

**Personal Status in Palestine between Multiple Laws and International Obligations
Occupied West Bank and East Jerusalem**

**Judge Somoud Damiri
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**If people's perception of things is complete, no space shall be left for atmospheric
impressions and fanaticism**

Ibn Taimia

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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Introduction:

The Palestinian Basic Law of 2003 and its amendments addressed the Palestinian citizens without any discrimination based on religion, gender or other reasons, in relation to rights and freedoms. Article 4 of it stated that Islam is the official religion of the State of Palestine, and the principles of Islamic Sharia are considered a major source of legislation. It also stipulated that all religions have respect and sanctity.

Question: To what extent did these formulations affect the general aspects of life? Is its impact concentrated in specific contexts? Did these formulations affect the concept of citizenship? Has it touched constitutional principles such as equality, justice and non-discrimination?

This leads to another important question that is; is religion a major element in the legislation?

To answer all these questions, it is important first to look into the extent to which the impact of religion on public life varies from one society to another. We look at the extent of commitment to worship and care for places of worship, the nature of dress in the country and the nature of the expressions used in the daily life of the citizen.

The impact of religion appears on the nature of religious discourse, the nature of the country's media and political discourse, and the extent to which it is linked to the religious context as well as the discussion of public affairs, including the enactment or amendment of legislation. It is also important to look into the extent of its spell on the patterns of bullying, including that online, and the extent of its impact on the electoral choice, and the extent of its interference in educational curricula.

We need to understand the forms of this interference with all these domains and its impact on raising children.

Women's rights are one of the most important issues affected by the controversy related to religion. The question is why there is always this religious historical debate on women's issues? How was this controversy linked to religion, how did it develop?

Has the interaction between religions and human nature resulted in distortions that produced male dominated structures? Who took charge of the interpretation of the religious text and its codification throughout Islamic history? Were women involved in interpretation and codification of the religious text?

In this research, I shall analyze personal status law in the West Bank and occupied East Jerusalem and its alignment with the international human rights standards, international conventions and treaties, especially those signed by Palestine without reservations. I shall also

examine the availability of gender-based human rights perspective in these laws and regulations.

I will follow the approach of the theory of multiple factors in this research paper, where the elements of the topic are analyzed in multiple causes and diversity of factors. I shall also use the feminist human rights approach in parallel with the other factors. The research will be divided into an introduction and two sections. Each topic is broken into two themes; the first topic covers the constitutional guarantees for Palestinian women's rights in the Palestinian Basic Law, and the status of Palestinian women under personal status laws in the context of legal pluralism and the Nationality and Citizenship Laws.

The second topic covers the status of women in personal status laws, human rights gaps, and the extent to which the system of personal status laws is compatible with international conventions. I will refer to analyzing some judicial precedents. I shall also analyze the Decision by Law 21 of 2019 regarding raising the age of marriage in Palestine. I end the paper with conclusion and recommendations.

First Topic:

Constitutional guarantees for Palestinian women in the Basic Law and the status of Palestinian women in the context of legal pluralism and the Nationality and Citizenship Law:

Theme (1): Constitutional guarantees for Palestinian women in the Basic Law

I will examine the rights of Palestinian women under the personal status law, and other relevant legislation, including the Palestinian Independence Document of 1988, which is considered the first protective human rights instrument for the Palestinian women. It addresses the Palestinians without discrimination between masculinity and femininity with regard to human rights and culture. It treats both on the basis of full equality of rights, maintaining religious and political beliefs and respect for human dignity. It calls for a democratic parliamentary system based on respect for opinion and freedom of all parties, including the minorities. It provides for justice, equality, and non-discrimination on the basis of race, religion, color, or gender. It calls for maintaining these rights under a constitution that is based on the rule of law and independent judiciary.

This means that rights and freedoms transcend gender and religion within a precise human rights perspective that must be taken into consideration. Religion and gender never constitute a barrier to enjoying these rights, as well as political affiliation and other forms of difference.

It is noteworthy that the type of government system is democratic and parliamentarian as confirmed by Article 5 of the Palestinian Basic Law of 2003 and its amendments which was approved years after the independence document in the sense that the type and form of the current system of government is different from that in which many personal status laws were approved under the Islamic rule, as mentioned above. Knowing that, the legislative amendments that took place at different points of time haven't affected the essence of these

laws. However, these laws have not changed for decades heeding nothing of the successive changes the society witnessed.

The Declaration of Independence and the Basic Law constitute the general guard of human rights in Palestine. The Palestinian Basic Law guarantee through its temporary provisions the rights of the Palestinian people wherever they do exist. It guarantees them enjoyment of equal rights, based on provisions of its preamble which is a basic human rights perspective as it appears in the discourse of the Basic Law. It applies to the Palestinian citizens, man and women, in the homeland and in the diaspora.

The Palestinian Basic Law provides for no form of discrimination amongst the Palestinians. It explicitly bans discrimination on the basis of gender and religion. It also introduces a new criterion to address the Palestinians, which is citizenship without discrimination, especially with regard to race, religion and other things in a way that indeed entices the integrity of the constitutional view towards the citizens. And, I will look into this criterion.

Under the concept of citizenship, women should enjoy rights, public freedoms and responsibilities. Article 5 of the Palestinian Basic Law states that (the system of government in Palestine is a representative democratic system based on political and partisan pluralism, in which the president of the National Authority is elected directly by the people, and the government is responsible to the president And the Palestinian Legislative Council).

When examining the gender criterion as a criterion on which discrimination may be based, we noted that masculinity is not a condition for political posts, and women can run for President of the National Authority.

Late Mrs. Samiha Khalil ran for the presidency of the National Authority in the first elections in 1996 AD against Late President Yasser Arafat.

It is also noted that masculinity is not a condition for holding ministerial and non-ministerial government positions or for the Legislative Council.

If we examine the relevant articles of the third chapter of the Basic Law (36-46) which is related to the position of the President of the Palestinian National Authority, we find that there is no discrimination on the grounds of gender. Women face no difficulty running for office or exercising the right to vote. However, they might face certain difficulties within the framework of social and cultural stereotypes and the obstacles arising from the Israeli occupation. So, the difficulties facing women in running for election or voting are due to man-made factors, neither biological, nor physiological¹.

¹ The Status of Women and Girls in the State of Palestine / Submitted to the Committee on the Elimination of All Forms of Discrimination against Women - CEDAW - the General Union of Palestinian Women. 2018 <https://www.gupw.net/assets/files/del-ar.pdf>

In light of the above-mentioned, it is worth mentioning that the articles of the fourth chapter (47-62) related to the legislative authority don't set masculinity as a condition for running for the legislative council or for the post of the Speaker of the Council or Vice-President post.

Reviewing the participation of women in the legislative and presidential elections of 1996 in the Palestinian territories shows that 49% of the eligible voters were women. In some districts, such as Ramallah, Tulkarm, and central Gaza, the number of women registered at the electoral list was greater than that of men.

Twenty-eight women participated in the electoral competition, 14 in the Gaza Strip and 14 in the West Bank, which constituted 4% of the total number of 672 male and female candidates. As a result, five seats of the 88 seats of the Legislative Council were won by women, 5.6%. The analysis shows that this low percentage was due to cultural and social factors as well as situations created by the Israeli occupation².

Articles 62-83 of chapter 5, which is pertinent to the executive authority, specifically in the context of government formation, government leadership, government membership, powers and allocations, indicate that the relevant laws and regulations are free from any form of gender-based discrimination.

The judiciary and the system of laws regulating the public service and the diplomatic corps used general terms in addressing its affiliates and the discourse on rights and duties. For example; Civil Service Law No. 4 of 1998 and its amendments and Executive Regulation No. 13 of 2020 grant equal wages for men and women according to their jobs formations. However, the Law of the Security Forces No. 8 of 2005 has some aspects of discrimination such as not allowing women's pension inheritance.

The human rights discourse directed to the Palestinian citizen is free of discrimination with regard to health and education. However, the first paragraph of Article 101, provides that (Sharia cases and personal status are handled by Sharia courts in accordance with the law). This means that religion is a standard of litigation in family disputes within the context of personal status.

This is an exception to Article 9 of the Basic Law, which stipulates that (the Palestinians are equal before the law and the judiciary, with no discrimination on the grounds of race, sex, color, religion, political opinion or disability).

We will determine whether it is an exception or not by examining Article 4 which concludes that Islam is the official religion of the state and the principles of Islamic Sharia is a major source of legislation, confirming in the same time the sanctity of all religions.

Examining the media discourse accompanying the human rights discourse is an important tool. We need also to measure the impact of religion on the work system of the Sharia courts. For

² Zaidat, Amjad, Ministry of Women's Affairs, Women and the Law - Palestinian Women's Rights -https://info.wafa.ps/ar_page.aspx?id=3190

example, Chief Justice, Mahmoud al-Habbash³ used to confirm that Islamic Sharia has precedence over the law in addressing Muslims' personal status affairs since. Mr. Habbash acts as Chief Justice and President of the Sharia Judiciary which determines personal status legislations since 2014⁴.

This period marks the start of real debate on the implementation of international conventions, especially those concerned with eliminating all forms of discrimination against women (CEDAW). It is also noted that efforts to amend and unify the system of personal status laws and remove forms of discrimination from other laws began many years before that⁵.

Sharia principle as a term refers to the basic rules on which it is based⁶. Verse 48 of Al Ma'idah Sura in the Holy Qur'an reads: (For each of you, we have ordained a code of law and a way of life).

Ibn Taymiyyah says, "The Sharia is inclusive of everything good for life and religion, and it is the Book of God and the Sunnah of His Messenger, and what Prophet's fellows were upon regarding beliefs, conditions, acts of worship, actions, policies, rulings, jurisdictions and gifts⁷."

Ibn Taymiyyah adds, "Sharia is people's discourse and it can be divided into three parts: a revealed law, which is legislated by God and His Messenger; a discretionary law which is the outcome of interpretation or discretion; and an elusive law which is of the lies and immoral claims resulted from falsehoods or heresies or misguidance that the misguided add to God's law⁸.

Contemporary jurists define Sharia as a set of religious and scientific orders and rulings that Islam calls to apply to achieve its reform goals in society⁹.

Sheikh Yusuf al-Qaradawi defined Sharia as clear and definitive principles, confirming the need for deduction and inference.

³ Al-Habbash, Mahmoud, a draft law on the protection of the family from violence that contradicts Islamic law, the proceedings of a television episode, published on Watan News Agency. <https://www.wattan.net/ar/tv/323682.html>. 31-10-2020

⁴ Mousa Khalil, Palestinian debate over CEDAW, Arab Independent <https://www.independentarabia.com/node/81196/%D8%A7%D9%84%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1/%D8%A7%D9%84%D8%B9%D8%A7%D9%84%D9%85-%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A/%D8%AC%D8%AF%D9%84-%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A-%D8%AD%D9%88%D9%84-%D8%A7%D8%AA%D9%81%D8%A7%D9%82%D9%8A%D8%A9-%D8%B3%D9%8A%D8%AF%D8%A7%D9%88>.

⁵ Abu Hayya, Ashraf, The Experience of Personal Status Law in the Occupied Palestinian Territories, Women's Center for Legal and Social Aid, 2012

⁶ Al Qamus Al Muhit (Inclusive Dictionary)

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⁸ Above-mentioned reference

⁹ Al-Zarqa, Mustafa Ahmed Khalil, The General Jurisprudential Disruption, Part One, Alif B Press, Al-Adib, Damascus, ninth edition, 1967-1968, p. 30

He said that the people of knowledge have to focus their minds to extract the legal ruling from the texts as some of these texts are conclusive in their evidence and others are suspicious. He added that certain issues have no texts at all, so we need to handle these new issues by extracting from the general rules of jurisprudence but not as they were written in the second and third or fourth Hijri century.

We need to have new jurisprudence rulings that fit into our times and our societies to solve our problems. Our old jurists worked hard and solved their problems using their minds. We have to solve the problems of our time using our minds, taking advantage of the old jurisprudence and adding to it the interpretations and discretions that connect us to the origin without taking away from the requirements of the current era¹⁰.

This leads me to the understanding that working to promote women's rights in their social and cultural context must be based on Islam.

There is no conclusive definition of the principles of Islamic Sharia so far. The Constitutional Court in Egypt, for example, provided a definition in several rulings, and I will present two of them and analyze the second ruling.

It ruled that the principles of Islamic Shari'a are the provisions of Islamic Shari'a, but it differentiated between definitive rulings of evidence and non-definitive rulings (presumptive), as follows: (... it is not permissible for a sharia text, to contradict the Shari'a rulings in their evidence and significance, given that ijihad \ interpretation in these rulings alone is forbidden, as they are based on Islamic Sharia universal principles where interpretation or alteration isn't tolerated¹¹.

In a related context, the same court ruled: since the judiciary of the Supreme Constitutional Court has consistently stated that what the constitution stipulated in its second article - after its amendment in 1980 - that the principles of Islamic Sharia are the main source of legislation. The Legislative and executive authorities must heed this ruling - including the provisions of Resolution No. 113 of 1994, interpreted by Resolution No. 208 of 1994. So it is not permissible for a legislative provision to contradict the Sharia provisions in their evidence and significance, given that ijihad \ interpretation in these rulings alone is forbidden, as they are based on Islamic Sharia universal principles where interpretation or alteration isn't tolerated.

The resolution added that it is inconceivable that its concept would change according to the change of time and place, as it is difficult to modify. It is not permissible to deviate it or take it away from its meaning. The jurisdiction of the Supreme Constitutional Court in this regard

¹⁰ Al-Qaradawi, Youssef, Al-Dustour and Shariah reference, facts of a television episode, Sharia and Life Program, published on Sheikh Yusuf's website: WWW.ALqaradawi.net. Date: 12-12-2012

¹¹ Encyclopedia of Judgments Issued by the Constitutional Court, Case No. 5 of Judicial Year 8, 1996.

focuses on monitoring compliance with it and giving priority to every other legal rule that opposes it.

The second Article of the Constitution takes precedence over these rules as the provisions of Islamic Sharia are universal principles and original pillars that take effect in a way that prevents the adoption of any legal rule to the contrary; otherwise, it would be considered defamation and a denial of the religious teachings.

The circle of interpretation and discretion is applied to the provisions that are unproven and lack evidentiary support. These provisions develop and change with time and space to guarantee their flexibility and vividness and adapt to emerging issues to organize the living conditions of the people, guarantee their legitimate interest and keep their life going on.

Interpretation is always possible within the framework of the holistic origins of the Sharia. It abides by its fixed controls. It digs for practical provisions and rules that control its branches. It guarantees the general sense of the Sharia in a manner that would conserve religion, man, reason, honor and money.

The same resolution provides for handling the issues that aren't provided for by resorting to mind and developing people –friendly practical rules that guarantee the interest of the society. These provisions and rules are based on the Shari'a the core of which is human rights and justice.

Abiding by these provisions and rules is in favor of the society, however, they shouldn't be rigid and intractable. They don't bestow sanctity on any of the jurists, and so they can be reviewed and reconsidered. They can also be changed.

The discretionary \ interpretation opinions with regard to disagreeing issues has no force beyond those who pronounce them, and so they can't be viewed as a final Shari'a law that can't be challenged. Otherwise, it would be denial of the right to contemplation and thinking of God's religion. It is a denial of the rule that each interpretation or discretion has error margin. Some of the Messenger's fellows were hesitant to issue Fatwa or religious advisory opinion in fear of committing a mistake. It is true that following the opinion of a jurist isn't preferable than following that of another, even if it is the least cited and most suitable for the changing situation and contrary to opinions that were validated for a period of time.

The Islamic Sharia is dynamic and gives interpretation enough room in cases that aren't sanctioned by definite provisions or texts. However, its holistic controls and general sense should be maintained. Heeding the practical provisions that are responsive to the contemporary issues is necessary while abiding to rules that were suitable for a period of time exclusively is now what should be done.

Against the afformentioned, the ruler can make judgment regarding the vase brought before him by referring to the teachings of God and His Messenger, heeding the relevant interests of the relevant parties in line with the intentions of the Shari'a. The Shari'a encompasses all

interests as it isn't restricted to certain interests without the others, but it determines the content and scope of these interests, taking account of the changing conditions. This opinion is supported by the fellows and disciples of the Messenger and Scholars who issued rulings based on the interests of the people and in their favor to avoid them any damage or critical condition. These rulings take into account the peoples' interests develop in accordance with the development of their communities and there is no Shari'a evidence that supports or revokes such rulings.

The legislator must first and foremost take into account the rights of the people where he has discretionary authority which has no restrictions or limitations by the constitution. The discretion authority has certain limitations that can neither be overpassed, neither undermined.

It is worth mentioning that violating or undermining the rights which are guaranteed by the law is a blatant violation of the Shari'a, and so ensuring these rights can't be contradictory to content of the Shari'a. Indeed, these rights must be reasonably guaranteed¹².

Considering Resolution No. 113 of 1994, explained by Resolution No. 208 of 1994, it appears that the following relevant issues should be taken into consideration the following issues:

- The resolution states that resorting to the rule of reason should be the choice with regard to the issues where there is no Shari'a provisions that sanction them. The reason-based rules must observe the real interests of the people for which Sharia provisions are enacted. These rules shouldn't derail from the Shari'a of God as its ultimate aim is justice. Ensuring commitment to these rules is recommended to prohibit corruption and discord. These rules are dynamic as they don't impart sanctity on the opinion of any jurists, so that they can be reviewed, reconsidered and changed. Discretionary opinions aren't absolute to the extent where others can't reconsider and alter, and so they can't be considered as Shari'a provision that mayn't be altered. If it is otherwise, it would limit contemplation and thinking of God's religion and denial of the fact that there is always margin for mistake.
- The resolution states that Islamic Shari'a rejects rigidity and gives discretion and interpretation wide space with regard to the issues that it doesn't provide for. It allows interpretation and discretion without prejudice to its intentions and meanings. The jurist adheres to its dynamic provisions which are responsive to development and transformation. These rules aren't constant; they change according to time and new developments since Scholars determine them on the basis of the absolute interest of the people and for the good of the society. These interests develop and change according to society transformations, and so do discretionary rules. There is no Shari'a evidence of supporting or obliterating these rules.

¹² The Egyptian Supreme Constitutional Court, Case No. 8 of the judicial year of 2017.

- The regulation of people's rights cannot contradict the intentions and targets of the Shari'a. They must be tackled in a fair and reasonable manner.

This reveals that the controversy about the impact of Shari'a on the Egyptian legislative provisions has been long settled, and so in Palestine. The Supreme Constitutional Court resolved in Case No. 4\2017 that religion must be one of the binding components of the national law and its alignment with the international conventions can't be realized without a new legislation or amendment that takes account of that. This means that any new legislation or amendment must heed the Islamic Shari'a that we shall try to understand its blueprint role in the legislature process. It is important to take religion as a component of the legislation process and understand how it can be reflected into the legislations in order not to be used in a manner that contradicts with the relevant interests.

It is pivotal to consider the mechanism of legislation and its form in the context of personal status of Muslims and of adoption of the Islamic legal ideology¹³. The mechanism of interpretation must be thoroughly considered to solve the problems of the current era, mainly those of personal status such as custody, children's best interest, alimony, separation and divorce. We should be mindful of any changes of the legal issues, and so they must be handles cautiously and be subjected to examination. All that is important as collective sensitivity to these issues is on rise.

After concluding the controversy concerning the impact of the religious text on legislations, especially those related to the personal status, the key question is raised again: Is this controversy concluded in the Palestinian society and what is the nature of the official discourse in this regard and what is the nature of the unofficial discourse in the civil society and local community?

We screened, this research paper, the relevant Palestinian media discourse in 2018-2019 as a sample. We present hereby some relevant statements:

The Palestinian civil society and many human rights defenders and activists expressed their outrage towards the attempt of the Palestinian Authority to have some reservations on some international conventions, including CEDAW which was signed by the Palestinian President, Mahmoud Abbas, without reservations.

They also considered the above-mentioned resolution of the supreme constitutional court and viewed such attempt by the Palestinian Authority as a way to disavow its legal responsibilities towards international human rights conventions¹⁴.

The campaign of critique of the government was ended when the government and the President assured that no reservations would be placed and any reversal of that would have legal and political repercussions.

¹³ Bushnaq, Basseem Sobhi and Al-Shobaki, Muhammad Rafiq, the indication of the text on the principles of Islamic law in the draft Palestinian constitution and its impact on the organization and work

¹⁴ Musa, Khalil, Palestinian controversy over the CEDAW agreement, The Independent Arabiya, 23-12-2019,

We present some examples of the debate taking place within the Palestinian society concerning this issue:

On 8 July 2019, Dr. Muhammad Al-Hajj Qassem, President of the Constitutional Court, said at the premises of the Independent Commission for Human Rights during a training workshop, entitled Consequences of Palestine's accession to international human rights conventions and their optional protocols, that the aim of the accession of the State of Palestine to the various agreements is to respect and guarantee fundamental freedoms and safeguard the legitimate and legal national rights of the Palestinian people.

This is a general statement that clarifies, in constitutional legal language, the importance of joining the international community by signing agreements and treaties, while assigning the mechanism of implementation of this constitutional vision to unspecified national bodies.

Judge Iman Abdel Hamid, Head of the Fatwa and Legislation Bureau, added in the same session that we have a problem in implementing the international conventions ratified by the State of Palestine, due to the specificity of the Palestinian situation and the provisions of Palestinian law that need to be harmonized with international conventions, stressing that the State of Palestine is now obligated to implement the conventions it signed.

The specificity of the Palestinian situation created posed challenges to the State of Palestine, which is striving to activate these conventions by calling on all official and local institutions to cooperate and integrate their efforts in order to implement the obligations of the State of Palestine before its people and before the international community.

She did not clarify what she means by specificity that must be reflected into the legislative channels. At the same time, she stressed that Palestine has an obligation under the international conventions it ratified without clarifying the date of publishing the conventions in the Official Gazette.

This procedure is one of the most important requests of the human rights community, Dr. Ammar Dweik, Director General of the Independent Commission for Human Rights, stressed, adding that the Supreme Constitutional Court has drawn up a road map for the implementation of international conventions without clarifying the outcome of these requests and the role of the civil society regarding the publication of the conventions. He neither announced any follow-up plan for harmonizing the legislations.

Palestinian Chief Judge Dr. Mahmoud Al-Habbash said in an investigative report, by Watan News Agency, on a television episode, entitled "Palestine is looking for interpretations of Sharia in harmony with CEDAW" and a rift widening between religious and political scholars on 16/8/2018: We are ready to harmonize all laws, but on the condition that they do not contradict the principles of Islamic Sharia.

We respect all international laws, and all international treaties as long as they do not dispute with what God has legislated. Sharia is above the law, and Sharia is above any political

obligation, or any commitment to laws or international conventions. He added that the Basic Law affirms that Islamic Sharia is the religion of the country and the state, and it is the main source of legislation.

He added, "Even if legislation and laws are passed in the Legislative Council or by the legislative authority in Palestine without consistency with the Islamic Sharia, we will overturn it." So, his statements hinge around a general line of harmonization that goes within the framework of the Islamic law.

Ambassador Dr. Omar Awadallah from the Ministry of Foreign Affairs confirmed in the same report the precedence of the international conventions over the internal law. He also added that all laws that contradict these international conventions shall be amended, and personal status laws shall be harmonized, so that international agreements become part of the Palestinian legal system.

He stressed that there is no dispute between Islamic Sharia and CEDAW, since the international convention is concerned with non-discrimination against women. He does not believe that there is any religion in the world that discriminates against women breach their rights.

He pointed out that Sharia is one of the foundations of the Palestinian laws, confirming that the Palestinian law is not based on Sharia alone, but one of its sources is Sharia.

We can understand of these official statements that Sharia should be considered a key entry point of harmonization and enactment of laws, and not only an element of the legislation process.

Representative of Al-Haq Foundation, Dr. Issam Abdeen stated that there is no text in the Basic Law except in Article 4, paragraph 2, which stipulates that the principles of Islamic Sharia are a major source of legislation, meaning that it isn't the only source.

He explained that the legal text was clear, focusing on the principles of Islamic Sharia, not the provisions of Islamic Sharia, clarifying that there is a big difference between principles and provisions.

He pointed out that the principles of Sharia mean the principles of justice, no harm and the principle of preserving one's life and money. He added that there is no coercion in religion, and therefore we do not see any dispute between these principles and the international system of human rights. This statement is aimed to present an understanding of the laws of Islamic Sharia referred to in the Basic Law, as well as an implicit claim not to expand the use of Islamic Sharia as a legislative source for the harmonization of the legislations.

Former Minister of Women Affairs, Dr. Haifa Al-Agha stated that everyone should delve into religion to find solutions. This is a statement that calls for seeking solutions based on Islamic Sharia alone. It is noteworthy that the Minister of Women's Affairs refers to the religious

context for solutions by applying ijihad \ interpretation without recourse to the international context¹⁵.

It is noted that the inconsistency of the official discourse gave religious leaders more space for controversy, and some Islamic parties, including Tahreer Party, exploited this crisis¹⁶. It is also noted that bullying increased against those of other opinions, especially women associations¹⁷. Enacting any legislation or making amendment to the current ones within the framework of the ongoing debate has been delayed.

All the statement, we examined, are committed to alignment with international conventions. However, no amendment or legislation was enacted to achieve that on the ground due to lack of clarity of intervention and discussion with the local community which in no way can be ignored or subsided. So the question that we raise once again “how would it be feasible to draft laws that do not dispute with the Shari’a and adhere to the international conventions which Palestine has ratified?”

The laws that were drafted based on the religious text and ideology show how the religious texts are translated into laws and how they became deeply rooted in the legal system¹⁸.

Considering the discipline of interpretation shows the importance of the language and how men led the translation process of the religious text and ensured its application from their own perspective. It shows how women impact on this track was historically dim. It is important to know why women’s role in the interpretation process was weak. The obstacles to women’s travel in the past stand behind this weakness. Travel and movement from one place to another was one of the key sources of knowledge, and that is why men’s role was dominant in interpreting the religious text. In this context, we understand why the interpretation of the religious texts was in favor of men rather than women. It should be understood that looking into the translation of the religious text into laws is not aimed to find or suggest solutions outside the frame of the religion¹⁹. It is aimed to find new readings from the religion itself.

Second Theme: Palestinian women in the context of the multiplicity of laws and the law of nationality and citizenship:

¹⁵ Quds News, Tahreer Party: Authority eludes public opinion and gradually implements CEDAW 24-12-2019.

¹⁶ <https://qudsn.net/post/171465/%D8%AD%D8%B2%D8%A8-%D8%A7%D9%84%D8%AA%D8%AD%D8%B1%D9%8A%D8%B1-%D9%84-%D9%82%D8%AF%D8%B3-%D8%A7%D9%84%D8%B3%D9%84%D8%B7%D8%A9-%D8%AA%D8%B6%D9%84%D9%84-%D8%A7%D9%84%D8%B1%D8%A3%D9%8A-%D8%A7%D9%84%D8%B9%D8%A7%D9%85-%D9%88%D8%AA%D9%86%D9%81%D8%B0-%D8%B3%D9%8A%D8%AF%D8%A7%D9%88-%D8%A8%D8%B4%D9%83%D9%84-%D9%85%D8%AA%D8%AF%D8%AD%D8%B1%D8%AC>

¹⁷ Nisa’ FM, Activist Rifae’ “absence of clear position towards CEDAW by the state’s institutions encouraged the convention’s demonization.

¹⁸ Abu Bakr, Randa, Translation and Production of Religious Knowledge in Feminist Thought, Guardianship in Islamic Heritage: Alternative Readings, Arabic Language Edition and Publication in 2016, Promotion Team, 34 Tigris St., branched from Shehab St., Mohandessin, Giza, Arab Republic of Egypt.

¹⁹ Ibid

The historical context of Palestine and how it was subjected to several legal systems during the last century as it was rule by several powers, including the continuing Israeli occupation²⁰. At first, the Ottoman rule (1517-1918) strongly affected the legal system in Palestine, especially with regard to family laws. The principles of Sharia were fully enforced by adopting the Hanafi School of Islamic jurisprudence. Palestine was influenced by the Latin system that prevailed in Europe as the Ottoman period was followed by the British Mandate authority, then the period of Jordanian rule in the West Bank and the rule of the Egyptian administration in the Gaza Strip. The effect of these powers on the legal and political structure of Palestine is still valid until today. We need to develop radical solutions to unify the legal system in Palestine, especially the personal status laws²¹.

The Palestinian National Authority was established in 1993 when Oslo Accord was signed. Late Palestinian President Yasser Arafat issued a presidential decree on May 20, 1994 stipulating the continuation of the laws, regulations and orders that were in effect before 6/5/1967 pending unification²². The second article of this presidential decree stipulated that the regular, Sharia and sectarian courts of all levels shall continue to carry out their work in accordance with the laws and regulations in force. The third Article stipulated that (the regular and legal judges and members of the Public Prosecution shall continue to practice their work, each within his jurisdiction in accordance with the laws in force).

When the Palestinian Legislative Council was established in the year 1996 AD, it enacted several legislations that united the Palestinian legal system in several areas. It sought to cancel a large number of Israeli military orders²³.

It should be recognized that the residents of the West Bank and Gaza are subject to a complex legal system, dating back to the Ottoman rule, British Mandate, Jordanian rule (WB) Egyptian rule (Gaza), Israeli military orders and the Palestinian legislations which were approved following the establishment of the Palestinian National Authority²⁴.

Accordingly, the citizens of the West Bank enjoy the rights and services of citizenship available within the West Bank while the citizens of Jerusalem and the Gaza Strip do not have that same privilege. The Israeli occupation and geographical dismemberment of the Palestinian territories is the key reason behind that. The Palestinian territories are divided into several disconnected regions without geographical contiguity. Even worse, the Israeli occupation imposes restrictions on Palestinian citizens' movement within the West Bank and between the West Bank,

²⁰ Wafa News Agency

²¹ Institute of Law, Legal Status in Palestine - The Judicial System in Palestine and the Stages of Historical Legal Development in Palestine -, Birzeit University, 2013

²² Al Muqtaf, the Institute of Law, Presidential Decree 1\94: <http://muqtafi.birzeit.edu/pg/getleg.asp?id=9663>.

²³ Institute of Law, Legal Status in Palestine - The Judicial System in Palestine and the Stages of Historical Legal Development in Palestine -, Birzeit University, 2013 <http://lawcenter.birzeit.edu/lawcenter/ar/homepage/2013-08-31-07-08-03>

²⁴ Institute of Law, BirZeit University: K<http://lawcenter.birzeit.edu/lawcenter/ar/homepage/2013-08-31-07-08-03>

Jerusalem and the Gaza Strip. Travel for the Palestinian citizens outside the Palestinian territories is also restricted by the Israeli occupation²⁵.

The Palestinian citizens of East Jerusalem²⁶ have some of the rights granted by the Israeli occupation, but they are deprived of the right to the Knesset elections²⁷. They have permanent residence status, not citizenship, which is one of the conditions of having the right to voting in the Knesset elections²⁸.

The Israeli policies of racial discrimination and forced displacement against the Palestinian citizens of East Jerusalem, who hold a Jordanian travel document, and enjoy Palestinian citizenship rights in the West Bank within parameters set by the Palestinian authorities in line with the political reality, affect the rights of these citizens²⁹.

The Palestinian citizens of Jerusalem are subjected to Israel's civil, administrative and criminal laws. Israel is an occupying belligerent power according to the international law and the Israeli judicial precedents of the Sharia and regular judiciary confirm that.

The Palestinian Authority has not proclaimed the Citizenship Law, based on Article (7) of the Palestinian Basic Law due to the above-mentioned political impasses.

The Jordanian Personal Status and Waqf's Laws are still applicable in East Jerusalem pursuant to Jordan's custodianship over Jerusalem Muslim holy sites. So, the Palestinian citizens of East Jerusalem have three judicial references, including the Israeli Sharia or Civil Judiciary in West Jerusalem, Jordan's Sharia' Judiciary in East Jerusalem and the Palestinian Sharia Courts in the suburbs of East Jerusalem. Neither of them explicitly prohibited the Palestinian citizens of East Jerusalem of recourse to any of the above-mentioned references.

It is important to refer to the manual of the Sharia Execution Law issued by the Chief Judge in 2017. It provides that the judicial provisions of Jordan-controlled Sharia Court in East Jerusalem should be handled just as the national provisions issued in the Palestinian territories. They aren't classified as foreign judicial provisions used as a legal measure that is consistent with the Palestinian political trend due to the status of East Jerusalem as the Capital of the State of

²⁵ Restrictions on movement, Israeli Information Center for Human Rights in the occupied Palestinian territories, 2017.

²⁶ Israeli attitude towards naturalization of the Palestinians of East Jerusalem, Al Istiqlal Newspaper.

◀ <https://www.alestiklal.net/ar/view/7348/dep-news-1612004574>

²⁷ Without citizenship, Jordanians from Palestinian origins, deprived of citizenship. Human Rights Watch, 2010. <https://www.hrw.org/ar/report/2010/02/01/256028>

²⁸ The right to participate in the Knesset election.

https://www.kolzhut.org.il/ar/%D8%AD%D9%82_%D8%A7%D9%84%D8%A5%D9%86%D8%AA%D8%AE%D8%A7%D8%A8_%D9%84%D9%84%D9%83%D9%86%D9%8A%D8%B3%D8%AA

²⁹ Foreign Ministry: The Committee on the Elimination of Racial Discrimination unanimously acknowledges Palestine's complaint against Israel, Palestinian News Agency / Wafa, 2021: <https://www.wafa.ps/Pages/Details/22635>

Palestine and its Palestinian citizens are citizens of the State of Palestine and have the citizenship rights despite the complicated political situation.

The data of the PCBS showed high rates of violence against women in all its forms, including loss of identity, freedom of movement, work and travel due to Israeli occupation practices. The data show that a large percentage of Palestinian women cannot work without having a permission from the Israeli authorities³⁰.

Several surveys and studies reveal that the women of Palestine face several economic, educational and health difficulties as well as other forms of vulnerabilities. These conditions can't be presented in detail in this research paper, but it focuses on their connection with the legal uncertainty and fragile situation of citizenship.

Such complicated situation appears when a Palestinian of one region of the 3 regions (WB, GS, Jerusalem) marries a woman of another or vice-versa. The spouse from the West Bank or from Gaza can't get Jerusalem or Israeli identity card. The problem of multiple laws is almost identical to the legal framework of trans-boundary disputes.

The Palestinian political division that started in 2007 is a stumbling block to access to justice and enforcement of the rule of law.

Oversight over the Palestinian justice and executive systems which is necessary for realizing rights in Gaza is fragile because of the weakness of the use of neutral oversight tools. Such a situation could set citizens' rights at risk and influence the stability of the legal and rights centers. It also undermines citizens' confidence in the Palestinian justice bodies.

The beneficiaries of the Sharia judiciary in the West Bank face difficulties accessing to judicial services in the Gaza Strip because of the political division between Gaza and the West Bank and its repercussions on the Palestinian judicial system, including the Shari'a judiciary.

One of the major repercussions of the political division between Gaza and the West Bank is non-execution of the decisions of the Sharia courts of the West Bank relating to Gaza and vice-versa.

Chief Justice Mahmoud Habbash established a joint committee of judges in the West Bank and Gaza to handle this issue³¹ to examine the cases submitted by the citizens of Gaza. The aim of this committee is to facilitate citizens' legal affairs and remove the barriers in the way of justice. Such measure was necessary to ensure citizens' access to justice and keep their interests free of any damage or harm.

The connection between citizenship and rights and duties is solid and we shall discuss the different aspects of this concept in this research.

³⁰ Woman and man in Palestine – Issues and statistics, PCBS, 2020.

³¹ Habbash: Res\119\2019 concerning endorsement of transactions organized by the Sharia Courts in Gaza.

Citizenship guarantees that all citizens have equal rights and duties as well as justice and law³². The contemporary concept of citizenship covers sincerity, loyalty and citizens' enjoyment of social, economic and cultural rights as well as healthcare. The citizen also has responsibilities and duties towards the state, including respect of constitution, laws, payment of taxes and political and social participation³³.

Dr. Imad Rashid Al Din Al Rashid had a comment at Al Madina Newspaper in regard to citizenship rights "this principle is based on the concept of citizenship. It is not religious-based as the State of Islam isn't the state of the good people and the believers in God; it is for all those who are subject to the Islamic system. Understanding this idea requires from all to understand that Islam isn't merely a religion. Those who think that Islam is merely a religion misunderstand it. Religion is just one facet of it. It has legal facets that are applicable to non-Muslims in the Islamic State. It also has cultural and civilizational facets for non-Muslim residents of the Islamic State³⁴.

Sahifat Al Madina or Al Madina Constitution which was set by Prophet Muhammed, PBUH, 14 centuries ago covers the content of citizenship and anchors its rules. It anchored the foundations of coexistence among all the elements of the civil society. It guaranteed the citizens of the society security against oppression and injustice. It also presented the strong coalition and unity amongst all the citizens against any foreign aggression. The aim of the constitution is to ensure security and encourage social synergy³⁵. Some of the predecessors followed through this approach. The Muslims Caliph, Ali Ibn Abi Talib, May Allah be pleased with him, called for no discrimination among people on the grounds of religion or loyalty. He took citizenship as a basis for his policy in dealing with people. He recommended the Ruler of Egypt during his era Malik Al Ashter that he should be amiable and kind to people and never act as a despotic ruler who wishes to oppress his people. He told him that people are divided into two categories: brothers in religion or brothers in humanity". These statements are consistent with the Universal Declaration of Human Rights of 1948 of which Article (1) states "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". Article (28) of the same declaration also states that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized".

One of the components of the social system is religion along with other elements such as language, culture and others, and these elements, as the French philosopher and sociologist Durkheim said in his theory, are jointly sufficient to found "mechanic solidarity" that connects the group together. He added that the joint culture in a group or a society creates social

³² Syrian Ministry of Waqf, citizenship in Islam, concept and constituents: (<http://mow.gov.sy>)

³³ Samer Abdullatif, Citizenship and Shortcomings, edit 7 (Iraq, Furat Magazine, 2011).

³⁴ Al Rashid, Imad Al Din, Citizenship in Islam.

³⁵ Kamal Al Sharif, Human Rights in Al Madina Constitution (Al Riyahd: Nayef Academy for Security Sciences, 2001), 1: 70-68).

connection – solidarity- that brings them together. He also explained that beliefs, values, positions and knowledge construct the “collective conscience”.

These views emphasize the reason why the social contract between the state and society is stable as the English Philosopher Thomas Hobbs, confirmed in his theory which states that the people of a certain society or group agree to empower the state to impose the rule of law and lay individuals’ right to power. This is the core of the social contract that Hobbes sought for social order. Consequently, the joint cultural constituents in a society construct the components of the social contract between the individual and the state. This applies more to the state the citizens of which have the same language, culture and creed. The substitute for such law and order is oppression and injustice. The preamble of the Universal Declaration of Human Rights of 1948 provides that the law is set to safeguard human rights. Understanding these facts can’t be completed unless we understand the theory of the natural right of the individual.

Accordingly, Article (27) of the International Covenant on Civil and Political Rights states that “in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”. Similarly, Article (1) of Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted by General Assembly resolution 47/135 of 18 December 1992 states that “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity and States shall adopt appropriate legislative and other measures to achieve those ends”.

In addition, the Committee on Civil and Political Rights noted in its 48th session in 1993 that “the right established by the above-said Article applies to all the individuals of the minorities as a distinct right added to the other rights to which they are entitled in accordance with the International Covenant on Civil and Political Rights. It also noted that enjoyment of the rights enshrined under the covenant applies to all the individuals of the state whether they belong to a certain minority or not. Likewise, Article 26 of the Covenant states that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

The Palestinian Basic Law and Res\4\2017 of the Constitutional Court is consistent with the international references and principles of human rights and freedoms. Islam is considered the source of legislation as it is the State’s religion and most of its citizens are Muslims. It maintains, at the same time, the rights and privacy of the minorities without prejudice to the concept of citizenship and the sovereignty of the regional states.

Theme (2): Women's status in the Personal Status Laws, rights gaps and alignment of the Personal Status Laws with the international conventions:

Theme (1): Women's status in the Personal Status Law and rights gaps:

The superficial reading of the personal status laws, and the lack of attention to their connection with the general legal system, especially in the Civil Status Law and other laws, is one of the most important causes of the unproductive debate about women's rights. Therefore, agreeing to review and amend where necessary, constitute the first important steps in the process of reform and development. Some effective legal provisions of the Sharia judiciary system in the West Bank and occupied East Jerusalem will be analyzed to give us an opportunity to provide new legal readings that are accordant with the above-mentioned rules.

Unifying and contextualizing laws in Palestine is a request by all the Palestinians since such step is a key element of human development. Legislations reform can't be realized without consideration of the legislative process in Palestine³⁶. The Custodian Family Regulation of 2013 (Article 23) which is concerned with the name of the child in custody states that it should be consistent with the custodian father in a way that leads to the optimal interest of the child in custody without contravention of the Islamic Sharia. This amendment of the regulation without being included in the Civil Status Law of 1999 which is higher than the regulation. Thus, this was considered a deviation in the wording and constituted an obstacle to the application of the regulation. The weakness of scientific research, the absence of legislative policy and the inadequacy of the legal framework regulating the legislative process were taken into account at this stage³⁷.

It is important to note that the institutions working in the legislative field have limited capacities and lack commitment to standard guiding rules and orientation of drafting as well as excessive issuance of legislations without thorough preparation³⁸. Increasing marriage age in Palestine to 18 years of age according to Res\21 of 2019 is an example of lack of preparation of the local community for such law. The law-makers have not analyzed the behavioral patterns of the population in the rural and urban areas, nor have they prepared programs and policies for that, either.

It is noted, for example, that the areas where girls drop out of schools are not provided with adequate vocational education and training centers or other interventions that allow girls to integrate and become empowered. Consequently, their first options are limited to marriage, and the lack of preparation has resulted in illegal forms of marriage for those without the age of

³⁶ Legislative reform conference: transformation and challenges: Institute of Law \ BirZeit University.

³⁷ Ibid

³⁸ Ibid

eligibility, which can be monitored in the records of Sharia courts, especially in the south of the Palestinian territories.

Law No. 21 of 2019 regarding raising the age of marriage in Palestine constitutes progress in the legislative process and an approach towards harmonizing legislation. For example, the age of marriage was amended in accordance with the age of the child under the Palestinian Child Law No. 7 of 2004. It was also consistent with international obligations such as the Child Convention, to which Palestine acceded on 5 April, 1995, as well as with the Convention on the Elimination of All Forms of Discrimination against Women “CEDAW”, specifically the second item of Article 16 thereof. This law is transcendent of gender and religion. It includes males and females for Muslims, the thirteen recognized Christian sects including the Samaritan sect.

This law obliterated laws multiplicity with regard to marriage age. However, the legal space for allowing marriage of girls under the age of 18 years as an exception, depending on the judge’s discretion should be viewed with reservation. Chief Justice explained that this legal space is given without restriction for social necessities aims to keep social fabric and civil peace³⁹. Consequently, Chief Justice, Mahmoud Al Habbash issued Circular No. 49/2019 dated 11/12/2019 regarding the organization of work as soon as the law comes into force, asking the judges to “verify the Shari’a, legal and social justifications, and submit it to him for consideration and implementation of the Shari’a and legal requirement according to the rules.

The new law established that marriage under the age of 16 years contradicts with compulsory education age, referring to the Law of General Education of 2017 which stipulates that education must be compulsory until the end of the 10th grade.

If the females who marry under the legal age encounter marital problems, they would face hardships arising from the litigation procedures. They would face compound violence due to legal gaps associated with their young age. After they obtain a judgment on alimony and other marital rights after a divorce, the money is only received through a guardian or trustee, given that they are under the age of majority, which is eighteen years.

The criminal complaints of violence against women can be submitted by their male guardians only even if they are subjected to physical violence. Such condition gets more sensitive if the survivor of violence is a mother and has custody of her children.

The Personal Status Law which is applicable in Palestine considers Muslims’ disputes in accordance with the Law of Sharia Courts Procedures No. 31 of 1959 and its amendments. These amendments have taken effect in Jordan and the West Bank due to its custodianship over the Islamic Endowments in East Jerusalem. These laws and regulations are applicable to spouses in the event that they have different faiths in accordance with Article (33) of the

³⁹ Al Habash: Law on raising marriage age to 18 years has exceptions, Dunia Al Wattan, 15\1\2020

Personal Status Law No 61 of 1976, enforced in the West Bank and Article (30) of the Jordanian Law No 15 of 2019 which is enforced in East Jerusalem.

When a dispute arises between a Muslim husband and his Christian or Jewish wife, their case would be considered by the regular courts in the Palestinian territory in accordance with Article (7) of Law No (2) of the Denominations Council. This applies in the case when an individual of a non-Muslim religious sect has a dispute with a Muslim unless the disputants approve of resorting to Shari'a Courts". Such an approach shows that there are several litigation paths to which spouses can recourse to when they are of different religions. This option is usually not known to the disputant spouses, and so they immediately resort to Shari'a Courts.

Article (6) of the Personal Status Law which takes effect in the West Bank states that "the judge have the power to allow marriage of virgin female at the age of 15 years in case of unjustified refusal of her guardian – neither father, nor grandfather. If her marriage is opposed by her father or grandfather, her request will not be observed unless she is 18 years of age and their opposition is unjustified. This rule is still valid even after marriage age was raised. Other cases remain within the sphere of exceptions which are allowed by the law.

If an 18 year old female marries without her guardian's consent, the terms of the marriage contract are considered appropriate and valid. In such case, the guardian can challenge the spouse's financial incompetence and to dissolve the marriage contract. This litigation path is fragile since spouses are usually capable of paying dowry and alimony.

It is important to note that Article 43 of the Personal Status Law applicable in the West Bank states that "continuing invalid or invalid marriage is forbidden and the judge may separate the spouses in the court, using the public right as a cause. The case of invalid marriage shall be overturned if the wife is pregnant or the case is filed while both spouses meet eligibility conditions. This means that dissolving marriage contract due to age non-eligibility by court can't be realized in case of pregnancy and birth for the benefit of the fetus. This situation is one of the obstacles to enforcing the new law of marriage age (18 years of age). The parties wait for non-eligible wife's pregnancy before they resort to court to document their marital status. In this way, they can guarantee that the court won't ask them to dissolve the marriage contract. On the other hand, the 3rd paragraph of Article (279) of the effective Jordanian Penal Law No 16 of 1960 criminalizes those who marry or conduct of help in the marital ceremonies of a female under the age of 18 years unless it is proven that her guardian had blessed her marriage. It is worth mentioning that the consent of the guardian for the marriage of a previously married woman who is over the age of 18 years is not a condition according to Article 13 of the applicable Personal Status Law.

Marrying an under-aged female without having an exception by the law is a crime punishable by the law in accordance with Article 17 of the Personal Status Law. It states that "if the marriage is conducted without an official document, the marriage officer in charge, the spouses and the witnesses shall be punished according to the Jordanian Penal Law. They could be fined

by not more than JD100. Accordingly, Article 279 of the same law states that “a sentence of 1-6 months in prison shall be handed down to 1. Those who conduct or take part in conducting the marriage ceremonies in breach of the Law of the Family’s Rights or any other law or Shari’a applicable to the spouses, 2. Who marries a female or conducts the marriage ceremonies or assists in conducting these ceremonies for a female who is still under 15 years of age, 3. Who marries a female or conducts the marriage ceremonies for a female under the age of 18 years or assist in such ceremonies in any capacity unless her guardian consents to that. Article 18 of the Jordanian Personal Status Law applicable in East Jerusalem states “The judge may, upon request, authorize the marriage of a virgin who has reached the age of sixteen solar years of her age in the case of the guardian’s unreasonable opposition”.

Minimum marriage age is determined according to the Jordanian Personal Status Law. Article 20 of this law states “the judge’s authority to allow marriage of a female according to Article 18 of the Personal Status Law is on the condition that the dowry should be full”. This could secure her financial rights that arise from the marriage contract of under-aged females in the case of exception”.

The above-mentioned Jordanian’s Law explains the standards of competence which the husband must meet. For example, Article 21 stipulates that the man should be competent financially to pay the advanced dowry and to cover her expenses. He should also be competent religiously, and so the sense of competence gets broader and beyond financial competence. The Article adds that this competence is one of the rights of the woman and her guardian, and so must be taken into account in the marriage contract. If this competence weakens or vanishes, it will not affect their marriage. It is a condition for marriage, but it won’t void it if it disappears, afterwards.

In East Jerusalem, Israeli occupation authorities prosecute cases of early marriage according to the Law of Marriage Age of 1950 which provides that marriage of a boy or a girl under the age of 17 years is banned and who allows their marriage or assists in it through their function, including the parents or clergymen would be punished by imprisonment for two years or a financial fine. The Marriage Age Law allows the Shari’a Court to marry a male or a female under the age of 17 years in the following cases:

1. Female: If she got pregnant or gave birth from a man she wishes to marry.
2. Male: If the female he wishes to marry got pregnant or gave birth from him.
3. Female or Male: If they reach the age of 16 years and the court deems that special conditions justifying their marriage are in place.

In addition, the law sets a time frame during which the girl’s parents and/or guardian and the social worker can go to court and ask her to annul the marriage as follows:

- a. If the request to cancel the marriage was submitted by the minor before she reached nineteen years of age.

- b. If the request to annul the marriage was submitted by the girl's parents and/or her guardian and the social affairs worker before the girl reached eighteen years of age.

Article 8 of the Personal Status Law in the West Bank, states that: (The judge may authorize the marriage of a person who is insane or demented if it is proven by a medical report that his marriage is in his interest). This means that the wife may be a female under the legal marriage age and permission is given. By her marriage as an exception or over the age of eighteen, or in both cases, the article does not address the wife's interest.

The concept of woman's interest in this case is subsided. Furthermore, the judicially established rule in the Sharia courts in the West Bank is that the woman cannot divorce her husband in clear contradiction of the purposes of marriage if it is not achieved. It is also contrary to the interest of the woman if it is proven that her life is subject to danger, especially in light of weak or lack of direct family and social protection, which may expose her to exploitation, especially sexual exploitation.

The Jordanian Personal Status Law which is applicable in East Jerusalem has strengthened restrictions on the marriage of a person who suffers from mental impairment. Article 12 of it stipulates (The judge may authorize the marriage of a person with dementia or mental impairment if it is proven by an official medical report that his marriage is in his interest and his disease is not communicable to his offspring, and that it does not pose a danger to the other party, and after reviewing his condition and verifying his consent).

These restrictions on this kind of marriage take into consideration the interest of the women whose consent to this marriage is verified, but the standards of interest are unclear. Further the social concepts inputs of these standards are negative. The verification of the consent of spouse with dementia or mental impairment which affects his eligibility is a matter that needs to be considered.

The right of child custody is one of the key rights enshrined in the personal status laws as it is connected with the right of the mother, the father, the society and most importantly, the child who has the right to protection and appropriate psychosocial setting without family disputes. Articles 154-166 of the Personal Status Law applicable in the West Bank clearly provide for such rights.

The age of custody of female and male children is based on the age of puberty as the average age of males to begin puberty is 12 years while for females is 9 years according to Article 986 of effective Judicial Provisions Journal. According to Article 154 of the Personal Status Law provides that the father of the child of the father without marital status in case of divorce has the right to have custody over his children once they reach the age of puberty.

This can only be achieved by the children's litigation by their father or another guardian such as the grandfather in the event of the father's death directly on the grounds that they have the capacity to litigate, and the trial procedures include asking them about puberty and its details.

In order for the Shari'a judiciary to prevent the psychological damage that may be inflicted on young children as a result of following and implementing these procedures, and so violating a basic principle in custody cases, which is the implementation of the best interests of the children, Chief Justice, Dr. Mahmoud Al-Habbash issued Circular No (34/2018) stipulating the adoption of the legal age of puberty at which the litigation is achieved, which is the fifteenth Hijri for both males and females in /6/2018. In addition, the Presidential Decree Law No. 17 of 2016 on Sharia Execution prevented forced execution of decisions regarding custody of young children - above the age of reason.

Pursuant to its newly bestowed authorities, the Shari'a Judiciary seeks to execute the decisions of the Sharia courts and integrate supporting mechanisms and tools to realize the right of custody. These mechanisms include interventions by the Department of Family Guiding and Reform as well as the social specialists of the Ministry of Social Development. These interventions can be used upon referral by the Execution Judge to reduce the adverse impact of the family dispute on children.

The court decision that the male child's custody is transferred to his father won't be binding to the child. He has the right of choice while if the female child chooses to be in the custody of her mother, she would lose the right to financial maintenance. She would be considered as disobedient according to paragraph B of Article 165 which states that "if the female child opposes the court's decision to move to her father's custody without a reason, she wouldn't be entitled to maintenance". This Article constitutes prejudice to the right of choice and creates a legal status that discriminates against females and describes their decision as disobedience. Thus, they might be subjected to social bullying and adverse psychological situation as they would have no alimony, afterwards.

The Jordanian Personal Status Law which is in force in East Jerusalem addresses in Article 173 the legal gaps pertinent to child custody. It increased the age of custody by mother for her male and female children to 15 years of age and 10 years to other guardians while the custody by any guardian other than the mother of the child according to the Law applicable in the West Bank ends at the age of 9 years of the male child and 11 years of age for female child. The Law allows extension of the custody of the ailing child by women if the interest of the child necessitates that even if the guardian is an eligible guardian of the child based on court's decision. And, Article 173 of the same law allows male and female children to choose the custodian and extend the duration of custody until the age of reason. It also addressed the issue of the travel of the child in custody, when necessary, without prejudice to the right of the father. The Law stipulates that the custodian must provide guarantees to return the child who travels without his guardian's consent to prevent escapism of children outside the country based on Articles 175-177. It also addresses cross-boundary family disputes, including those based on gender differences.

Articles 164-166 of the Personal Status Law which is applicable in the West Bank does not address the issue of travel of the child in custody away from the guardian. So, the guardian can

use this gap to involve the children in marital problems and subject them to the repercussions of the spousal problems with disregard to their right to education. So the legislator must abridge these gaps. On the other hand, Circular No 59\2012 issued by Chief Justice on 30\8\2012 addressed several gaps regarding the right to seeing and hosting while the law in article 163 didn't address that. The new circular addressed the issues related to the parents and grandparents and it set standards regarding the age of the child in custody but kept that excluded to physical contact through a specific number of visits based on the party that which requests that. This is a temporary measure implemented when necessary, pending the amendment of the law.

It is worth mentioning that having no provision regarding the use of online communication methods in case of need or travel overshadowed children's communication with their guardians during Covid 19 crisis. Some people exploited the pandemic by not returning the children after seeing or hosting. Some others refrained from carrying out the court ruling concerning the custody of the child, knowing that it was not easy to the law enforcement bodies to execute courts' rulings or contacting people during the pandemic crisis in accordance with health protocols. Further, the Israeli occupation practices affect the possibility of executing courts' orders in the occupied Palestinian territories that are geographically not contiguous. These Israeli practices impede the functions of the Palestinian law enforcement bodies. The fact that the Palestinian authority doesn't have control over the crossings and borders eased abduction of children to Jerusalem and Area (C) which is under full Israeli occupation control. It also eased illegal transfer of children in custody by their guardians and depriving the second party of their right to custody or seeing according to the legal provisions.

Article 181 of the Personal Status Law applicable in occupied Jerusalem governs the right of visitation and accommodation inside and outside Palestine. It also specifies the number of visits. The legislator connected this with the standard of young age and its conditions on the principle of child's interest. It allows seeing by using social media and broke down the financial issues related to visitation and accommodation, including transportation fees, especially for the children who live abroad. The chapter of custody under the law applicable in East Jerusalem establishes in Article 180 that the custodians maintain the original documents of the child in custody in the country or copies of the original ones, including birth certificate and health insurance.

It is clear that the guardian, other than the father, such as the mother and the grandmother can benefit from this article. The Civil Affairs Law of 1999 in the Palestinian territories, save Jerusalem, enables the custodian father according to Article 19 thereof can maintain the official original documents of the child or copies of them. Article 19 of the same law provides that the birth certificate must be recorded in the civil registry according to the official form and be given to the parent of the child or to the person who sent notice of his or her birth. The birth certificate can be sent by post. Decree by Law No 22 of 2019 provides that the mother of the child in custody can issue passport document for her child.

The optimal interest of the children is taken into consideration under the section of custody in the Personal Status Laws. The Child Law of 2007 and the Custodian Families Regulation of 2014 and other relevant laws take in the international standard of best practices of child care. Child care is also guaranteed under Article 29 of the Palestinian Basic Law which states that maternity and childhood care is a national duty, and so children have the right to:

1. Protection and care;
2. Not to be exploited for any purpose and not to do anything that could endanger their safety, health and education;
3. Protection against harm and cruel treatment;
4. The law bans subjecting children to beating and cruel treatment by their parents' \ relatives.
5. To be separated from adults if they are punished by imprisonment and to be treated in a way that fits their ages with the aim of rehabilitation.

Accordingly, the provisions of custodianship must be examined in accordance with this concept to fulfill the interest of the child by harmonizing the relevant provisions of custody with the international standard in terms of custody age, the conditions which the mother of the child must meet to have custody over her child, and when she isn't entitled to that. All these issues are broken down under the section of custody in the law. It also explains the right of the child in custody to travel. This right could be affected by the father of the child when the mother is the custodian despite the Decree Law which allows the mother to issue her child in custody passport document and ban his travel by his father or any of his guardians. Despite this provision, the decision of travel is still in the hand of the father of the child in custody.

Concerning child's bank account, the custodian mother can open him a bank account and deposit for him, so she enjoys guardianship over her child's money.

The accumulated judicial experience has proven the necessity for amending the provisions related to custody, seeing and hosting. These provisions have been in effect for more than forty years in the West Bank and more than sixty years in the Gaza Strip. The Jordanian amendments to these laws were enforced in occupied East Jerusalem in isolation from the rest of the Palestinian territories.

Since these provisions were codified within the framework of jurisprudence, there is nothing in the Shari'a that prohibits their reconsideration to provide new legal readings of them with full consideration of the peoples' interest. There is no interpretation that bans a new one.

Regarding the right to alimony, the wife is entitled to alimony once the marriage contract is duly signed before retreat and consummation according to Article 35 of the Personal Status Law applicable in the West Bank. If the marriage contract is duly signed, the wife becomes entitled to dowry, maintenance and inheritance. Article 167

of the same law also states that “each person is responsible for covering their own expenses, but wife is entitled to maintenance from her husband even if she is well-off”. The types of alimony, as stipulated in Article 66 of the same law, include: (food, clothing, housing, medical care to the extent known and the services a wife who has servant and lives in the same setting gets. The husband must pay alimony for his wife if he refrains from covering her expenditures and falls short of that. The wife is entitled to her husband’s alimony. This also applies to the wife whose religion isn’t Islam but married to a Muslim. He must pay her full alimony even if she lives at her family’s house unless he asks her to change the place of her residence and she refuses without a reasonable cause. She has the right to oppose to his request of changing her place of residence in the event that he doesn’t pay her advanced dowry or fails to provide a suitable house for her based on Article 67 of the law. The difference in religion never constitutes a cause for depriving the wife of her right to alimony. Articles 59-60 of the Jordanian Personal Status Law applicable in East Jerusalem stipulates that the husband must provide alimony to his wife when the marriage contract is duly signed even before consummation. This applies to the wives who are well-off and of different religion. She may ask for separation if he fails to provide alimony for her.

The wife’s maintenance is subject to the standards of hardship and ease for the husband’s condition according to Article 70 of the law, which stipulates that (Matrimonial alimony is imposed according to the husband’s financial condition. It may be increased or decreased according to his financial condition, but not less than the minimum amount necessary for food and clothing. If the amount the husband has to provide for his wife is agreed by both of them or by court’s decision, the accrued amount of the period before this agreement is voided.

The alimony is determined from the date of the request and not from the date of the ruling or predisposition according to Article 73 of the law which stipulates that (if the husband refrains from spending on his wife and the wife requests alimony, the judge shall estimate her alimony as of the day of the request and order that it be paid in advance for the days that he appoints). The Jordanian law applicable in East Jerusalem stipulates in Article 64 that “the wife’s maintenance is imposed according to the husband’s financial situation, whether it is well-off or not, and it may be increased or decreased according to his condition, provided that it is not less than the minimum amount necessary for food, clothing, housing and medical care. The alimony could be determined through an agreement by the spouses or by a court order. In such case, the accruals of the period before this agreement are revoked.

Recourse to the judiciary by women and the application of legal provisions related to alimony requires women legal awareness and knowledge of procedures. Something that many women miss. At the same time, there is no national legal aid program that ensures providing legal aid to women so far.

Legal aid includes providing legal awareness and legal representation in personal status cases. The reality indicates that the efforts made by the different institutions are neither concerted, nor monitored. They have no mechanism to measure the quality of services provided in this area or to assess the difficulties of executing courts' decisions or imposing the rule of law. These shortcomings could be due to the impediments set by the Israeli occupation and the division of the Palestinian territories into A, B and C.

Further, the law does not set a minimum limit for alimony or connect it to the cost of living. This affects women's access to decent life. As a result, many women are forced to leave their children with the husband at the age of custody because they are unable to support them. They keep waiting for collecting the alimony and in some cases their families don't support them until they settle the alimony issues by court decision. Under such conditions, they have no choice but leave their children under the custody of their father.

Providing alimony is not mandatory for a wife who works outside the home without her husband's consent according to Article 68 of the Personal Status Law in force in the West Bank. This contradicts the provisions of Article 25 of the Basic Law that guarantees women's right to work, as the article stipulates: (Work is a right for every citizen, and it is a duty and honor. The National Authority seeks to Provide it to everyone who is able to do so), and Article 61 of the law in force in East Jerusalem stipulates that (the wife who works outside the home is entitled to alimony provided that the work is legitimate and the husband agrees to it explicitly or implicitly; the husband can't oppose to his wife's work without a legitimate cause and proof that her work cause her harm).

The wife's work is one of the important causes of family disputes today due to lifestyle change and women's access into the labor market. Such change induced new legal needs as the legal system doesn't have provisions or mechanisms for governing the money shared between the wife and her husband. Wives fulfill several financial obligations together with their husbands without being aware of the legal organization of such activity. Many of them incur financial loss in case of divorce as they have no way to settle the shared financial issues. Solving such problems in case of divorce is always tensed up and difficult. They are often forced to offer financial concessions to speed up the separation process.

The law covered the medical expenses and the midwife's and physician's fees according to Article 78 of the law applicable in the West Bank, and Article 70 of the law applicable in East Jerusalem, but the wife must pay these expenses, bring the bills to court, and claim them through judicial procedures. This mechanism needs to be reviewed and amended, such as obligating the husband and assigning him to pay the amount or part of it initially, or direct financial follow-up on his part, as the situation becomes more complicated if the woman is in need, especially in the case of pregnancy and illness.

The combination of expenses on a man, a husband and a father, is one of the factors that reduce the value of the marital alimony rulings in the courts. The judge assesses the man's

financial condition, taking into consideration the obligations of the man, and the private and public sectors workers' value of salaries of workers as well as those of per-diem workers. These factors are seen as decisive criterion in determining the due expenditures.

It is difficult for the courts to impose on the husband an amount that exceeds his salary which is proven in the case. So, considering family disputes requires certain interventions and programs to compare the expenditures against the poverty line and consumer price index to ensure that the husband who provides alimony won't fall into new financial bottlenecks. This is a right that can't be bypassed by the judiciary without a legal rationale because fulfilling a right should not lead to social imbalance that the official authorities cannot tackle. The rule that there is no harm and no reciprocating harm is heeded in such situations.

The Chief Justice issued Circular No 59\2012 on 30 August 2019 to address the issue of marital dispute and discord. It was issued to address the issue of prolonged litigation process of divorce cases as some cases take years to settle due to difficulty proving the harm arising from dispute and discord as stipulated under Article 132 of the Personal Status Law applicable in the West Bank. Due to difficulty proving the occurrence of harm or damage as most of the incidents of dispute and discord happen in closed rooms, the Chief Justice issued this circular based on the deliberations of the Sharia Judicial Council. It gives enough space for the judge to use his discretionary authority with regard to the notoriety of the dispute and discord to complete the litigation proceedings.

This circular must develop to become a legislative amendment as it contributes a lot to settling marital and family disputes.

Though the above-referenced Law establishes for arbitration in cases of dispute and discord as a mandatory track, the legislator stipulates that the two arbitrators must be men of good experience and capable of achieving reconciliation. One of them must be of the family of the wife and the other of the family of the husband, if possible. If it isn't possible to have two men of their relatives, the judge assigns the mission of reconciliation to two men of experience, justice and ability of reform and arbitration.

Stipulating that the arbitrators be men is considered gender-based discrimination. At the practical level, the judge of dispute and discord cases is a woman judge, and so the status of the judiciary is more decisive in the judicial proceedings of such cases which have arbitration as one of its procedures. It is unreasonable to set masculinity as a condition at the lower level and as an option at the higher one.

In addition to setting general standards for the arbitration process, there is no control over the arbitration procedures in terms of the arbitration environment and mechanisms of communication with the parties. There is no determination of the value of the fees imposed and they vary from one court to another. Accordingly, it is considered an additional loophole in the provisions of solving dispute and discord cases. It is feared that the weakness of these

standards governing arbitration will affect the financial rights of one of the aggrieved parties, especially women.

The Jordanian Law which is applicable in East Jerusalem acknowledged in Articles 126-127 that the dispute and discord should be considered rather than notoriety. It kept masculinity as a condition for arbitration and broke down in Article 126 the patterns of harm that might befall either spouse. The Article handles all forms of harm, including physical, verbal and morale one or any indecent conduct that might affect the other party. It also handles the other party's determination to disavow the marital duties and rights. This explanation promotes the legal protection of women in light of the prevalent social concepts of the spousal relationship and the trend that women should bear with the difficult situation, and tolerate the forms of social violence committed by men.

Some legal provisions of the Personal Status Law in the West Bank and East Jerusalem were analyzed. The focus was placed on the provisions that are subjected to Sharia and legal interpretation to be presented as models of the necessity for legislative reform and standardization of the Personal Status Laws.

Theme 2: Aligning Personal Status Laws with International Conventions:

The Palestinian legal status developed. It became observer state in the United Nations in 2012 and ratified a number of international conventions, including those that relate to the Personal Status Laws. Palestine accessed 98 international conventions until the end of October 2021 according to the data of the Ministry of Foreign Affairs. Accessing to international conventions is considered by the Palestinian Authority as a political and diplomatic instrument to materialize the existence of a sovereign Palestinian State on the land occupied on 4 June 1967 in accordance with the international legitimacy. On the other hand, the Palestinian Authority is aware of the importance of the Palestinian conventions in safeguarding the rights of the Palestinian people. However, accessing to the conventions has binding international obligations and disavowing these conventions puts the State under accountability.

The Palestinian government took certain steps to harmonize the local legislations. On its session No. (2) held on 22/4/2019, it formed a committee to harmonize the national legislations with international conventions. The committee includes the Ministry of Justice as a rapporteur and the Ministries of Interior, Foreign Affairs, Finance, National Economy, Social Development, Women Affairs and Culture, the Fatwa and Legislation Bureau, the General Secretariat of the Council of Ministers, the Regular Bar Association, the General Union of Palestinian Women as well as the Independent Commission for Human Rights and the Negotiations Affairs Department. As per the alignment of the Personal Status Law, a committee with Chief Justice Bureau on it was activated.

At start, the political and governmental authorities in Palestine declared that they are committed to international agreements, especially those that Palestine signed without reservations. These statements sparked an internal debate, and the local community, political

parties, civil society, and the official and political level engaged in controversy. Although the controversy is a healthy state, and societal fears are normal when initiating amendments that affect people's immediate affairs such as personal status, they deviated towards bullying and threats.

The controversy concerning the alignment of the national laws with the international conventions took a new direction as it put on the table of the High Constitutional Court. In its Decision No 4\2017, it determined the status of the international conventions visa-vis the Palestinian national law. It gave the international conventions precedence over the national legislations and laws as well as the national independence document and the Palestinian Basic Law.

The Constitutional Court justified its decision (that international jurisprudence and judiciary have settled that international conventions essentially express the will of states to express their sovereignty in signing, ratifying and acceding to international conventions). And here I note that this interpretation was submitted to the Supreme Constitutional Court because the Basic Law did not regulate this matter.

In the same decision, the Constitutional Court added (that international agreements transcend national legislations, so that the rules of these conventions are prioritized in line with the national, religious and cultural identity of the Palestinian Arab people). This was considered as a subsequent reservation on the international conventions and provided for the amendment of the national laws first but hasn't bound any party to them prior to amendment, including the judicial authority. It is understood that they must abide by them after the national laws and legislations are amended in line with the alignment principle.

Controversy concerning the adoption of the international conventions by joining them was monitored in the official and unofficial Palestinian discourse. It pushed the Palestinian president to deliver a speech confirming Palestine's ratification of the international conventions according to the parameters determined by the Constitutional Court.

The governmental discourse focused on the importance of compliance with the international conventions in accordance with the alignment approach set by the Supreme Constitutional Court. This decision subsided controversy and argument within the local community and political parties, so that the legislative issue couldn't be exploited by partisan and electoral agendas.

The alignment approach could be used during the legislative reformation process. Palestine is in need for in-depth legislative reformation process according to the data of the previous Palestinian reports of the sectoral and cross-sector plans of 2014-2017. The plan of 2017-2020 was extended which was extended to 2022 states that fragmented legal system impedes the access of all, especially women and children to justice. What aggravates this situation is the

complicated situation of law enforcement, especially in the fragile areas, the Bedouin communities, refugee camps and border areas. These complications are aggravated by the political division of the Palestinian territories into areas (A, B, C) in accordance with Oslo accord. The weakness of the Palestinian sovereignty and non-enforcement of laws promotes violence, particularly domestic violence. ESCWA reported in 2017 that the division of the Palestinian territories into legal regions promotes the Israeli Apartheid regime.

The last ten years show the extensive efforts of the governmental and non-governmental organizations to reform the personal status laws. Despite that, no radical amendments of laws were produced. These amendments were concentrated in certain themes such raising marriage age to 18 years to all the Palestinians regardless of their faith or sect with some exceptions enshrined in Law by Decree No 21 of 2019.

In addition, mothers are allowed to issue passport documents to their children and open bank accounts for deposit and withdrawal of money in accordance with the decision issued by the cabinet on 5 March 2018 and the Law by Decree No 22\2019. The Palestinians agree today that the fragmentation of the legal system should end and all laws must be contextualized and standardized. Some obstacles face the law drafting process since these laws address sensitive legal and social issues. It should be noted that the Islamic Sharia is one of the constituents of the legislative structure, and so the review of the amendment path must be accurate, deep and scientific.

Conclusion:

The legal research focused first on the Palestinian Basic Law of 2003 and its amendments since it prohibits any form of discrimination against the Palestinian people on the grounds of religion, gender or any other reason. Some of its provisions were linguistically examined to understand any paradoxical wording and the extent to which there is harmony between the Basic Law and other relevant legislations.

I examined the impact of religion on national legislations through the provisions of the Basic Law. The provisions of the Basic Law are binding and are at the top of the legislative hierarchy. The processes of drafting the relevant national legislations take into account all the provisions of the Basic Law. I tried to monitor, in parallel, the negative impacts on rights and freedoms in the event that the jurisprudential legacy is used as it is in drafting the personal status laws of Muslims. Islamic Sharia is considered as a major source of legislation according to the binding and guiding ruling issued by the Constitutional Court.

I examined the personal status laws, especially with regard to women's rights from the perspective of religion, rights and gender equality. Then I attended to questions about the historical religious debate on women's issues and how this debate was linked to religions, how it started, how it developed, and who took control of the interpretation of religious text and codification throughout Islamic history, and what was the status of Women in the path of interpretation and codification was.

Through the research, the system of laws regulating personal status in the West Bank and occupied East Jerusalem was analyzed, and the applicable legal system was analyzed and linked to international human rights standards and international conventions and treaties; Especially those that Palestine signed without reservations. The availability of gender-based human rights perspective was examined to the extent to which the personal status law is linked to the legal provisions sanctioning rights, freedoms and citizenship, and the extent of interaction between the Shari'a and legal perspective on one hand and international obligations, on the other.

I followed the approach of the multi-faceted theory, where the elements of the subject were analyzed in terms of multiple causes and diversity of factors. The feminist human rights approach was also used in parallel. The research was divided into an introduction and two sections, and each topic into two themes. In the light of personal status laws and in the context of legal multiplicity, the law of nationality and citizenship was considered.

The second topic presented the status of women in personal status laws and rights gaps, and the extent to which the system of personal status laws is aligned with international conventions; some judicial precedents were analyzed, and the Decree- Law No 21 of 2019 on marriage age in Palestine was also highlighted. The research ends up with conclusion and recommendations.

This research examined the constitutional guarantees for women, by scrutinizing the Independence Document issued in 1988. It is the first instrument of protecting Palestinian women's rights. It strengthens their legal status by placing them at the highest point of the Palestinian legislative hierarchy according to the Constitutional Court decision 4/2017. It confirms that the Palestinians rights must be guaranteed without discrimination on grounds of gender, religion, or any other reason. They are all entitled to all human rights and cultural aspects. It treats everyone on the basis of full equality of rights, the maintenance of religious and political beliefs and respect for human dignity, under a democratic parliamentary system based on respect for opinion, freedom, parties' formation, respect for minorities, justice and equality and non-discrimination of rights in accordance with a constitution that ensures the rule of law and independent judiciary.

The research also examines the Basic Law that establishes the rules of the rights enshrined in the national legislations and addresses the Palestinians everywhere, overcoming all political barriers which impedes enjoyment of the Palestinian constitutional rights by the refugees and the diaspora. The Basic Law prohibits discrimination on grounds of gender and religion. It also focuses on the principle of citizenship without discrimination in a way that shows the constitutional rights view propriety for all citizens.

The researcher discussed the concept of citizenship in Islam and promoted the definition of the concept by highlighting realistic historical models and presenting the views of the modern thinkers of law and sociology. It revealed that there are no obstacles to enjoying these rights on the basis of gender. It also revealed that multiple religions never impede coexistence in any

state by balancing the inputs of citizenship as it brings citizens together towards loyalty, sincerity, rights and duties as well as justice that is based on one law. The researcher believes that the state whose most populace take Islam as their religion must be based on citizenship not religious structure. The State of Islam is not a state for Muslims only; it is a state for all its citizens as Islam is not merely a religion. Those who consider Islam as merely a religion misunderstand it. Religion is one aspect of Islam, but it has other aspects, including legal ones. It is a system for all including those whose faith is different but live under the Islamic system.

It has a cultural and civilization aspects adopted by the non-Muslims who live in the Islamic State, and so as women are citizens according to the Palestinian Basic Law, they are entitled to all political rights, including the right to run for presidential elections and occupy ministerial and non-ministerial governmental posts. These rights are maintained without any prejudice. However, what constitutes a barrier to them is the Israeli occupation and some social and cultural factors.

The provisions of the Basic Law do not discriminate against women with regard to occupying positions in the judiciary, the diplomatic corps and public office. Rather, efforts are made to strengthen women's leadership within these institutions and enhance their access to decision-making positions. Discriminatory provisions that special legislations could include with regard to these positions must be analyzed and monitored to make sure that they are free of any form of discrimination based on the grounds of gender or disability. If they are identified, they must be stricken out to ensure equality.

The way the Palestinian Basic Law addresses the Palestinian citizens shows some difference with regard to the personal status and marital disputes. It appears more related to religious and denominational discourse, especially in Article 101. The first paragraph of this Article states that Shria and personal status affairs are resolved by Sharia and ecclesiastical courts according to the law". This clarifies that religion has become one of the standards of litigation in family disputes within the context of personal status affairs. This sounds exceptional to Article 9 of the Basic Law which is specific to freedoms and rights "all the Palestinians are equal before the law and the judiciary without discrimination on grounds of race, color, religion, political opinion or disability". This Article is consistent with Article 4 of the Basic Law which states that Islam is the State's official religion and the principles of the Islamic Sharia is the source of legislation. It also emphasized respect for all religions.

The official and unofficial media discourse related to the harmonization of legislation with international conventions was examined. Discrepancies appeared in the official discourse, especially before the controversy within Palestinian society was resolved by Constitutional Court Decision No. 4/2017. It clarified the position of international conventions in relation to the Basic Law and national legislations. It indicated the internal mechanism for adopting these conventions, which is harmonization by amending or approving new national legislations.

President Mahmoud Abbas stated that the course of the Constitutional Court is Palestinians' guide towards adopting international conventions, noting that the court determined harmonization inputs on the basis of cultural identity, religion, customs and traditions of the Palestinian people.

This leads to an understanding of the necessity of respecting the majority religion based on the Universal Declaration of Human Rights of 1948, especially Article 28 of this Declaration, which states: (Everyone has the right to enjoy a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized), One of the components of the social system is religion, along with other elements such as language, culture, and others.

This understanding includes the obligation to protect the existence of minorities and their national, ethnic, cultural, religious and linguistic identity, and to create the conditions necessary for strengthening this identity and for states to adopt legislative and other appropriate measures to achieve these ends in accordance with Article 1 of the Declaration on the Rights of Persons Belonging to National or Ethnic and Religious Minorities and linguistics issued by the General Assembly of the United Nations in 1992.

There is still doubt that several judicial bodies cannot work on personal status affairs in the same country, and this does not conflict with international references, especially Article 27 of the International Covenant on Civil and Political Rights which states that "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language".

In the same vein, the Committee Concerned with Civil and Political Rights stated in its 48th session (1993) that the right of the individuals belonging to other minorities under the above-said Articles is distinctive and additional to the other rights to which they are entitled in accordance with the International Covenant on Civil and Political Rights just like other groups of the society. Enjoyment of these rights which are set forth in the above said Covenant apply to the individuals living in the region or subjected to the jurisdiction of the State whether they belong to a certain minority or not.

In addition, there is a distinct right guaranteed under Article 26 which provides for equality and equal legal protection as well as non-discrimination with regard to the rights granted and the obligations imposed by states, while at the same time the enjoyment of the rights to which Article 27 relates does not impair the sovereignty or integrity of any state party and its regional safety. It shows the harmony of the concept of citizenship and respect for the culture of the majority and the inputs regarding the protection of minorities.

This research discussed the connotation of the Islamic Sharia principles which constitute the key of the legislations in light of the proven impact of the religion on the personal status laws

and their application in courts. The judicial precedents were also analyzed to explain the concept of the Islamic principles. The definition and analysis of the judicial precedents by scholars denote that the Sharia principles are Sharia provisions.

Proven Sharia provisions are not subject to interpretation since they represent the Islamic Sharia in its holistic principles and its origins which are not subject to interpretation or alteration. Whereas suspicious provisions of Sharia are subjected to reason. The issues that are not provided for in the Sharia provisions can be subjected to reason and interpretation in a way that guarantees people rights and interest for which provisions are established as the core of Sharia is justice and rights. Abiding by these provisions is recommended to avoid corruption. These provisions are dynamic and interpretation in non-consensual issues does not constitute Sharia principle. It can be repealed, otherwise, it would block contemplation and thinking of God's religion. It would be really a denial of the possibility of mistake occurrence in interpretation. Islamic Sharia is dynamic and transformative and does not prohibit interpretation with regard to issues which are not provided for. However, interpretation should not contradict the meaning and intention of Sharia.

The diligent Imams often decided rulings that sought the absolute interests of the people to serve them and ward off harm from them or alleviate their embarrassment, given that their interests develop in light of the changing conditions of their societies. This shows the importance of the efforts exerted to know what is interpreted of Sharia and enforcement of interpretation, when necessary.

The sanctity and authenticity of many rights are taken away due to the temporal factor. Nothing should continue forever. The rights persist while the way of their realization varies from time to time in accordance with changing social conditions.

The research shows formal and informal collective commitment to the mechanisms of alignment of national laws with international conventions. It is necessary to think of how to draft and produce laws that are consistent with the international practices without breach of the rules of the Islamic Sharia or affecting the value of its provisions or its purposes.

The research highlighted the situation of the Palestinian women in the context of multiple laws and absence of a Nationality Law. It revealed that women's access to justice is too complicated in light of the absence of the National Law and connecting it to the final political resolution of the Palestinian cause. What aggravates the situation is Israel's division of the Palestinian territories into Bantustans and the existence of several laws. The Palestinian territories lives a state of legislative disorder, especially in relation to personal status affairs. The research also show the impact of the legal and political status on the fulfillment of women's rights and enforcement of the judicial decisions. It is also impacted by the political division between the West Bank and Gaza Strip and the dysfunction of the Legislative Council. The research also shed light on the marital disputes when these disputes are cross-border due to the different nationality of the spouses.

The research monitors a number of legal gaps that are connected with the personal status laws in the West Bank and East Jerusalem. Some of these laws organize marriage issues, including marriage of persons with mental impairment and early marriage. It analyzed the law of marriage age, inter-faith marriage, the right of custody, seeing and hosting and the child best interest as well as the right of separation in case of dispute and discord.

Gender-based discrimination and right gaps as well as inaccessibility to justice in light of the current legislative structures were revealed. The research deliberately looked into the legal provisions which can be reconsidered without prejudice to the Law and Sharia.

Finally, the research presented the official steps which are connected with the alignment of the Palestinian legislation and what was achieved in this regard. It also highlighted the national bodies which were established to achieve this end.

Recommendations:

- Promoting intellectual efforts to find alternative Sharia readings from the Sharia to be legally translated.
- Reconsidering the national bodies established to align and standardize the legislations as the legal, Sharia, sociology and economics specialties of their members are diversified.
- Setting clear work methodology for the national bodies that are established to align and standardize the national legislations.
- Approving legislations review methodology from the perspective of religion and citizenship to align the national legislations by introducing amendments or approving new legislations.
- Increasing collective awareness about the standards of Sharia interpretation and introducing them into the basic and higher education curricula as one of the dialogue tools in the discussion of public affairs.
- Connecting Sharia interpretation to legislations legal development.
- Identifying time-bound legislative reform priorities.
- Connecting legislative reform priorities with the aspects of the Palestinian sovereignty.
- Holding regional and international understandings for the protection of the Palestinian citizens in regard to personal status affairs wherever they live and organizing this procedure legally, especially with regard to trans-boundary family disputes in cases of mixed marriage.
- Connecting the legal agenda with the political agenda, especially with regard to Jerusalem, in a realistic and systemic way in the legislative plans. This should be time-bound and budgeted.

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