

**Research Paper**

**Discrimination in The Ecclesiastical Personal Status Laws in Palestine and The Evangelical Lutheran Church in Jordan and the Holy Land's Experience in Adopting a Family Law based on Gender Justice**

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**November 2021**

## **Introduction**

According to Article 101 of the Palestinian Basic Law, Shari'a and personal status matters are governed by Shari'a and ecclesiastical courts. Therefore, Shari'a Courts assume this jurisdiction for Muslims and the ecclesiastical courts have jurisdiction over members of different churches. Ecclesiastical courts draft and amend personal status laws of Christians. Each Ecclesiastical court has the absolute right to govern the affairs of its parishioners and their religious rites. As for the personal status of Muslims, the laws are amended and drafted according to the legislative principles of the Basic Law under the section of the legislative authority and the relevant laws. Sharia judiciary has a key role in proposing drafts and amendments, as it is the competent authority. In the context of personal status laws, Palestine suffers from legal pluralism, which can be seen even among Muslims. The Jordanian Personal Status Law No. 16 of 1976 is applied in the West Bank, the Ottoman Family Rights Law of 1954 in the Gaza Strip, and the amended Jordanian law applicable in the Hashemite Kingdom of Jordan due to Jordanian guardianship of the Islamic endowments and holy sites in East Jerusalem. This impacts access to justice and litigation procedures for Palestinians, which are critical to the balance of justice. The personal status laws applied in Palestine and the Middle East are regarded as a regional environment with great importance due to the societal interdependence and cultural similarities and are considered among the most difficult obstacles to achieving gender equality and women's rights. This could be attributed to the multiplicity of these laws and their failure to be updated. They haven't been modified, improved or developed despite changing life conditions and legal perspectives. Many of the legal reviews indicated that there are discriminatory legal articles that must be reviewed, canceled or amended, so that discrimination can be eliminated, specifically in light of the State of Palestine international obligations under international conventions and treaties.

## **The Evangelical Lutheran Church in Jordan and the Holy Land (ELCJHL)**

The Lutheran Church is a local Arab church located in Palestine and Jordan and is the only religious institution in Palestine and the Middle East that has incorporated gender justice into its internal personal status law. The Church reformed its Personal Status Law and established its own Ecclesiastical Court in 2015. This was a milestone decision that arose after a long process of deliberation that began in 2013. The deliberations resulted in the adoption of a fair and gender-balanced family law aimed at improving the gender-equitable outcomes of the Ecclesiastical Court and ensuring women's access to justice.

## **YW4A Project Background**

Religious values, beliefs, and practices have a significant impact on individuals and societies. This was cemented by the decision of the Palestinian Constitutional Court 5/2017 which states that alignment of the law must take into consideration the culture and religion of the society as standards without prejudice to international conventions and treaties. Therefore, the state, and in particular the legislature, civil society institutions, religious institutions, and the Sharia judiciary are responsible for a mixture of laws and customs regulating personal status matters that apply to men and women depending on where they live (the West Bank, East Jerusalem, or Gaza). The legal frameworks for Muslim and Christian personal status law in Palestine are subject to patriarchal interpretations that lead to discrimination against women. The laws regulating

personal status between Muslims and Christians of different sects include some discriminatory provisions in regards to custody and inheritance as well as other relevant issues. Therefore, religious institutions play a major role in amending personal status laws that discriminate between men and women. They also play a major role in changing negative norms that hinder the enforcement and approval of rules of justice and equity.

In this regard, the Evangelical Lutheran Church in collaboration with Faith to Action Network is implementing a 5-year project entitled “Young Women for Outreach, Agency, Advocacy and Accountability” (YW4A). This project is funded by the Ministry of Foreign Affairs of the Government of the Netherlands. The project envisions three short-term outcomes aimed at changing the negative norms and practices of religious organizations that restrict the rights of young women in Palestine:

- Mobilizing religious leaders and advocates to change negative norms and re-read the text of the Quran and the Bible.
- Enhancing the positive view of community members' attitudes towards the rights of young women.
- Promoting positive masculine practices to ensure that young women are safe and heard.

**The Overall Objective of the Research:**

Girls and young women across the Middle East face numerous challenges that impede their access to rights and empowerment. In Palestine, holy texts often guided by religious laws have been used to justify practices that promote gender-based violence and discrimination against women, particularly practices that lead to women’s exclusion from leadership positions. However, religious organizations in Palestine have the capacity to advocate for the reform of laws that discriminate between men and women and those that affect the enhancement of women's ability to claim and enjoy their human rights. In addition to challenging discriminatory laws that undermine women's rights and gender equality in Palestine, religious organizations and women's rights advocates need to gather evidence to strengthen and institutionalize their advocacy actions. Therefore, the Evangelical Lutheran Church in Jordan and the Holy Land asked consultants to conduct a comprehensive policy mapping of religious personal status laws (Christian and Sharia) applied in Palestine, and identify strengths and gaps from a gender perspective.

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## Summary

The research is aimed to identify the special status laws of Christian churches in Palestine, their discriminatory provisions, and contradictions with the Palestinian Basic Law as well as regional and international conventions on the human rights of women and children. It is also aimed to shed light on the Evangelical Lutheran Church in Jordan and the Holy Land's experience in adopting a gender-just personal status law that guarantees equal rights for men and women during marriage and in case of its dissolution.

The research was divided into an introduction and eight sections. The first section explores women's rights in the Palestinian legal system and the second section presents their guarantees under regional conventions and treaties. The third section sheds light on women's rights guarantees under international human rights instruments, and the fourth section presents an overview of the legal guarantees of the rights of the Palestinian child. The fifth section reviews the jurisdiction and powers of ecclesiastical courts. The sixth section focuses on the personal status laws of the Christian denominations. The seventh section discusses discrimination in the personal status laws of the Christian denominations, and the final section presents the experience of the Evangelical Lutheran Church in adopting equality-based law.

The research demonstrates the level of discrimination in personal status laws of churches in Palestine against women and their rights, especially in regards to the age of marriage, guardianship, custody, alimony, financial rights of spouses, divorce, and inheritance. Through its descriptive and analytical approach as well as its reliance on interviews with lawyers specialized in ecclesiastical issues, this research presents a set of recommendations to revise and reform current personal status laws.

The research reveals that the personal status laws of churches should be reviewed to include the principles of equality between women and men, aligning with the Palestinian Basic Law, regional treaties, and international conventions, particularly the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The personal status laws should provide for setting the minimum age of marriage at 18 years for both Christian men and women. They should also set narrow and strict justifications for allowing exceptions to the minimum age of marriage. In addition, they should approve the principle of joint guardianship over children during marriage and in case of its dissolution, taking into consideration the best interest of the child. The research concludes that the personal status laws of churches should allow for reducing and unifying lawsuit fees in ecclesiastical courts, and amending the court's procedures so that alimony cases are considered urgent. Alimony cases should be disposed of expeditiously by directing Christian women to the Palestinian Alimony Fund in the event that the wife is unable to collect alimony from her husband after the ruling has been submitted to the Execution Department. They must endorse the principle of equality regarding the right to seek divorce and/or dissolution of marriage. More needs to be done to encourage ecclesiastical courts to appoint women judges based on their specialization of law, distribute inheritance according to the transitional division and on the basis of gender equality before ecclesiastical courts, and organize awareness and education campaigns for Christian women of the various denominations about their rights within the personal status law of the Christian sects.

## Introduction

*“So God created mankind in His own image, in the image of God He created them; male and female He created them.” (Genesis: 1:27)*

The Palestinian Basic Law, which is the constitution for the State of Palestine, guarantees equality among all Palestinians without discrimination on the basis of religion. It also emphasizes respect for human rights and the rule of law, which constitute basic pillars of the concept of citizenship. However, the Basic Law divided Palestinian citizens according to their religious affiliation, Muslims and Christians. There are thirteen recognized churches in Palestine, and each church has its own laws on personal status, including articles regulating marriage, guardianship, custody, alimony, divorce, and inheritance. Palestine’s recognition of multiple personal status laws deprives women of a unified legal framework based on the principle of citizenship, as these laws established a patriarchal authority, authorizing men with the right to control women within and outside the family. These laws consist of many discriminatory provisions in contradiction to the Basic Law, international conventions, and covenants. The State of Palestine is bound by the international conventions it signed to revise its legislation based on principles of gender equality in terms of rights and duties complying with international human rights standards.

This research aims to study the personal status laws of Christian churches and to highlight discriminatory provisions with a view to amending them to align with the Palestinian Basic Law and international conventions and treaties on human rights and the elimination of all forms of discrimination against women.

**Research question:** Are personal status laws of Christian churches compatible with the Palestinian Basic Law and international conventions and covenants? What are the discriminatory provisions under those laws?

**The importance of this research:** The research acquires its importance from society’s need for such kind of research as it is a recent topic and affects the rights of women under the personal status laws of the recognized Christian churches in Palestine. It also acquires special importance from the analysis of the legal provisions of the personal status laws of the 13 recognized churches in Palestine and the extent to which these laws are compatible with the basic law, the declaration of independence, and the decision of the Palestinian Constitutional Court regarding the transcendence of international conventions, and article 16 of CEDAW.

### Research Objectives

1. Contributing to providing knowledge of the aspects of discrimination against women in the personal status laws of the recognized Christian Churches in Palestine.
2. Discussing the experiences of some distinguished churches in reforming personal status laws in Palestine by approving a modern law based on justice and gender equality.

### Research Methodology

Adopting human rights and feminist approaches.

- **Desk research:** Review and analysis of ecclesiastical laws and the personal status of ecclesiastical courts in the West Bank and Gaza Strip, relying on academic literature, surveys and related published materials, reviewing international human rights laws and focusing on CEDAW, especially Article (16), which the State of Palestine signed without reservations.
- **Field research:** Conducting interviews with judges, lawyers, and specialists in ecclesiastical courts in the West Bank and Gaza

## **Section (1): Women's Rights in the Palestinian Legal System**

### **I. The Palestinian Declaration of Independence of 1988**

This Declaration issued by the Palestinian National Council on November 15, 1988, is considered the most important in the Palestinian national history, which guarantees all Palestinians full equality with regard to exercising public rights and freedoms without discrimination. It states that,

“The State of Palestine shall be for Palestinians, wherever they may be therein to develop their national and cultural identity and therein to enjoy full equality of rights. Their religious and political beliefs and human dignity shall therein be safeguarded under a democratic parliamentary system based on freedom of opinion and the freedom to form parties, on the heed of the majority for minority rights and the respect of minorities for majority decisions, on social justice and equality, and on non-discrimination in civil rights on grounds of race, religion or color or as between men and women, under a Constitution ensuring the rule of law and an independent judiciary and on the basis of true fidelity to the age-old spiritual and cultural heritage of Palestine with respect to mutual tolerance, coexistence and magnanimity among religions. The State of Palestine declares its commitment to the purposes and principles of the United Nations, and to the Universal Declaration of Human Rights<sup>1</sup>.

In one of its decisions, the Constitutional Court considered the Declaration of Independence as an integral part of the constitutional system in Palestine, and even the most transcendent, followed by the Basic Law.

### **II. Palestinian Basic Law**

The provisions of the Basic Law, which is the Palestinian Constitution, are of paramount importance for consolidating the rule of law and protecting human rights, including the rights of religious minorities as the Palestinian Basic Law provides for the principle of equality. It states that Palestinians shall be equal before the law and the judiciary, without distinction on the grounds of race, sex, color, religion, political views or disability<sup>2</sup>. Religious freedom is also guaranteed by the Basic Law, which stipulates that: “Islam is the official religion in Palestine, and all monotheistic religions have their respect and sanctity; freedom of belief, worship, and practice of religious rites is guaranteed, provided that it does not violate public order or public morals”.

The Palestinian Basic Law confirms that “basic human rights and liberties shall be protected and respected, and that the Palestinian National Authority shall work without delay to become a party to regional and international declarations and covenants that protect human rights<sup>3</sup>”. Indeed, the State of Palestine has signed international treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the

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<sup>1</sup> The initial official report of the State of Palestine, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) March 8, 2017

<sup>2</sup> Articles 9, 101 of the Palestinian Basic Law of 2003 and its amendments

<sup>3</sup> Article 10 of the Palestinian Basic Law of 2003 and its amendments



Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.

### **III. The Palestinian Constitutional Court**

The Palestinian Supreme Constitutional Court was established by law as an independent judicial body, with jurisdiction over the constitutionality of laws and regulations and the interpretation of the Basic Law<sup>4</sup>.

The Constitutional Court affirmed the international jurisprudence and judiciary's principle of precedence of international conventions over national legislature. It indicated in its decision that international jurisprudence and international conventions has precedence over the national legislation. This active practice of the State of Palestine confirms that it has a positive attitude towards the international law system and all its components, accounting for the preservation of the national, religious and cultural identity of the Palestinian Arab people. The Constitutional Court affirms the precedence of international conventions over domestic legislation, so that the conventions acquire a higher power than the domestic legislation after these conventions are ratified and published according to the formal stages that must be carried out for their issuance in the domestic legislation. The domestic legislation should be binding to individuals and authorities, and it should conform to the scope of the provisions of the Basic Law without prejudice to the national, religious and cultural identity of the Palestinian Arab people<sup>5</sup>. In March 2018, another decision was issued by the Supreme Constitutional Court, interpreting Article 10 of the amended Basic Law of 2003 and its amendments. It states that, "Human rights and fundamental freedoms are binding and obligatory to be respected<sup>6</sup>."

#### **Section (2): Women's Rights Guarantees under Regional Agreements and Treaties.**

##### **I. The Arab Charter on Human Rights - 2004:**

The Arab Charter on Human Rights was adopted by the sixteenth Arab Summit hosted in Tunisia on May 23, 2004 and was ratified by the State of Palestine in March 2008. The Charter affirmed the principles of the United Nations Charter and the Universal Declaration of Human Rights, and the provisions of the two international covenants on civil and political rights and economic, social and cultural rights<sup>7</sup>.

##### **II. Muscat Declaration – 2016**

The Women's Committee decided to adopt the Muscat Declaration towards achieving gender justice in the Arab Region on January 21, 2016, in which women ministers, chairpersons, representatives, and representatives of national commissions for the advancement of women in

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<sup>4</sup> Constitutional Court Law No. (3) of 2006, as amended by Decree-Law No. (19) of 2017.

<sup>5</sup> Supreme Constitutional Court Decision No. 4/2017 in Case No. 12 of (2) Judicial, Al-Waqa'i al-Falastinia, No. 138 dated 29/11/2017

<sup>6</sup> The initial official report of the State of Palestine, Article 44 of the Convention on the Rights of the Child; received September 21, 2018:

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsg6l%2Fw%2B3HEC3fMLIFvJp9JurPLNDSE4vK5a96GFadl0x>

<sup>7</sup> Arab Charter on Human Rights: <http://hrlibrary.umn.edu/arab/a003-2.html>.

the Arab region, and experts who met at the seventh session of the Women’s Committee of the United Nations Committee of Economic and Social Development for Western Asia (ESCWA). They committed themselves to working together to achieve gender justice as a basis for achieving sustainable development, peace and security in the Arab region<sup>8</sup>.

### **Section (3): Women’s Rights Guarantees under International Human Rights Instruments**

#### **I. The Universal Declaration of Human Rights – 1948**

The Universal Declaration of Human Rights is a milestone document in the history of human rights drafted by representatives with different legal and cultural backgrounds from all regions of the world. The Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected. It states that,

“all human beings are born free and equal in dignity and rights. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national or social origin, property, birth, or other status<sup>9</sup>, they are all equal before the law and have the right to protection by law without discrimination.<sup>10</sup>”

#### **II. The International Covenant on Civil and Political Rights -1966.**

Beginning at the age of marriage, men and women have a recognized right to marry and to found a family. Marriage can only take place with the full consent of the two parties to be married, without coercion. The State parties to this Covenant shall take the appropriate measures to ensure equal rights and duties of spouses at marriage, during marriage and at its dissolution. In the event of dissolution, measures must be taken to ensure the necessary protection of children, if they are present.

#### **III. The International Covenant on Economic, Social and Cultural Rights – 1966.**

The Covenant was issued by the General Assembly of the United Nations in December 1966. It stipulates that, “the States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”. It also states that “The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses<sup>11</sup>”.

#### **IV. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

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<sup>8</sup> Muscat Declaration, 21 January, 2016.

<sup>9</sup> Universal Declaration of Human Rights: <https://www.un.org/ar/universal-declaration-human-rights/>

<sup>10</sup> (Article 23) of the International Covenant on Civil and Political Rights, 1966

<sup>11</sup> Articles 3 and 10 of the International Covenant on Economic, Social and Cultural Rights, 1966

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which was issued in 1979 constitutes a distinctive mark in the history of the fundamental rights of women around the world. The Convention requires the signatory states to take the appropriate measures to eliminate discrimination against women practiced by any person, organization, or institution. It calls for temporary measures of affirmative action in favor of women<sup>12</sup>.

The President of the State of Palestine signed CEDAW on March 8, 2009 by issuing Presidential Decree No. 19/2009 without prejudice to the amended Palestinian Basic Law of 2003. On April 1, 2014, Palestine acceded to CEDAW without making reservations to any of its provisions. This was an expression of an actual political will and a significant step representing progress in national efforts to protect Palestinian women's rights, strike out discriminatory provisions from the applicable legislation and policies, and combat actual discrimination in all areas.<sup>13</sup>The State of Palestine shall undertake a comprehensive review of Palestinian legislation in order to harmonize its legal system with CEDAW. In a further step, Palestine acceded to the Optional Protocol of the Convention on 4/10/2019, and it entered into force on 7/10/2019<sup>14</sup>.

Article (16) of CEDAW provides that, "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

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<sup>12</sup> Ziyad Yaish: Personal status law in Palestine between international conventions and Islamic law, *Journal of Women's Studies*, Volume (5). 2009; Birzeit University

<sup>13</sup> Palestine State report 2017

<sup>14</sup> Dr. Najah Duqmaq: Women's Rights between CEDAW and the Jordanian Personal Status Law No. 61 of 1976, *Political Attihat Magazine*, Issue 15, 2021

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

#### **Section (4): Legal Guarantees for the Protection of the Rights of the Palestinian Child**

##### **I. The Convention on the Rights of the Child-1989**

The State of Palestine declared its commitment to the principles and objectives of the United Nations, and of the Universal Declaration of Human Rights through the Palestinian Declaration of Independence issued by the Palestinian National Council in 1988. The Declaration of Independence also affirmed the commitment of the State of Palestine to the human rights system as stated in international treaties and conventions, including the safeguarding of children's rights. In order to ensure this commitment, it has laid down the basics for building a legal system based on the principles of the rule of law and the independence of the judiciary.

The State of Palestine acceded to the Convention on the Rights of the Child on April 1, 2014, as an expression of the State of Palestine's respect for the principles and spirit of the Convention. The convention was published in the Official Gazette<sup>15</sup>. This was a true expression of the political will of the State of Palestine and its commitment to the recommendations of the Committee on the Rights of the Child after its review of the official Palestinian report and the report of Palestinian civil society institutions in February 2020. It concluded that the publication of the Convention on the Rights of the Child is one of the tools of implementing the general measures of the Convention. It urged states to publish it for practical implementation of its provisions<sup>16</sup>.

##### **II. Palestinian Child Act**

The State of Palestine issued the Palestinian Child Act No. 7 of 2004, and it was amended by a presidential decree in 2012 to align its provisions with the 1989 Convention on the Rights of the Child. The provisions of this Act define the child as every human being under the age of eighteen. It establishes that every child enjoys all the rights stipulated in this law without discrimination based on their gender, color, nationality, language, national, religious or social origin, wealth, disability, birth or parents, or any kind of discrimination, and the state takes all appropriate measures to protect children from all forms of discrimination with the aim of ensuring them effective equality in all rights enshrined in the law. It also stipulates that the interest of the child

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<sup>15</sup> Decree-Law No. (25) of 2021 regarding the publication of the Convention on the Rights of the Child in the Palestinian Gazettes, No. 181 dated 7/8/2021

<sup>16</sup> Official Palestinian Gazette, *International Body: Publication of the Convention on the Rights of the Child*, published July 31, 2021

must be taken into consideration by courts, administrative authorities and social welfare institutions<sup>17</sup>.

### **Section (5): Competence and Powers of Ecclesiastical Courts**

The Palestinian Basic Law establishes that “matters governed by Shari’a law and matters of personal status, shall come under the jurisdiction of Shari’a and religious courts, in accordance with the law. Laws, regulations, and decisions in force in Palestine before the implementation of this law shall remain in force to the extent that they do not contradict the provisions of this Basic Law, until they are amended or repealed, in accordance with the law”<sup>18</sup>. This article is considered discriminatory on the basis of religion as it contradicts Article 9 of the Basic Law, which stipulates that the Palestinians are equal before the law and the judiciary, and there is no discrimination between them on the grounds of race, gender, color, religion, political opinion or disability. It also contradicts with the Palestinian Declaration of Independence document which states that “Palestine belongs to Palestinians wherever they may be, in which they develop their national and cultural identity, and enjoy full equality of rights”. It is also considered a derogation of the concept of citizenship, which is based on the principle of equality in which the members of the state are equal in rights and duties without discrimination on the basis of religion, gender or creed.

The Judicial Authority Law provides that the Palestinian courts consist of Sharia and religious courts regulated by law, provided that each of them considers the issues brought to it in accordance with the law<sup>19</sup>.

Religious courts derive their powers from the Councils of Religious Denominations Law No. (2) of 1938, which was applied to the West Bank under the Councils of Non-Muslim Religious Denominations Law No. (9) of 1958. Article (3) of Councils of Non-Muslim Religious Denominations Law No. (9) of 1958 stipulate that “the non-Muslim religious communities established in eastern Jordan and included in the first table annexed to this law or any other non-Muslim religious community located in eastern Jordan recognized by the government after the entry into force of this law and added to the mentioned table by a decision of the Executive Council and the approval of His Highness, The Great Emir, may establish courts known as councils of religious denominations that have the power to consider and decide cases in accordance with the provisions of the applicable law.

### **Religious Denominations Recognized and Based in Palestine<sup>20</sup>:**

1. The Greek Orthodox Church
2. The Armenian Church
3. The Syriac Orthodox Church
4. Latin Church
5. Roman Catholic Church
6. Armenian Catholics Church

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<sup>17</sup> Articles (1) and thereafter of the Palestinian Child Law No. (7) of 2004, as amended by Decree-Law of 2012

<sup>18</sup> Article (101) and (118) of the Palestinian Basic LAW of 2003 and its amendments

<sup>19</sup> Article (6) of the Palestinian Judicial Authority Law of 2002

<sup>20</sup> Bitar Bayan, Ecclesiastical Judiciary in Palestine, Birzeit University, Constitutional Law Unit. December 2019

7. The Maronite Church
8. Syriac Catholics Church
9. Chaldeans (Catholics) Church
10. The Arab Episcopal Evangelical Church
11. The Evangelical Lutheran Church
12. Seventh-day Adventist Church
13. Baptist Church
14. Coptic Church

#### **Ecclesiastical Law Sources:**

The Bible, especially the New Testament, is the first source of ecclesiastical law. In addition to explaining the history and doctrines, it includes many legal instructions adopted by Jesus Christ himself. The second source is the honorable tradition. It is the oral and written instructions the apostles used to deliver to organize and manage the church. It is considered one of the sources of ecclesiastical jurisprudence, and it became part of the ecclesiastical law<sup>21</sup>. The third source of ecclesiastical law is the decisions of the ecclesiastical councils, which are the decisions taken by the councils and held over the centuries. The last source is the decrees issued by bishops and patriarchs directed to priests in relation to a matter of the denomination's affairs in addition to the writings and writings of the clergy of the fathers and monks<sup>22</sup>.

#### **Proof of the Suit at Ecclesiastical Courts and their procedures**

All personal status laws of Christian denominations provide for the mechanism of proving the suits in personal status matters, such as the Constitution of the Judiciary in the Ecclesiastical Right or the Ecclesiastical Procedures of the year 1930, the Code of Procedure and Evidence for the Evangelical Lutheran Church in Jordan and the Holy Land for the year 2015 and the collection of laws of the Byzantine family, and the set of laws of the Eastern Churches of 1990. This multiplicity leads to a difference in the mechanism of proof, evidence, and procedures needed by the judiciary in every matter<sup>23</sup>.

#### **Ecclesiastical Courts' Competences:**

For the non-Muslim religious denominations established in eastern Jordan, including the list annexed to the law and recognized by the government after the law came into force and added to the list by a decision of the Executive Council and the approval of His Highness the Emir, to establish courts known as the councils of religious denominations. They have the authority to consider and decide cases that arise between members of their denomination related to all personal status issues within the jurisdiction of the Shari'a courts when the litigants are Muslims, as far as the rules of the religious denomination permit this, with the exceptions stipulated in

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<sup>21</sup> Father Ibrahim Shaheen: You and the Law, Part One, a legal study of ecclesiastical law, personal status law for the Greek Orthodox Church, and due process; first edition, 1994

<sup>22</sup> Faraj Tawfiq, Personal Status Provisions for Non-Muslims, Beirut. University House for Printing and Publishing, 1980

<sup>23</sup> Bitar Statement of the Ecclesiastical Judiciary in Palestine, Birzeit University, Constitutional Law Unit. December 2019

Article 6 of the law<sup>24</sup>: Referring to the Shari'a Procedure Law No. 31 of 1959<sup>25</sup> and its amendments, which determine the jurisdiction of Shari'a courts, we find that personal status matters that fall within the jurisdiction of these courts as follows:

1. The endowment, its establishment by Muslims, its conditions, the guardianship and replacement of it, and what is related to its internal management, its transformation into sheds and endowment properties for leasing, and linking it to the Department of Waqf.
2. Suits of dispute between two parties over endowments or the validity of the endowment and the rights arising from it are established by special custom. If one of the parties claims the ownership of the disputed property with the presence of a letter of endowment or judgment of endowment, or if the property is a well-known to residents of the village as an endowment, and the claimant of ownership in all these cases has documents that support his claim, the court must postpone its proceedings and the cost of reviewing the case for a reasonable period of time, pending the court's consideration of the ownership of the property. Otherwise, it proceeds with the lawsuit for disposition.
3. Use of orphans' money and property for their own benefit.
4. Trusteeship, guardianship and inheritance.
5. Sponsorship, its dissolution and proof of maturity.
6. Appointing a sponsor and a guardian and terminating their responsibilities.
7. The missing person: the person whose status as alive or dead can't be confirmed
8. Marriage, separation, dowry and its derivatives as well as maintenance, lineage and custody.
9. All that happens between spouses on the basis of the marriage contract.
10. Settling the issues of the estates, deciding on the claim of their ownership, and disposing debt cases related to them, except for the money of immovable property or arising from a commercial transaction, liquidating and dividing them among the heirs, and determining the legal and transitional shares of the heirs.
11. Requests for blood money if the two parties are Muslims, as well as if one of them is non-Muslim and they agree that their case can be considered by the Sharia courts.
12. (Takharuj) or waiver by some heirs of movable and immovable in return for some type of payment.
13. Gift or will in case of disease or death.
14. Permission for the guardian, sponsor, trustee, and custodian and holding them accountable as well as issuing rulings in accordance with such accountability.
15. Cases related to Islamic endowments registered with Sharia courts if the claimant is not a Muslim and the parties agree on that.
16. All Muslims-related personal status affairs.
17. Every marriage contract registered with the Shari'a courts or one of its authorized officials and what results from it.

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<sup>24</sup> Non-Muslim Religious Denominations Councils No. (2) of the year 1938

<sup>25</sup> Sharia' Courts' Proceedings Law No. 31 of 1959: website: <https://www.qanon.ps/news.php?action=view&id=16338>

Therefore, all the matters mentioned fall within the powers of Councils of Non-Muslim Religious Denominations

### **Exceptions to the Jurisdiction of Councils of Non-Muslim Religious Denominations<sup>26</sup>**

The Religious Denominations Councils Law lists special cases in which the power to decide falls within the jurisdiction of another court. These cases can be summarized as follows:

1. In cases of establishing and managing a waqf, the inalienable charitable endowment under Islamic law.
2. In cases where a member of a non-Muslim religious community is involved in personal status matters with members of the Muslim community.
3. In cases where there is no denomination council (ecclesiastical court) with jurisdiction over the matters of the other denomination:
4. In cases where the parties to the case are not Muslims and belong to more than one religious denomination:

### **Establishing Ecclesiastical Courts (Courts of First Instance and Appeal) and Mechanisms of Appealing their Rulings:**

Litigation in ecclesiastical courts is of two degrees<sup>27</sup>, where the councils of religious denominations for non-Muslims are considered courts of first instance with the authority of issuing a final judgment in the event that the Court of First Instance and the Court of Appeal agree to the same judgment<sup>28</sup>. The law allows appeal cases to be filed with the Court of Appeal outside Jordan as most of the courts of appeals were based in Jerusalem when the law was issued before the headquarters of the recognized Christian denominations in Jerusalem were united<sup>29</sup>.

### **Execution of the Decisions of Denominations Councils \ Ecclesiastical Courts**

Judgments issued by councils of religious denominations for non-Muslims are executed by the Execution Department in the manner in which the judgments issued by the regular courts are executed<sup>30</sup>.

### **Dispute over jurisdiction and appointment of referee:**

If there is a dispute between the council of a religious denomination and a regular court, or between the council of a religious denomination and a Sharia court, or between the councils of two different denominations, over the position, then each of the parties may submit a petition to the Minister of Justice asking him to appoint a court to decide on this dispute, by upholding or turning over the case.

When the Minister of Justice receives this request, he must establish a special court to consider the appointment of the authority as follows<sup>31</sup>:

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<sup>26</sup> Diyat Al-Farid, Al-Wajeez: the Rulings of Marriage and Family of the Christian Denominations in Jordan. 1985

<sup>27</sup> Website of the Ecclesiastical Court of the Greek Orthodox Patriarchs - Jerusalem

<sup>28</sup> Shari'a and Ecclesiastical Judiciary in Palestine, Birzeit Institute of Law, 2012

<sup>29</sup> Diyat Al-Farid: Al-Wajeez: the Rulings on Marriage and the Family of the Christian Denominations in Jordan. 1985

<sup>30</sup> Article (14) of the Non-Muslim Religious Denominations Councils Law No. (2) of 1938

<sup>31</sup> Article (16) of the Non-Muslim Religious Denominations Councils Law No. (2) of 1938



- a. Two judges of the regular court of appeal and the head of the relevant religious denomination council if the dispute is between a religious denomination council and a regular court.
- b. The Chief Justice, one of the judges of the Court of Appeal, and the head of the relevant religious denomination's council, if the dispute is between a Sharia court and a religious denomination's council.
- c. A judge of the Court of Appeal and the heads of the councils of the two related denominations, if the dispute is between the councils of both.

The Minister of Justice must appoint one of the aforementioned persons as president of the court. The claimant must prove his claim before the court or the council he sues, and so the court or the council that considers the claim should postpone all measures until the competent court considers the case.

It should be noted that the issue of religious freedom has repercussions in particular on the personal status system, where the mismanagement of denominational multiplicity constitutes a cornerstone of the religious and sectarian division, which is entrenched by the citizens of one state subject to different legislations and courts, according to their religious and sectarian affiliations. This system also perpetuates sectarianism and the disintegration of society, as a result of the application of different laws to the citizens of the same state. It highlights the violation of the principle of equality between citizens in the context of prohibiting some types of mixed marriages, especially between a Muslim and non-Muslim, as well as ruling in favor of the Muslim party in judicial disputes related to the custody of children and their religion<sup>32</sup>. It is not permissible to inherit if you are affiliated with another religion. The subsequent sections shed more light on this matter.

#### **Section (6): Personal Status Laws for Christian Denominations:**

Palestinian Christians personal status laws vary according to their denominations as follows<sup>33</sup>

##### **I. Catholic Denominations:**

###### **1. Western Catholic Denominations applying:**

- The Personal Status Law of the Latin Patriarchate of Jerusalem for the year 1954.
- The Code of Canon Law 1983.
- The Constitution of the Judiciary of the Ecclesiastical Right or the Ecclesiastical
- Procedures of the year 1930, which is related to the procedures of lawsuits before the Catholic Ecclesiastical Courts.

**2. Eastern Catholic denominations:** They include the royal Roman Catholic denomination, the Syriac Catholic denomination, the Armenian Catholic denomination, the Maronite denomination, the Chaldean Catholic denomination, and the Coptic Catholic denomination.

These denominations apply the following laws:

- Code of Laws of the Eastern Churches of 1990.

<sup>32</sup> Nael Gerges - Religious and Sectarian Divisions in the Arab Mashreq Countries: Roots and Causes. Published: June 7, 2018  
<http://www.alraafed.com/2018/06/07/%D9%A4-140/>

<sup>33</sup> Christians' personal status laws, Muqtafi. <http://muqtafi.birzeit.edu/Christian.aspx>

- Personal Status Law for Catholic (Eastern) denominations.
- II. **The Greek Orthodox Church** applies the Byzantine family law.
  - III. **The Syriac Orthodox Church** applies the Syriac Orthodox Personal Status Law for the year 2000
  - IV. **The Arab Evangelical Episcopal Church** applies the Personal Status and Endowments Law of the Arab Evangelical Episcopal Denomination for the year 1954
  - V. **The Evangelical Lutheran Church in Jordan and the Holy Land** applies the Personal Status Law of the Evangelical Lutheran community in Jordan and the Holy Land for the year 2015, the Law of Courts Proceedings, and the Law of Evidence.

In the case of absence of a law for one of the recognized denominations or those present in Palestine, the smaller one resorts to the law of the church that is closest to it ideologically<sup>34</sup>.

### **Section (7): Discrimination in Ecclesiastical Personal Status Laws**

#### **Marriage Age**<sup>35</sup>

Christian denominations emphasized that one of the conditions of the marriage contract is the capacity of the contracting parties, as marriage is based on the consent of the two parties. The consent is given by two legally qualified persons; nobody can be authorized to give the consent on their behalf<sup>36</sup>. They consider the marriage contract a sacred sacrament whereby the man unites with the woman and shares her life in good and difficult times as well as her divine and human rights<sup>37</sup>. Marriage aims at the welfare of both spouses and the upbringing and education of children.<sup>38</sup> Marriage takes place in front of the church and under its supervision<sup>39</sup>.

Despite the above said, the Christian denominations legalized the marriage of minors. The Orthodox and the Syriac Orthodox<sup>40</sup> churches set the age of marriage for a young man at fourteen years and for a girl at twelve<sup>41</sup>. As for the Episcopal Evangelical church, it stipulated that marriage for the young man is permitted when he reaches the age of eighteen and the girl sixteen<sup>42</sup>. The Catholic denominations do not allow marriage unless the man has reached the age of sixteen and the woman is fourteen<sup>43</sup>. The law granted the bishops the power to set an older age for marriage, because Catholic law is set to be applied in all parts of the world, and this power was determined

<sup>34</sup> Bitar Bayan: Ecclesiastical Judiciary in Palestine, Birzeit University, Constitutional Law Unit. December 2019

<sup>35</sup> Discrimination in The Ecclesiastical Personal Status Laws in Palestine and The Evangelical Lutheran Church in Jordan and the Holy Land's Experience in Adopting a Family Law based on Gender Justice, Bishara, Scarlet, Miftah: Palestinian Initiative for the Promotion of Global and Democracy Dialogue, 2020

<sup>36</sup> Article (1057) Collection of the Legal Right of the Latin Catholic Church for the year 1983

<sup>37</sup> Article (29) of the Byzantine Family Law of the Greek Orthodox Church.

<sup>38</sup> Articles (1055 and 1056) of the Code of Legal Right of the Latin Catholic Church.

<sup>39</sup> Article (12) of the Personal Status Law of the Evangelical Lutheran Church

<sup>40</sup> See the Syriac Orthodox Personal Status Law for the year 2000, Article (4)

<sup>41</sup> See the Byzantine Family Law of the Orthodox Church, (Article 30).

<sup>42</sup> The Personal Status Law of the Arab Evangelical Episcopal Church of 1954 (Article 21)

<sup>43</sup> See Legal Right Group for the Catholic Church, (Article 1083) and Article (800) of the Eastern Churches Group

to take into account the circumstances and customs of each region<sup>44</sup>. It views that the man under the age of 18 is subjected to the authority of his parents or guardians.<sup>45</sup>

It is clear that the personal status laws related to the age of betrothal and marriage are discriminatory regarding the rights of women and girls and encourage early marriage. They also violate the Basic Law<sup>46</sup> and the Palestinian Child Law, which considers the age of majority to be 18 years and that the best interests of the child must be taken into account in all actions, whether carried out by legislative bodies, courts, or administrative authorities<sup>47</sup>. These laws violate the effective penal code in the West Bank<sup>48</sup>. Moreover, the provisions of the personal status articles for Christians regarding the age of marriage contradict the Convention on the Elimination of All Forms of Discrimination against Women, stating the betrothal to marriage of a child shall have no legal effect, and all necessary measures must be taken, including legislation to determine the minimum age of marriage<sup>49</sup>. Few marriages are held for girls under the age of 18 among Christian denominations, so the provisions of the law must be amended to set the marriage age at 18 years. Marrying a girl under the age of 18 deprives her of protection, care and a sense of security. Further, it negatively affects her health and deprives her of the opportunity for education that is necessary for developing her abilities and potential.<sup>50</sup> The Committee on the Elimination of All Forms of Discrimination against Women made a note on the first report of the State of Palestine that there is still child marriage due to the existence of many laws with different provisions related to determining the minimum legal age of marriage<sup>51</sup>. It added that the state is obligated to set the minimum age of marriage at 18 years. It also recommended setting narrow and strict excuse for allowing exceptions to the minimum age of marriage<sup>52</sup>. The Christian denominations can amend their laws to raise the age of marriage the way the Evangelical Lutheran Church did. It set the age of marriage for men and women at 18 years<sup>53</sup>.

The President of the State of Palestine issued a presidential decree, raising the age of marriage in personal status laws for Muslims and Christians, with some exceptions. The law allowed marriage for Christians and Muslims under the age of 18 years on the provision of obtaining approval of the Chief Justice and religious institutions. However, it did not specify the minimum age of marriage. Therefore, Christian and Muslim religious authorities can marry the girl at the age of fourteen or

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<sup>44</sup> Diyat, Lawyer Dr. Alfred: the Rulings of Marriage and the Family of the Christian Denominations in the Hashemite Kingdom of Jordan, First Edition/First Edition, 2004, House of Culture for Publishing and Distribution

<sup>45</sup> Article (98): the second item of the Code of Legal Right of the Catholic Church. Article (97) first clause

<sup>46</sup> Article (9) of the Amended Palestinian Basic Law of 2003

<sup>47</sup> Article (1) of the Palestinian Child Law No (7) of 2004

<sup>48</sup> Jordanian Penal Code No. (16) of 1960. Article (279) stipulates that "Whoever marries a girl, performs marriage ceremonies for a girl under fifteen years of age, or assists in conducting marriage ceremonies in any capacity, shall be punished with imprisonment from one to six months."

<sup>49</sup> Paragraph (c) of Article (16) of the Convention on the Elimination of All Forms of Discrimination against Women

<sup>50</sup> Child Marriage: Causes and Effects, Women's Affairs Center - Gaza. Palestine 2014

<sup>51</sup> CEDAW Committee's observations on the first report of the State of Palestine

<sup>52</sup> Gender Justice and Equality before the Law: A Regional Analysis of Progress and Challenges in the Arab States Region - ESCWA-2019

<sup>53</sup> Article (13) (1) of the Personal Status Law of the Evangelical Lutheran Denomination in Jordan and the Holy Land

younger if the interest of the girl so requires. Therefore this decision constitutes a violation of the rights of women even more than the original provisions of the personal status laws<sup>54</sup>.

### **Guardianship**

It is considered one of the requirements of parental authority over children until they reach the age of majority. It means the right to raise children, ensure their safety and keep their money. It is divided into two parts: The first is guardianship over the self, which is concerned with the religious, moral, physical and disciplinary education of the child as well as treating him in the event of illness, directing him to earn, and approval of his marriage. In short, guardianship over oneself is concerned with all matters relating to the person of the minor. The second, is the guardianship of money. It is concerned with the preservation, management and investment of the child's money and property in a way that guarantees the benefit of the minor, provided that it is handed over to him upon reaching the age of majority with the proceeds of this investment<sup>55</sup>.

Christian personal status laws grant guardianship rights to male family members (father, grandfather, uncle, cousin) and do not grant it to women except with exceptions or restrictions<sup>56</sup>. The father has authority over his children from marriage or adoption<sup>57</sup>. Guardianship over the minor, legally and naturally, is first for the father, unless he is detained, parted from religion, or unable to perform the duty of guardianship, and then to the Christians who the father entrusts the child with before his death. If the father does not entrust his child to anyone, then the guardianship is pledged to the grandfather, then to the elder brother, then to the uncle and the cousin, and then to the mother as long as she is not married<sup>58</sup>. If the minor gets married with the consent of her guardian or custodian, then she moves to the guardianship of her husband<sup>59</sup>. As for the Catholic community, as expressed in the Journal of Legal Rights that in order for the marriage to take place properly, the consent of the minor to the marriage is not sufficient, but the consent of the guardian is required, as the law stipulated that minors should not marry without the valid consent of their parents, based on a legitimate and just reason<sup>60</sup>.

Guardianship in personal status laws is considered a dedication to the concept of absolute masculine authority and the values of the patriarchal society and its manifestations in family relations. It is rooted on the fact that the man is the breadwinner, the guardian, and the controller of the fate of his family members whereas the woman is seen as subservient, obedient and her rights are not fully exercised<sup>61</sup>.

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<sup>54</sup> Decree-Law No. (21) of 2019 for amendment of the age of marriage in the State of Palestine.

<sup>55</sup> Dyat, Attorney Dr. Alfred, *Al Wajeez In The Rulings of Marriage and the Family of the Christian Denominations in Hashemite Kingdom of Jordan* . First Edition, The Economic Press, 2004

<sup>56</sup> Article (72) of the Personal Status Law of the Arab Evangelical Episcopal Denomination for the year 1954

<sup>57</sup> Article (301) of the Byzantine Family Law, corresponding to Article (77) of the Syriac Orthodox Personal Status Law for the year 2000.

<sup>58</sup> Article (81) and what follows from the Syriac Orthodox Personal Status Law for the year 2000

<sup>59</sup> Article (70) of the Personal Status Law of the Arab Evangelical Episcopal Congregation for the year 1954

<sup>60</sup> Article (1071) of the legal right of the Latin community and Article (789) of the collection of laws for the Eastern Catholic denominations.

<sup>61</sup> Discrimination in personal status laws in Syria, a comparative research. Syrian Women's League counter. 2009-2010.

Thus, the previous articles relating to guardianship in the personal status laws of the Christian denominations are considered a violation of the Palestinian Basic Law and the principle of equality. They also constitute a violation of women's rights, and contradict CEDAW (Article 16), which affirms that the national legislation must include the principle of equality<sup>62</sup> of rights between women and men, and that women have the right to choose their husbands with their full and free consent, and the state must take appropriate measures to eliminate discrimination in rights under legislation or laws, especially those related to matters of marriage.

### **Custodianship:**

Child custody legally means having care and control of children. It includes taking care of their physical and moral matters until they reach a certain age at which they are able to dispense with the matters covered by the nursery, since nursing belongs to the mother, while all the rights and duties of the parental authority are limited in principle to the father. Children live according to principle with their father<sup>63</sup> due to the patriarchal authority. The father gets custody according to ecclesiastical law. Children reside exceptionally with their mother because of their age or need of her care until they reach the age of seven. They reside with the mother when she isn't the cause of divorce<sup>64</sup>. The Syriac Orthodox Church specified the period of custody for the male as nine years and eleven years for the female<sup>65</sup> while the Episcopal Church specified the age of seven for the male, and the age of nine for the female<sup>66</sup>. For the Evangelical Lutheran Church, the custody period for the mother was determined from birth until the son or daughter is thirteen years of age, after which they move to live with their father<sup>67</sup>.

Unlike the rights of the father to guardianship, the rights of the mother to custody are time-limited and conditional. The legal custody by the mother could end due to the legal age of custody or a ruling determining that the mother is incompetent.<sup>68</sup> Most of the personal status laws of Christian denominations emphasized that the parental authority rests with the father but exceptionally rests with the mother and during the period of breastfeeding. These laws have identified many reasons for dropping or restricting custody of the child by the mother. These reasons include: The mother's ineligibility to raise and care for her child, the mother's marriage to a man other than the child's father, the mother's neglect of the child's religious upbringing (including being of a different religion), the mother's disobedience (a woman is sentenced to disobedience if she leaves the marital home and refuses to cohabit with her husband).

Accordingly, custody according to the personal status laws of Christian denominations constitutes inequities between parents and contradicts Article 16 of CEDAW, which affirms that "States Parties shall take all appropriate measures to eliminate discrimination against women in all

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<sup>62</sup> A strategic vision to amend personal status issues in Palestine, Women's Center for Legal and Social Counseling 2018

<sup>63</sup> Articles 116 and thereafter of the Personal Status Law of the Latin Patriarchate of Jerusalem for the year 1954

<sup>64</sup> Article (243) of the Byzantine Family Law

<sup>65</sup> Article (62) of the Syriac Orthodox Personal Status Law for the year 2000

<sup>66</sup> Article 65 of Personal Status and Endowments Law for the Arab Evangelical Episcopal Congregation for the year 1954

<sup>67</sup> Article (68) of the Personal Status Law of the Evangelical Lutheran Church in Jordan and the Holy Land for the year 2015

<sup>68</sup> Human Rights Report No Protection No Equality 2015

matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount<sup>69</sup>.

Lawyer Rock stated that such discriminatory provisions allow religious court judges in some cases to evaluate the behavior of a woman, her moral nature, religious beliefs, and commitment to those beliefs without paying attention to the behavior of the father. Rather, it scrutinizes the mother's behavior, and the criteria used by ecclesiastical court judges are based on the masculine mentality and denomination affiliation. It depends on the prejudgment of women more than verifying the best interest of the child<sup>70</sup> by keeping them in her custody. Such trend is a blatant violation of the Palestinian Child Law<sup>71</sup> and the Decree-Law<sup>72</sup> regarding the publication of the Convention on the Rights of the Child, which stipulates that "the state take all appropriate measures to protect children from all forms of discrimination and ensure they exercise of all their equal rights as stipulated under the law. It also provides that the best interest of the child must be considered in all actions taken in this regard<sup>73</sup>.

The full implementation of the concept of the best interests of the child requires the development of a rights-based approach and the involvement of all stakeholders to ensure the overall physical, psychological, moral, and spiritual integrity of the child and the promotion of his human dignity. It is a three-dimensional concept: A fundamental right of the child is to assess the best interests of the child to reach an appropriate decision regarding the issue at hand, a basic interpretative legal principle the purpose of which is to serve the best interests of the child when there is more than one interpretation of the legal ruling, and a procedural rule that states that the rights and guarantees of the child be explicitly evaluated and taken into account in making any decision that would have an effect on the child<sup>74</sup>.

Lawyer Salwa Bannoura stresses that child custody provisions in Christian denominations are discriminatory and have negative consequences on women, especially those who seek divorce. They sometimes have to relinquish the right to the custody of their children, or they face coercion and extortion during divorce procedures<sup>75</sup>.

The woman is also deprived of the custody of her child if her husband converts to Islam, as the custodian is required to be sane and honest, and since she is not a Muslim, she is seen as an apostate, and therefore is not permitted to have the custody of her child<sup>76</sup>. In this case, which of

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<sup>69</sup> Article 16 of CEDAW.

<sup>70</sup> An interview with Attorney Alfred Rock on 1/11/2021, a lawyer specializing in pleading before ecclesiastical courts.

<sup>71</sup> The Palestinian Child Law of 2004 and its amendments.

<sup>72</sup> And Decree-Law No. (25) of 2021 regarding the publication of the Convention on the Rights of the Child published in the Palestinian Gazette in issue (181) dated 27/7/2021.

<sup>73</sup> Article (3) the Palestinian Child Law No. (7) of 2004.

<sup>74</sup> Al-Haq report submitted to the Committee on the Rights of the Child regarding the first report submitted by the State of Palestine, session 83 of the year 2020.

<sup>75</sup> An interview with lawyer Salwa Bannoura on 1/11/2021

<sup>76</sup> Article 155 of the Personal Status Law 61 of 1976.

the two courts has the function of considering the case? The ecclesiastical court in which the marriage contract was held, or the Sharia court?

**The Religious Denominations Councils Law** answers the (previous) question as follows:

The regular court has the jurisdiction over the cases between a Muslim and a Non-Muslim unless both parties give consent to the Shari'a court to consider their case<sup>77</sup>. If there is a dispute between the denominational religious council and the Sharia Court over a function or position, each of the opponents can petition the Minister of Justice to appoint a court to settle the dispute by upholding or turning over the case. When the Minister of Justice receives the application, he must appoint a special court of the Chief Justice and a Judge of the Court of Appeal as well as the Head of the Denomination Religious Council if the dispute is between the council and the court or between two different denominations.

The Minister of Justice shall appoint the Head of the Court, and the applicant presents to the court or council the necessary documents and evidence. Accordingly, the court or council against which the complaint is filed must postpone all the relevant proceedings until the appointed court takes its final decision regarding the relevant case.

#### **Can custodial parents travel abroad with their child?**

Since the rights of parental authority in most personal status laws are originally assigned to the father as the head of the family, except in exceptional cases where it belongs to the mother; the father has the right to support his children, raise up, discipline them, agree to their engagement and marriage<sup>78</sup> and/or even register them at school or transfer them to another school. During the period of custody, it is not permissible for the mother, if she is the custodian, to take the child out of his father's country to another country without the (father's) permission. Likewise, the father is not permitted to take the child out of his mother's country without her consent as long as she is the custodian. However, the court may decide the opposite, but there are no specific criteria for specifying the best interest of the child. It is at the discretion of the court judges and according to the evidence submitted by the parties.

#### **Spouses Financial Rights:**

The personal status laws of the Christian denominations adopted the principle of the separation of the spouses' funds, and the independence of each spouse with his\ her financial rights<sup>79</sup>, whereby each spouse retains his/her money and the right to manage and benefit from it unless they agree otherwise<sup>80</sup>. Marriage does not result in the mixing of the spouses' money, so each of them remains completely free to dispose of his/her money, and neither of them has the right to the other's money unless otherwise is agreed<sup>81</sup>.

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<sup>77</sup> Article (7) of the Non-Muslim Religious Communities Councils Law No. 2 of 1938

<sup>78</sup> Article 302 of the Byzantine Family Law of 1901

<sup>79</sup> Article 138 of the Byzantine Family Law of 1901

<sup>80</sup> Article 36 of the Personal Status Law of the Latin Patriarchate of Jerusalem for the year 1954

<sup>81</sup> Father Ibrahim Shaheen, You and the Law: Part One: A legal study in the ecclesiastical right and personal status law of the Greek Orthodox Church, first issue. 1994

Referring to the provisions of the Byzantine law of the Greek Orthodox<sup>82</sup>, it is noted that it assumed that during marriage everything that belongs to the wife is considered to be the husband's until proven otherwise. In other words, since the husband is the legal breadwinner for the wife, the money in the marital home is assumed to belong to the husband unless the wife proves otherwise<sup>83</sup>. As for the Evangelical Lutheran Church, the spouses, upon marriage, may live under the principle of joint gain, and after marriage, the property they have, whether movable or immovable, belongs to both, unless they decide otherwise by virtue of an agreement between them<sup>84</sup>.

The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) has indicated that states parties are obligated to achieve equality between the parties, upon divorce and/or separation, with regard to the division of all property acquired during the marital period. States parties should recognize the value of indirect contributions, including non-financial contributions, related to property acquired during the marital period<sup>85</sup>.

A study of the Women's Center for Legal and Social Counseling confirmed that the wealth collected in the context of the marital relationship or the marital financial system is legally shared by both of them and should be organized and codified according to a modern legal understanding and the principle of equality. The idea of defining joint property is linked to women's economic rights which is enshrined in the international treaties<sup>86</sup>.

Some of the lawyers who were interviewed pointed out that spouses' rights to financial independence are enshrined in the personal status laws. Each of them has the right to maintain and manage their own property and benefit from it. However, these laws are not implemented as most women do not register their properties and financial contributions in their names. They keep them registered in the husband's name. Most women register their property and money in the husband's name due to a lack of awareness of their rights under the personal status laws or the prevalent customs and traditions. The control of Palestinian women by society often pushes them to waive their property and money to end the spousal disputes and get divorced<sup>87</sup>.

The Palestinian Declaration of Independence<sup>88</sup> emphasizes justice, equality, and non-discrimination on the grounds of race, religion, color, and gender. The Palestinian Basic Law<sup>89</sup> and the regional conventions (Arab Charter on Human Rights) also emphasized that the household is

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<sup>82</sup> Article 141 of the Byzantine Family Law Corresponding to it is Article 37 of the Syriac Orthodox Personal Status Law for the year 2000. As for the Personal Status Law of the Arab Episcopal Denomination, the issue of the spouses' money was not addressed.

<sup>83</sup> Diyat, attorney Dr. Alfred, *Al-Wajeez: In The Rulings of Marriage and the Family provisions for Christian Denominations in the Hashemite Kingdom of Jordan*, House of Culture for Publishing and Distribution, 2004.

<sup>84</sup> Articles 33 and 37 of the Personal Status Law of the Evangelical Lutheran Church in the Levant and the Holy Land for the year 2015

<sup>85</sup> Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee on the Elimination of Discrimination Against Women on 10/30/2013

<sup>86</sup> Women's Center for Legal and Social Counseling, An investigative study on the rights of the wife in the inherited property after marriage in Palestine, Dr. Hassan Ayoub, 2019

<sup>87</sup> An interview with the lawyer Salwa Bannoura on 5/11/2021

<sup>88</sup> Palestinian Declaration of Independence 1988.

<sup>89</sup> The Palestinian Basic Law of 2003 and its amendments.



a natural and basic unit of society and marriage is the basis of its founding. Men and women have the right to marry and to establish a family at the age of maturity in accordance with the rules of marriage. Marriage can only take place with the full consent of both parties, without compulsion. The legislation in force regulates the rights and duties of men and women at the conclusion of marriage, during its establishment, and at its dissolution. The state and society guarantee the protection of the family, the strengthening of its ties, the protection of its members, and the prohibition of violence and abuse, particularly against women and children<sup>90</sup>.

Accordingly, the Christian denominations must take into account the rights of women regarding the money acquired after marriage, by including in the personal status laws clear provisions about the division of the common funds between the spouses at the end of the marriage in order to preserve the rights and contributions of the wife. This is to embody the principle of equality between women and men in accordance with the international covenants on human rights, CEDAW, the Arab Charter on Human Rights, the Palestinian independence document and the Basic Law.

### **Alimony**

Alimony provisions in the personal status laws of Christian denominations are linked to the concept of patriarchal authority. The man is the head of the family and the primary income earner for his wife and family members depending on his financial ability<sup>91</sup>. Alimony is defined as all that a person needs to live a decent life in proportion to the situation of his peers, and it includes food, clothing, housing for all, medical care for the sick, service for the disabled, education, and upbringing for the young<sup>92</sup>. The husband is bound to provide alimony for the wife. While the wife is not bound to give alimony to her husband unless she is well off and her husband is insolvent<sup>93</sup>. The duration and amount of alimony are estimated by the court according to what it deems appropriate, taking into account the circumstances and conditions of the disputants,<sup>94</sup> and is subject to change according to the circumstances<sup>95</sup>.

If the wife should be entitled to alimony from her husband, she must obey<sup>96</sup> him and stay in the marital home, so that he can enjoy his full marital rights whenever he wants. If she refuses to cohabit with her husband or join him in his place of residence or leaves the marital home without, she shall lose her right to maintenance<sup>97</sup>. She shall also be seen as disobedient<sup>98</sup>. Not only shall she be considered “disobedient wife”, separated or abandoned, but she shall also be

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<sup>90</sup> The Arab Charter on Human Rights was adopted by the Sixteenth Arab Summit of the League of Arab States, hosted by Tunisia on May 23, 2004

<sup>91</sup> Armenian Orthodox Personal Status Law

<sup>92</sup> Article (136) and what follows from the Personal Status Law of the Latin Patriarchate of Jerusalem for the year 1954

<sup>93</sup> Article (34) of the Syriac Orthodox Personal Status Law, corresponding to Article (239) of the Byzantine Family Law

<sup>94</sup> Article (36) of the Personal Status Law of the Arab Evangelical Episcopal Congregation for the year 1954

<sup>95</sup> Article 240 of the Byzantine Family Law

<sup>96</sup> Article 33 of the Syriac Orthodox Personal Status Law for the year 2000

<sup>97</sup> Faraj, Tawfiq, personal status provisions for non-Muslims. Beirut. University House for Printing and Publishing. 1980

<sup>98</sup> Section 160 of the Eastern Catholic Personal Status Law of 1990

bound to compensate her husband financially for the damage caused due to her departure from the marital home<sup>99</sup>.

Christian women belonging to different denominations encounter several obstacles that hinder their access to justice through the procedures and practices of the courts they file their claims with. They charge them exorbitant fees ranging from JD150-700. In addition, women have to pay the fees of the lawyers assigned to represent them in the court. This leads to women's reluctance to resort to the ecclesiastical judiciary. Some of them are forced to borrow from relatives to cover the defense lawyers' expenses<sup>100</sup>.

"These courts' proceedings take a long time to settle family cases. They keep postponing hearings to give room for the spouses to settle their differences and return to normal", Judge Mislih said. Concerning the assessment of the wife's alimony, the court decides on that taking into account the financial conditions of the husband. It considers his monthly salary or income<sup>101</sup>.

Lawyer Al-Daboub stressed that the wife's suffering begins with the litigation procedures in alimony cases, as they are long procedures; they may take months. The wife remains without any alimony during the litigation process pending final decision. The wife is requested to provide documents proving the financial conditions of her husband. Such proof is difficult to bring about, especially when the husband is self-employed. The alimony amount in most cases isn't sufficient to meet the needs of the wife to have dignified life<sup>102</sup>. Ecclesiastical courts generally do not have a formal procedures manual that allow exemption or reduction of courts' fees<sup>103</sup>.

Lawyer Rock points out that implementing the alimony decision faces many obstacles. Decisions issued by ecclesiastical courts regarding alimony are implemented through the enforcement department of the regular courts, which sometimes takes eight months. During this period, the woman does not have any source of income. If the husband is notified and does not pay or abide by the court's decision, the wife has the right to issue a detention order against him. Most Christian women do not resort to the court for fear of family pressure and society blaming. They would hold her responsible for her husband's imprisonment, and such decision could cause her divorce<sup>104</sup>.

It is clear that the provisions concerning cohabitation or marital home which is necessary for the wife's eligibility to alimony according to all personal status laws of the Christian denominations is a sword over women's neck. It is a means to enable the man to rid him of his obligations to support his wife. The legal procedures for claiming alimony constitute a fundamental obstacle to women's access to justice. They are set in contravention of the Palestinian Basic Law and the Convention on the Elimination of All Forms of Discrimination against Women which affirms the principle of

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<sup>99</sup> Diat, attorney Dr. Alfred, briefing on marriage and family provisions for Christian denominations in Jordan. The first edition / the economic press. 1985

<sup>100</sup> An interview with lawyer Salwa Bannoura on 5/11/2021, a lawyer specializing in ecclesiastical issues for more than twenty years

<sup>101</sup> An interview with Father Issa Mosleh on 10/30/2021, a judge at the Greek Orthodox Court of Appeal in Jerusalem.

<sup>102</sup> An interview with lawyer Jiyad Daboub on 9/11/2021, a lawyer who has specialized in church issues for a long time.

<sup>103</sup> Kian: Fees in the Ecclesiastical Courts of the Greek Orthodox, Roman Catholic and Latin Denominations in Israel, 2017

<sup>104</sup> Interview with Lawyer Rock who is specialized in ecclesiastical cases.

equal rights at marriage, during and after marriage. As such the state must take the necessary measures to achieve gender equality and ensure women's access to justice.

### **Child Support**

According to the personal status laws of Christian denominations, the father has an obligation to support his children. If the mother is rich and the father is insolvent, it is an obligation on the mother as well. It is the ecclesiastical court that decides the amount and tenure of alimony according to the capacity of the custodial parent. Therefore, the amount of the alimony is subject to change according to the circumstances<sup>105</sup>.

Women face obstacles and challenges, including a lack of legal empowerment and knowledge about the laws applicable in the courts. They have no access to a legal aid system that would help them and raise their awareness about their rights. Litigation fees are unaffordable and vary from one court to another. Further, the litigation proceedings are prolonged and complicated. When the courts decide the amount of alimony to which women are entitled, it can hardly cover the expense of children's needs in terms of housing, clothing, medication, and education. Compared to the consumer price index, the amount of alimony set by the courts in most cases is insufficient and keeps women and children in a state of extreme poverty. They have to borrow money to support their children and meet their basic needs. Against this backdrop, the ecclesiastical courts hardly take into account the best interests of the child in breach of the Palestinian Child Law.

### **End of Marriage Relationship**

#### **The difference between separation, divorce, and annulment<sup>106</sup>**

**Divorce:** It is the dissolution of a valid marriage bond that was concluded in accordance with the effective legal provisions without a defect in consent or an impediment to the marriage. It gives the spouses the right to conclude a new valid marriage contract.

**Separation:** It is setting free the spouses from the obligation of marital cohabitation, which is imposed on them in accordance with a valid marriage contract for the presence of a serious reason. Separation could be concluded due to adultery or derogatory treatment, but the bond of marriage remains valid, and neither of them has the right to enter into a new marriage

**Annulment:** Annulment is not a divorce, that is, it is not a dissolution of a valid marriage, nor a separation. Rather, it ends legally invalid marriage.

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<sup>105</sup> Article (164) of the Personal Status Law of the Latin Patriarchate of Jerusalem for the year 1954. It corresponds to Article (302) of the Byzantine Family Law of 1901. It corresponds to Article (77) of the Personal Status Law of the Syriac Orthodox for the year 2000. It corresponds to Article (35) and what follows. From the Personal Status and Endowments Law of the Arab Evangelical Episcopal Church for the year 1954, corresponding to Article 39 of the Personal Status Law for the Evangelical Lutheran Church in Jordan and the Holy Land for the year 2015

<sup>106</sup> Father Ghaleb Badr, Explanation of the Marriage Rulings as they appeared in the Legal Right Group issued on January 25, 1983. The Institute's Seminary Publications 35.

**The personal status laws of Christian denominations consider marriage as a sacred sacrament of the Church and it is everlasting. It can't be dissolved except for specific, limited and varied reasons that differ from one denomination to another.**

#### **Dissolution of Marriage among Catholics:**

One of the characteristics of a Christian marriage is its permanence. Therefore, a valid, established, and complete marriage (a marriage that was concluded according to the legal provisions is free from defects of consent and invalidated impediments and becomes complete when the conjugal act between the spouses is completed). It can't be dissolved by any human authority, in accordance with the saying of Christ, "What God hath joined together, let no man put asunder." Therefore, the Catholic Church has put in place measures to address problems between spouses that make it difficult for them to continue to live together. The solution set by the church is separation which keeps the spouses away from each other but the marital bond remains undissolved. However, there are some exceptions to the rule allowing the dissolution of the marriage. These exceptions include: decided marriage but still incomplete (i.e. the conjugal act between the spouses has not been completed) or the incomplete marriage contracted between two unbaptized parties. In such cases, the marriage can be dissolved by a decision of the Supreme Pontiff (who has the authority to dissolve this marriage) at the request of one of the spouses if they find reasons and justifications that require the dissolution and annulment of the marriage<sup>107</sup>.

#### **Marriage annulment at the request of one of the spouses and its provisions in the following situations**<sup>108</sup>:

- If it is proven at the time of entering into the contract that one of the contracting parties is insane,
- If the conjugal act has not taken place, the court may give the husband or wife a period of no less than one year to address the problem.
- If one or both of the contracting parties was not of marriageable age at the time of completing the marriage contract and the guardian or trustee did not ratify the marriage contract,
- If the marriage contract was concluded by a trick, actual or moral coercion or threat.
- If the husband leaves his wife immediately after marriage for a period of no less than five (5) consecutive years, and the court proves that the marriage has not been completed. It is required that the court's ruling of the annulment of marriage be upheld by the bishop.

#### **Marriage Rectification by the Catholic Church:**

**Simple Validation**<sup>109</sup>: It includes rectifying cases of invalid marriage due to an invalidating impediment and lack of consent. If the marriage was annulled due to lack of consent, then its rectification is carried out by renewing the consent of the spouse, provided that the other party

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<sup>107</sup> Diyat, Lawyer Dr. Alfred, *Al Wajeez In the Rulings of Marriage and the Family of the Christian Denominations in the Hashemite Kingdom of Jordan*, First Edition/First Edition, House of Culture for Publishing and Distribution, 2004

<sup>108</sup> Article (27) of the Personal Status and Endowments Law for the Arab Evangelical Episcopal Congregation for the year 1954

<sup>109</sup> Diyat, Lawyer Dr. Alfred, *Al Wajeez in the Rulings of Marriage and the Family of the Christian Denominations in the Hashemite Kingdom of Jordan*, First Edition/First Edition, 2004, House of Culture for Publishing and Distribution.

persists in the consent given. If the marriage was invalid due to the failure of fulfilling the basic conditions of the marriage contract, it must be re-entered with mutual consent of both in the presence of the competent bishop and witnesses.

**Retroactive Validation<sup>110</sup>:** The retroactive validation of an invalid marriage is its validation without the renewal of consent, granted by the competent authority. It involves a dispensation from an impediment if there is one and from the legal provision if it had not been observed, as well as a referral back to the past of the legal effects. The validation takes place from the moment the favour is granted; the referral back, however, is understood to have been made to the moment the marriage was celebrated, unless it is otherwise expressly provided. A retroactive validation is not to be granted unless it is probable that the parties intend to persevere in conjugal life. It was proclaimed by the Supreme Pontiff, Pope Francis, through which the doctrine of the indissolubility of the sacred bond of marriage was further cemented, as the system of annulment of marital consent and regulations aimed at accelerating litigation in cases of annulment of marriage were developed<sup>111</sup>.

### **Separation while the Bond Remains<sup>112</sup>**

Separation does not mean absolute divorce as the bond of marriage remains in place. Separation allows the spouses to live separately, and exempts them from the obligation of joint cohabitation, which is imposed on them by the marriage itself. Although the spouses no longer live together, they remain bound to each other by the bond of sacred marriage. They remain bound by the duty of mutual fidelity whereby they aren't allowed to enter into a new marriage or establish marital relations with a third party. Separation according to personal status laws is exercised within the jurisdiction of the ecclesiastical courts<sup>113</sup>. Christian denominations take it as a means to preserve the marital bond in case of a dispute so that the door remains open for the spouses to return to a joint life. The separation may be temporary, that is, for a specific period, or it may be permanent, but in both cases the marital bond remains in place, and neither of them can contract another marriage, and each of them inherits the other in case he dies during the separation period<sup>114</sup>.

Separation could take place due to adultery, marital infidelity,<sup>115</sup> serious physical harm towards the spouse or their children (for example, beating, abuse, constant quarrels and hatred), serious spiritual harm towards the spouse or their children (for example, constant insults), attempting to

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<sup>110</sup> Father Ghaleb Badr, *Explanation of the Marriage Rulings as they appeared in the Legal Right Edition* issued on January 25, 1983. The Institute's Seminary Publications 35.

<sup>111</sup> The Apostolic Will of the Supreme Pontiff Francis the Vatican for the year 2015 "The Lord Jesus, the Meek Judge" on the reform of due process in lawsuits declaring the nullity of marriage in the Western Legal Right Group 1983

<sup>112</sup> Diyat, Lawyer Dr. Alfred, *Al Wajeez*

in the *Rulings of Marriage and the Family of the Christian Denominations in the Hashemite Kingdom of Jordan*, First Edition/First Edition, 2004, House of Culture for Publishing and Distribution. page 111

<sup>113</sup> Father Ghaleb Badr, *Explanation of the Marriage Rulings as they appeared in the Legal Right Group* issued on January 25, 1983. The Institute's Seminary Publications 35.

<sup>114</sup> Diyat, Lawyer Dr. Alfred, *Al Wajeez In the Rulings of Marriage and the Family of the Christian Denominations in the Hashemite Kingdom of Jordan*, First Edition/First Edition, House of Culture for Publishing and Distribution, 2004

<sup>115</sup> Article (1151) of the *Compilation of the Legal Right of the Latin Catholic Church*

push one of the parties to commit dishonorable acts, or push him \ her to commit a sin<sup>116</sup> and neglect and abandonment of the marital home.

### **End of Marital Bond in Greek Orthodox Church**

Marriage ends in cases of death or any of the following:

#### **Marriage Annulment:**

Marriage annulment takes place when the ecclesiastical court decides that the two parties to the marriage contract were not married and their marital bond did not constitute legal marriage, meaning that the effects of annulment go back to the date of the marriage contract. Marriage is nullified if one of its parties is absent due to the failure of meeting the conditions necessary for the validity of the marriage contract. The marriage is nullified if it takes place in the event that one of the spouses is bound by another marriage, and/or if it takes place in contravention of the provisions of the basic church laws, such as marriage between relatives up to the third degree, and/or if it was concluded by a priest who does not belong to the denomination of one of the parties<sup>117</sup>.

**Dissolution of Marriage**<sup>118</sup> which is determined by the following reasons:

- The death of one of the spouses.
- Issuance of a definitive decision of divorce by the ecclesiastical court signed and approved by the competent bishop.

#### **When can the husband request divorce**<sup>119</sup>?

- If the husband discovers that his wife is not a virgin on the wedding day;
- If the wife deliberately spoils the husband's sperm, so that she doesn't become pregnant and that is in breach of the goals of marriage;
- If she carouses with male strangers, and joins them in banquets, or bathes with them.
- If the wife spends the night, without her husband's permission, outside her home as such behavior calls for suspicion and presumption of adultery. This reason does not apply if her husband expels her or if she resides in the house of her father or her relatives;
- If she goes to racing, acting, and hunting events without her husband's knowledge;
- If the wife committed adultery and the husband proved that;
- If the court orders the wife to marital obedience, that is, to follow her husband to the marital home, but she did not comply with the court's decision and did not object to it during the legal period, and she remained separated from her husband for a period of three years.

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<sup>116</sup> Article 1153 of the Legal Right of the Latin Catholic Church

<sup>117</sup> Father Ibrahim Shaheen, *You and the Law, Part One*, a legal study of the ecclesiastical right and personal status law of the Greek Orthodox sect and due process. First Edition.1994

<sup>118</sup> Article 246 of the Byzantine Family Code

<sup>119</sup> Diyat, Lawyer Dr. Alfred, *Al Wajeez In the Rulings of Marriage and the Family of the Christian Denominations in the Hashemite Kingdom of Jordan*, First Edition/First Edition, House of Culture for Publishing and Distribution, 2004

### **When can a wife request divorce<sup>120</sup>?**

- If the husband has been impotent for a period of three years from the date of the wedding and his impotence isn't curable. It should be noted that infertility alone is not considered a reason for divorce as long as the spouses are able to engage in conjugal acts.
- If the husband forces his wife to engage in illicit affairs with others. Such an act constitutes a violation of the sanctity of marriage and the principles of marital fidelity, morals and honor.
- If the husband accuses his wife of adultery without proving that;
- Husband's negligence of his wife for three years;
- Physical and emotional infidelity by the husband

### **When can spouses request divorce<sup>121</sup>?**

Spouses may request divorce in the following cases: insanity, conspiracy against the state, conspiracy by one of the spouses against the life of the other, convicting one of the spouses of a criminal offense, difference of religion, difficulty living together.

### **End of the marital bond in the Syriac Orthodox Church**

- Marriage ends with desertion and separation<sup>122</sup>, if one of the spouses intentionally harms the other and the harm lasts for three years;
- If the damages were made upon requesting desertion from the court;
- If desertion and separation continues for more than three years, the marriage is dissolved;
- If the husband commits adultery in the marital home, or if he loves another woman other than his wife;
- If one of the spouses conspires against the life of the other;
- If the husband forces his wife to engage in matters that harm her honor and religion;
- If the wife refuses to return to the marital home despite the court ruling without providing a legitimate excuse.

### **Annulment of marriage and divorce<sup>123</sup>:**

It takes place if:

- The wife pretends to be a virgin and it's later revealed to be untrue.
- The wife appears to have committed adultery deliberately not raped;
- The wife carouses with strangers without her husband's knowledge;
- The wife damages her husband's implantation (the sperm);
- One of the spouses leaves the Christian faith.

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<sup>120</sup> Article 249 of the Byzantine Family Law.

<sup>121</sup> Article 250 of the Family Byzantine Law.

<sup>122</sup> Article (48) of the Syriac Orthodox Personal Status Law for the year 2000

<sup>123</sup> Article (54) of the Personal Status Law of the Syriac Orthodox Church for the year 2000

## **Spouses' judicial separation with marital bond kept in place in the Arab Episcopal Denomination<sup>124</sup>**

### **Spouses' judicial separation takes place if:**

- One of the spouses goes insane completely and cannot be cured;
- One of the spouses was proven to have tried to kill the other;
- One of the spouses converts to a religion other than Christianity;
- One of the spouses has been separated from the other for a period of no less than two years, and the court did not succeed in convincing him to return to marital cohabitation, and the other party requested a separation between them. In such case, the court has the right either to give the spouses a time limit for reconciliation or to separate them temporarily or permanently;
- One of the spouses commits an act of adultery and the innocent spouse doesn't enter into a conjugal act with him \ her after discovering that;
- The court proves that one of the spouses treats the other badly;
- One of the spouses eloped with another person, and they deserted each other.

### **Analysis of some legal provisions on separation, annulment, divorce and dissolution of marriage in the personal status laws of Christian denominations:**

In the event that the separation period between the spouses ends and the ecclesiastical court decides for them to return to marital life, while the wife refuses to implement the decision, she would be treated as disobedient. Thus, her husband becomes entitled to file lawsuits against her. He could deprive her of her marital rights (alimony, child custody, legal home, and any other rights). The question is how women are forced or coerced into the house of obedience? Is this not considered enslavement and humiliation of women and degradation of their dignity? How are they punished for being disobedient, especially in the event of marital disputes that end up without reconciliation and/or with violence against the wife by her husband?

The provisions that oblige the wife to accept forced cohabitation are enshrined in all personal status laws of Christian denominations. These laws are usually<sup>125</sup> exploited by the husband in cases of marital disputes before the ecclesiastical courts as a means of evading his obligations including alimony, child custody, and any other rights, under the pretext that she is disobedient. Forcing the wife into obedience is inconsistent with the human rights and personal freedom of the wife stated in international human rights covenants and conventions. They also constitute a violation of the Palestinian Basic Law, the Declaration of Independence and CEDAW. These instruments emphasize the quality of rights before the judiciary without discrimination between men and women. Contrary to these conventions and instruments, only the wife is considered disobedient and is punished by depriving her of her rights if she refuses to obey. These provisions aren't applicable to the husband, even if he rejects obedience and cohabitation.

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<sup>124</sup> Article 31 of the Personal Status and Endowments Law for the Arab Evangelical Episcopal Congregation for the year 1954

<sup>125</sup> Interviews with lawyers specialized in ecclesiastical matters.



The personal status law of the Greek Orthodox Church allows the husband to divorce his wife if she commits adultery. As for the wife, the crime of adultery committed by the husband is not considered a ground for divorce unless the adultery is committed in the marital home. Cases of adultery, marital violence, and abuse are considered grounds for separation while the marriage bond remains, but they don't qualify for the dissolution of marriage and/or divorce. Lawyers confirmed that many women face obstacles trying to end their marriage. They are forced to compromise their rights to child custody and/or alimony and/or compensation. Women often relinquish their rights to alimony and compensation in exchange for the husband's consent to end the marriage by changing denomination to resort to more lenient laws that allow dissolution of marriage (such as the Orthodox Church)<sup>126</sup>.

### **Mixed Marriages Conflicts**

Mixed marriage is a marriage that takes place between two Christian parties, one of whom belongs to the Latin Church and the other is baptized but not Catholic. This includes both the Orthodox churches and the Protestant churches, but in order for the marriage to take place according to the personal status law of the Catholic Church, permission and dispensation must be obtained from the ecclesiastical authority<sup>127</sup>. According to the Byzantine Family Law of the Orthodox Church, marriage between an Orthodox Christian and a non-Orthodox Christian has become permissible. However, the spouse must obtain from the presidency of the church to which they belong a statement that they are not bound by a legal impediment preventing marriage, and that they are subject to the Orthodox Church and its laws and courts in everything related to the upbringing, maintenance and discipline of their children, as well as any spousal dispute<sup>128</sup>.

### **Conversion into another faith after marriage and its impact on the marriage contract**

The Christian woman would encounter a major obstacle if her Christian husband converts into the Islamic religion in the event of marital disputes. A remarriage without ending the previous marriage that was held in the church is not possible for Christian women as Islam allows polygamy. In this case, the first marriage and its effects remain subject to the ecclesiastical authority in which the marriage was contracted. However, the conversion of the husband negatively affects the rights of the wife<sup>129</sup> and her children<sup>130</sup>, as a non-Muslim does not inherit from a Muslim<sup>131</sup>.

In the Orthodox Church, either of the spouses may request a divorce in the event the other spouse converts into another faith since the difference in religion originally prevents marriage. So it is natural that one of the spouses' conversion to another faith leads to a divorce request from the

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<sup>126</sup> Interviews with lawyers specialized in ecclesiastical laws, 5-11-2021.

<sup>127</sup> Father Ghaleb Badr, Explanation of the Marriage Rulings as they appeared in the Legal Right Group issued on January 25, 1983. Institute Publications 35.

<sup>128</sup> Article (121) and what follows from the Byzantine Family Law for the Greek Orthodox

<sup>129</sup> Article 155 According to the Personal Status Law of 1976 stipulates that the mother loses custody if she is an apostate.

<sup>130</sup> The Islamic jurisprudence rule: "A child follows his father's religion"

<sup>131</sup> Diyat Al-Farid, *Al-Wajeez In the Rulings on Marriage and the Family of the Christian Denominations in Jordan*, 1985

other spouse<sup>132</sup>. The Syriac Orthodox Church and the Arab Episcopal Church have made an amendment whereby one of the spouses' conversion could be a reason for abandonment<sup>133</sup>. The Evangelical Lutheran Church considers marriage to a non-Christian a reason to annul the marriage<sup>134</sup>.

The subjection of Christian women to several personal status laws according to the denomination to which they belong makes them vulnerable to spousal violence, extortion and abuse during the procedures of ending marriage before the ecclesiastical courts, especially in the absence of the family protection law in Palestine. The women cannot exercise legal measures that may provide them with protection, such as deporting the offender. The wife must also face lawsuits of marital disobedience and/or waive her right to custody of her children and/or her financial rights and/or being expelled from the marital home if the house is registered in her husband's name.

The multiplicity of laws detracts from the rights of the citizen. It constitutes a flagrant discrimination against the Palestinian Basic Law and the Declaration of Independence, and constitutes a challenge to international law and covenants on human rights. It is also a violation of the CEDAW Convention, which the State of Palestine has ratified and committed itself to align its local legislation accordingly, especially personal status laws, by including the principles of equality and justice between men and women, and equal rights between spouses at all circumstance<sup>135</sup>.

Referring to (Article 16) of the Convention on the Elimination of All Forms of Discrimination against Women, we note that it has certain provisions that confirm the importance of women's enjoyment of equal rights within the family at the beginning, during and upon dissolution of marriage. It also binds the party states to take the necessary steps to establish the principle of effective equality and prevent discrimination. Even so, the personal status laws of Christian denominations restrict women's rights to dissolve marriage.

Finally, the diversity of laws and courts undermines national unity and rips the Christian community in the Arab Orient apart by turning it into small minorities. This constitutes an obstacle to the consolidation of democracy and the promotion of the sense of national belonging. Furthermore, it reinforces bureaucracy, complicates Christians' lives and pushes them to convert to Islam.

### **Compensation upon issuance of ruling of annulment and dissolution of the marriage**

The personal status laws of the Christian denominations unanimously agree that whoever of the spouses causes annulment and \ or dissolution of the marriage must compensate the other for

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<sup>132</sup> Article (48) of the Personal Status Law of the Syriac Orthodox Church for the year 2000 and corresponding to (Article 31) of the Personal Status and Endowment Law of the Arab Evangelical Episcopal Church for the year 1954

<sup>133</sup> Article (92) of the Personal Status Law of the Evangelical Lutheran Church in Jordan and the Holy Land for the year 2015

<sup>134</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

<sup>135</sup> Article 176 of the Personal Status Law of the Latin Patriarchate of Jerusalem for the year 1954, corresponding to Article (110) of the Personal Status and Endowments Law of the Evangelical Lutheran Church in Jordan and the Holy Land for the year 2015 and Article (28) of the Personal Status and Endowments Law for the Arab Episcopal Church of 1954. Article (61) of the Syriac Orthodox Personal Status Law for the year 2000, corresponding to Article (68) of the Personal Status Law of the Armenian Orthodox Church.

the damages incurred by them as a result. The amount of compensation estimate rests with the court<sup>136</sup>.

Referring to interviews held with some lawyers, they stated that the value of the compensation awarded to the wife is often insufficient for her economic independence and/or self-reliance, and is not commensurate with the number of years of marriage. This is unfair to women as they face difficulty in proving their contributions throughout the marriage life, since most of the holdings and the property of the spouses is registered in the name of the husband (according to custom and practice)<sup>137</sup>.

### **Inheritance**<sup>138</sup>

Inheritance is all that a person leaves after death of movable and immovable property, including one's rights. The inheritance is distributed among the heirs. The heirs have the right to inheritance of another person by virtue of Sharia and law, and the right holder is called an heir<sup>139</sup>. The inheritance laws which are applicable to Christians in Palestine are fragmented dating back to the Ottoman, Jordanian and Egyptian eras, and contradict each other. The Ottoman law of inheritance gave authority and jurisdiction to the ecclesiastical courts in matters of inheritance. Then, Non-Muslim denominations' councils appeared during the period of Jordanian rule, which required these councils to distribute immovable properties in accordance with the provisions of Jordanian laws applicable to Muslims. Consequently, Christians apply the provisions of Islamic law of inheritance in force in the West Bank and Gaza Strip<sup>140</sup>.

Some personal status laws of Christian denominations indicated that inheritance provisions are subject to civil law<sup>141</sup>, which contradict the Basic Law, the Palestinian Declaration of Independence, the Arab Charter and the Convention on the Elimination of All Forms of Discrimination (CEDAW), which urges the state party to take all appropriate measures to ensure equality between men and women in regards to family benefits<sup>142</sup>.

According to the personal status laws of Christian denominations, the impediments of inheritance could be the following: difference in religion and killing of the inheritor<sup>143</sup>. Different

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<sup>136</sup> Article 176 of the Personal Status Law in the Latin Patriarchate of Jerusalem for the year 1954, corresponding to Article (110) of the Personal Status and Endowments Law of the Evangelical Lutheran Church in Jordan and the Holy Land for the year 2015 and Article (28) of the Personal Status and Endowments Law for the Arab Episcopal Church of 1954. (61) The Syriac Orthodox Personal Status Law for the year 2000, corresponding to Article (68) of the Armenian Orthodox Church Personal Status Law.

<sup>137</sup> Interviews with lawyers specialized in the ecclesiastical judiciary.

<sup>138</sup> Scarlett Bishara. Paper on the Rights and Policy Gaps in Personal Status Laws for Christian Denominations, the Palestinian Initiative to Deepen Dialogue and Democracy "Miftah" 2020

<sup>139</sup> Diat. Alfred. Al-Wajeez in the provisions of marriage and family for the Christian denominations in Jordan. The first edition, 1985

<sup>140</sup> Article (5) of the Law of Councils of Religious Denominations No. (2) of 1938 and the Law of Councils of Non-Muslim Religious Denominations No. (9) of 1958 applicable in the West Bank, and Law No. (1) of 1965 regarding the application of inheritance provisions in Islamic Sharia on all Amiri lands in force in Gaza. Article (2) of the Shari'a Procedure Law of 1959 in the West Bank and Article (5) of the Shari'a Procedure Law No. (12) of 1965 in the Gaza Strip.

<sup>141</sup> Article (210) of the Personal Status Law in the Latin Patriarchate of Jerusalem states that the inheritances of universals from the Catholic denominations are subject to its provisions and the determination of their shares to civil laws.

<sup>142</sup> Article 13, paragraph (a) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

<sup>143</sup> Article (208) of the Personal Status Law of the Latin Jerusalem Church of 1954, corresponding to Article (211) of the Personal Status Law for the Eastern Catholic denominations, and Article (112) of the Personal Status and Endowment Law for the Arab

religion means that the relatives and \ or wife of the deceased person who are not affiliated with the same faith would not be entitled to his inheritance. While killing of the inheritor means that the person who deliberately kills them to inherit his property would be deprived of the right to inheritance<sup>144</sup>.

Other impediments of inheritance in some Christian denominations include: permanent desertion as a result of adultery and annulment of marriage. The spouse who is handed down desertion decision by court due to commission of adultery does not inherit the innocent spouse<sup>145</sup>; and the inheritance of either spouse is not realized towards the other if the marriage is nullified by a court's decision<sup>146</sup>.

Although women have the legal right to inherit according to the principles of Islamic law, in practice women are prevented from exercising this right due to customary laws and social traditions<sup>147</sup>. They are subjected to pressure by male relatives to give up their inheritance rights in favor of male heirs<sup>148</sup>. Discrimination between women and men regarding inheritance goes beyond the limits of Sharia or law. Women are deprived of inheritance due to cultural customs that result in a symbolic compensation in return for their "free" waiver of their share of the inheritance to their brothers. As for women who refuse to do so, they are usually ostracized<sup>149</sup>."

Women also face judicial and procedural obstacles, including prolonged court procedures. Settlement of inheritance issues takes prolonged times and the majority of exit transactions (Takharuj) are carried out by female heirs in favor of male inheritors due to women's lack of knowledge of the concept of Takharuj<sup>150</sup>. Diab stressed that women and girls must be targeted by awareness and education programs to raise their awareness of their rights<sup>151</sup>.

The Committee on the Elimination of Discrimination against Women (CEDAW) recommended in its concluding observations on the report of the State of Palestine submitted to it, "that the State of Palestine should review all personal status laws with a view to repealing or amending all

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Evangelical Episcopal Congregation for the year 1954, and Article (219) and thereafter in The law of inheritance and wills of inheritance of the Orthodox sect in the totality of the Byzantine family law.

<sup>144</sup> Dayat. Alfred. Al-Wajeez in the provisions of marriage and family for the Christian denominations in Jordan. The first edition. 1985.

<sup>145</sup> Article (215) of the Personal Status Law of the Eastern Catholic denominations, corresponding to Article (212) of the Personal Status Law of the Latin Patriarchate of Jerusalem for the year 1954.

<sup>146</sup> (Article 117 and what follows under the Personal Status Law of the Evangelical Lutheran Church in Jordan and the Holy Land for the year 2015)

<sup>147</sup> The United Nations Development Program in partnership with the United Nations Population Fund, the United Nations Entity for Gender Equality and the Empowerment of Women and the Economic and Social Commission for Western Asia (ESCWA): Gender justice and equality before the law. A regional analysis of the progress made and challenges in the Arab States region. November 2019.

<sup>148</sup> The United Nations Development Program in partnership, Palestine (gender justice and law) 2018.

<sup>149</sup> Dudin and Khalil, Paper on the Jurisdiction of Christian Religious Courts in Children's Cases, Presented at the Fifth Meeting of the Mini-Committee in the Palestinian Ministry of Planning, Ramallah (2006)

<sup>150</sup> Women Center for Legal and Social Counseling, Palestinian Women and Inheritance, 2014,

<sup>151</sup> An interview with Judge Fadi Diab on 7/8/2020, Judge of the Court of First Instance of the Arab Evangelical Episcopal Denomination.

provisions that discriminate against women and girls, especially those related to marriage, divorce, inheritance and legal eligibility of women<sup>152</sup>

Since 2015, the Evangelical Lutheran Church has been able to distribute the inheritance equally between males and females in movable and immovable property<sup>153</sup>. In my experience as a judge in the Evangelical Lutheran Church's first instance court, I have observed satisfaction among women and a sense of justice and equity for having equal inheritance. The judges make sure that the heirs attend the court and ask the woman whether she has obtained her rights in full without pressure or coercion before completing and approving the exit process.

In the first step of its kind since the issuance of the first personal status law in the Byzantine and Ottoman eras, Christian denominations in Jordan embarked on making radical amendments to the law in order to modernize it and address the loopholes that conflict with the interest of the family. The amendments that specialized committees of priests, lawyers and jurists are reviewing will affect, especially issues of inheritance, custody, witnessing, alimony and age of marriage. The work is moving towards equal rights in inheritance between men and women. At the same time the Latin Patriarchate has begun to review the Personal Status Law to ensure gender equality in inheritance<sup>154</sup>.

### **Section (8): Evangelical Lutheran Church Experience in Implementing Gender Equality through the Personal Status Law**

The Evangelical Lutheran Church in Jordan and the Holy Land adopted the Lutheran Personal Status Law<sup>155</sup> and established ecclesiastical courts with its first instance and appellate degrees<sup>156</sup>. The court consisted of clerical and secular judges specialized in law. Female judges were appointed for the first time in Middle Eastern ecclesiastical courts due to the conviction of the Evangelical Lutheran Church that court judges play an important role in consecrating justice and equality by enforcing the law. The female judges also understand women's issues and their rights, and address the cases brought before the court with full impartiality. Increasing the number of women in the judiciary contributes to the achievement of gender justice and the establishment of strong and independent judicial institutions. It also improves the decision-making process, particularly in cases that affect women<sup>157</sup>. It allows women who attend court to feel more at ease and less embarrassed, empowering them to express themselves and their cause in a better manner.

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<sup>152</sup> Committee on the Elimination of All Forms of Discrimination against Women, concluding observations on the initial report of the State of Palestine. July 2018 CEDAW/ C/PSE/CO/1

<sup>153</sup> See Article (173), the second item of the Personal Status Law of the Evangelical Lutheran denomination, which states that "all children of the testator, male and female, shall obtain the inheritance equally."

<sup>154</sup> Radical amendments to the personal status law for Christians - Al-Rai newspaper <http://alrai.com/article/10477368/>

<sup>155</sup> The Personal Status Law of the Evangelical Lutheran Church in Jordan and the Holy Land (2015)

<sup>156</sup> Decision No. (105) of 2014 approving the formation of the Church of Appeal and the Primary Church of the Evangelical Lutheran Church in Jordan and the Holy Land.  
<http://muqtafi.birzeit.edu/pg/getleg.asp?id=16674>

<sup>157</sup> Economic and Social Commission for Western Asia (ESCWA): Women in the Judiciary as a Step towards Achieving Gender Justice, Beirut 2018

Thus, the Lutheran Church became an inspiring example of promoting and serving justice between women and men according to the ecclesiastical law and the ecclesiastical court proceedings.

The Evangelical Lutheran Church has adopted the current Personal Status Law because it is convinced of the importance of the church's role in supporting its members in building a family life based on achieving a policy of equality and gender justice including the protection and promotion of the dignity of women and men. It acts based on its conviction that men and women are created in the image of God, and works to create balance between women and men. It strives to eliminate institutional, cultural, and customary systems that give privilege to men and support discrimination of women<sup>158</sup>.

**The law is based on the Palestinian Basic Law and the Convention on the Elimination of All Forms of Discrimination against Women:**

The Lutheran Personal Status Law, which was inspired by the Lutheran understanding of the Bible, was in line with the Palestinian Basic Law, which emphasized equality among Palestinians. It is drafted in accordance with the Palestinian Declaration of Independence and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the international covenants on human rights. The following are some of the legal provisions enshrined in the law:

**Age of Marriage (Articles 12-13):** In Lutheran Personal Status Law, marriage is defined as a notarized, consensual covenant between a man and a woman. The provisions stipulate that both parties should be at least 18 years of age and that the marriage takes place before God and in the presence of a group of believers. This enables spouses to unite and form a Christian family. In order to guarantee complete freedom of marriage and to eliminate child marriage, the law stipulated that the minimum age for marriage is 18 years.

**The financial system of spouses (Article 33):** The joint and equal financial rights of spouses are confirmed in the provisions of the Lutheran Personal Status Law. Spouses may claim joint ownership of all their material gains. Property includes all movable and immovable assets. According to Lutheran Personal Law, after the spouses are married, the cash and assets they collect together belong to each of them (Article 37).

**Divorce and Separation (Articles 99-128):** The Lutheran Church believes in the importance and permanence of marriage, but it also believes in a person's right to a harmonious relationship based on respect and maintenance of rights. If there is an imbalance in the relationship, one of the spouses has the right to go to court to terminate the marriage. There are real and compelling reasons for ending a marriage. Examples of this include the exposure of one of the spouses to violence or cruel treatment, desertion, adultery, infectious diseases and other reasons that can prevent the sustainability of the marital relationship.

**Alimony:** Alimony is defined as the means that a person needs to live a decent life. This includes food, clothing, housing, medical treatment, disability services and education for young people. It is the amount of money that must be paid for the spouse to cater to herself and her children's needs. The law emphasized equal responsibility between spouses regarding alimony, as Article 39

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<sup>158</sup> Lutheran World Federation. Gender Justice Policy [https://www.lutheranworld.org/sites/default/files/DTPW-WICAS\\_Gender\\_Justice.pdf](https://www.lutheranworld.org/sites/default/files/DTPW-WICAS_Gender_Justice.pdf)

stipulates that: “For alimony is obligatory between spouses, alimony is obligatory for the affluent husband for his insolvent wife, and for the wife to provide for her insolvent husband as long as the marital bond exists.”

**Parental authority:** A child remains under the authority of their parents (father and mother) until they reach the age of majority<sup>159</sup>.

**Children’s alimony:** The father or mother is bound to support the child, male or female, until he reaches the age of majority. In estimating the alimony for the young child, the necessary service, breastfeeding, nursery, education and the rest of his various living necessities are taken into account<sup>160</sup>.

**Custody:** The custody period begins from birth until the child reaches the age of thirteen. After this period, the children reside with their father, unless the court finds reasons that show that the father has lost his eligibility and ability to take care of them. The right to custody of the children belongs to the mother, provided that she is of good conduct and is able to raise and care for her children.<sup>161</sup>

**Inheritance:** Since 2015, the Evangelical Lutheran Church has been able to distribute the inheritance equally between males and females, including movable and immovable property<sup>162</sup>. As a judge in the Evangelical Lutheran Church's first instance court, I have witnessed women's satisfaction as well as a sense of justice and equity for having equal inheritance. Before approving the exit process, the judges ensure that the heirs attend court and question the women if they had received their rights in full without pressure or coercion.

## **Recommendations**

1. Palestinian Christian denominations should review their personal status laws by including the principles of equality and justice between women and men in accordance with the Palestinian Basic Law and the Declaration of Independence, international conventions and covenants on human rights, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
2. Encouraging churches to work together to adopt a unified personal status law for all Christians in Palestine and a law of procedures that guarantees justice and equality between spouses in all marital aspects.
3. Setting the minimum age of marriage under personal status laws at 18 years for Christians with strict narrow justified exceptions.
4. Acknowledgement of the principle of joint guardianship of children during marriage and in case of its dissolution. The provisions of child custodianship must take child best interest into consideration.

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<sup>159</sup> Article (62) of the Personal Status Law of the Evangelical Lutheran Church in Jordan and the Holy Land (2015)

<sup>160</sup> Ibid

<sup>161</sup> Ibid

<sup>162</sup> See Article (173), the second item of the Personal Status Law of the Evangelical Lutheran denomination, which states that “all offspring of the deceased, male and female, shall receive the inheritance equally.”

5. Reducing and unifying judicial proceedings fees at the ecclesiastical courts in addition to disseminating the guidelines for exempting women with financial hardships of paying courts' fees.
6. Amendment of ecclesiastical courts' proceedings so that alimony cases are considered and disposed expeditiously.
7. The amount of alimony should not be less than the minimum wage to enable the wife and her children to live in dignity. Ecclesiastical courts, judges, and lawyers should direct Christian women to the Palestinian Alimony Fund in the event that the wife cannot collect alimony from her husband after the ruling has been submitted to the Executive Department.
8. Adopting the principle of equality of the right to seek divorce and/or annulment of marriage, taking into consideration domestic violence as one of the reasons for terminating marriage.
9. Immediate work to abolish the provisions of forcing the wife into marital obedience, in all personal status laws. Such provisions are inconsistent with the human rights and personal freedom enshrined in international covenants and conventions of human rights as well as the Palestinian Basic Law.
10. The provisions of the personal status laws of Christian churches should provide for the division of common funds between spouses at the end of the marriage in order to preserve the rights and contributions of the wife and embody the principle of equality between women and men, based on the principle of joint ownership.
11. Encouraging ecclesiastical courts to appoint judges specialized in ecclesiastical law to enhance the sensitivity of the courts towards women's issues. The current judges must attend training programs on human and women's rights and the Convention on the Elimination of All Forms of Discrimination against Women.
12. Suspension of Article (5) of the Religious Denominations Councils Law No. (2) of 1938, the Non-Muslim Religious Denominations Councils Law No. (9) of 1958, Article (2) of the Shari'a Procedure Law of 1959 in the West Bank, and Article (5) of Law No. (12) of 1965 in the Gaza Strip, which provide that the non-Muslim communities in Palestine must be subjected to the Islamic Law of Inheritance. The Christian communities should be allowed to divide the inherited property according to the transitional division on the basis of gender equality before ecclesiastical courts.
13. Organizing awareness and education campaigns for Christian women of different denominations about their rights within the personal status law of the Christian denominations and legal procedures to reach justice, and emphasizing the need to provide evidence of legal procedures before ecclesiastical courts in cooperation and coordination with civil society institutions.
14. Urging the Heads of all recognized churches in Palestine to play their role in promoting the concepts and values of equality and justice between women and men by interpreting the texts of the Bible from a gender perspective, and working to find solutions to the challenges facing the Christian family to keep pace with the ongoing massive developments.
15. Encouraging universities and colleges to teach personal status laws to Christian churches and to conduct studies and research on them.



16. Ensuring Christian churches participation in government plans aimed at achieving equality and justice between men and women. Such a step is of high importance as churches can influence Christian citizens in changing negative customs, traditions and norms in the society.
17. Advising all churches to organize workshops for spouses-to-be on the personal status laws applicable to their churches.
18. Establishing a legal aid system to help women access to justice by providing them with legal advice services before ecclesiastical courts.
19. Establishing a Family Reform Department in which secular social and psychological specialists specialized in family counseling are appointed at ecclesiastical courts. They should bind litigant spouses to resort to the counseling section to help them reach amicable solutions, before proceeding with the lawsuits at ecclesiastical courts.
20. Increasing free legal, social and psychological services for women through human rights and civil society institutions to support them at church courts to claim their rights.
21. Making endeavors to change the cultural and social reality that negatively affects women's rights and prevents them from accessing justice. This could be achieved by increasing media programs, courses and workshops to create new women supportive concepts.

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Interviews were held with:

- Father Issa Mosleh, a Judge at the Greek Orthodox Court of Appeal in Jerusalem.
- Lawyer Alfred Rock, a lawyer specializing in litigation before ecclesiastical courts.
- Lawyer Jiyad Al-Daboub, a lawyer who has specialized in ecclesiastical issues for a long time.
- Lawyer Salwa Bannoura, a lawyer who has specialized in pleading before ecclesiastical and Sharia courts for a long time.
- Lawyer Imad Al-Batarseh, a lawyer specialized in pleading before the ecclesiastical courts.
- Lawyer George Sabbat, a lawyer specialized in pleading before ecclesiastical courts.

Meetings held with lawyers to discuss the challenges women face before ecclesiastical courts:

- Lawyer Mary Rock, specialized in litigation before ecclesiastical courts.
- Lawyer Haya Bannoura, specialized in litigation before ecclesiastical and Sharia courts.
- Lawyer Rock Rock, specialized in litigation before the ecclesiastical courts.