women's institutions. The pressure on the government from women's organizations and human rights activists increased in late 2019 after the tragic death of a young Palestinian girl, Israa Ghayeb, who had been subject to many forms of physical violence and was reportedly beaten to death. (Oppenheim, 2019) Her death sparked Palestinian protests and vast condemnation through social networks and media. Following this incident, the Ministry of Women's Affairs pledged, through its Minister, Mrs. Amal Hamad, that the government would speed up its process to implement the new law against domestic violence. (Wattan, 2019) The Council of Ministers approved the draft in May 2020 whereupon, immediately after it was leaked to the media, tribal leaders, Muslim religious scholars and clerics took the lead in criticizing the draft, claiming that the text was derived from the CEDAW agreement which "contradicts Islamic law". (Quds, 2020)

The Debate Concerning the Legal Necessity of the Draft

As explained above, the Council of Ministers approved the draft law on family protection against violence after its first reading in May 2020. The draft must pass a total of three readings before it will be sent to the President for promulgation approval. Once approved by the President as a Decree, it will be published in the Palestine Gazette ⁽¹⁾. This process has been in place since 2007 due to the ongoing conflict between the two main Palestinian political parties that has resulted in the formation of two

(1) Under Article (116) of the Amended Basic Law (2003) it states that laws "...shall be published immediately in the Official Gazette. These laws shall come into force thirty (30) days from the date of their publication, unless the law states otherwise". <https://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law>. See further (Brown N. J., 2000).

separate political and executive authorities, one in the Gaza Strip, controlled by the Hamas party, and the other in West Bank which has remained under the administration of the Palestinian official authority lead by the Fatah Party. (Milton-Edwards, 2008, p. 1585) Accordingly, the activities of the Palestinian Legislative Council (PLC) were suspended following a Presidential Decree declaring a state of emergency⁽¹⁾. Thereafter, on 12th December 2018, the Palestinian Constitutional Court decided in its interpretative decision No. (10/2018) to dissolve the Legislative Council. (Dodeen, 2019, pp. 460-461)

Conversely, the Palestinian Basic Law allows the President during state of emergency, and when the Legislative Council is not in session, to issue decrees that have the power of law, but only “in cases of necessity that cannot be delayed”⁽²⁾. Consequently, the first attack on the draft Family Protection Law by those who opposed it has been that the draft is not a necessity that cannot be delayed, and hence its enactment is unconstitutional. This argument is based on the fact that the rates of domestic violence in Palestine are decreasing and, in all cases, such crimes are minimal within Palestinian society. (Maan, 2020) These views were rejected by both women organizations and human rights activists who relied on official data and statistics that showed that protection against domestic violence was undeniably necessary and must be promptly promulgated. (Al-Asaad, 2020)

To elaborate, the Palestinian Central Bureau of Statistics showed, in its official annual report (PCBS, 2019), that 27.2% of married or previously married women were subjected to some form of violence from their husbands at least once, and that 60.1% of them preferred to remain completely silent about it, with only 1% of them reporting it to the police or the Family Protection Unit to get help or file a complaint. The above

(1) The Presidential Decree on suspending work in provisions of articles in the amended Basic Law, issued on 14 June 2007. <https://web.archive.org/web/20071012102508/http://jmcc.org/goodgovern/07/eng/presidentdecrees07.htm>. See further, (Brown E. , 2005)

(2) Article 43.

data raised the alarm that the government must act promptly to eliminate domestic violence. In his response on this issue, the Minister of Social Development stated that the number of assaulted women who registered with the Ministry for having been subjected to various forms of violence had reached over 350 cases in Palestine. (Wafa, 2021) These figures, therefore, confirm the need and necessity to promulgate the Family Protection Law.

The Issue of CEDAW

Opponents claimed that the draft is in parallel with the CEDAW convention which calls for the elimination of all forms of discrimination and gender inequality, including an amendment to the Palestinian Personal Status Law that is currently based in Islamic law. Hence, they argued that the draft's aim was to comply with the CEDAW and its values, rather than with Islamic teaching and rules. In general terms, Muslim religious scholars and *ulama* have been arguing throughout the last decade that Islam addresses men and women equally, and that Islam "gave women spiritual, social, political, and economic rights centuries before western societies did". (Sidani, 2005, p. 502) However, their views and opinions of women and their role within society begin to emerge when details are presented. (Mahamid, Hattab, & Berte, 2023) While the vast majority of them agree on issues such as a woman's right to education and work, (Hreish, Alsafadi, & Salman, 2015; Salameh, Dawas, & Qarawi, 2024) only a handful of them would accept that women have equal rights in complex areas such as marriage and divorce, inheritance, and a woman's right to refuse sexual relations with their spouse. It is almost unanimous among Muslim scholars in Palestine, and among most of Arabic and Muslim society, to refuse any changes to the Personal Status Law that would give equal right to these former issues. (Bara, Muhammad, & Sani, 2019, pp. 46-47) There are also solid objections to the passing of any legal code or article that relates to marital rape, or that would deny the guardianship of men over women in general, or the guardianship of a husband over his wife and children in particular. (Susila, 2013, p. 146)

The traditional views of Muslim scholars regarding women have been used by some men as a shield to cover their toxic masculinity, (Pearson,

2019, pp. 1252-9) whereas other men use these views to protect their role in the family, to keep their hierarchy of control, or to defend their share of possession over women. In contrast, the vast majority of Palestinian and Arabic women would accept the guardianship of men, and even refuse to pass any law that gives them equality regarding the above complex issues, (Cherayi & Jose, 2016, p. 251) due to the influence of the traditional views of Muslim scholars and the effect of the patriarchal culture on their education and role in society. (Alexander & Welzel, 2011, pp. 250-207)

However, it does not follow that all Muslim religious scholars accept these traditional views regarding women. There are some enlightened scholars, although still limited in numbers, who have argued that Islam should be interpreted in compliance with a modern understanding of human rights and gender equality. (Hattab & Abualrob, 2023) For example, Dr. Shahrour attempted to modernize the rule of Islam by interpreting the text of the Quran to meet the international standard on human rights, stating that men and women should have equal rights to marriage, divorce, guardianship, and inheritance. (Shahrour, 2000) In Palestine, the lecturer on Islamic law and member of the Association of Muslim Scholars, Dr. Bilal Zarina, pointed out that the draft law does not contradict the texts of Islamic law. (Nissa, 2020) He also considered the statement issued by the Association of Islamic Scholars in Palestine, which rejected the draft law due to its alleged contradiction of Islamic law, to be incorrect. Dr Zarina stated that the Personal Status Law is based on jurisprudential interpretations that are not agreed upon among scholars (*ulama*), meaning that it is subject to change and development in order to meet the modern needs of society. (Nissa, 2020)

Aim and Scope of the Draft

Article (3) of the draft states that the law aims to achieve a number of goals in order to protect victims of domestic violence, and act in their best interests. These include preserving family unity and harmony in Palestinian society, and providing victims of domestic violence with psychological, physical and economical rehabilitation so that they can reintegrate into society. As will be explained further below, in order to achieve these aims, the draft provides, in its subsequent articles, the

methods and procedures that must be implemented by the Ministry of Social Development, the police, the general Prosecution, the courts, and other relevant authorities.

Article (4) details the scope of the protection provided and the meaning of 'protected family members', which includes: a husband and wife; members of the family who have a blood or kinship relationship up to the third degree; workers or servants of the household; and any person linked to the family through adoption (for Christians) and surrogate families or foster care (for Muslims).

While paragraph 1 of Article (4) states that family includes a husband and wife who form or who are in a marriage relationship, which clearly indicates that the marriage relationship must be comprised of a male and female, Islamic scholars and clerics have criticized the provision for not stating that the marriage relationship must be formed in accordance with the Personal Status Law and by obtaining an official Marriage Certificate. (Abu-Sneina, 2020) According to their view, the provision allows and even encourages same sex marriage, which is prohibited by Islamic and Christian rules and values. In our view, this criticism has no legal or linguistic grounds, and has instead been raised as social and political propaganda designed to form and encourage popular objection against the law. The provision states the word 'husband' in its terms. In the Arabic language, this word is a masculine noun that can only be used to mean a male spouse; conversely, the term 'wife' is a feminine noun that can only be used to describe a female spouse. Further, in Article (2), the draft states that all Articles and provisions of the draft law must be read and interpreted in connection with other laws already in force; this means that the word 'marriage' must be defined in accordance with the Personal Status Law which clearly states that a marriage can only be between a man and a woman i.e. those of the opposite sex⁽¹⁾.

(1) Article (2) of the Personal Status Law states that "marriage is a contract between a man and a woman to form a family and produce offspring between them.

Although the issue of the rights of homosexuals is outside the scope of this article, and will therefore not be discussed in detail, it should be mentioned that, in almost all Arab and Muslim societies, the issue of homosexuals and their associated rights, is still a taboo subject. Indeed, there are many countries where homosexuality is still considered illegal and where it remains punishable. (Rehman & Polymenopoulou, 2013, pp. 2-8) Muslims oppose homosexuality due to the traditional interpretation of Islamic rules, as well as the traditional socio-cultural system, that considers the issue to be a freely made choice by a person in order to fulfill their sinful and anomalous desire. (Glas & Niels , 2021) Muslims societies oppose homosexuality due to the traditional interpretation of Islamic rules, as well as the traditional socio-cultural system, that considers the issue to be a freely made choice by a person in order to fulfill their sinful and anomalous desire,⁽¹⁾ to raise an objection against any legal changes on family or women status, and to backfire against any call by feminists and human right activists who calls for gender equality or seek changes to the traditional interpretation of Islam on women and other controversial issues.

Interpretation of the Draft's Main Terms

Article 1 provides interpretations and definitions of the most important terms used in the draft, most notably the meaning of 'family violence'. The draft defines this as, "any act or failure to act by a family member against another family member that causes physical or psychological harm". It also includes the "exploitation of physical, psychological and sexual treatment, or sexual or economic abuse, or forced labor, or the threat of these acts, whether the act or threat occurred within the family home or outside it". However, opponents to the draft law criticize the definition for being too broad and vague, with the words "failure to act" in particular alleged to be ambiguous. Their view is that violence cannot be a negative

(1) According to a survey conducted by BBC News Arabic in 2019, acceptance of homosexuality is extremely low across the Arab region. See BBC News at <https://www.bbc.com/news/world-middle-east-48703377>. Accessed 3 March 2022.

act, but must instead be a positive act, whereby a person commits an act to cause harm or physical injury to someone else. (Al-Asaad, 2020)

It can be argued that the motive behind interpreting the term to include negative acts is due to some form of pre-existing duty whereby a failure to act can be criminalized or regarded as an act of domestic violence, i.e. looking after the health of children and providing food. (Perkins, 1936, p. 683) Furthermore, the draft considers it a negative act, which constitutes an act of domestic violence, to deny or prohibit a family member from their economic rights, including a prohibition on working, the concealment of a right of inheritance, or retaining a person's possessions, shares or entitlements.

Nevertheless, the argument about including or excluding a failure to act from the definition of 'domestic violence' does not, in our view, provide any legal difference, since any negative act which constitutes a harm is commonly a positive act. (Kleinig, 1986, pp. 161-163) For the avoidance of doubt, we suggest an amendment to the definition of 'family violence' in the following terms; "any behavior or attitude by a family member against another family member..." as this amendment would prevent any ambiguity and provide a broader term which could include all forms of acts⁽¹⁾.

Economic violence

In Article (1) of the draft there is a specific definition for the term, 'economic violence'. This is described as; "prohibition from work, or forcing labor (exploitation), or controlling its returns and remuneration". It also includes, "any control over property and inheritance rights, or

(1) While some countries, who have domestic violence act, did not define the term in their act, but leaving its interpretation to the jurisprudence of the courts and legal scholars, (e.g. UK: Family Law Act 1996, Part IV Family Homes and Domestic Violence; Canada: Protection Against Family Violence Act, RSA 2000; and Tuvalu: Family Protection and Domestic Violence Act 2014), other counties have used the term "behavior" instead of "act" (e.g. Australia; Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011).

concealment of money, or control over any movable or immovable property shared, or prohibition from using or disposing of it”.

Critics of the law argued that the term ‘forced labor’ (exploitation), which was used in the interpretation of the ‘domestic violence’ provision as well as in the interpretation of ‘economic violence’, is vague and ambiguous. They argued that the term could be interpreted too widely to the extent that it could include normal parental acts such as a request by a parent to his child to fulfill or help with normal household duties and needs. (Abu-Sneina, 2020)

The latter view, which has mainly been argued by Islamic scholars and clerics, appears to mix the terms, ‘exploitation’ or ‘forced labor’ with the term ‘chore’ and other routine tasks. In our opinion, this mix is due to their prejudicial perception that the law is an application of CEDAW, and consequently against Islamic teaching and Islamic values. As Dr. Hattab stated in his response to the above criticism, legal terms are not interpreted under conspiracy theories, but according to specific criteria and legal rules of interpretation. Therefore, the judges who would be looking at the provisions of the law would be governed by such procedures and would surely be affected by the Palestinian societal culture which they are members of. (Hattab M. K., 2020)

Another criticism regarding the definition was based on the view that criminalizing economic violence would undermine the role of parents in educating and raising their children, and would, accordingly, destroy family relationships, undermine Palestinian socio-cultural values and abolish Islamic morals and ethics. Their argument is based on the view that Palestinian culture gives parents full control over the type and place of work that their family member, but the law would allow a daughter or a sister to choose any work she wanted, including working in nightclubs, discos or bars. This work would not only bring shame on the family but also contradict Islamic values and teachings that oblige the father or guardian of a woman to take all necessary steps to prevent her from committing any sin or immoral act. Accordingly, they have argued that the law induces western and non-Islamic values, where parents or

guardians who try to stop a woman from acting sinfully or immorally, can be charged with economic violence (Omran, 2020).

It is notable that the arguments above, which have been put forward by Islamic scholars, tribal leaders and others who subscribe to a patriarchal masculine mentality, have focused solely on choices of work made by females, and their presumed behavior if given economic liberty. (Nissa, 2020) While the vast majority of cities, towns and villages in Palestine do not have any bars, nightclubs or similar industries due to the conservative culture and rooted Islamic values within Palestinian society, the connection between these industries and females, and the propaganda of associating some extreme examples of socially unacceptable behavior with the draft, indicates, in our view, two main factors. Firstly, there is a fear that those opposing the law have towards any call for gender equality. Secondly, there is the manipulation of Islamic law to generate popular opposition to any gender equality law, such as the draft, that intends to empower women towards economic liberation and material independency. (Mernissi, 1991, p. ix)

In our view, the scope of fear towards implementing equal economic rights, and the proposal to criminalize economic violence, is not limited to the traditional interpretation of Islamic text, nor to the socio-cultural perspectives on women, but is more importantly due to the fear that many have regarding how the law would negatively affect their own wealth and economic status (Hattab M. K., 2021). This can be easily detected from the Palestinian official data that confirms that over 37% of married or previously married women have been subjected to economic violence, making this category the second most common type of violence against women in Palestine. (PCBS, 2019, p. 20) Accordingly, criminalizing the control or prevention of property and inheriting rights, as provided in Article 40 of the law, would restrain the power of men who deny or aim to deny their family member of their economic rights.

When analyzing the reason why economic violence is the second most common type of violence, it is observed that the most common type of violence within this category relates to issues of inheritance and the right of possession. Many Palestinian women, when they have required or

insisted upon claiming their right of possession and/or their share of an inheritance, face many problems and obstacles including both psychological and physical violence. On some occasions this violence has amounted to the killing of women, who have insisted upon claiming their property and inheritance, by their brothers or other relatives who would normally justify their crime of murder on the ground of protecting the family “honor”. (Atma, 2019)

The term ‘honor’ has been socially and legally assimilated as a supreme value in patriarchal societies. (Cooney, 2014, p. 415) In addition to the difficulties that women face in Palestine with regard to Palestinian culture and custom, access to justice and the complex procedures in Palestinian courts, which include significant effort and high legal costs, makes women hesitant to pursue any legal claim for their economic rights before the courts. (Barghouti, 2020)

To explore this further, the right to inheritance in Palestine is subject to the Personal Status Law and its Amendments No. 61 of 1976, a law that is considered by many feminist and human rights activists to be discriminatory against women due to inheritance not being divided on the basis of equality, with men enjoying a greater share. (Al-haq, 2015) Nonetheless, according to a statement made by the Minister of Women's Affairs in 2019, only 3% of the women in the Palestinian territories received their share of the inheritance through court process. (Atma, 2019) Accordingly, the importance of criminalizing economic violence, in our view, is not limited to the fact that controlling inheritance rights, or depriving women of their inheritance rights, is the second most common domestic violence against women in Palestine, but also because of the absence of legal texts or codes criminalizing cases of fraud and coercion practiced by a family member against women or children in order to deprive them of their inheritance rights. This is notwithstanding the absence of any penalty for those family members, especially in the case of fathers, husbands, or brothers, who deprive women and children of their possessions, wages and salaries, or their rightful share of any inheritance.

Notable, the matter of inheritance and equal succession rights is highly contentious, primarily due to its significant financial and economic

implications and its direct impact on the economic well-being of men (Mahamid, Hattab, & Berte, 2023). While this study cannot delve deeply into this issue, it is pertinent to summarize the prevailing stance in Palestine, where there is a reluctance to implement or amend Personal Status Laws to grant women equal inheritance rights. This reluctance stems from entrenched public opinion, which perceives such equality as conflicting with Sharia law. Nevertheless, some progressive Muslim scholars (Souaiaia, 2019) have proposed modern or alternative interpretations of Islamic texts that allow for reformation within Islam, thereby ensuring equal inheritance rights for both genders. The adoption of such views by Palestinian society hinges on their readiness to promote and disseminate the perspectives of modernist scholars through public education and advocacy efforts.

Psychological Violence

The official data shows that psychological violence is the most common type of violence against women in Palestine with 52.2% of currently or formerly married women being subjected to this type of violence. (PCBS, 2019, p. 24) It also shows that psychological violence is the most common type of domestic violence against children. For example, in 2019 the percentage of prevalence where psychological violence was the most common type of violence against children aged 11 and under by a family member or caregiver, was 44%. (PCBS., 2020, p. 104) The number of children aged 12-17 years who were exposed to physical violence from their father was 26%, with 63% suffering psychological violence. This compared to 24.8% who were subjected to physical violence from their mother, with 62% suffering psychological violence. (PCBS, 2019, pp. 28-31)

These figures confirm the need to have effective regulations in place to prevent and criminalize any sort of violence, especially psychological violence, against a family member. Hence, Article (1) of the draft interpreted the term, ‘psychological violence’ to mean “directing obscene words, threatening, menacing, insulting, humiliating, intimidating, slandering, defamation, or denigrating”. Article (43) stipulates that the penalty for anyone who commits psychological violence against a member

of his family will be imprisonment for a period of no less than three months, a fine, or both. The difficulty with the definition of psychological violence provided under the above articles, is the broad meaning it can have, as well as its ability to be interpreted in different ways. For example, the terms ‘insult’ and ‘threat’ in the Arabic language are broad and indeterminate, since they can include any word or behavior which can be viewed by society as mild or normal, as well as those that are considered to be extremely harsh or abusive.

To explore this further, the draft law does not distinguish between intentional or unintentional acts, nor does it set any clear boundaries between an inconsistent behavior and a pattern of abusive behavior being committed by a family member. Accordingly, under the above Articles, a parent may be imprisoned for attempting to correct the behavior of their children by way of a simple threat such as, “you will not be allowed to watch TV tonight” or, “you will not be allowed to play out today” where such words have an emotional effect on their child. Likewise, either a husband or wife could be imprisoned in the event that either of them says a sentence which includes a simple threat such as, “I will not go out with you”, or an insult such as, “you are heartless”, against the other whereby the spouse’s feelings are injured.

To overcome any ambiguity in the definition or interpretation of the term, we suggest that the draft should either abolish or amend its specific interpretation of “psychological violence”, as defined in Articles (1) and (43) of the draft, and either; give the court and jurisprudence enough flexibility to develop a pattern of what can or cannot constitute psychological domestic violence,⁽¹⁾ or amend the interpretation of the term in Article (1) so that it is in accordance with the Council of Europe report (2011) which defined it as, “reiterated words and acts aimed at or having the consequence of causing harm or putting the victim in a position of subjugation”. (Europe, 2011) The latter definition takes into account the intention of the aggressor and the impact on the victim, while confirming

(1) In the UK and US such method is used. See (Robinson, Pinchevsky, & Guthrie, 2016).

that psychological violence can take a wide range of forms including verbal abuse, intimidation, constant criticism, insults, and ridiculing, amongst many other forms.

Furthermore, the above amendments prevent ambiguity in the legal meaning of the term, especially in the Arabic language and its terminology, but yet provides a clear distinction between, on the one hand, common or unintentional behavior that is not meant to cause harm or abuse, and, on the other, domestic violence or abusive behavior that typically manifests as a pattern of abusive behavior towards a family member that seriously impairs his or her emotional health and psychological integrity.

Alternatively, the draft could take the middle ground between the above two suggestions by following Article (33) of the Istanbul Convention that defines psychological violence as; “intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats”. (Parliament, 2017) The offence of psychological violence set out in the Article limits its criminalization to any act that is subject to the combination of three elements: that which is intentional, regular and which causes psychological harm. While the elements are not defined and are open to interpretation, they allow courts and lawyers to evolve and include unlimited examples of behavior which can be characterized as ‘psychological violence’ as long as it contains the above three elements.

Sexual Harassment

Article (1) of the draft defines sexual harassment as, “Any harassing of others, by directing words, touching, or practicing actions, or indication that would harm the dignity of the victim, or infringe its modesty, or affect its privacy or feelings, with the aim of making the victim respond to the desires of the perpetrator of sexual violence, or the sexual desires of others, or practicing pressure on the victim to weaken its will so that it cannot confront those desires”. The definition was seen by some opponents to the draft as too broad, with the risk being that it could include simple or normal conduct between spouses or couples. According to their view, the definition should exclude marital relationships in order to avoid any confusion or misunderstanding of the term. Furthermore, opponents also

argued that Article (41), which deals with the criminal penalty of sexual harassment, was too general and interfered with family life in a way that violated the purpose of the draft law. According to Article (41) of the draft, harassment within the family includes, “any harassment that a person inflicts on his family members verbally, by touching, or gestures that would violate the victim's dignity, infringe its modesty, or breach its privacy or injure its feelings”. These are terms that are considered by some opponents to be an exaggeration of what constitutes sexual harassment, considering that the family relationship should bear ‘a degree of flexibility’ in this regard, especially between a wife and husband, and that a distinction should be made between normal or ‘acceptable behaviors’ and that which could constitute actual or impulsive ‘aggression’. (Omran, 2020)

In our view the term, as defined under Article (1) of the draft, clearly distinguishes between acceptable conduct, such as simple touching or foreplay between couples, and those acts that are plainly violent or considered harassment. The elements of what constitutes sexual harassment are clear and can be easily found in the definition provided under Article (1) of the draft. The first element is that the act of harassment is unwanted or unwelcome by the victim. The second element is that the conduct must amount to harm, and the third is that the aggressor’s aim and intention must be criminal or violent. Conversely, we suggest that the interpretation of the term, as stated in Article (41) of the draft, be removed due to it not fully reflecting the interpretation provided in Article (1), and that the term in the latter Article be retained as the broad and comprehensive definition.

Sexual Violence and Marital Rape

While Article (1) of the draft included in its definition of domestic violence any conduct of sexual treatment or sexual abuse by a family member against another family member, it did not define the term ‘sexual treatment’ or ‘sexual abuse’ with a specific interpretation, leaving this to jurisprudence and the explanation of courts and legal scholars. Nonetheless, Articles (292-301) of the Penal Code No. (16) of 1960, in force deals with issues of rape, which, under Article (2) of the draft,

remains applicable. Depending on the age, relationship and marital status of the female, the Penal Code stipulates a sentence of between at least 10 years' imprisonment up to a life sentence or even capital punishment for the rape of a female. Article (295) of the Penal Code deals with the crime of rape when the perpetrator is a parent/step-parent, a relative (*Mahram*),⁽¹⁾ a caretaker, a care giver, or someone who has legal guardianship of the victim. However, the Penal Code explicitly excludes marital rape from the definition of rape. This is due to the influence of the traditional school of Islamic thinking, which represents the vast majority of Muslim scholars, who consider it sinful for a wife to refuse her husband's sexual advances. (Ainunnisa Rezky, Andini Naulina, & Raditio Jati, 2020, pp. 133-134)

Nonetheless, under Article (42), martial rape and any form of sexual violence against a spouse is criminalized. This was greatly criticized by Islamic scholars and clerics who saw it as a westernized law and in opposition to Islamic rules. (Tønnessen, 2014, pp. 145-149) As explained above, the views of most Islamic scholars and *ulama* are that Islamic rules do not encourage the use of force or violence in order for a husband to have sex with his wife. However, although it is agreed that sexual activity should be enjoyed respectfully by both parties, they nonetheless make it clear that the husband has the privilege in sexual intercourse. Accordingly, Islamic teaching cannot accept the existence of marital rape (Susila, 2013, p. 145) This argument has not been accepted by other enlightened and modern Islamic scholars who argue that Islamic rules allow the state or its parliament to criminalize marital rape when it becomes necessary. (Al-Azm, 2021) Additional, feminists and human rights activists have welcomed the introduction of the concept of marital rape, and have argued that recognizing marital rape and sexual assault is obligatory on the state of Palestine in order to meet international standards, including principles laid out by CEDAW. (Maalouf, 2020) There is no clear or specific data regarding the number of women who have been exposed to marital rape by their husbands. However, according to official data published in 2011,

(1) Mahram: is a member of a person's family with whom marriage would be considered haram (illegal in Islam).

approximately 11.8% of women who had been or were currently married were exposed to sexual violence by their husbands. Two thirds of women who were exposed to some form of domestic violence preferred to keep silent, whilst the rate of women who were exposed to violence by their husbands and went to a women's institution or center soliciting advice did not exceed 0.7%. (PCBS, 2019, pp. 20-23) This data confirms the necessity of imposing a law that criminalizes all forms of sexual violence in the household, including marital rape.

The Role and Duty of Relevant Authorities

Under its Articles, the draft provides the duties and powers associated with the Ministry of Social Development, including the implementation of national policies, strategic plans and other programs to ensure the prevention of all forms of violence in the family, and to promote societal change against domestic violence. Under Article (5) of the draft, the Ministry shall provide the necessary training for those charged with implementing the provisions of the law in order to enable them to possess the necessary tools for intervention, mediation and the protection of victims of violence.

Further, the draft introduce for the first time the role of Family Protection Counsellors (FPC) who will be appointed by the Minister of Social Development, and has judicial enforcement power (Judicial Officer) which allows them authorities to facilitate, refer, govern, give direction and make decisions in regard to the application of the law.⁽¹⁾ It also provides the main duties and responsibilities of the FPC, which includes conducting interviews and/or investigation with individuals and families to assess any possible domestic violence situation. However, it has been argued by opponents that the role and responsibility of the FPC is too broad and that it gives the FPC great power to interfere in family issues that should only be left to the father or guardian of the family. (Nissa, 2020) Dr. Muhammad Abu Sneina, a judge at Islamic Sharia Court of Appeal and a critic of the draft law, criticizes the role of the FPC and

(1) Articles (7- 11)

argued that the draft allows the FPC to ask to remove a father or husband from his home if he has been reported for conducting any act, even if such an act is commonly regarded as normal or accepted behavior and does not constitute a crime. (Abu-Sneina, 2020)

In our view, these arguments against the role of the FPC do not reflect the true nature of the FPC's role and power. Article (10) of the draft clearly states that the FPC must ensure that any claim of domestic violence they receive is legitimate and, in the case of a threat to the life or health of a family member, they must act within 24 hours to ensure that the claim is legitimate. Any action or precaution designed to eliminate, restrict, or remove the aggressor from the family home must be issued by the police, the FPP, or the court. In all cases, any order or action against an aggressor can be challenged or appealed through the courts in accordance with the rules of court procedure.

The Family Protection Prosecution & Police

Furthermore, the draft provides that the relevant authority must form a special police force that deals with domestic violence cases, where its role, as stated in Article (12) includes, accepting "reports and complaints received regarding domestic violence crimes, and inform the Protection Counselor to take the necessary measures in accordance with the law". Additionally, Article (13) states that a specialized Family Protection Prosecution (FPP), which shall be a branch of the Public Prosecution, must be formed in order to follow and deal with all matters relating to family violence and the protection of the family from violence, to proceed with a full investigation of an alleged crime of domestic violence, and to take any necessary measures to protect the family and its members from the aggressor. Further, the FPP must represent the victim in the event that there is no one else able to represent them or if there is a conflict of interest with the victim's representative. In our view this provision is ambiguous and contradicts the Palestine Criminal Procedures Law. We accordingly suggest that the provision must clearly distinguish between the representation of a victim in cases in criminal procedures, where the FPP is the only entitled authority to represent the victim before the court, and representation of the victim in cases of civil matters and/or making a

request for protection, where the FPP can act as a representative of the victim in the event that there is no one else available to do so.

The draft also provides an important role for the FPP in cases when a victim needs protection. Under Article (18), all necessary measures must be taken “to protect the victims of violence or those who are threatened with it through Protection Orders issued by the Family Protection Prosecution or the competent judge”. Such an order can be obtained by the police in the event that the police fear a threat to the life or health of the victim. The order can also be issued by the FPP during the investigatory procedures conducted by the FPP, or throughout a trial or court proceeding, after assessing the level of risk regarding the safety of the victim⁽¹⁾.

Some critics find this Article harsh in allowing the police to issue an order which can prohibit a father or guardian of the family from entering his home without the consent of a relevant court or competent judge (Omran, 2020) In their view there can be many malicious or vexatious accusations, especially since the law (under Article 15) allows any member of the public, a Family Protection Counselor, a member of the family, or a sponsor of the family, to report any incident or crime of family violence to the relevant authority or to the police. As a result, anyone who is not part of the family can cause hardship to the accused, or any other member of the family, by simply reporting an allegation to the police. This is highlighted by the fact that Article (17) provides full protection to any person who reports to the authorities or the police a crime of domestic violence, or files a complaint with the police against any family member for family violence. (Abu-Sneina, 2020)

In our view, this argument does not legally stand, since the law does not give the police or the FPP unconditional power to prevent the aggressor from entering his family home. The order, when obtained by the police or issued by the FPP under the draft, is subject to normal criminal procedures, which are always subject to the court’s approval or disapproval. The only

(1) Article (20) of the draft.

exception to the above is the power given to the FPP to take precautionary measures, for as short a period of time as possible, in order to ensure the safety of any family member whose health or life can be undermined. Any further or alternative action, including arrest, investigation, integration or detention must be made by the police, the relevant prosecutor, or the court in accordance with the law, namely the Palestinian Criminal Procedures Law and its amendments.

In addition, under Article (21), the draft states that the FPP must ensure that any received complaints or claims of domestic violence are not made for malicious reasons. It does not, however, state how this can be achieved or how the FPP can make such an assurance nor enact any punishment against those who make a malicious claim. This may therefore leave the issue to be considered under Article (210) of the Penal Code which states that, anyone who knowingly makes a false complaint or a written report tending to show that an offence has been committed, or fabricates material evidence indicating the occurrence of such an offense, shall be punished by imprisonment from one week to three years.

Conversely, the draft makes it compulsory, under Article (16), for anyone who works in the health sector, education sector, or in social or legal services, whether in the public or private sector, to report to the FPS or the police, “upon her or his knowledge, by virtue of his work, of the occurrence of any of the crimes of domestic violence specified in this law”. A person who works in any of the above sectors can be punished with imprisonment of between three to 12 months, if they are found to have withheld such knowledge, or if found to have refused to report it to the FPS or the police. However, the Article is not clear on what can be conceded as knowledge of the occurrence of a crime of domestic violence, since knowledge in the Arabic language can be interpreted or defined in various ways including: cognizance, realization, recognition, acquaintance, and conversance. This makes it difficult to understand whether the law requires a simple awareness or suspicion of a domestic violence crime, a concrete cognizance, (i.e., being in no doubt) of the crime being committed, or something that falls within the middle of these meanings.

Meditation & Procedure Rules

Article (14) provides, in special circumstances and on one occasion only, an alternative route of family mediation, in the event that the assault does not involve any accusation or allegation of sexual harassment, violence against a child or violence against an elderly or disabled person. Mediation can be requested through, and attended at, the FPC office or upon an order by the Family Protection Prosecution, when it considers that such a measure is more appropriate for a family's cohesiveness and unity.

However, the law does not provide any explanation regarding how such mediation shall be conducted, and gives the FPP full discretion on whether or not to offer such mediation in the first place. In our views, mediation can be effective in some situations, especially in cases where treatment or rehabilitation of the aggressor is feasible. Nonetheless, this needs to be undertaken by fully trained and competent family mediators, who are, firstly, able to assess whether mediation is an appropriate method for the family, and secondly who can employ the right techniques and procedures before, during and after the mediation. For that reason, mediation must be designated to a special unit, for example a National Family Mediation Service, which the law must request the formation of, and which must thereafter be given, full authority to deal with all cases of family mediation.

Furthermore, we suggest that the law must include separate Articles on Family Dispute Resolution (FDR), or at least give the Minister or the government the task of providing guidance and rules on Family Dispute Resolution. The aim of FDR is to assist families and family members in resolving certain conflicts or disputes that arise in the family without involving formal authorities, such as the court system or the police, especially when the issues or the violence can be treated and illuminated through education, counseling and any other form of support.

On the other hand, the draft provides, under its Articles (27- 49), rules and practice for the court when conducting criminal trials, subject to the existing law on criminal procedure, as well as the modern methods of electronic technology to be used during the trial. Finally, the law under

Articles (49-52) requests the competent authorities to issue rules and regulations to implement the provisions of the draft law, whilst requiring the cancellation of any other law or Article that contradicts with the provisions of the draft law.

Conclusion

The article demonstrates that the debates surrounding the draft bill on domestic violence were not primarily centered on legal disputes regarding its provisions. Instead, they were largely driven by broader social and religious objections to legal reforms aimed at empowering women and advancing their rights, particularly in matters concerning economic equality and guardianship

Opponents have used moral and religious apprehension to cast progressive ideas in a negative light and to mobilize public sentiment against changes perceived to challenge the traditional male hierarchical position or clash with the ethical values of patriarchal societies.

Certain feminists argue that the root cause of social and religious objections to empowering women lies not in Islamic teachings but in the patriarchal structure of society, which has fostered an ethical and cultural system aimed at controlling women and restraining their power. This controlling mechanism is particularly evident in efforts to enhance women's economic liberation, which directly threatens gender disparities in wealth and authority, or undermine the male elite and dominance of men over women. For instance, Mernissi (1991) contends that women's liberation is primarily economic, emphasizing the necessity of economic independence for women to assert their rights. She posits that the resistance to granting women this right stems not from Islam itself but from its conflict with the vested interests of men. Accordingly, "if women's rights are a problem for some modern Muslim men, it is neither because of the Koran nor the Prophet, nor the Islamic tradition, but simply because those rights conflict with the interests of a male elite" (Mernissi, 1991, ix).

Other feminists advocate for reforms to women's rights and social development rooted in a reinterpretation of Islamic teachings. For example, Amina Wadud (1999) argues for a reevaluation of religious

scripts depicting male domination over women to advance women's causes in Arab and Muslim societies. Similarly, Heba Ra'uf (2002, p235) asserts that women's liberation in Muslim societies necessitates a revival of Islamic thought and a re-examination of Islamic jurisprudence.

In our view, both perspectives are equally significant, as women's liberation depends on social acceptance on the one hand, and the economic empowerment that gives women the ability and strength to break free from male dominance and control on the other. Traditional Muslim scholars often invoke classical interpretations of Islamic texts to obstruct contemporary trends in Islamic jurisprudence, hindering progress toward gender equality.

Therefore, ongoing efforts to advocate for the enactment of legislation protecting families from violence must persist. These efforts should include public awareness campaigns to elucidate the law's significance and provisions. Additionally, opportunities should be provided for enlightened Muslim thinkers to express their views and counter the influence of traditional religious scholars who impose their perspectives on the public. Furthermore, the process of enacting the law should involve objective academic and legal discussions among scholars to refine the draft and address its deficiencies. Specifically, the vagueness of certain definitions, such as those of 'domestic violence,' 'psychological violence,' and 'harassment,' must be rectified. Clarity is also needed regarding the roles and powers of relevant authorities, such as the Family Protection Program (FPP) and the police, in cases involving victims and the issuance of Protection Orders.

Disclosure Statement

Ethical approval and consent to participate

All procedures performed in this study involving human participants were following the ethical standards.

Availability of data and materials

The datasets and material generated and/or analyzed during the current study are available from the corresponding author on reasonable request.

Author contribution

All authors contributed in this article equality. Dr. Hattab prepared the Introduction section and conclusion. Dr. Mahamid, prepared methodology and analysis sections. Finally, Dr. Hatab & Dr. Mahamid prepared the literature review section. All authors contributed to the design of the study.

Conflict of interest

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