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Domestic Violence in Saudi Arabia

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DOMESTIC VIOLENCE IN SAUDI ARABIA

Sahar Alhabdan

Submitted to the faculty of the Maurer School of Law in partial fulfillment of the

requirements for the degree

Doctor of Juridical Science

Indiana University

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Abu Hurairah (May Allah be pleased with him) reported:
The messenger of Allah (peace be upon him) said, "The most perfect man in his faith among the believers is the one whose behavior is most excellent; and the best of you are those who are the best to their wives."

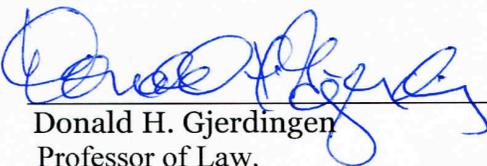
[At- Tirmidhi]

Accepted by the faculty, Indiana University, Maurer School of Law, in partial fulfillment of the requirements for the degree of Doctor of Juridical Science.

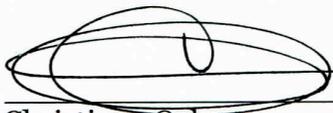
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❖ **Dedication**

I would like to dedicate this work to my loving mother and father. I also would like to dedicate this work to my beloved husband, Abdulrahman and my lovely child Beisan for their support and encouragement.

❖ Acknowledgments

First of all, I would like to thank God for his grace he gave me in my life and for advancing me in my academic career.

Second, it is my pleasure to acknowledge my deep sense of gratitude to my Committee Chair, Prof. Joseph L. Hoffmann for his valuable comments, support, patience, motivation, and for always having the time to help. I would like also to thank my dissertation committee members, Prof. Christiana Ochoa and Prof. Donald H. Gjerdingen, who gave me great guidance and comments on my dissertation.

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❖ Abstract

Family violence is a serious issue that affects women in Saudi Arabia. In response to cultural acceptance of violence between spouses in Saudi Arabia, the government issued its first law criminalizing domestic violence in 2013. The Protection from Abuse Act was proposed to improve protection for women and to punish the abusers, but several articles in the Act may reduce its effectiveness. Issuing laws prohibiting domestic violence cannot by itself protect women. Women should be protected under family law by preserving their rights to marry, divorce, obtain custody of children, and receive alimony. This dissertation will study the issue of domestic violence in Saudi Arabia. It will provide a clear understanding of domestic violence, women's rights under Islam, and the source of law in Saudi Arabia. This dissertation will shed light on several problems in the Protection From Abuse Act and under family law and will provide ways for how to effectively improve the law.

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❖ **Chapter One:**

○ **Introduction.**

Saudi Arabia has declared that Islamic law serves as the government's constitution. There are four sources of law under Islam: the Quran, the Sunnah, Qiyas, and Ijma. All Saudi Arabian laws and regulations must be consistent with these sources. Also, all rights enjoyed by Muslims are derived from these sources. With respect to women's rights, Islam elevates women's status and protects their dignity. Islam treats men and women on an equal basis. More importantly, Islam prohibits all kinds of mistreatment of women and violence against them.

Despite women's rights in Islam, Islam is accused of allowing violence between couples. This accusation is a result of Muslim men misapplying and misunderstanding the religious text that discusses the issue of a wife's disobedience. The misinterpretation of the Islamic text has led to women suffering from abuse and violence. Due to an incorrect interpretation of the Quran, men have justified their violent acts by referring to the religious text, leading to tolerance of violence between couples in Saudi Arabian society.

Domestic violence in Saudi Arabia is a sensitive issue. Besides misinterpretation of the religious text, other cultural and traditional factors may affect the understanding of violence in the family. Women in Saudi Arabia often experience several forms of abuse. Besides the most common forms of abuse (sexual, emotional, and physical) Saudi women experience economic abuse through the deprivation of education, work, and inheritance. The combination of these forms of abuse has resulted in the deprivation of important rights for Saudi Arabian women.

Women in Saudi Arabia may also suffer under discriminatory practices of family law. In marriage and divorce, women may experience additional abuse due to the lack of codification of family law in Saudi Arabia. For example, women are sometimes subjected to forced marriage or abandonment. Additionally, the extensive process for divorce procedures can lead women to suffer abuse and pressure that may cause her to waive their right to child custody and support in exchange for gaining divorce. Because there is no minimum age for marriage, some women are forced to marry early in life.

In 2013, the government issued the first law that criminalized domestic violence in an attempt to illuminate the issue of family violence. The Protection from Abuse Act criminalizes negligence, physical, sexual, or psychological abuse against any family member. While this act is an important step in combatting violence against women in Saudi Arabia, several articles in this act require reformed to better serve to protect and provide for the needs of women. For instance, the Act should better define abuse as a pattern of behavior and treat all abuse cases as criminal. Without reforms, the Act will fail to make any real difference on the status of abused women.

This dissertation also argues that the protection of abused women in Saudi Arabia can be enhanced under family law in addition to criminal law. The codification of family law will have an important effect on protecting rights already given to women in marriage relationships under Islamic law. Utilizing family law to empower women through by establishing a family department and setting clear procedures for divorce, child custody, and alimony can protect women from several forms of physical, emotional, and economic abuse.

Other important changes may be implemented to change the societal response to the crime of abuse and to promote change and reformation of existing laws. The government should begin with launching an educational campaign to raise societal awareness of women's rights. Introducing human rights education in the school curriculum can have an impact on the next generation, encouraging the respect of other's rights. Another way to advance the rights of individuals is through using religious teachings and illustrating the Islamic view on violence and abuses. Finally, increasing the rate of employment among women can increase women's security.

- **Goals.**

The essential goals of this dissertation are to increase women's protection and emphasize their rights. First, this dissertation will seek to provide a clear definition of domestic violence and the types of abuse that women suffer in Saudi Arabia. It will also seek to illustrate that Islam introduces women's rights and indicates that married women enjoy specific rights in the marriage relationship. Additionally, it will discuss Islam's stance against violence and abuse in family relationships.

The second goal of this dissertation is to reform several articles of the Protection from Abuse Act. This dissertation will explain how certain articles in the current Act may negatively impact the goals of the act, which is to protect women from abuse and increase women's protection. Further, this dissertation will suggest how to bring effective reform to the Protection from Abuse Act.

The third goal of this dissertation is to uncover problems that women face when seeking divorce, child custody, or alimony. It will also explain how current family law has deprived women of most of their rights. This dissertation will argue for the codification of family law and will propose an effective way to codify family law and to regulate family cases in family court.

In an attempt to achieve these major goals, the dissertation also will provide additional steps that can be taken in the short term to enhance women's status and promote changes in the laws.

- **Research Roadmap.**

Chapter two provides a general explanation of domestic violence. This chapter covers the definition of violence in the family and the types of abuse that women in Saudi Arabia suffer. This chapter also attempts to provide some explanation behind the use of violence. This section introduces multiple theories that help explain the reasons for domestic violence. A brief statement of the main issue of the dissertation will conclude this chapter.

Chapter three discusses the issue of women's rights in relation to Islam. The first section in this chapter provides a brief history of the treatment of women in the Arabian Peninsula before the birth of Islam. Then, the chapter will shift to give a clear understanding of women rights in Islam and the marriage relationship. This chapter also explains the Islamic viewpoint on violence between couples. A brief discussion on women rights in Muslim countries concludes this chapter.

Chapter four reviews the legal system and the sources of law in Saudi Arabia. Specifically, this chapter covers judicial authority, judicial principles, and the individual rights under the criminal justice system in Saudi Arabia, as well as the criminal justice system under Islam. This chapter will also introduce the Protection from Abuse Act and family law in Saudi Arabia.

Chapter five investigates the Protection from Abuse Act. This chapter first covers the problems that abused women struggled with before the issuance of the law and explains the reasoning behind the issuance of the act. Then, this chapter will shift to introduce the problems appearing in the act and argue for reformation of the law. In addition, this chapter proposes how the law should be reformed and provides examples of domestic violence law in several countries.

Chapter six explores the issues faced with codifying family law. This chapter argues that codifying the law will lead to several benefits to the legal system and will increase women's rights. This chapter sheds light on women's struggle for their rights in cases of divorce, child custody, and alimony and provides a proposal for how to codify the law to protect women from mistreatment.

Finally, chapter seven provides explanations on how to achieve major changes in the law. This chapter proposes several important steps can be taken to raise women's status, raise public awareness on the issue, and increase women's personal knowledge regarding their rights. This chapter argues that these steps would have a positive impact on the status of women in Saudi Arabia. Chapter eight provides a conclusion for the dissertation.

❖ Chapter Two: What is Domestic Violence?

○ Introduction.

Domestic violence is a serious issue in Saudi Arabia. Statistics indicate that married women are the largest segment abuse victims in Saudi society. Saudi women suffer several forms of abuse, including physical and emotional. There are several causes of domestic violence in Saudi Arabia such as ignorance regarding women's rights, cultural acceptance of violence between spouses, and societal understanding of violence.

There are several barriers to the study of domestic violence in Saudi Arabia including societal structure, high value of family privacy, and lack of reporting of abuse cases. From legal perspective, abused often women face obstacles when seeking redress. Abused woman may try escaping violent relationships by seeking divorce. The extensive process required to seek divorce may raise the amount of violence suffered by women in Saudi Arabia. Also, the Protection from Abuse Act, which was issued in 2013, is not fully sufficient to protect women from abuse.

For a deeper understanding of domestic violence in Saudi Arabia, the first section of this chapter will focus on defining domestic violence and how Arab society has defined it. The second section will explain the types of abuse. To understand why violence happened, the third section will provide multiple theories to explain the use of violence.

○ **Section One: The Definitions of Domestic Violence.**

Domestic violence has been identified as a very serious problem that affects women and children in all levels of society, regardless of race, financial status, religion, and level of education. This violence may cause physical, sexual, and emotional harm to the victim, which may contribute to other harms in the family and society. Studies indicate that the presence of one form of violence in the family is a sign that other forms of violence may exist.¹ Domestic violence is a very dangerous pattern of behavior that needs to be defined carefully.

No universal definition of domestic violence exists. Different cultures have varying views on violence generally and the nature of the relationships between husbands and wives. What may be considered an act of domestic violence in one community may be considered appropriate in another. Therefore, every community has its own understanding of the issue.²

In order to provide a definition of domestic violence, one must understand the prevailing culture; local religion, laws, and customs; and composition of the family. The definition of domestic violence also depends on the context in which the term is being used. The term of domestic violence has led to other concepts such as “marital violence”, “spouse abuse”, “battered wives”, and “family violence”.³

In some fields of study, the definition of violence may be narrowed to focus on one or two types of abuse. For instance, sociologists have defined violence as any behavior or conduct performed, intentionally or unintentionally that causes bodily harm

¹ Lenore E. Walker, *Psychology and Domestic Violence Around the World*. 54 AM. PSYCHOL. 21-23. (1999)

² JIBRIN ALI AL-JIBREEN. DOMESTIC VIOLENCE THROUGH THE STAGES OF LIFE 21 (2005)

³ *Id.* at 22.

or injury.⁴ By contract, psychologists and mental health researchers consider physical and emotional harm as important elements of violence. In the field of psychology, violence can be defined as any conduct that may cause or has high risk of causing physical or emotional harm, including threatening of physical harm or death and sex-related crimes.⁵

In the United States, the U.S. Department of Justice has defined domestic violence as “a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.”⁶ Also, the Center for Disease Control and Prevention defines domestic violence as “actual or threatened physical or sexual violence, or psychological and emotional abuse, directed toward a spouse, ex-spouse, current or former boyfriend or girlfriend, or current or former dating partner.”⁷

Western and Middle Eastern views on domestic violence vary greatly. In the United States, the definition and laws regarding domestic violence are broad, protecting even non-familial relationships from a wide variety of behavior. Abusive behavior, as the Disease Control and Prevention stats, may be “actual or threatened physical or sexual violence, or psychological and emotional abuse.” The abusive behavior may be “directed toward a spouse, ex-spouse, current or former boyfriend or girlfriend, or current or former dating partner.”

⁴ NANCY A. CROWELL & ANN W. BURGESS, UNDERSTANDING VIOLENCE AGAINST WOMEN 9 (Washington, D.C. USA. National Academy Press 1996)

⁵ *Id.*, at 10.

⁶ The U.S. Department Of Justice. <http://www.ovw.usdoj.gov/domviolence.htm>

⁷ Centers for Disease Control and Prevention. <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/definitions.html>

In the United States, domestic violence definition does not depend on family status or marriage relation, but in the Arab region, the family status and the marriage relation is an important element of the crime of domestic violence. In most of the Arab regions, and in Saudi Arabia, religion and law prohibit men and women from living together without being related or legally married.⁸

Arab countries have more narrowly tailored laws regarding domestic violence. For example, Jordan has established laws to directly criminalize domestic violence. Jordan's law regarding domestic violence has defined "family members" as legally married husband and wife, their children and grand children, their children from an ex-marriage, the husband and wife's parents, the husband and wife' brothers and sisters, and adopted child who is less than 18-year-old. The law explains that domestic violence must be between family members.⁹ The law does not mention what forms of abuse are covered.

Moreover, Bahrain has proposed a law regarding the protection from family violence. The drafted law has defined domestic violence as any assault on a female in the family sphere by her guardian or any one who has authority over her, whether father, brother, or husband. The drafted law explained that the abusive acts include neglect, threat of harm, physical injury, emotional harm, and the threat or of hard objects to beat.¹⁰

⁸ AL-JIBREEN, *Supra* note 2, at 23.

⁹ Jordan Domestic Violence law (2008) http://www.lob.gov.jo/ui/laws/search_no.jsp?no=6&year=2008

¹⁰ Ali Abdulla Al-Aradi. Comparison Between the Bahraini Drafted Domestic Violence Law and the Jordan Law of Protection From Domestic Violence No (6) Of 8002. 2-5. (2011)

In Saudi Arabia, the Protection From Abuse Act, which was introduced in 2013, is a law that covers all types of abuse and assault against women and children. While this law does not specifically address the issue of domestic violence, it can be regarded as the most relevant law for domestic violence cases. The defines “abuse” as the practice or threat of physical violence, sexual assault, emotional abuse, or neglect committed against a woman or child by a person who has the power to either of them, whether authority, responsibility, maintenance relationship, family relationship, or guardianship. Additionally, it is considered abuse if a person omits, neglects, or fails to fulfill the duties or obligations to provide the basic needs of any family member or dependent under law or religion.¹¹

The Saudi Protection from Abuse Act, similar to the Jordanian and the proposed Bahraini laws on domestic violence, has indicated that there must be some form of relation between the perpetrator and the victim to constitute domestic violence. While the Jordanian and proposed Bahraini laws have limited the scope covered by the laws to marriage and guardian relationships, the Saudi law covers other forms of relations. The law explains that crimes fall under this law if it perpetrated by a person with some form of relation to another, whether an authority relation, family relation, guaranty relation, dependency on living relation, or guardianship.

In sum, it is difficult to provide a uniform definition for domestic violence since laws and understanding of domestic violence and abuse vary between countries. Western countries, such as the U.S, have broader definitions of domestic violence than Arab countries. Since this research will focus on domestic violence against wives in Saudi Arabia, it will follow the definition of abuse under the Saudi law and Arab countries,

¹¹ The Protection From Abuse Act 2013.

because they specifically cover the issue of violence against wives. The next section will provide more explanation for the types of abuse a woman may suffer.

○ **Section Two: Types of Abuse.**

Several studies indicate that domestic violence against women, especially conducted by a woman's husband, is a serious problem in Saudi Arabia.¹² A woman in Saudi Arabia may suffer several forms of abuse for refusing to comply with her husband's demands. Besides physical, emotional, and sexual abuse, that are well-known in other countries, a Saudi woman may be subject to other forms of abuse, such as economic-social abuse, which is related to rights to education, work, inheritance, and marriage.¹³

The most dangerous and common type of abuse is physical and can be defined as the use or threat of violent acts that may result in bodily harm or suffering against any member in the family. Physical abuse may include any act, such as slapping, kicking, hitting, and punching, that may result in injury.¹⁴ The definition of physical abuse differs between societies, depending on the amount of tolerance given to the use of physical punishment in the family and society.¹⁵ However, in most cases of physical abuse the victim also suffers another form of abuse, emotional.

¹² Islam dictates love and mercy between spouses and prohibited any physical, psychological, or sexual violence inside or outside the family. Islam also restored women rights, for instance, right to work, education, and inheritance.

¹³ The Center of Social Studies, *Domestic Violence Between Confrontation and Concealment* 22.

¹⁴ National Council for Family Affairs, *Status of Violence Against Women in Jordan 1-7* (2008)

¹⁵ AL-JIBREEN, *Supra* note 2, at 21.

Emotional abuse, also be referred to as psychological violence, is defined as “any act that may result in weakening a person’s ability to deal with his/her surrounding social environment; it includes rejection, insults, neglect.”¹⁶ Emotional abuse includes verbal abuse, such as threat of harm or calling by inappropriate names. It may also include preventing the wife from seeing her family, intimidation and terrorizing any family member.¹⁷

Another form of abuse, sexual abuse, is defined as committing any sexual act without the consent or the tolerance of the other party. Sexual abuse includes rape, sexual touching, sexual harassment, and any inadmissible sexual comments.¹⁸

Finally, health violence is defined as preventing or neglecting necessary medical treatment for any family member. Health violence also includes feeding the family anything that is harmful to their health, such as rotting food.¹⁹

- Other Forms of Abuse.

Besides the most common forms of abuse, Saudi women are subject to another forms of abuse, economic-social. This type of abuse includes depriving a woman from her rights to education, work, work salary, property or inheritance, and the refusal to give permission for a woman to get married.²⁰ It must be stressed, though, that economic-social abuse is often a result of tribal legacies, tradition, and culture of the family rather than actual Islamic teachings.²¹

¹⁶ National Council for Family Affairs, *Supra* note 14, at 1-7.

¹⁷ The Center of Social Studies, *Supra* note 13, at 41.

¹⁸ National Council for Family Affairs, *Supra* note 14, at 1-7.

¹⁹ The Center of Social Studies, *Supra* note 13, at 43.

²⁰ Saudi Gazette report, *Guardianship abuse has serious implications: Study Saudi Arabia*. Saudi Gazette, June 24, 2013, <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20130624170994>

²¹ See, Reema Alswael, *Education and the Role of Women in Saudi Arabia* (George Mason University) at 1-5 (This research outlined how girls education in Saudi Arabia was conservative and based on tradition.)

Some families have deprived their daughters of education or work, claiming that education and employment are not important for women and undermine family life. They further argued that education and work might contradict with women's nature and women's role in the family. Family refusal to educate their daughters or permit their work outside the home is connected to the concern that women will not be interested in their essential role in the house as a wife and a mother.²² This form of abuse has affected women financially and made her lose the ability to be independent.

Another abusive act that affects women financially is the denial of a woman's right to a salary or her share of an inheritance. Some Saudi men used to justify depriving women of their salary, claiming that women spend too much money and a husband can prevent that by controlling the money. Also, women may have a limited knowledge of their rights of inheritance, designated to them under the law of Islam. Some families take advantage of this lack of knowledge and deny women their share of inheritances. Others have justified this act by claiming that women have no share in inheritance, or by expressing the fear that the wealth from the inheritance would be transferred out of the family if she got married.²³

²² Alsweel, *Supra* note 21. See, Majeedah M Alnajem, Characteristics of Poverty of Women in Saudi Society From The Perspective of Qualitative Study, Applied to Beneficiaries of The Charities in The Eastern Region19 (2012) (The study concluded that depriving women from education contribute to their poverty.)

See, MAYSON ALFAYEZ, VIOLENCE AGAINST WOMEN 15 (2009) (The book further explains other forms of abuse that women in the Arab region may suffer.)

²³ Galal Fakkar, *Ministry Moves to Ensure Women's Inheritance Rights*, Arab NEWS. July 18, 2011, <http://ww.w.arabnews.com/node/384429>

See, Razan Baker, *Women's Inheritance: When Protectors Become Abusers*, Arab NEWS. Mar. 23, 2007, <http://ww.w.arabnews.com/node/296265> (One lawyer said, "there are two reasons why women face these problems. Firstly, some people abstain from implementing Islamic law in their lives and prefer to opt to live lives according to pre-Islamic traditions that prefer men over women.")

See also, REUBEN LEVY, THE SOCIAL STRUCTURE OF ISLAM 245 (1957). (In the eastern region of Saudi Arabia, created a different set of rule in sharing the inheritance which is not derive from Islamic law.)

Additionally, the economic abuse affects women's right get married. One of the Islamic conditions for marriage is permission from a guardian. Some men have manipulated this condition, making it the most common avenue for economic-social abuse in Saudi Arabia. While serving as a guardian of a woman, a man can marry her off or prevent her from getting married. While preventing a woman from getting married may not seem by itself to be an abusive act, the reasons for keeping a woman single may be considered a form of domestic violence.

There are many reasons for preventing a woman from getting married. One reason could be that fathers and/or brothers are financially abusing a woman. The guardian may be taking the payment for the woman's work and fear that the new husband may take the money if she were to get married.²⁴ The guardian may also reject a marriage proposal because he wants to receive a high dowry. Another reason may stem from tribal legacies, which prevent women from marrying someone from another tribe.²⁵

In sum, active violence can take three forms: physical abuse, emotional abuse, and sexual abuse. Active violence can be manifest by the presence of bodily injury, mental disorder, or sexual harm. Passive violence can be defined as preventing a woman from enjoying her rights, including rights to education, work, financial independence, and marriage. Both active and passive abuses have serious effects on a woman's life. Social scientists have explored multiple theories to explain the reasons for domestic violence, which will be discussed in the next section.

²⁴ Ghazayel Otaibi, *Men Abused The State of Women!* Al-Riyadh Newspaper. June 11,2013
<http://www.alriyadh.com/2013/06/11/article842739.html>

²⁵ Awatif Al-hazemy, *Denying Women Marriage of Efficient, Causes and Effects*, Om Al-qura U. 1-3 (2013)

○ **Section Three: Theories of violence.**

Why would a man beat his wife? This is an important question that needs to be answered in order to help social workers, professionals, and law enforcement officers intervene in early stages to protect victims and prevent future harm. Besides the common causes of domestic violence such as poverty, low level of education, and alcohol consumption, there are multiple theories in social science that attempt to explain human behaviors, especially violent behavior.

Since domestic violence includes several types of abusive acts, a single theory is not sufficient to explain all domestic violence. Researchers in this field take two different approaches to explain violent human behavior. The macro is a broad approach to explain violent human behavior. This approach focuses on the environment surrounding the person, social variables, and social contracture. Another form of explaining violent human behavior is the micro approach, which tends to explain violence by focusing on small units, such as the character of the abuser and family.²⁶

Under the perspective of the social learning theory, children learn their behavior by observing the behavior of others around them. This theory explains how children will adopt the “emotional and moral meaning”²⁷ of violence from their family members, affecting the way they interact with others and deal with their partners. Thus, when children witness violent behavior, they learn to act violently. This theory suggests that men who beat their wives learned to be violent in their childhood from their families.²⁸

²⁶ AL-JIBREEN, *Supra* note 2, at 97.

²⁷ Alvina Makhosazana Kubeka, *Exposure to Violence at Home: A Qualitative Exploration of Experiences and Perceptions of Black Adolescents in South Africa*. S. AFR. REV. OF SOC. 39. 282- 285 (2008)

²⁸ AL-JIBREEN, *Supra* note 2, at 99.

This transfer of violent behavior is known as the cycle of violence or the transmission of violence.²⁹

The theory of the cycle of violence also suggests that children who grow up in violent homes will adopt the beliefs that (a) "those who love you the most are also those who hit you", (b) "those you love are those you hit" (c) "violence can be and should be used to secure good ends", and d) "violence is permissible when other things do not work."³⁰ Under this theory, a child must have the ability to pay attention, to remember, and commit the violent act. The child must also have the motivation to commit violence.³¹

Another theory that attempts to explain the reasoning behind domestic violence is the trauma theory. This theory takes into consideration the social and psychological effect of exposure to violence. Trauma theory suggests that children may acquire "post-traumatic stress disorder" (PTSD) when witnessing violence. Indicators of PTSD include feeling insecure or nervous, remembering the traumatic event, and being horrified. Moreover, researchers have found that adults who have been subjected to or witnessed violence may develop a sense of feeling out of control, lack the ability to manage their lives, and fear of being re-victimized.³²

²⁹ Avshalom Caspi, ET AL., Role of Genotype in the Cycle of Violence in Maltreated Children, 297 SCI. 851-854 (2002).

³⁰ Kubeka, *Supra* note 27, at 285.

³¹ AL-JIBREEN, *Supra* note 2, at 99.

³² Kubeka, *Supra* note 27, at 284.

Children experiencing domestic violence who have post-traumatic stress disorder (PTSD) may exhibit a number of additional symptoms. For example, these children are more likely to behave violently, aggressively, and act out in anger toward others who threaten them than children who do not have PTSD. Children suffering from PTSD may also behave violently when they feel insecure.³³

The social exchange theory, or deterrence theory, provides another explanation for the reasoning behind domestic violence. This theory explains that seeking “rewards and the avoidance of costs and punishments”³⁴ controls human actions and behaviors. Therefore, a man will use violence with his wife or with any family member when he believes that there are no costs. The cost of using violence with family member may include the risk of being beaten back by someone, the risk of criminal charges, imprisonment, or divorce.³⁵

In general, the social exchange theory focuses on the purpose for creating laws and regulations and enforcing them. When applied to criminal law, the theory can be utilized to establish punishments to help reduce future crimes. According to this theory, the best way to decrease domestic violence is to enact harsher punishments. Establishing penalties for domestic violence would send a clear message that the costs of beating a family member outweighs any reward of gaining control over the other person.³⁶

³³ Kubeka, *Supra* note 27, at 284.

³⁴ Fran S. Danis, *The Criminalization of Domestic Violence What Social Workers Need to Know*. NAT'L. ASS'N. OF SOC. WORKER. 237-239 (2003)

³⁵ *Id.*

³⁶ *Id.* See, AL-JIBREEN, *Supra* note 2, at 107 (Applying the exchange theory in the Saudi society, where there is no law to criminalize domestic violence, the cost of beating do not outweigh the rewards.)

The feminist theory views domestic violence as the consequence of patriarchal societies that give men the tools to control and manipulate women's lives. The inequality between men and women in a patriarchal society deprives women of their rights to participation in "the social, economic, and political system."³⁷ This theory explains that domestic violence originated as a problem in society rather than factors affected by or associated with individual men.³⁸

Feminist theory suggests that in order to solve the problem of domestic violence, equality between men and women must be achieved. Therefore, women must acquire decision-making positions, receive equal pay, and change laws that create inequality between the sexes.³⁹ This theory asserts that the dangers of a patriarchal society are deeply rooted in social structure and are easily passed from one generation to another. To avoid transferring these problems, society work to improve the status of women.⁴⁰

In addition to the theories discussed above, cultural factors may partially explain the prevalence and acceptance of domestic violence in Saudi Arabia. The view of male honor in Saudi society and the importance of protecting familial reputation are contributing factors. Male honor affects both men and women. A man's status and reputation is determined in light of three criteria: the female family members and relatives' behavior,⁴¹ the man's ability to control and manage the behavior of his female relatives, and the man's willingness to prevent any harm on his family, familial

³⁷ Alison Cunningham & Peter G. Jaffe, ET AL, *Theory-Derived Explanations of Male Violence Against Female Partners: Literature Update And Related Implications For Treatment and Evaluation*. LON. FAM. CT. CLINIC 3 (1998)

³⁸ Fran S. Danis, *Supra* note 34.

³⁹ Cunningham, *Supra* note 37.

⁴⁰ AL-JIBREEN, *Supra* note 2, at 100.

⁴¹ Khaled Omar Al-rdien. *Domestic violence against women and descriptive study on a sample of women in the city of Riyadh*. SEC. RES. J. No 39, 104 (2008)

reputation, and properties.⁴² Thus, a man cannot obtain honor without controlling the women in his family.

The emphasis on male honor triggers duties of female honor. Female honor focuses on female code of dress and behavior. In honor-centric societies, women are taught to act in a way that protects the family's reputation.⁴³ Arranged marriages at young ages, for instance, are one way to protect female chastity and modesty and therefore, protect the family name. Under the honor norm, the burden of protecting women is placed on the men. The ways of protecting are varied and may include physical, emotional, and verbal abuse. Other forms of violence may be used to prevent women from behaving in a way that threatens the family honor.⁴⁴

In sum, each theory provides a logical explanation for domestic violence. Each of these theories proposes different ways to predict and intervene with domestic violence and respond to abusers. The social exchange theory suggests that arresting or convicting is one way to reduce violence against women. The social learning and trauma theories suggest that programs to help victims of violence recover will temper domestic violence. Finally, the feminist theory suggests adversary programs as a way to support victims.

⁴² Joseph A. Vandello & Dov Cohen, *Male Honor and Female Fidelity: Implicit Cultural Scripts That Perpetuate Domestic Violence*. 84 J. OF PERS. & SOC. PSYCHOL. 997–998 (2003)

⁴³ *Id.*

⁴⁴ Al-rdien, *Supra* note 41, at 105.

- **Conclusion**

Domestic violence is a serious crime that can affect all aspects of women's lives. Domestic violence can be defined as a pattern of abusive behavior against an intimate partner for the purpose of gaining power and control that results in physical, sexual, or emotional harm or neglect. Violence in the family may include several forms of abuse such as physical abuse, sexual abuse, emotional abuse, and financial abuse. Several theories have been introduced by social sciences that can help give an understanding to violent human behavior, such as the social learning theory and the cycle of violence.

Some of the theories directly help to explain the use of violence against wives in Saudi Arabia. The feminist theory indicates that domestic violence is a result of a patriarchal society, as in Saudi Arabia. The inequality between men and women in this patriarchal society has led to women suffering from abuse and manipulation. Additionally, the male honor theory provides an explanation for the use of violence in Saudi Arabia. Male honor norms obligate men to protect the family honor and reputation. Men often use several forms of abuse, including physical or emotional abuse, to control the wife's behavior and to protect the family's honor and reputation.

❖ Chapter Three: Domestic Violence and Women Rights in Islam.

○ Introduction.

Family violence is deeply rooted in human history. Women in the ancient world experienced many forms of manipulation and humiliation. In Ancient Rome, the law gave the husband the right to control his wife.⁴⁵ Similarly, Ancient Hinduism treated women as slaves with no value. In Ancient Greece, fathers controlled their daughters' lives and had total control over their money. The father had full rights to marry off his daughter without her consent.⁴⁶ Some societies even questioned if women were human or had souls. Historically, women have been considered inferior to men, the modulation of sin, with no rights.⁴⁷

The treatment of women in the Arabian Peninsula before the birth of Islam mirrored that of other ancient civilizations. Women were subject to their male relatives, who had rights over them, and they were considered a burden on their families. Men could sell or inherit women. Women were also abused in marriage relationships; they could not choose whom to marry nor did they have any rights after marriage. However, the birth of Islam changed the status and the rights of women in order to protect their dignity.⁴⁸

Islamic law cares about family and considers it a strong bond. The Quran and the words of the Prophet Mohammad indicate the rights and duties husbands and wives have toward each other and toward their children. Islamic law also provides rules that promote love, mercy, and respect in marriage. Islam treats men and women on an equal basis and thus, provides them with equal rights.

⁴⁵ Albrithen, Abdulaziz A. Alcoholism And Domestic Violence In Saudi Society (2006) (unpublished Ph.D Thesis, The University of Liverpool)(on file with author) at1-26.

⁴⁶ Jassim Almutare, Women and Democracy, 1-2 (2007)

⁴⁷ HAIFAA A. JAWAD, THE RIGHT OF WOMEN IN ISLAM: AN AUTHENTIC APPROACH 1-2 (St. Martin's Press 1998)

⁴⁸ *Id.*

Islam introduced women's rights and prohibits all forms of abuse that women suffered pre-Islam. In order to understand the rights women given by Islam, the first section will give a brief history of the negative treatment of women before the birth of Islam. The second section will discuss the improvement of women's status and rights under Islam and will be divided into two subsections. The first subsection will discuss women's rights under Islam in general, and the second subsection will focus solely on the rights of married women. Section three will explain the Islamic perspective on spousal violence. The final section will discuss the disconnect between certain Muslim countries regarding women's rights.

○ **Section One: Women in pre-Islam**

In order to better understand women's position before the birth of Islam, it is necessary to address the diversity of the Arab society and its effect on women's status.⁴⁹ Before the birth of Islam, the Arab region was composed of different communities, customs, and cultures. The status of women also varied from one tribe to another; in some tribes women were leaders and spoke for themselves, but in other tribes they were treated poorly. Women in pre-Islamic society had different rights and statuses depending on the communities they lived in.⁵⁰

On the one hand, in some tribes women were respected, treated well, and enjoyed certain rights. Women within this society had total control over their lives, were independent, and had a visible impact on the community. Women also had control over their marriages—they could marry whom they wanted, and they could gain a divorce if they were not treated well by their husbands.⁵¹ Women in these tribes had power and were treated as equals with men.⁵²

On the other hand, in other tribes women were less valued and suffered under several abusive behaviors, including physical and emotional abuse, in their families and marriages. Fear of poverty and disgrace were two reasons women were abused in pre-Islamic society. Poverty affected the treatment of women when Arabs suffered from hunger and lack of resources. Women were considered less productive than men and a

⁴⁹ Azizah Al-Hibri, *A study of Islamic Herstory: or How did we Ever Get Into This Mess?* 5 (2) WOMEN'S STUD. INT'L F. 207–209 (1982)

⁵⁰ GUNAWAN ADNAN, WOMEN AND THE GLORIOUS QURAN: AN ANALYTICAL STUDY OF WOMEN-RELATED VERSES OF SURAT ALNISAA 27-28 (2004)

⁵¹ ASGHARALI ENGINEER, THE RIGHTS OF WOMEN IN ISLAM 31 (3rd ed. 2008)

⁵² ADNAN, *Supra* note 50, at 29.

burden on their families. Women were treated as slaves and deprived of most of their basic rights, including inheritance and ownership.⁵³

Frequent wars among tribes also led to a high level of abuse against women. In the inter-tribal blood feuds, men were required to protect their tribes, specifically women, from being captured by enemies and taken as revenge. Women were the preferred targets of enemies because they could be held for ransom. When a tribe would not or could not pay money, the tribal honor would be at stake.⁵⁴ For these two reasons, Arabs preferred the birth of boys over girls to help support the family and protect the tribe.⁵⁵

The preference for boys over girls resulted in serious abusive acts against women, the most grievous of which was female infanticide. Female infanticide was a widely acceptable and prevalent practice in the Arab society prior to Islam.⁵⁶ The Quran (Holy book) condemned the reaction of Arabs toward the birth of a baby girl: “When the birth of a girl is announced to one of them, his face grows dark and he is filled with inward gloom. Because of the bad news, he hides himself from men: should he keep her with disgrace or bury her under the dust? How ill they judge.”⁵⁷ The verse describes that the birth of a girl depressed and shamed the father. To escape the shame, however, the father considered burying his daughter alive.⁵⁸ However, the Quran makes clear that female infanticide is wrong.

⁵³ ALTERAZY ALHUSSANY ABU ALNASSER ALMUBASHER, WOMEN RIGHTS IN ISLAM 12(2013)

⁵⁴ ENGINEER, *Supra* note 51, at 24.

⁵⁵ *Id.*

⁵⁶ JAWAD, *Supra* note 47, at 30.

⁵⁷ Quran. Surat Al-nahl, 16:58.

⁵⁸ ALMUBASHER, *Supra* note 53, at 12.

A generally abusive attitude toward women from birth led to several abusive acts connected to marriage.⁵⁹ The goal of marriage was to multiply tribal offspring and therefore increase the population and strength of the tribe.⁶⁰ There were no strict rules governing marriage and divorce, rights and responsibilities, and the number of wives a man could marry.⁶¹ The absence of rules regulating marriage resulted in women suffering from manipulation and humiliation in marriage relationships.

Prior to Islam, Arabs practiced four forms of marriage. First, marriage by capture was widely practiced in times of war. Women were captured by enemies and taken as slaves. In this form of marriage, the husband owned the woman and he had complete control over her.⁶² Second, marriage by purchase occurred when a woman's family married her off for high price, whether money or animals. This form of marriage decreased the occurrence of female infanticide. Families started to think that selling their daughters, instead of burying them, would benefit them financially.⁶³ The third form of marriage occurred through inheritance. When a married man died, his wife could be inherited. The heir had total control over the woman—he could marry her, or preventing her from re-marrying.⁶⁴

The final form of marriage was the temporary marriage, which was widely practiced by men who traveled frequently to different tribes. This form of marriage can be described as an agreement between the man and the woman. In these relationships, the woman continued to live in her own house and could not move to her husband's house, children belonged to their mother, could not inherit from their father, and the

⁵⁹ ENGINEER, *Supra* note 51, at 27-28.

⁶⁰ ADNAN, *Supra* note 50, at 32.

⁶¹ ENGINEER, *Supra* note 51, at 25- 28.

⁶² ADNAN, *Supra* note 50, at 33-34.

⁶³ *Id.*

⁶⁴ Al-Hibri, *Supra* note 49, at 209-210.

husband had to pay a certain amount of money to the woman.⁶⁵ None of the four forms of marriage provided women with the right to seek divorce.

Only husbands held the power of divorce.⁶⁶ Since there was no law governing divorces, the man could say, “I divorce you” many times and continue living with his wife. There was no waiting period before a divorced woman could marry another man.⁶⁷ Moreover, in order to divorce the woman, the woman’s father had to agree to pay back the money or dowry to the husband. Divorced women had no right to claim maintenance and the man had no obligation to financially care for his wife after divorce.⁶⁸

Since there was no rule governing marriage and divorce, a man could marry as many wives as he liked without repercussion.⁶⁹ Women could also be traded, as a man could exchange his wife or daughter with another man’s wife. A man could also force his wife, daughter, or female slave into prostitution in order to collect money for himself. All these inhumane traditions have contributed to facilitating the belief that women had no dignity or right to be respected. Many women believed they had brought misfortune to their families and that men could rightfully treat them as property.⁷⁰

In conclusion, the status of women before the rise of Islam was dismal. Women were viewed as bad luck and shameful. Also, women were deprived of many rights, including the right to inheritance and ownership, and instead were treated as property that could be bought, sold, and inherited. Women were treated harshly, like slaves for their

⁶⁵ ADNAN, *Supra* note 50, at 34.

⁶⁶ ENGINEER, *Supra* note 51, at 32-33.

⁶⁷ This point will be discussed under married women rights in Islam.

⁶⁸ ADNAN, *Supra* note 50, at 36. See, JAWAD, *Supra* note 47, at 4 (Since the man had purchased the woman, he would return her back after receiving his money.)

⁶⁹ JOHN L. ESPOSITO, *WOMEN IN MUSLIM FAMILY LAW* 12 (1982)

⁷⁰ MOSTAFA ALSEBAEY, *WOMEN BETWEEN JURISPRUDENCE AND LAW* 19-20 (1999)

husbands, who could divorce them for any reason at their will.⁷¹ The birth of Islam changed the status of women from being subordinate to humans deserving full dignity.

○ **Section Two: Women in Islam**

Islam introduced four sources of law for Muslims. These four sources are the Quran (Holy book), the Sunnah, (prophetic traditions of the Prophet Muhammad—peace be upon him), Ijmaa (consensus of Muslim scholars), and the Qias (analogy). These four sources have influenced all fields of Muslim law, including criminal, commercial, and family law.⁷² Women’s rights and children’s rights have also been derived from these four sources.⁷³ This section will focus on women’s rights in relation to domestic violence. The first part of this section will discuss women’s rights in Islam generally, and the second part will focus on the rights of married women.

• **First: Women Rights Under Islam.**

Since the advent Islam, women’s rights have emerged in the Arab peninsula. The rights of women under Islam cover all aspects of women’s lives and protect women beginning at birth. Islam protects women from being controlled by their male family members. The rights that are given indicate that women and men are equal by providing them with equal punishment and reward. Women also have rights within their families and marriages. Islamic law has elevated women’s status and dignity. By providing these rights, Islam has protected women from manipulation, control, and abuse.

⁷¹ Women in Islam, Women in the Pre-Islamic Societies and Civilizations (2008)
http://www.womeninislam.ws/en/status-of-women_pre-islamic-societies.aspx

⁷² See, for example, in the Quran, Surat Al-Baqarah, verses 227 & 237 (The verses provide important rules with regard seeking a divorce.)

⁷³ Donna E. Arzt, *The Application of International Human Rights Law in Islamic States*, 12 HUM. RTS. Q. 202-205 (1990)

Islam's protection of women begins at birth by prohibiting female infanticide and asserting a child's right to life. Verses in the Quran states that God prohibits the killing of girls despite parental fear of poverty. The verse states, "[d]o not kill your children for fear of poverty; it is we who provide for them as well as for you. Killing them is surely a grave sin."⁷⁴ The verse highlights that God provides sustenance for all, making it inappropriate to kill a child in hope of financial security. In another verse the Qur'an states, "[t]hose will have lost who killed their children in foolishness without knowledge and prohibited what Allah had provided for them, inventing untruth about Allah. They have gone astray and were not [rightly] guided."⁷⁵ The verse explains that those who kill their children for any reason, such as poverty, are influenced by the devil, causing confusion about their religion.⁷⁶

Islam also promotes the equal treatment of boys and girls. It prohibits the former practice of selling and trading women. The Prophet—peace be upon him—encouraged men to treat their daughters well, promising a reward for doing so: "If a daughter is born to a man and he brings her up affectionately, shows her no disrespect and treats her in the same manner as he treats his sons, the Lord will reward him with paradise."⁷⁷

Islam gives men and women equal. Islam promotes women's dignity, and they are regarded as worthy of being treated humanely. Under the law of Islam, women are not to be treated as slaves. The Quran states "O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed

⁷⁴ Quran, Surat Al-Isra 17:31.

⁷⁵ Surat Al-an'am 137:140.

⁷⁶ Tafsir Ibn Kathir. Surat Al-An'am 137:140. <http://quran.ksu.edu.sa/tafseer/katheer/sura6-aya137.html>

⁷⁷ JAWAD, *Supra* note 47, at 12.

Allah is ever, over you, an Observer.”⁷⁸ In this verse, God commended the creatures to fear him and indicates that men and women were created from a single soul, Adam, and from that soul, God created a mate, Eve.⁷⁹

The teachings of the Prophet Muhammad also advocated treating men and women equally. He stated, “All people are equal, as equal as the teeth of a comb. There is no claim of merit of an Arab over a non-Arab, or of a white over a black person, or of a male over a female. Only God- fearing people merit a preference with God.”⁸⁰ God views all of mankind as equal. There is no favorite race, color, or gender.⁸¹

Both men and women are responsible for their actions, with no distinction between the two regarding reward and punishment. For instance, the Quran states that in cases of theft, both men and women get the same punishment. In other crimes, such as adultery, they also receive the same punishment.⁸² Moreover, in terms of reward, Allah says in the Quran, “[a]nd their Lord responded to them, ‘Never will I allow to be lost the work of [any] worker among you, whether male or female; you are of one another.’”⁸³ In this verse, God accepted the believer’s prayers and answered with assurance that with God, deed is overlooked and God will reward both men and women equally for their good deeds.⁸⁴

⁷⁸ Quran Surat Al-nisāa 4:1.

⁷⁹ Tafsir Ibn Kathir. Surat Al-nisāa 4:1. <http://quran.ksu.edu.sa/tafseer/katheer/sura4-aya1.html>

⁸⁰ SUMMARISED SAHIH AL-BUKHARI, Vol. 1, 181–2. (Maktabat Dar-Us-Salam, Saudi Arabia, 1994)

⁸¹ MUHAMMAD ABDULRAUF, THE ISLAMIC VIEW OF WOMEN AND THE FAMILY 13 (1993)

⁸² ALSEBAEY, *Supra* note 70, at 24. See, Quran, Surat An-Nur 24:6-10 (“And those who accuse their wives and have no witnesses except themselves, let each of them testify by swearing four times by Allah that his charge is true, calling down in the fifth time upon himself the curse of Allah if he is lying. But they shall spare her the punishment if she swears four times by Allah that his charge is false and calls down Allah’s wrath upon herself if it be true” Hence, Islamic law can work in the woman side in case of the husband accused his wife of adultery, her oath weights more heavily than his accusation.)

See also, Equality of Men and Women, <http://www.submission.info/perspectives/women/equality.html> (The Quran is full of examples of the equality between men and women.)

⁸³ Quran, Surat al-immran 3:195.

⁸⁴ Tafsir Ibn Kathir Surat Al-immran 3:195. <http://www.quran4u.com/tafsir%20ibn%20kathir/004%20Nisa.htm>

Besides evidence of equality between men and women under Islamic law, it provides women with several rights including “the right of independent ownership,” “the right to inheritance,” “the right to education,” “the right to work,” and “the right to respect.”⁸⁵ Those rights elevate women’s status and protect women from pre-Islamic abuses.

Islamic law grants Muslim women the right of independent ownership, including total control over her money and the right to administer her own wealth separately from her father or husband. Islam promotes a women’s financial independence and prohibits any interference that right.⁸⁶ A woman also has full right for her dowry and fathers are prohibited from interfering with this right.⁸⁷

The right of independent ownership is also relevant because it allows women to receive shares in inheritance. The Quran indicates that both women and men have right to inherit where it says: “[m]en shall have a share in what their parents and kinsmen leave; and women shall have a share in what their parents and kinsmen leave; whether it be little or much, it is legally theirs.”⁸⁸ Islam protects women’s right to inheritance and prohibits any family member from interfering with that right.⁸⁹

⁸⁵ JAWAD, *Supra* note 47, at 7-12.

⁸⁶ Jamal Badawi, *The Status of Women in Islam*, Al-Ittihad, Vol. 8, No. 2 (1971)

⁸⁷ Quran, Surat Al-nisa 4:4.

⁸⁸ Quran, Surat Al-nisa 4:7.

⁸⁹ JAWAD, *Supra* note 47, at 10.

In addition, Islam encourages women and men to be educated and develop themselves. After the rise of Islam, the Prophet taught the religion and how to perform religious duties to his followers, both men and women.⁹⁰ Because women sought education from the Prophet, women became scholars in his time.⁹¹ The Quran says, “Allah will raise to high ranks those that have faith and knowledge among you. He is cognizant of all your actions.”⁹² The Quran and the Prophet’s actions indicate that seeking knowledge is not limited to one sex and it is the obligation of both Muslim men and women.⁹³ Since education increases women’s knowledge, Islam allows women to spread their knowledge and to achieve independence by giving them the right to work.

Although Islam does not require women to support their family financially,⁹⁴ Islam gave women the right to work if she desires to or is in need. In the Quran there is evidence that women worked in the past to help their families: “[a]nd when he arrived at the water of (Midian) he found there a group of men watering their flocks, and beside them he found two women who were keeping back their flocks. He said, ‘What is the matter with you?’ They said, ‘We cannot water our flocks until the shepherds take their flocks. And our father is a very old man.’⁹⁵ Islamic law allows women to work while following certain conditions. These conditions include the work should be lawful, female

⁹⁰ Ingrid Nicolau, *Women's Rights in Islam*, CONTEMP READINGS IN L. & SOC. JUST. 711-719 (2014)

⁹¹ JAWAD, *Supra* note 47, at 8.

⁹² Quran, Surat Al-mujadilah 58:11.

⁹³ Nicolau, *Supra* note 90, at 719.

⁹⁴ See, Noor Mohammad Osmani & ET AL, *The Political Role of Muslim Women: Between Traditional Texts and Changing Realities* 1-5 (2009) (Islam has given women and men equal rights in participation in political and public life. The Quran is full of example of women participation in public efforts, as the Quran state: “The Believers, men and women, are protectors one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His Messenger. On them will Allah pour His mercy: for Allah is exalted in power, Wise.” The Quran verse emphasizes how Muslims, men and women, are required to command good deed and to discourage evil acts. They both are required to believe in God and his messenger, preform prayers, and to give charity.)

⁹⁵ Quran, Surat Al-qasa 28: 23.

workers should comply with Islamic requirements for women's clothing, and the work should not affect the woman's duties inside the home.⁹⁶

Furthermore, one important right guaranteed to women under Islamic law is the right to be respected, to be treated equally as men. It was reported that the Prophet said, "The more civil and kind a Muslim is to his women whether wife, daughter, or sister the more perfect in faith he is declared."⁹⁷ Islam emphasizes that woman has worth as a human being and is an important member in the society. Whether mother, daughter, sister, or wife, she should be treated with understanding, appreciation, and love.⁹⁸

Finally, Islamic law provides specific rights related to the marriage relationship. Islam prohibited the four forms of marriages that were prevalent in the pre-Islam era and indicates required conditions for the marriage to be legal. Islamic law provides a set of rules and regulations that govern marriage, family relations, and the rights and duties of husband and wife toward each other and their children. Further, Islam has changed the relationship between husband and wife to be based on consideration, protection, and caring for one another.⁹⁹ While polygamy is permitted under Islam, Islam encourages a man to marry one wife and limits the number of wives a man can have to four, conditioning that all wives be treated fairly and equally.¹⁰⁰

⁹⁶ Al-Dehailan, Salman Saleh, *The Participation Of Women In Saudi Arabia's Economy: Obstacles And Prospects* (2007) (unpublished Ph.D Thesis, Durham University) (on file with author) at 32.

⁹⁷ ABDUR RAHMAN DOI, *WOMEN IN SHARIAH (ISLAMIC LAW)* 7 (1992)

⁹⁸ JAWAD, *Supra* note 47, at 11.

⁹⁹ *Id.*, at 6.

¹⁰⁰ MAHA A.Z YAMANI, *POLYGAMY AND LAW IN CONTEMPORARY SAUDI ARABIA*, 12 (1st ed. 2008). See, Holly Quran for the conditions of Polygamy, Surat Al-nisa verse 4:3 states that: (But if you fear that you will not be just, then [marry only] one or those your right hand possesses. That is more suitable that you may not incline [to injustice].) A man could marry up to four wives if he could treat them equally and just. The Quran also encourage the man to marry one wife if he is unable to treat them equally.

- **Second:** Women and Marriage in Islam.

Marriage is the most important institution in society. Islam considers marriage to be a “strong bond and a total commitment to life, to society and to being a respectable human.”¹⁰¹ Marriage in Islam has always been encouraged. The Prophet stated that a man should marry as soon as he is able to support a woman.¹⁰² Islam indicates the purpose of marriage, set important conditions for marriage to be valid, and provides both the husband and wife with rights and duties toward each other. Following the Islamic instructions for marriage helps reach agreement and find peace in the marriage relationship.

- The Purpose of Marriage.

Islamic law recognizes several goals in marriage. The first goal is the following of God’s instruction and the Prophet’s call to increasing the number of the Prophet’s followers through having children. Also, by getting married and having children, parents enjoy the blessings and benefits of the children’s prayers.¹⁰³ The Prophet stated: “When a man dies, his deeds come to an end except for three things: ceaseless charity; a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased).”¹⁰⁴ Getting married is the only way to receive these benefits.

The second goal for marriage is the controlling the sexual desires of women and men to protect from committing adultery, which is forbidden by Islam. Islam looks to marriage as a tool for spouses to have a stable familial commitment. The third purpose of marriage is the development of one’s own personality and skills through the

¹⁰¹ JAWAD, *Supra* note 47, at 30.

¹⁰² See, SUNAN AN-NASA'I 2241. VOL. 3, BOOK 22, HADITH 2243. (It was narrated that "The Messenger of Allah said: 'Whoever among you can afford to get married, let him do so, and whoever cannot afford it should fast, for it will be a restraint (Wija) for him.")

¹⁰³ Muhammad Abdul-Rauf. Marriage in Islam, is Marriage Desirable? 2 (1997)

¹⁰⁴ RIYAD AS-SALIHIN, THE BOOK OF KNOWLEDGE, BOOK 13, HADITH 1383.

responsibilities and duties that husband and wife commit to in achieving successful family relations.¹⁰⁵ Fourth, the final purpose of marriage is providing individuals company that gives with love and support.¹⁰⁶ The purposes of marriage under Islam are accomplished, in part, by satisfying a series of requirements for a valid marriage.

- Marriage requirements

Under Islamic law, marriage will not be considered binding and effective unless four conditions are satisfied. These conditions are bridal consent, dowry, the presence of guardian, and the absence of any unlawful conditions.¹⁰⁷ Bridal consent to the marriage is one of the important conditions. Islam encourages a woman to marry whom she likes and prohibits anyone from forcing her into marriage.¹⁰⁸ The Prophet indicated the importance of seeking female consent to the marriage when he stated, “A widow (or divorcee) is not to be married before her consent is sought,” and “No virgin girl is to marry without first consulting her, and her approval is her keeping silent.”¹⁰⁹ The bride and the groom must give a clear consent and enter the marriage with free will. Some Muslim jurisprudence requires written and verbal consent.¹¹⁰

¹⁰⁵ Abdul-Rauf, *Supra* note 103, at 2-3.

¹⁰⁶ JAWAD, *Supra* note 47, at 36.

¹⁰⁷ Ahmad Shafat, *Marriage in Islam: Considered from a Legal Point of View* (1984) http://www.themodernreligion.com/family/family_marriagelegal.html

¹⁰⁸ Asim Mughal, *Marriage Laws & Women In Islam*. 1993,1994.

¹⁰⁹ TRANSLATION OF SAHIH MUSLIM, THE BOOK OF MARRIAGE (KITAB AL-NIKAH), BOOK 8, HADITH 3303.

¹¹⁰ ENGINEER, *Supra* note 51, at 117.

Second, the husband has to give his wife reasonable dowry as a gift.¹¹¹ Under the law of Islam, the bride has full right to her dowry and fathers are prohibited from seizing it. Allah says in the Quran, “And give the women [upon marriage] their [bridal] gifts graciously. But if they give up willingly to you anything of it, then take it in satisfaction and ease.”¹¹² The verse indicates that the dowry has to be given to the bride, and the bride is free to keep it for herself or give a portion of it to her husband.¹¹³

The third condition is that the bride’s guardian must be present during the process of the signing the marriage contract and there must be two adult witnesses to verify the marriage contract.¹¹⁴ The fourth and the final requirements for the marriage to be legal is that the marriage contract should be free from any unlawful condition or plans to dissolve the marriage. For example, it would be impermissible for a man and woman to enter into a marriage contract with the intent to marry only for a period of time and then later dissolve the marriage. Islam forbids “temporary or casual” marriage.¹¹⁵

The four requirements for marriage to be valid protect the bride and groom from any interference with their right to marry whom they like and protect their marriage from unlawful conditions that may be stated in the contract. The absence of one of the requirements may lead to the dissolution of the marriage. For instance, in the case forced marriage, the Prophet upheld the right to revoke the marriage when two women complained that their fathers forced them into marriage.¹¹⁶ If all conditions were met and

¹¹¹ Imani Jaafar-Mohammad, Esq & Charlie Lehman. *Women Rights in Islam Regarding Marriage and Divorce*. WM. MITCHELL C. OF L. J. OF L. & P. 3 (2011)
See, MAULANA WAHIDUDDIN KHAN, *WOMEN IN ISLAM SHARI'AH* 83 (The Islamic Center, New Delhi 1994). (The dowry is way to show the husband responsibilities and obligation for his wife maintenance.)

¹¹² Quran, Surat Al-nisa 4:4.

¹¹³ Tafsir Ibn Kathir. Surah Al-nisa 4:4. <http://www.quran4u.com/tafsir%20ibn%20kathir/004%20Nisa.htm>

¹¹⁴ HAMMUDAH ABDALATI, *THE FAMILY STRUCTURE IN ISLAM* 60-61 (American Trust Publications 1977)

¹¹⁵ JAWAD, *Supra* note 47, at 33.

¹¹⁶ Badawi, *Supra* note 86.

the bride and the groom signed the marriage contract, Islam provides certain rights for the husband and wife to enjoy.

- Husband and Wife Rights.

In the context of the marriage relationships, there are joint rights between the husband and the wife and special rights for each of them. Starting with the joint rights, Islam encourages mutual peace in domestic life. Both the husband and wife are expected to respect and to deal with each other with good moral conduct and good deeds. Both have to be kind, loving, considerate, and take care of one another.¹¹⁷ Both must be loyal and sympathetic to each other's feelings, share responsibilities, and be prepared to make sacrifices.¹¹⁸

The Quran illustrates this equal partnership with the following statement: "They are an apparel to you, as you are an apparel to them."¹¹⁹ Also, the Prophet stated that "[t]he best of you is the best of you to his wife, and I am better than any of you toward my wife."¹²⁰ The Quran and the Prophet's statements emphasize that the husband and wife are obligated to provide love and comfort to each other. Besides that, both husband and wife have the right to enjoy each other and to inherit from each other. They have equal rights and duties toward their children.¹²¹

¹¹⁷ MOHAMMAD OTHMAN, VIOLENCE IN THE FAMILY 1-4.

¹¹⁸ NOHA ALQURTAJE, DOMESTIC VIOLENCE BETWEEN THE INTERNATIONAL DECLARATIONS AND ISLAMIC LAW 10(2009)

¹¹⁹ The Quran. Surat Al-baqara 2: 187.

¹²⁰ SUNAN IBN MAJAH, THE CHAPTERS ON MARRIAGE. VOL. 3, BOOK 9, HADITH 1977.

¹²¹ MOHAMMAD OTHMAN, *Supra* note 117, at 6.

Along with the joint rights, the wife, on the one hand, has special rights over her husband. It had been reported that the Prophet was asked about the rights of wives, and he stated “It is that you shall give her food when you have taken your food, that you shall clothe her when you have clothed yourself....”¹²² The Prophet’s statement indicates that married women have the right to the husband’s support. The amount of support depends on the husband’s income. However, the wife can receive maintenance by court order if the husband fails to provide it.

Several other rights relate to married Islamic women. For instance, in Islamic law, the wife has the right to hold her family name after getting married. In general, a woman is not required to change her name after she marries, gets divorced, or becomes a widow.¹²³ Also, married women have the right to have children; the husband is commanded not to deprive his wife of children if she desires them.¹²⁴ Another important right related to the wife applies if her husband has more than one wife. The husband is required to treat his wives equally.¹²⁵

On the other hand, the wife has several duties and responsibilities toward her husband. First, the wife is required to obey her husband. Second, the wife is encouraged to get her husband’s permission before leaving the home. Third, the wife is also required to protect her husband’s property in his absence.¹²⁶ Fourth, because of the special relationship between husband and wife, a wife would have knowledge to all the man’s secrets; the wife is obligated not to reveal any of his secrets.¹²⁷ The rights of husbands

¹²² SUNAN ABI DAWUD, MARRIAGE (KITAB AL-NIKAH). BOOK 11, HADITH 2138.

¹²³ JAWAD, *Supra* note 47, at 9.

¹²⁴ Fatwa Center, Husband is not Allowed to Deprive His Wife of Children, Fatwa No 94648, 2007

<http://fatwa.islamweb.net/fatwa/index.php?page=showfatwa&Option=FatwaId&Id=94648>

¹²⁵ MOHAMMAD OTHMAN, *Supra* note 117, at 6.

¹²⁶ *Id.*, at 8.

¹²⁷ WAHIDUDDIN KHAN, *Supra* note 111, at 87.

and wives have been set forth in Islamic law to achieve peace in family life. If peace in family life is not achievable, Islam sets forth the procedure for men and women to dissolve a marriage.

- Divorce.

There are three forms of divorce in Islam, with respect to who may initiate it. Divorce initiated by the husband is called talaq. When a woman seeks a divorce, it is called khule. The third option is when a court dissolves a marriage. A husband may divorce his wife by announcing, “I divorce you” three different times, and the marriage will end.¹²⁸ Khule is the term used when a wife seeks a divorce without cause. It applies when the husband has fulfilled all of his duties, but the wife wants to divorce him anyway (for example, she may decide she dislikes him). Under this type of dissolution, the wife is required pay back her dowry. The last type of divorce is dissolution by court decision; the court may issue a divorce if the husband did not fulfill his duties or if he caused damage to his wife, abandoned her, and refused to divorce her. The wife in this type of divorce is not obligated to pay any amount of money.¹²⁹

Islamic law also dictates rights and responsibilities for the husband and wife in the event of divorce. The divorced wife has the right to alimony for a period of three months and ten days. Islamic law does not allow the divorced wife to get married during this period. This period is set to ensure that the child’s identity will be known if the wife were to discover that she was pregnant. If the wife is pregnant, the husband is obligated to support his wife financially until she delivers and nurses the baby to a certain age.¹³⁰

¹²⁸ ESPOSITO, *Supra* note 69, at 30-34.

¹²⁹ See, AHMAD ALKEBESY, PERSONAL STATUE LAW IN THE JURIECPRODENCE, COURT, AND LAW 238-239 (1970) (In Khule cases, some Muslim scholar believed that women may pay any amount of money that they agreed on, or may give any things with value, and it does not have to be her dowry.)

¹³⁰ Imani Jaafar-Mohammad, Esq *Supra* note 111.

In general, divorce cases may work through a mediation process before the final decision is issued by court. When a woman seeks divorce, the judge may work as a mediator to attempt to reconcile the husband and wife. The judge may talk to the wife and educate her of the consequences of divorce, but if she insists on the divorce the judge may submit the case to arbitration. The judge should appoint two arbitrators to work toward reconciliation between the husband and wife. One arbitrator must be from the wife's family and the other one from the husband's family.¹³¹ If both arbitrators agree that the husband harmed his wife and that he cannot be reformed, the court will grant an irrevocable divorce. Yet, if both arbitrations find no ground for divorce, but the wife insists, the court grants khule divorce, which requires the wife to return the dowry.¹³²

Finally, Islam prohibits forced marriage, protects women's financial independence, and requires both men and women to enter into the marriage with good faith. Islamic law imposes both rights and duties within the marriage relationship. These rights and duties facilitate compassion, love, and mercy between spouses. Yet, despite all these rights, Islam has been accused of permitting violence in the family.

¹³¹ Sami Al-damaq, Project law that governs divorce cases and the consequent right of the wife and children 60-61. See, MOHAMMAD ALKAJA, MEDITATION-ISLAH THAT THBANE 41-42 (2009) (In choosing the mediators, the judge has to ensure that both mediators are fair, with high moral, with good intent, and have some knowledge of the problem.)

¹³² ESPOSITO, *Supra* note 69, at 33-34.

○ **Section Three: Islamic Perspective on Spousal Violence.**

Violence between couples is a hotly debated issue in Islam. Some argue that Muslim husbands are permitted to use violence with their wives and support their claim by using verses from the Quran. This section will argue that Islam prohibits violence between couples and will provide a clear understanding of the concept of a husband's authority over his wife. Then this section will shift to explain the steps to resolve any disobedience on the part of the wife as instructed by the Quran.

- **First:** Common Conception.
 - The Concept of The Husband Authority.

While the Quran indicates in verses 3:195 and 4:1 that men and women are equal and therefore they deserve equal rights and treatment, Islam also recognizes that husbands and wives have different rights in marriage. This difference in rights is not based on the preference of males over females, or the desire to make women inferior to men, rather it is essential for achieving the different roles that men and women perform in the family sphere. Men and women in marriage relationships are assigned specific duties and responsibilities. These different duties and responsibilities are designed to achieve unity in the family and stability in society.¹³³ The husband's authority over his family includes supporting his family, taking care of his family, and solving problems with kindness.

¹³³ Lisa Hajjar, *Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis*, 29 L. & Social Inquiry No.1, 1-7 (2004)

The Quran has imposed a heavy duty on the husband. It states in two verses “Women shall with justice have rights similar to those exercised against them, although men have a degree above women. Allah is Mighty and Wise,”¹³⁴ and “Men have authority over women because Allah has made the one superior to the other, and because they spend their wealth to maintain them.”¹³⁵ In the two verses, God obligate the husband to support his family financially. The husband is also obligated to protect the family. Two reasons were given by verse 4:34 for these obligations. First, men are usually physically stronger than women, and second, he is also responsible for financially supporting the family because the husband paid his wife a dowry.¹³⁶ Whether the wife works or not, she is not responsible for supporting the family. As a result of this obligation, Islam places the husband as the head and leader of the family.¹³⁷

The husband, as the leader and authority figure in the house, must not be unjust. . Muslim scholars have explained that a man may not manipulate his wife or restrict her freedom.¹³⁸ Moreover, the Prophet Muhammad provided husbands with guidelines in managing their homes and dealing with their wives. The Sunnah reports that the Prophet gave instructions in his Farewell Pilgrimage sermon, stating “Fear God regarding women; for you have taken them [in marriage] with the trust of God.”¹³⁹ The Prophet’s statement encourages husbands to fear God when dealing with their wives and to treat them with respect and kindness.

¹³⁴ Quran, Surah al baqara 2:228.

¹³⁵ Quran, Surat an-Nisa’ 4:34.

¹³⁶ MOHAMMED MAZHER IDRIS & TAHIR ABBAS & ROSS ABBINNETT, HONOUR, VIOLENCE, WOMEN AND ISLAM 98 (2011)

¹³⁷ SHEHZAD SALEEM, ISLAM AND WOMEN: MISCONCEPTIONS AND MISPERCEPTIONS 8 (2012)

¹³⁸ Abdulrahman Al-ajlan, *Provisions of Disciplining A Wife in Islamic Jurisprudence*, 52 Al-Adel J. 43(2002)

¹³⁹ ALSAID ALTABTABANY, TAFSEER AL MIZAN, Vol. 4. 259.

The Prophet, peace be upon him, also advised husbands to take care of their wives. For instance, the Prophet stated, “Whoever believes in Allah and the Last Day should not hurt (trouble) his neighbor. And I advise you to take care of women...”¹⁴⁰ He also advised one of his followers, who spent most of his time praying, to make time for his wife.¹⁴¹ In another statement the Prophet stated, “All of you are guardians and are responsible for your wards. The ruler is a guardian and the man is a guardian of his family; the lady is a guardian who is responsible for her husband's house and his offspring; and so all of you are guardians and are responsible for your wards.”¹⁴² The Prophet’s statement reminds husbands of their responsibilities toward their wives, and reminds the wives of their duties toward their husbands and children.

Husbands are responsible for solving household problems with kindness. The Quran prohibits the husband from acting cruelly toward his wife and encourages the husband to consider her positive traits. The Quran revealed “O! you who believe! You are forbidden to inherit women against their will. Nor should you treat them with harshness; ...on the contrary live with them on a footing of kindness and equity. If you take a dislike to them it may be that you dislike a thing and Allah brings about through it a great deal of good.”¹⁴³ In this verse God commands husbands not to treat their wives harshly. If a husband dislikes his wife but treats her well, God will reward him for his patience and good treatment.¹⁴⁴

¹⁴⁰ SAHIH AL-BUKHARI 5185, 5186. MARRIAGE BOOK. Vol. 7, BOOK 62, HADITH 114.

¹⁴¹ See, SAHIH AL-BUKHARI 5199. MARRIAGE BOOK. Vol. 7, BOOK 62, HADITH 127. (The Prophet stated “Your body has a right over you and your wife has a right over you.”)

¹⁴² SAHIH AL-BUKHARI 5200. MARRIAGE BOOK. Vol. 7, BOOK 62, HADITH 128.

¹⁴³ Quran, Surah Al-nisa 4:19.

¹⁴⁴ Tafsir Ibn Kathier, Surah Al-nisa 4:19.

[http://www.haznevi.net/english/icerikoku.aspx?KID=9457&BID=104&title=4.AL%20NISA%20\(THE%20WOMEN\)](http://www.haznevi.net/english/icerikoku.aspx?KID=9457&BID=104&title=4.AL%20NISA%20(THE%20WOMEN))

Further evidence from the Sunnah corroborates the Quran's teaching that the husband's authority over his wife is associated with being kind, caring, and respectful. Although the Quran places the husband as the leader of his family, the husband's authority does not prevent him from sharing the household work with his wife. When Aisha, the Prophet's wife, was asked about what the Prophet did at home, she answered that "He used to work for his family and when he heard the call for the prayer, he would go out."¹⁴⁵ The Prophet was the best example of a family leader who loved, cared for, and assisted his wives with the household chores.

Finally, both the Quran and the Sunnah make clear that the husband's authority over his wife does not mean that she is inferior or subordinate. This authority is a burden placed on the husband shoulders to care for and protect his family.¹⁴⁶ However, this responsibility cannot be performed or be effective if the wife does not show respect to her husband or disobeys him. Because the husband is required to support his family, the wife is required to obey him.

- The Concept Of Wife Disobedience.

As stated earlier, verses 2:228 and 4:34 emphasize that the husband has authority over his wife and is responsible to support the family financially and protect them from any harm. Wives, on the other hand, are not required to support the family financially, but are required to obey their husband as he obeys God.¹⁴⁷ Verse 4:34 continues to advise the husband on dealing with family disputes, specifically the case of his wife's disobedience. The Quran states:

¹⁴⁵ SAHIH AL-BUKHARI 5363, SUPPORTING THE FAMILY, Vol. 7, BOOK 64, HADITH 276.

¹⁴⁷ IDRIS, *Supra* note 136, at 98.

*[M]en are the protectors and maintainers of women, because Allah has given the one more strength than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in the husband's absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them first, Next, refuse to share their beds, And last beat them lightly; but if they return to obedience, seek not against them Means of annoyance: For Allah is Most High, great above you all.*¹⁴⁸

To clearly understand the wife's obligation to obey her husband, it is very important first to explain what it means for a wife to be disobedient. From the perspective of Muslim scholars, disobedience can be explained in two ways. Some Muslim scholars classify disobedience as a set of acts performed by the wife. These acts may include ignoring responsibilities toward her husband, treating her husband poorly, refusing to move to another place with her husband, or avoiding his requests or needs.¹⁴⁹

Others Muslim scholars have interpreted disobedience generally and say that the wife disobeys her husband if she fails to do anything her husband asks her to do or if she continues to do something he dislikes. Under this classification, a wife disobeys her husband if, for example, she leaves her home when her husband tells her not to or she refuses to go somewhere her husband asks her to go.¹⁵⁰ While Muslim scholars have differing views on the meaning of disobedience,¹⁵¹ it is consistent that the wife's obedience to her husband should not be "forced obedience."¹⁵²

¹⁴⁸ Quran, Surah Al-nisa 4:34.

¹⁴⁹ IDRIS, *Supra* note 136, at 99.

¹⁵⁰ Islam's Women, Nushuz (Marital Discord) http://www.islamswomen.com/marriage/fiqh_of_marriage_9.php

¹⁵¹ MOHAMMAD OTHMAN, *Supra* note 117, at 14.

¹⁵² IDRIS, *Supra* note 136, at 100.

Wives have the responsibility to exhibit “natural obedience out of love”¹⁵³ and respect for their husbands. However, wives are only required to obey their husbands on issues permitted under Islamic law. These issues can include asking the wife to respect her husband or fulfill her duties toward her husband and children. Therefore, the wife is not obligated to obey her husband on all matters he requests. For instance, if a husband asks his wife to act in a manner that contradicts Islamic law the wife is permitted to ignore his request. Also, the wife is not required to obey her husband’s request if the obedience would result in harm or a violation of any of her rights.¹⁵⁴ In these situations, the husband has no right to require his wife’s obedience.

The husband may have the right to claim that his wife disobeyed him and to exercise his rights stated in the verse only if the wife breached her duties that Islam imposes on her toward her husband, ignored his lawful request, or acted in a manner that is against his instruction. Verse 4:34 instructs the husband to follow three techniques to resolve issues of disobedience. The verse indicates that the three techniques must be used in the order stated in the verse to be effective in solving the issue. The three steps are as follows: first, the husband must talk to his wife; second, he must withhold sexual relations; and finally, the husband must beat his wife lightly.¹⁵⁵

¹⁵³ IDRIS, *Supra* note 136, at 100.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*, at 98.

First step:

The husband first must talk to his wife and inform her that she failed to fulfill her duties. Muslim scholars advise husbands to be patient with their wives in this step because it may take time to recognize her mistakes. When talking to the wife, Muslim scholars recommend that the husband increase his wife's awareness of how her behaviors affect the family dynamic.¹⁵⁶ They also recommend that the husband remind his wife of her rights and duties under Islamic law and to fear God in their relationship. If the first step resolves the issue, the husband is forbidden from moving to the second step.¹⁵⁷

Second step:

If the first step failed to make the wife aware of her mistake and the wife continues to disobey her husband, the verse instructs the husband to follow to the second step. According to the verse, the second step instructs the husband to separate from his wife. Specifically, the husband should sleep in another room and avoid having sexual relations with her, talking to her, or having any encounter with her.¹⁵⁸ If the second step resolves the disobedience and the wife begins to fulfill her duties toward her husband again, the husband is no longer allowed to continue the separation and he is obligated to resume the relationship.¹⁵⁹

¹⁵⁶ Al-ajlan, *Supra* note 138, at 74-75.

¹⁵⁷ *Id.*, at 73.

¹⁵⁸ Al-ajlan, *Supra* note 138, at 76.

¹⁵⁹ IDRIS, *Supra* note 136, at 99.

However, there are some limitations on the husband, while practicing his rights of separation from his wife. One important limitation is that the husband cannot separate from his wife until he has followed the first step without success. Also, the husband is not allowed to separate from his wife by leaving the home. The separation must be inside the home and be specifically limited to the bed.¹⁶⁰ The bed separation must not exceed one month¹⁶¹ and the avoidance of conversation must not exceed three days. According to the Prophet's statement, it "is not permissible for any Muslim to desert (not talk to) his brother (another Muslim) for more than three days."¹⁶² Another important limitation is that the husband must not have any sexual relationship with his wife. If the husband is not able to control his sexual needs, the separation will be meaningless and ineffectual in solving the problem.¹⁶³ Islam prohibits the husband from following the third step in resolving the issue if he has not sexually separated from his wife.

The wisdom behind this separation is that both the husband and the wife will have time and space to think about their way of dealing with one another.¹⁶⁴ Also, the wisdom behind limiting the separation to only in bed is to protect children from being involved in their parent problems or affected by the absence of their father. Limiting the separation to the bed also protects the family privacy and the wife's dignity as well because if family and friends learn about the separation, it may hurt the wife or humiliate her.¹⁶⁵

¹⁶⁰ Al-ajlan, *Supra* note 138, at 78 -79.

¹⁶¹ FATIMA MERNISSI, *THE VEIL AND THE MALE ELITE: A FEMINIST INTERPRETATION OF WOMEN'S RIGHTS IN ISLAM* 156- 57 (Mary Jo, Trans., Cambridge, Mass.: Perseus Books 1991)

¹⁶² SAHIH AL-BUKHARI 6065, *GOOD MANNERS AND FORM (AL-ADAB)*, Vol. 8, BOOK 73, HADITH 91.

¹⁶³ IDRIS, *Supra* note 136, at 99.

¹⁶⁴ *Id.*

¹⁶⁵ Al-ajlan, *Supra* note 138, at 79.

Third step:

If talking to the wife and separating from her have failed to resolve marital problems, the Quran verse permits the husband to follow the third step. The third step in solving the problem of wife disobedience is the most controversial part of verse 4:34. Clearly understanding the third step will clarify that Islam does not allow violence between couples.

Historically, there are two schools of thought that interpreted the third step in verse 4:34, which instruct the husband to beat his wife lightly if she disobeys. The first school argued that the verse allow the husband to beat his disobedient wife. This school argued that the beating is allowed as long as the husband does not harm his wife. The second school argued that beating women is not allowed in Islam and provide further explanation for this step.¹⁶⁶ Modern interpretation of the third step concurs with the second school. This interpretation depends on the fluctuating meaning in the Arabic for the word beat (daraba), which is used in the verse.

First school:

The first school of interpretation argues that beating is allowed if a wife disobeys her husband. According to this school of thought, the word used in verse 4:34 means beat, strike, or hit. This school also argues that wife beating should be the last step in solving the issue, after both talking to her about the issue and then avoiding her, and that the husband should take the wife's safety into consideration. This school of interpretation

¹⁶⁶ Nawal H. Ammar, *Wife Battery in Islam: A Comprehensive Understanding of Interpretations*. VIOLENCE AGAINST WOMEN 516- 519 (2007)

believes that the purpose of this beating is to reform the relationship between the spouses and to reduce problems.¹⁶⁷

According to this interpretation, there are restrictions on the husband's right to discipline his wife. These limits include that the beating must be light, leave no marks, must not lead to any harm, must avoid the face, and can only be done with light, soft objects like a toothbrush. A husband may only beat his wife if he believes that his act would benefit their relationship and will not lead to more problems. Therefore, the husband is not allowed to beat his wife out of revenge. Also, the husband is not allowed to beat her if he has failed to implement any conditions of the marriage contract.¹⁶⁸ Finally, this school agrees that an exercise of verse 4:34 techniques, with its conditions and limitations, would demonstrate a level of control over problems in the family.¹⁶⁹

Second school:

The second school of interpretation argues that disciplining one's wife is "permissible but not desirable."¹⁷⁰ This school of interpretation emphasizes that verse 4:34 was revealed to the Prophet in an era where beating women was a widespread practice. Therefore, it makes sense to say that verse 4:34 is "a restriction on the existing practice and not a recommendation."¹⁷¹ According to this school, wife beating contradicts Islamic instructions on married women rights and contradicts with rules in the Quran and Sunnah that prohibit violence and abuse.¹⁷²

¹⁶⁷ Ammar, *Supra* note 166, at 520.

¹⁶⁸ IDRIS, *Supra* note 136, at 103- 105.

¹⁶⁹ MOHAMMAD OTHMAN, *Supra* note 117, at 9. See Also, ALQURTAJE, *Supra* note 118, at 8.

¹⁷⁰ Ammar, *Supra* note 166, at 521.

¹⁷¹ Kumaralingam Amirthalingam, *A Feminist Critique Of Domestic Violence Laws In Singapore And Malaysia*, Asia RES. INST. No. 6, 1-9 (2003)

¹⁷² Ammar, *Supra* note 166, at 521.

In the Quran:

There are several verses in the Quran that indicate a prohibition of violence or cruel acts against others, whether inside or outside the family. For instance, God states in the Quran “[a]nd if they are inclined toward peace, then move toward it and rely upon Allah. Indeed, it is He who is the Hearing, the Knowing.”¹⁷³ In this verse, God commands Muslims not to start wars or battles when the enemy offers peaceful ways to solve the issue.¹⁷⁴ The Quran verses indicate that violence is unacceptable under Islam and verse 4:34 should not be interpreted as allowing the husband to beat his wife.

The Quran is opposed to violence in principle. God says “And the servants of the Most Merciful are those who walk upon the earth easily, and when the ignorant address them [harshly], they say [words of] peace.”¹⁷⁵ In this verse God illustrates how in early Islam, Muslims responded with good words when non-Muslims spoke to them cruelly.¹⁷⁶ Islam always encourages Muslims to act peacefully. In another verse in the Quran, Allah states, “Nor can goodness and Evil be equal. Repel Evil with what is better: Then will he between whom and thee was hatred become as it were thy friend and intimate.”¹⁷⁷ These verses indicate that Islam does not promote violent when dealing with others.

In relation to wife beating, there are several verses in the Quran that promote and protect the status of women in the family and encourage harmony in family relations. The Quran characterized the relationship between husband and wife as intimate, loving, caring, and protecting. For example, “He created for you from yourselves mates that you

¹⁷³ Quran, Surah Al-anfal 8:61.

¹⁷⁴ Tafsir ibn kathir, Surah Al-anfal 8:61. <http://www.quran4u.com/tafsir%20ibn%20kathir/008%20Anfal.htm>

¹⁷⁵ Quran, Surah Al-forqan 25:63.

¹⁷⁶ Tafsir ibn kathir, Surah Al-forqan 25:63.

<http://www.islamicvideos4u.com/Tafsir%20Ibn%20Kathir/025%20Furqan.htm>

¹⁷⁷ Quran, Surah Fussilat 41:34.

may find tranquility in them; and He placed between you affection and mercy....”¹⁷⁸ All of the above verses from the Quran indicate that violence is not allowed between couples.¹⁷⁹

In the Sunnah:

In several statements, the Prophet—peace be upon him—discouraged the act of beating or hurting a woman. Also, the Prophet set an example for all husbands with how he treated his wives. Interpreting verse 4:34 to mean that it is permissible for a husband to beat his wife would contradict with the Prophet’s statements, instruction to his followers, and personal behavior.

On more than one occasion, the Prophet prohibited violence between spouses. For example, the Prophet stated, “do not beat believing women.”¹⁸⁰ The Prophet described men who use violence against their wives “as lacking in character, as indiscriminate in their behavior, and as unethical.”¹⁸¹ Also, it has been believed that the Prophet, as a way of discouraging men who beat their wives from continuing this act, said, “Many women have gone round Muhammad's family complaining against their husbands. They (the men) are not the best among you.”¹⁸²

The Prophet’s behavior set an example against wife beating. One of the Prophet’s wives, A’ishah, said, “The messenger of Allah never hit anything with his hand neither a servant nor a woman... He never took revenge upon anyone for the wrong done to him....”¹⁸³ A’ishah’s statement illustrates that the Prophet never hit or beat any of his wives or servants. It also indicates that the Prophet never responded cruelly to bad acts,

¹⁷⁸ Quran, Surah Al-Rum 30:21.

¹⁷⁹ Ammar, *Supra* note 166, at 521.

¹⁸⁰ SUNAN ABI DAWUD 2146, SAHIH (AL-ALBANI), MARRIAGE, BOOK 11, HADITH 2141.

¹⁸¹ Ammar, *Supra* note 166, at 521.

¹⁸² SUNAN ABI DAWUD 2146. SAHIH AL-ALBANI. REGARDING HITTING WOMEN. BOOK 11, HADITH 2141.

¹⁸³ REPORTED BY MUSLAIM, THE BOOK OF MISCELLANY, BOOK 1, HADITH 644.

which supports the conclusion that wife beating is not allowed. Evidence presented by the second school interpreting verse 4:34 as allowing wife beating, would cause conflict and inconsistency between the Quran and the Sunnah.¹⁸⁴ The Modern, or Linguistic, School agrees with this conclusion and provides further explanation of the verse.

The Modern Interpretation, Linguistic:

This Modern, or Linguistic, School of interpretation analyzes the third step of verse 4:34 using the multiple meanings that can be attributed to certain Arabic words. The Arabic word for ‘light beating’ used in verse 4:34 is “idribuhunna” which derived from the word “daraba” which means, “beat.” However, most words derived from the word “daraba” and mentioned in other verses in the Quran refer to several meanings other than beat. Also, when the Quran talks about punishment, it uses the word “flog”, or “jald.” Therefore, the word “idribuhunna” in verse 4:34 could have other meanings.¹⁸⁵ To demonstrate this point, in 17 verses in the Quran, Allah Almighty used the word “daraba” to refer to different meanings. For instance, it may refer to give an example,¹⁸⁶ to travel,¹⁸⁷ to prevent them from hearing,¹⁸⁸ to explain, to distinguish between the rights and wrong doing, to sentence, to claim, to turn away, to be modest, to isolate and prevent,

¹⁸⁴ See, SAHIH AL-BUKHARI 6114. TO BE CAUTIOUS FROM BEING ANGRY, Vol. 8, BOOK 73, HADITH 135. (The Prophet stated “The strong is not the one who overcomes the people by his strength, but the strong is the one who controls himself while in anger.”) See Also, SUNAN ABI DAWUD 4782, GENERAL BEHAVIOR, SAHIH (AL-ALBANI), BOOK 42, HADITH 4764. (Interpret the verse to mean beat would also contrary with the Prophet instruction about anger. The Prophet explained how one should be acting upon anger to calm him/herself down, if a person is standing up when he is angry he should sit down. And if he is angry when he is sitting, he should lie down.)

¹⁸⁵ ABDULHAMEED ABU SULIMAN, DARB AL MARA’ WASILAH LIHAL AL KHILAFAT ALZAWJIAH: RU’IAH MANHAJIAH [WIFE BEATING TO SOLVE MARITAL DISCORD: A SYSTEMIC VIEW] 49 (2001)

¹⁸⁶ Quran, Surah Ibrahim 14:24. “Have you not considered how Allah ‘daraba,’ [making] a good word like a good tree, whose root is firmly fixed and its branches [high] in the sky?”

¹⁸⁷ Quran, Surah Al-nisa: 4:101 “If you travel “darabtum” through the earth, there is no blame on you if ye shorten your prayers.”

¹⁸⁸ Quran, Surah Al-khaf: 18:11 “Then we drew (fadarabna) a veil over their ears for a number of years.”

and to calm down.¹⁸⁹ According to the Quran, Allah Mightily used the word “darada” as a metaphorical expression to illustrate other meanings.¹⁹⁰

In addition to the multiple meanings of the word “daraba,” the Quran uses the word “Al-jald,” which means lashing or flogging, when speaking about punishing or disciplining.¹⁹¹ For instance in verse 24:2 “The woman and the man guilty of adultery or fornication, flog each of them.”¹⁹² The Quran did not use the word beat or “daraba” when discussing the punishment for committing adultery, it state that the guilty man or woman will be flogged.

This school of thought argues that this verse does not permit a husband to physically punish his wife and explains that the suitable interpretations for the word “daraba” in verse 4:34 are “to forsake, to avoid, or to leave.”¹⁹³ Those meanings for daraba in the verse are ways for a husband to use to demonstrate his disapproving or disagreement about something his wife has done.¹⁹⁴ Interpreting the word “daraba” to mean “leave” is also consistent with the Prophet’s behavior in one occasion when he was

¹⁸⁹ ABU SULIMAN, *Supra* note 185, at 47-48. See, Ammar, *Supra* note 166, at 523. (Provide more explanation for the word daraba.)

¹⁹⁰ *Id.*, at 49.

¹⁹¹ ABU SULIMAN, *Supra* note 185, at 138.

¹⁹² Quran, Surah Al-Nur: 24:2.

¹⁹³ Linda Bogaert, Does Qur'anic verse 4:34 allow a superior husband to beat his inferior, disobedient wife? *Koran-Notities* (2004)

¹⁹⁴ See *Id.* (Bogaert also provide one more interpretation of verse 4:34 to mean beat is not consisted with Quran principle. One important principle that Quran established for women and men is “equal actions lead to equal punishment” as in adultery case, the Quran verse 24:2 provides that: "The woman and the man guilty of adultery or fornication, flog each of them with a hundred stripes..." The Quran stated that men and women must have the same punishment. Applying this principle to the husband-wife relation and, would imply that if the husband causes the problem in the marriage his wife could beat him. Therefor, he could invoke verse 4:34 to beat her back, and the result would be permanent physical fight between husband and wife. Moreover, interpret verse 4:34 to says that if the wife cause problem the husband has fist to talk to her, then second leave their bed, then avoid her more and leave the house is very consist with what Allah prescribe in the situation where the husband makes problem. As verse 4:128 states “If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves” in order to prevent things from getting worse, Allah instruct the wife if the husband causes problem that she should avoid him, and try to work toward reconciliation.)

angry with this wives. He did not beat them or act cruelly toward them, but he left the house for 29 nights.¹⁹⁵

It is clear that Islam does not allow the husband to beat his wife. Even the school of thought that argues that the husband has right to discipline his wife provides restrictions and limitations to protect the wife from being abused, injured, or humiliated. A misreading of the Quran's verse on the husband's authority over his wife and the verse on the wife's disobedience has led men to believe that Islam allows husbands to control and beat their wives.

- Why does domestic violence still prevail despite women rights under Islamic law?

As indicated earlier, Islam has promoted women rights and improved their status. Yet in many Muslim countries, women suffer from abuses and restrictions. The problems women face vary from country to country based on differing laws, governments, and schools of thought. While Muslim countries share the same basic principles, the details often vary.¹⁹⁶ However, the violation of women's rights is due to the effect of the culture and tradition on the interpretation of Islamic law, the way Muslim jurisprudence interprets the law, and the desire to gain political power.

¹⁹⁵ MERNISSI, *Supra* note 161, at 156- 57.

¹⁹⁶ Azizah al-Hibri, *Islam, Law and Custom: Redefining Muslim Women's Rights*, 12 (1) Am. U. INT'L. L. REV. 1-7 (1997). See, Khalid Chraibi, *Reforming Islamic family law within the religious framework: the best practices strategy*. 2009 (The article compare Family Law in several Muslim countries and illustrate how laws differ.)

When interpreting the law, Muslim jurisprudence takes culture and tradition into consideration. The more culture influences opinion, the more abuse women suffer. For instance, the rise of the patriarchal family structure in some Muslim societies is a result of the cultural influence on Muslim opinion in family law. Despite clear cultural influences, all laws have been viewed as Islamic law.¹⁹⁷ Prioritizing cultural influences over religious rules when forming laws has resulted in the suppression of women's rights.

Muslim leaders' interpretation is also contributes to the variance in women's rights among Muslim countries.¹⁹⁸ Muslim leaders may strictly interpret the Islamic law and also restrict Ijtehad, the making of new rules for matters that Islamic law does not cover.¹⁹⁹ For instance, in some Muslim countries women are allowed to drive cars, based on their Ijtehad. Other Muslim countries have banned women from driving. This ban is based on a strict interpretation of Islamic law and limits on the use of Ijtihad. Strict interpretations of Islamic law can result in several abuses, including restricting the movement of women, depriving women of education and work, and limiting the role of women to the family sphere. Muslim leaders may justify their interpretation by claiming that it protects women's morality and to reduces problems in society.²⁰⁰

¹⁹⁷ Azizah Yahia Al-Hibri, *Muslim Women's Rights In The Global Village: Challenges And Opportunities*, J. OF L. & RELIGION. No.15, 105 (2000-2001)

¹⁹⁸ See, Zainah Anwar, Islamisation and its impact on laws and law making process in Malaysia 71- 73 (2004) (In Malaysia, only Ulama have the right to discuss and interpret Islamic law. Other groups such as women NGOs are not allowed to argue about any matter under Islam.)

¹⁹⁹ Al-Hibri, *Supra* note 196, at 1-7.

²⁰⁰ Norani Othman. *Muslim women and the challenge of Islamic fundamentalism/extremism: An overview of Southeast Asian Muslim women's struggle for human rights and gender equality*. WOMEN'S STUD. INT'L F.29. 339-342 (2006)

Moreover, Muslim women's rights may differ among Muslim countries because of the attitudes and desires of political leaders. In some Muslim countries, politicians focus on gaining power and control. Political leaders mislead Muslims about their religion and rights. They achieve their goal by denying Muslims proper religious education that would increase their knowledge of their rights or bans their access to education.²⁰¹

In order to improve the status and rights of women in Muslim countries, women must speak from an Islamic point of view on women rights. In doing so, women's groups must use their knowledge of Islam to explain women's roles, rights, and responsibilities in the society. Also, in challenging women's status, women's groups must work to reform family law because it governs the majority of women's rights. For women to successfully reclaim and enjoy their rights, their argument must reflect Islamic law.²⁰²

²⁰¹ Al-Hibri, *Supra* note 197, at 42.

²⁰² Norani Othman, *Supra* note 200, at 347-349.

- **Conclusion.**

Before the birth of Islam, women had no rights and were subject to mistreatment and abuse from men. Women were considered men's property and could be sold or inherited. Islam introduced women's rights and serves to protect their dignity. Islam prohibits all forms of abuse and manipulation and treats women and men on equal an basis. Under Islam, women enjoy several rights, such as the right to education, the right to work, and the right to be independent.

Also, Islam introduced several rights and duties in the marriage relationship. Husband and wife are both required to appreciate each other and to treat each other with love and respect. Wives are required to obey their husbands, and husbands are obligated to support their families financially. The Quran provides husbands with three steps to assist in solving problems with his wife. The misapplication of these steps has caused women to suffer from abuse.

Despite the rights granted to women under Islamic law, women suffer from abuse in many Muslim countries. Several reasons for this abuse may include overly strict interpretations of Islamic law, the misunderstanding of the religious text, confusion of leaders and citizens about their rights, and finally, the influence of traditions and culture on the jurists' interpretation of Islam.

❖ Chapter Four: The Legal System in Saudi Arabia

○ Introduction.

The legal system in Saudi Arabia is based on Islamic law. Saudi Arabia declared in its basic law that the Quran and Sunnah (the Prophet tradition) are the supreme law of the country. While the Quran and Sunnah are the primary sources of law, Ijma (Consensus) and Qias (Analogy) are considered secondary sources of law. All laws and regulations in Saudi Arabia must be in accordance with these sources.

In recent years, the legal system in Saudi Arabia has been developed and improved. Several systems have been reformed and new laws have been issued. One of the important reforms was to the structure of the judicial system, which led to the establishment of specialized courts, including a family court. Another important improvement to the law was the passage of The Protection from Abuse Act, which has led to the criminalization of domestic violence.

The first section of this chapter will cover the source of law in Saudi Arabia in order to provide greater understanding of Saudi Arabia's legal system. The second section will explain judicial authority and judicial principles in Saudi Arabia. The third section will introduce the criminal justice system under Islam and will be divided into two subsections. First, I will explain the individual rights under the criminal procedure system; in the second subsection, I will discuss the treatment of crime in Islam. This section will discuss both codified, which include The Protection from Abuse Act, and uncodified crimes. The final section in this chapter will talk about family law in Saudi Arabia.

○ **Section One: The Legal System in Saudi Arabia.**

Saudi Arabia is an Islamic country, with Islamic law as the foundation of its law. Islamic law influences the government system, the social and national identity, regulations, norms, and values. The first article in the Saudi Basic Law indicates that “God's Book the “Quran” and the “Sunnah” of his Prophet (Allah's prayers and peace be upon him) are the government constitution”²⁰³ Sharia, which describes the legal system in Saudi Arabia, refers to “a legal system based on certain religious texts and works of Muslim jurists and Muslim states during the last fifteen centuries.”²⁰⁴

Before introducing the sources of law in Islam, it is worth noting here that there are two schools of thought in Islam, the Sunni school and the Sheia School. Under the Sunni there are four schools of thought: the Hanafi, Maliki, Shafi'i, and Hanbali.²⁰⁵ These schools of thoughts differ in their application of the sources of law in Islam. Saudi Arabia follows the Hanbali School, which is the most traditional school of thought.²⁰⁶

• The Source of Law.

In Saudi Arabia, there are four sources of law. The Quran and Sunnah are regarded as the primary sources of Islam, and the *Ijmaa* and *Qiyas* are considered the secondary sources of law.²⁰⁷

²⁰³ The Saudi Basic Law of Governance was enacted by Royal Decree No. A/90 in (Jan. 31, 1991)

²⁰⁴ Hossein Esmaili, *On A Slow Boat Towards The Rule Of Law: The Nature Of Law In The Saudi Arabian Legal System*, 26 *Ariz. J. OF INTER'L & COMP. L.* 1-7 (2009). See, Omar Alghmdi, *The Basic Structure Of The Saudi Arabia And The American Criminal Law. A Close Look At The Larceny And Robbery Crimes* (1996) (unpublished LLM Thesis, Case Western Reserve University) (on file with author) at 5-6.

(The Islamic legislation or Shar'a referres to the Quran and what Allah revealed to the Prophet – peace be upon him-.)
²⁰⁵ Jalal Hashim Sahlool. *Corporate Criminal Liability: A Comparison Between The Law In The United States And Saudi Arabia* (2013) (unpublished S.J.D dissertation University of Kansas)(on file with author) at 79.

²⁰⁶ Esmaili, *Supra* note 204.

²⁰⁷ RAJ BHALA, *UNDERSTANDING ISLAMIC LAW (SHARI'A)* 289, (1st ed. 2011)

- The Quran.

The Quran is the first and the chief source of law. The Quran is the word of God that has been dictated to the Prophet Muhammad –peace be upon him- by the Angel Gabriel. The Prophet received the Quran over a period of approximately 23 years.²⁰⁸ During those years, the Prophet spent 13 years in Mecca - the Holy place- and 10 years in Medina.²⁰⁹ Therefore, the verses in the Quran are categorized as Mecca and Medina verses, depending on where the revelation was received. The Mecca verses focus on calling people to convert to Islam and changing their belief. The verses also focus on changing people’s behavior and encouraging good moral interactions with one another, while the Medina verses focus on introducing the legal system.²¹⁰

The Medina verses have had a profound impact on the structure of the legal system. Among the 6,239 verses in Quran, 500 verses provide details on the Islamic legal system. Approximately 30 verses of the Quran introduce the Islamic criminal law and 70 verses are devoted to family and inheritance law. About 20 verses provide procedure on justice and fairness and 70 verses deal with contractual duties.²¹¹ The legal verses in the Quran do not appear as a codified law,²¹² therefore, jurists are responsible for deriving the rule. For instance, under commercial law the Quran stated that: “*O you who have*

²⁰⁸ Abdullah Saad Alarefi, *Overview of Islamic Law*. INTER’L CRIM. L. REV. 9. 707–710. (2009).

²⁰⁹ Medina, is located in the Hejaz region of western Saudi Arabia.

²¹⁰ Alghmdi, *Supra* note 204, at 9.

²¹¹ Alarefi, *Supra* note 208. See C.G. WEERAMANTRY. ISLAMIC JURISPRUDENCE: AN INTERNATIONAL PERSPECTIVE 32-33 (New York: St. Martin's Press.1988). (Provide examples of some legal verses in the Quran, for instance, in commercial matter Quran Surah Isra verse 17:35 “And give full measure when you measure, and weigh with an even balance. That is the best [way] and best in result.”)

But see, Ali Ahmari Moghaddam, *Towards International Islamic Human Rights: A Comparative Study Of Islamic Law, Shari’ah, With Universal Human Rights As Defined In The International Bill Of Human Rights* 23-33 (2012) (Other Muslim scholars have argued that among 6,239 verses there is 350 verses than introduced the legal system. 140 verses identify the Islamic performance as to prayer and fasting, 70 verses commercial transaction, 30 verses identify the criminal system, 70 verses provide the issue of family regulation and inheritance, and 30 verses illustrate the judicial system.)

²¹² Abdulaziz S. Al-Rodiman, *The Application of Shari’ah and International Human Rights Law in Saudi Arabia* 1-6 (2013). See, Quran, Surat Al- nisa Verse 4:11(With respect family and inheritance, the Quran provide clear illustration on how to divide the inheritance were it stated: “*Allah instructs you concerning your children: for the male, what is equal to the share of two females...*”)

*believed, fulfill [all] contracts.*²¹³ This verse obligates contractors to comply with their contracts. Also, under criminal law, the Quran stated: “*O you who have believed, prescribed for you is legal retribution for those murdered - the free for the free...*”²¹⁴ This verse provides the punishment for murder, which is retribution.

The Quran rules can be classified into three categories. First there are rules related to Islamic faith, which call on Muslims to believe in God, his angels, the Quran, the Prophet, the Day of Judgment, and fate, either good or evil. Second are ethical rules—“*virtues every Muslim should cherish and vices from which he should abstain.*”²¹⁵ Third are practical rules, which cover the way Muslims must speak and act. Also, jurisprudence from the the Quran can be classified into rules of ownership such as prayer, fasting, and pilgrimage and rules that regulate the lives of Muslims, including businesses, and dealing with crime and punishment.²¹⁶

According to Islamic teaching, rules derived from the Quran are considered the highest rules in the legal system. These rules are constant, immutable, and incontestable by other sources of Islam. The Quran also contains general principles and rules, but leaves the explanations of these rules to the Sunnah.²¹⁷

²¹³ Quran, Surat Al-mā'idah, 5:1.

²¹⁴ Quran, Surat Al-baqara 2:178.

²¹⁵ Alarefi, *Supra* note 208, at 711.

²¹⁶ *Id.*

²¹⁷ *Id.*, at 710- 711.

- Sunnah (Tradition).

Sunnah is regarded as the second source of Islamic law. In linguistic terms, Sunnah refers to the route or way that a person follows or seeks in his or her life.²¹⁸ However, Sunnah in Islam has a slightly different and broader meaning; it refers to the life of the Prophet Muhammad—peace be upon him, speeches to his followers, his actions—how he behaved or instructed others to behave in certain situations, and the way he lived his life.²¹⁹ While Sunnah includes everything about the Prophet’s life, Hadith is another important term that has a clear connection to Sunnah, but is limited only to the Prophet’s teachings and speeches that are reported to us.²²⁰ Sunnah, which includes Hadith, plays an important role in completing and supporting the Quran.

Sunnah provides details on matters that the Quran did not cover. For example, the Quran orders Muslim to perform prayers, while the Sunnah provides details on how to pray and the rewards a Muslim will receive when he or she prays. Sunnah also provides explanations of the general principles and rules stated in the Quran, and helps interpret ambiguous verses. Consequently, Muslim scholars seek answers in the Sunnah to questions the Quran is silent about.²²¹ Due to the way the Sunnah is written and reported, Muslim scholars have developed three types of Sunnah depending on the number of people who reported the Sunnah and their reputation. This process is called Sunnah authentic.²²²

²¹⁸ BHALA, *Supra* note 207, at 302.

²¹⁹ Al-Rodiman, *Supra* note 212, at 7.

²²⁰ BHALA, *Supra* note 207, at 303.

²²¹ Alarefi, *Supra* note 208, at 712-713.

²²² Irshad Abdal-Haqq, *Islamic Law: An Overview of its Origin and Elements*, 1 J. OF ISLAMIC L. 48-49 (1996)

The first type is Sunnah ‘Mutawatira’ which is the Sunnah that has been reported by a high number of upright, trustworthy, and well-known groups of people. The second type is Sunnah ‘Mashoorah’ this type of Sunnah refers to what has been reported from the Prophet by a small number of trustworthy people, and then the Sunnah was reported by a high number of upright different groups of people. The third type of Sunnah interpretations is called ‘Ahaad.’ The Ahaad is reported by a small number of people, and then followed by small several groups of people.²²³

The first and the second types of Sunnah are considered to be valid Sunnah and Muslims must follow them in their life. Unlike the first and the second type of Sunnah, the third type of Sunnah can be rejected because people who reported them were not clearly known or trustworthy.²²⁴ Finally, in circumstances where both the Quran and Sunnah are silent on an issue, Islam instructs Muslims to follow Ijma, which is the decisions of scholars who have evaluated the issue and reached an agreement.

- Ijma (Consensus).

Ijma is considered the third source of Islamic law. Ijma is defined as the “general consensus among Islamic scholars of a particular age in relation to the legal rule correctly applicable to the situation.”²²⁵ Therefore, if the Quran and Sunnah do not discuss a particular matter, the agreement of Muslim jurisprudential scholars on that matter

²²³ Sahlool, *Supra* note 205, at 81. See, C.G. WEERAMANTRY, *Supra* note 211, at 35(In the life of the Prophet, there was no attempt to write the Hadith because of the fear that people may be confused between the Quran and Sunnah. The written of Sunnah started after century from the Prophet death when scholar believed that writing the Sunnah is necessary to avoid dispute and fabrication in the Sunnah.)

²²⁴ Islamic Research Journal. The types of Sunnah, No 20 (1986-1987)

<http://www.alifta.net/Fatawa/fatawaDetails.aspx?View=Page&PageID=2914&PageNo=1&BookID=2>

²²⁵ C.G. WEERAMANTRY, *Supra* note 211, at 39.

becomes part of the law.²²⁶ Yet, several conditions must be present for this agreement to be binding on the Muslim community.

For the views of Muslim scholars to be valid, their judgment or agreement must not contradict any teachings in the Quran and Sunnah and must be in accordance with the principles and rules in the Quran and Sunnah. Also, the agreement must be unanimous; a majority agreement on particular matter is not sufficient.²²⁷ Therefore, each scholar that has participated in the discussion must clearly express his agreement.²²⁸ The authority of Ijma comes from the Quran saying: “*O you believe, obey God and obey the messenger and also those in charge among you.*”²²⁹ And also from the Prophet saying: (*My nation will not agree unanimously on error.*)²³⁰ The statements in the Quran and from the Prophet indicate that agreement among Muslim scholars on a particular matter becomes binding on other Muslims.

Ijma allows Islamic law to develop and adapt to changing times and societal needs. As an example of Ijma, Muslims in the Prophet companion’s era wondered if someone died before paying his loan, whether the family should share the inheritance or the loan should be paid first. Since the Quran and Sunnah did not discuss this issue, Muslim agreed that if someone died before paying his loan, the loan must be paid before the deceased family shares the inheritance.²³¹ This agreement became a binding law.²³²

²²⁶ Irshad Abdal-Haqq, *Supra* note 222, at 54.

²²⁷ MOHAMMAD HASHIM KAMALI, PRINCIPLES OF ISLAMIC JURISPRUDENCE 228, (The Islamic Texts Society 1991).

²²⁸ Alghmdi, *Supra* note 204, at 15. See, BHALA, *Supra* note 207, at 316 (Because Muslim religions has expanded, reaching agreement among Muslim scholars become harder. Nonetheless, it is possible to reach agreement among Muslim scholars in each region, yet this agreement would not be binding on the community.)

²²⁹ Quran, Surah An-Nisa verse 4:59.

²³⁰ SUNAN IBN MAJAH, TRIBULATIONS, Vol. 1, BOOK 36, HADITH 3950.

²³¹ Consensus in the era of the Companions. Fatwa No. 62925. (2005)

<http://fatwa.islamweb.net/fatwa/index.php?page=showfatwa&Option=FatwaId&Id=62925>

Finally, while Ijma requires a unanimous agreement, the final source of Islam is Qiyas (analogy), based on individual reasoning.

- Qiyas (Analogy).

Qiyas is the fourth source of Islamic law. Qiyas can be defined as the “judgment given in a new case on the bases of juristic analogy.”²³³ Therefore, under Qiyas, rules provided in the Quran or Sunnah for a particular situation can be extended and applied to similar circumstances. The role of Qiyas is limited in the sense that Muslims can use Qiyas only if the other sources of Islamic law did not provide answers for a particular case.²³⁴

Qiyas is a tool to compare similar cases and reach logical conclusions.²³⁵ Unlike Ijma, which creates a new rule, Qiyas does not create a new rule, as the law already existed. Also, while it takes many years for Ijma to develop and for Muslim scholars to reach consensus to create a new law, Qiyas can be performed “on a case-by-case basis.”²³⁶ In addition, Ijma requires consensus agreement among Muslim scholars to be valid. For Qiyas to be valid, the legal reasoning underlying the root, the original text that was found in the Quran and Sunnah, must match the legal reasoning underlying the branch, the new situation that has no text.²³⁷ For instance, the Quran prohibits drinking

²³² See, Consensus in the era of the Companions, *Supra* note 231 (Also, since Islam has prohibited eating pork, Muslim had agreed on the prohibiting of using the flab of the pork as well. The Prophet companions also had agreed on setting leader to Muslims and punishing anyone who refuse to pay Zakat.)

²³³ Alghmdi, *Supra* note 204, at 16.

²³⁴ FRANK E. VOGEL, ISLAMIC LAW AND THE LEGAL SYSTEM OF SAUDI: STUDIES OF SAUDI ARABIA 52 (Brill Academic Publishers, Inc. 2000)

²³⁵ Alghmdi, *Supra* note 204, at 17.

²³⁶ BHALA, *Supra* note 207, at 322.

²³⁷ Alarefi, *Supra* note 208, at 716.

alcohol because alcohol impairs the mind. By analogy, or Qiyas, drug abuse also is prohibited because drug abuse also impairs the mind.²³⁸

In sum, the Quran and Sunnah are regarded as the primary sources of law in Saudi Arabia. The Hanbali School of thought, which Saudi Arabia follows, limits the use of Ijma, and only recognizes Ijma from the Prophet's companions.²³⁹ Also, the Hanbali School applies Qiyas very strictly and allows only narrow application of the legal reasoning in the Quran and Sunnah.²⁴⁰

- Other Sources Of Law in Saudi Arabia.

The Saudi Basic Law has also indicated three other sources of law and regulations in Saudi Arabia: The Royal Decree, The Ministry Counsel,²⁴¹ and The Shura Council (House of Counsel).²⁴² The king can issue laws or regulations by royal decree without any further discussion with the other government bodies.²⁴³ The Ministry of Counsel, which includes 22 ministry departments, is responsible for drafting resolutions, but the enactment of these resolutions is subject to the king's ratification.²⁴⁴ The House of Counsel, which includes 150 members, is responsible for drafting legislation.²⁴⁵ The Ministry of Counsel can debate legislation issued by The House of Counsel, and the king

²³⁸ BHALA, *Supra* note 207, at 320. See also, Quran, Surah al-Jumuah 62:9 (“*O you who have believed, when [the adhan] is called for the prayer on the day of Jumu'ah [Friday], then proceed to the remembrance of Allah and leave trade. That is better for you, if you only knew.*” in this verse the Quran has specifically prohibited doing business and selling or buying goods during Friday prayer. By analogy, this prohibition has been extended to cover any form of transactions during Friday prayer.)

²³⁹ C.G. WEERAMANTRY, *Supra* note 211, at 40.

²⁴⁰ MICHAEL MUMISA, *ISLAMIC LAW: THEORY & INTERPRETATION* 96 (Amana publication 2002). See Sahlool *Supra* note 205, at 82. (Other scholars may believe that The Absolute Interest (Al-Maslaha Al-Mursalah) is another source of Islamic law, which means that every law enacted has to bring benefit or illuminate harm. Also, for Absolute Interest to be one of the Islamic sources, it must not contradict with any of the four sources.)

²⁴¹ Council of Ministers system 1995.

²⁴² Shura Council system 1993.

²⁴³ The Saudi Basic Law Article 70.

²⁴⁴ See, Council of Ministers system 1995.

²⁴⁵ See, Shura Council system 1993.

has authority to enact or reject legislation.²⁴⁶ One important ratification made by the king is that of the Judicial System.

○ **Section Two: Judicial Authority.**

In Saudi Arabia, there are two judicial bodies, the Shareia Court and The Board of Grievances. Each authority hears a specific type of case. Share'a Court has jurisdiction to hear all cases that involve violations of rights or offences. The Board of Grievances has jurisdiction to hear cases initiated against any government body. This section will introduce important articles under the two systems and will cover important principles that the judiciary follows.

• Share'a Court.

The new Judicial System, which was established in 2007, changed the number of courts in Saudi Arabia and their jurisdictions. The old system was comprised of three levels of judiciary under the Share'a Court. The first level consisted of the Summary Court and the General Court, the second level was the Appellate Court, and the third level was the Supreme Court.²⁴⁷ The new judicial system kept the Appellate Court, and the Supreme Court, but replaced the Summary Court and the General Court with the First Instance Court.

Under the new system, the Supreme Court is located in Riyadh, the capital city. It has specialized departments to look at cases. Each department has three judges; however, criminal courts have five judges.²⁴⁸ The new system also states that each province in Saudi Arabia should have at least one appellate court, and each appellate court would have a criminal chamber, personal status chamber (family law), commercial chamber,

²⁴⁶ The Saudi Basic Law.

²⁴⁷ The Judicial System 1975.

²⁴⁸ The Saudi Judicial System 2007. Article 10.

and labor chamber.²⁴⁹ All case decisions in the Appellate Court must be reviewed by three judges, except criminal cases, which are to be reviewed by five judges.²⁵⁰

The First Instance Court is comprised of several specific courts, including a general court, criminal court, commercial court, personal status court, and labor court.²⁵¹ The general court hears traffic cases.²⁵² The criminal court has three specialized departments for Hodood and Qasa cases, Tazear cases²⁵³, and juvenile cases.²⁵⁴ The personal status court and labor court both have the ability to create special departments as needed.²⁵⁵ All cases in the First Instance Courts, except in the criminal court, may be heard by a single judge: however more may be added as needed. The system indicates that criminal cases must be heard by three judges.²⁵⁶

- The Board of Grievances.

The Board of Grievances is the second judicial authority in Saudi Arabia. The Board of Grievances is independent from the other courts and directly linked with the king.²⁵⁷ Like the judicial system, the Board of Grievances has three levels of courts: the Supreme Administrative Court, the Administrative Court of Appeal, and the Administrative Court. Each court is led by three judges.²⁵⁸ The Board of Grievances hears several claims, including complaints related to the rights stated in the Civilian and Military Service System; the regulation of retirement for government employees, administrative dispute; requests for enforcement of foreign judgments; and disciplinary

²⁴⁹ The Saudi Judicial System, *Supra* note 248, Article 16.

²⁵⁰ *Id.*, Article 15.

²⁵¹ *Id.*, Article 9.

²⁵² *Id.*, Article 19.

²⁵³ These crimes will be discussed in details in the third section of this chapter.

²⁵⁴ The Saudi Judicial System, article 20.

²⁵⁵ *Id.*, Article 21.

²⁵⁶ *Id.*, Article 20.

²⁵⁷ The Broad of Grievances 2007, Article 1.

²⁵⁸ *Id.*, Article 8.

proceedings brought by the competent authority.²⁵⁹ Finally, the second level of judiciary is required to follow certain principles that raise justice and fairness.

- Judicial principle.

The Saudi legal system endeavors to apply important general principles that help protect the rights of the parties in lawsuits. The judicial system and the trial procedures include a number of important principles. These principles help the judicial system handle cases with fairness and neutrality.

Among the significant principles is that of judicial independence. The first article of the judicial system provides for judicial independence by stating that judges are subject only to Islamic law and Saudi regulation.²⁶⁰ Additionally the Saudi Trial Procedure enhances judicial independence by indicating that judges are not subject to recusal, except in specific indicated situations, such as relation one of the case parties.²⁶¹ Also, judges would not be dismissed from services but shall be retired when reach the age of seventy.²⁶² Judicial independence is also enhanced by protecting judges from being transferred to other jobs, except in the case of promotion or after obtaining the judge's consent²⁶³ and by prohibiting judges from working side jobs.²⁶⁴ Judges' independence led to another important principle, equality under the law.

²⁵⁹ The Broad of Grievances 2007, Article 13.

²⁶⁰ The Saudi Judicial System, Article 1.

²⁶¹ The Saudi Trial Procedure 2014. Article 94.

²⁶² The Saudi Judicial System, Article 45 and 69.

²⁶³ *Id*, Article 49. (The Judicial Counsel can only transfer judges in the same judicial structure, but if the transformation is outside the judicial structure, a royal decree must be obtained.)

²⁶⁴ *Id*, Article 51.

Judges must treat all parties on an equal basis.²⁶⁵ To support the notion of equality, litigation in Saudi Arabia is free and the judiciary is available for every citizen, Muslim and non-Muslim, male or female, rich or poor.²⁶⁶ Equality before the law also dictates that cases are heard based on the date they are commenced with the court clerk.²⁶⁷ The Saudi Trial Procedure further emphasizes that litigation should be open to the public and the court discussion should be read in open court, except in special circumstances to protect the family privacy or public moral consideration.²⁶⁸ This principle is enhanced by requiring judges to follow one source of law, which is Islamic law.

Adhering to one source of law, Islamic law, is an important principle in the Saudi legal system. All disputes, whether family, civil, criminal, or commercial, are resolved by law found in the Quran, Sunnah, and Ijma. This principle provides the judicial system with neutrality since Islamic law is revealed by God and was not created by humans who may be prejudiced for certain groups.²⁶⁹ To support this principle, judges are required to provide reasoning for their decisions.²⁷⁰ These principles are very important to enhance judges' ability to perform their duties to protect people's rights and enforce the law. The Saudi Law of Criminal Procedure further provides specific rights for the accused.

²⁶⁵ The Saudi Trial Procedure, Article 60 -69.

²⁶⁶ The Saudi Basic Law. Article 47.

²⁶⁷ The Saudi Trial Procedure, Article 42.

²⁶⁸ *Id*, Article 64.

²⁶⁹ The Saudi Trial Procedure, Article 1.

²⁷⁰ *Id*, article 163. See HESEEN AL-ALSHEK, THE JUDICIAL PRINCIPLES IN ISLAM AND ITS CONNECTION TO THE JUDICIAL SYSTEM IN SAUDI ARABIA 38 (2005). (This book explains the application of the judicial system in Islam in Saudi Arabia.)

○ **Section Three: The Criminal Justice System in Saudi Arabia.**

Saudi Arabia follows the criminal justice system prescribed in Islam, which divides crime into three categories. This section will first explain the individual rights under the Saudi Law of Criminal Procedure and then will shift to introduce the categories of crime.

- The Individual Rights Under The Saudi Law of Criminal Procedure.

The Saudi Law of Criminal Procedure recognizes the importance of protecting the rights of the accused. These rights are derived from the two primary sources of law.²⁷¹ Under Islamic law, suspects enjoy several rights, including the right to be informed of the crime of which a person is accused, the right of self-defense, the right of presenting evidence and witness testimony, and the right of fair and public trial.²⁷² The Saudi Criminal Procedure Code of 2013 incorporates most of these rights and principles.

One of the important principles adopted by the Saudi Criminal Procedure Code is the principle of legality, which implies that a person must be protected from any abuse of authority. No conduct is regarded as criminal unless stated as illegal in the law.²⁷³ The principle also implies that the accused “is innocent until proven guilty, and that guilt must be established beyond a reasonable doubt.”²⁷⁴ After guilt is established, the Saudi Criminal Procedure Code provides that the accused has the right to a fair trial overseen

²⁷¹ See, for instance Quran Surat Al-Mā'idah 5:8. (“O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just.”)

²⁷² KATE DANIELS, CRIMINAL JUSTICE IN ISLAM: JUDICIAL PROCEDURE IN THE SHARI'AH 7 (M. Abdel Haleem et al. eds. 2003)

²⁷³ The Saudi Law of Criminal Procedures, Article 2.

²⁷⁴ *Id.*, Article 3.

by an independent judge who will provide a decision in accordance with Islamic law and Saudi regulations.²⁷⁵

The Saudi Criminal Procedure Code also indicates that the accused must be clearly informed of the crime with which he has been charged and of the evidence against him.²⁷⁶ The Code protects the accused's right to introducing exculpatory evidence and cross-examining adverse witnesses.²⁷⁷ Suspects also have several rights during investigations. The defendant has the right to have the assistance of counsel during the investigation.²⁷⁸ The defendant cannot be forced to admit guilt or testify against himself,²⁷⁹ and evidence gained by illegal means is inadmissible.²⁸⁰

Further, since Islam values privacy,²⁸¹ the Saudi Criminal Procedure Code provides twenty-one articles related to search and seizure. These articles control, restrict, and provide limitations for authorities. This discussion starts in article 41, which states that: "The privacy of persons, their dwellings, offices, and vehicles shall be protected. The privacy of a person protects his body, clothes, property, and belongings. The privacy of a dwelling covers any fenced area or any other place enclosed within barriers or intended to be used as a dwelling."²⁸² Offenders who commit any offences are granted all of these rights.

²⁷⁵ The Saudi Law of Criminal Procedures, Article 6-7.

²⁷⁶ *Id.*, Article 101.

²⁷⁷ *Id.*, Article 162.

²⁷⁸ *Id.*, Article 65. See, M. CHERIF BASSIOUNI, EDITOR, THE ISLAMIC CRIMINAL JUSTICE SYSTEM 98 (London: Oceana Publications 1982). (Historically, the right of assistance of counsel was not widely practiced, one reason for that is judges, in solving problems, worked closely with jurists and thus, the accused was not in need for the assistance of counsel. However, Islamic law never opposed the assistance of counsel and that can be based on Islam principles.)

²⁷⁹ *Id.*, Article 102.

²⁸⁰ The Saudi Law of Criminal Procedures, Article 46.

²⁸¹ See, BASSIOUNI, *Supra* note 278, at 100 (Islamic law highly respect and protect the person privacy. In more than one verses in the Quran, Allah prohibited spying and the search of a person or his home. However, the accused rights can be limited under the Islamic jurisprudence that says: "necessity renders prohibited things permissible." And so, infringe the accused privacy by searching his home or vehicle is permissible for the purpose of searching for the truth. It must be stressed out that limitation on the right to privacy is also limited by the principle of "necessity.")

²⁸² The Saudi Law of Criminal Procedure, Article 41.

- The Crime Category.

To clearly understand the criminal categories under the law of Islam, it is worth briefly explaining the concept of crime and violation under Islam. This section will first explain the definition of crime and then will shift to introduce the crime categories in Saudi Arabia.

- The Concept of Crime.

Crime in Saudi Arabia is more than committing a prohibited act; under Islam, crimes are considered a violation of the rights of God or people.²⁸³ Crimes that affect the rights of God deal with the security of society and public interest. Crimes that affect the rights of people are the types of crime that result in the injury, harm, or threat to a person's safety. In some situations, the rights of God and the rights of people may overlap and therefore crime in this situation affects both rights.²⁸⁴ From a procedural perspective, whether the rights of God or the rights of people have been violated alters standing to initiate and terminate the criminal proceedings.

The government is obligated to prosecute crimes that violate the rights of God, while injured persons or their heir can initiate crimes that violate the rights of a person. However, if the crime affects both rights, the government and the injured person both have standing to initiate the criminal case.²⁸⁵ With respect the termination of criminal proceedings, criminal cases that violate the right of God cannot be terminated²⁸⁶ and defendant must be punished, except in specific cases where the defendant has shown

²⁸³ DANIELS, *Supra* note 272, at 5.

²⁸⁴ *Id.*, at 5-6.

²⁸⁵ *Id.*, at 6-7.

²⁸⁶ BASSIOUNI, *Supra* note 278, at 24. See, SUNAN AN-NASA'I 4891, THE BOOK OF CUTTING OFF THE HAND OF THE THIEF, VOL. 5, BOOK 46, HADITH 4895 (The Prophet indicated that the punishment of Hudud crime must be carried out and mercy is no accepted. It has been reported that in the Prophet time a women stole and she asked not to cut her hand, the Prophet said: "If Fatimah bint (daughter of) Muhammad were to steal, I would cut off her hand." The prophet statement indicates that the punishment under Hudud crime must be inflicted and mercy is not allowed.)

repentance.²⁸⁷ In contrast, when the rights of a person have been violated, the case may be terminated if the victim chooses to forgive and to drop the charges. In the case of overlapping rights, the criminal case cannot be terminated even if the injured person consents. The victim dropping the charges does not prevent the government from continuing the case so long the crime is related to the public interest.²⁸⁸

Finally, under Islamic law, there are three major categories of crimes, which are Hudud crimes, Qisas crime, and Tazear crime.²⁸⁹ Hudud Crime violates the right of God and Qisas crime and Tazear crime violate the right of people.

²⁸⁷ See, BHALA, *Supra* note 207, at 1262- 1263. (The idea of plea bargain is not available in Islam specifically in Hudud crime; however, there is the notion of forgiveness in some crime. For example, apostasy from Islam is considered, as Hudud crime and thus, the criminal procedure cannot be terminated. Apostasy from Islam is punishable by death if the apostasy hurts Islam. An apostate may be given three days to think and reconvert to Islam. If he converted to Islam, the procedure has to be terminated.) Also see, The Saudi Law Of Criminal Procedure, Article 22.

²⁸⁸ DANIELS, *Supra* note 272, at 7.

²⁸⁹ SHAHID M SHAHIDULLAH, COMPARATIVE CRIMINAL JUSTICE SYSTEMS: GLOBAL AND LOCAL PERSPECTIVES 378 (Jones & Bartlett Learning, 2014).

- **Hudud Crime.**

Hudud crimes can be defined as crimes committed against God, even when the perpetrator caused harm to other people. Hudud crimes are specifically mentioned and criminalized in the Quran and/or Sunnah, which provide specific punishments for these crimes.²⁹⁰ Therefore, those accused of Hudud crimes must be punished in accordance with the exact punishment described in the Quran or Sunnah. The accused cannot be pardoned from penalty and mercy is not available. However, the accused can be pardoned from punishment for a Hudud crime if the perpetrator has a medical issue, such as a mental disorder or sickness.²⁹¹

Due to the serious and harsh punishments for Hudud crimes Muslim scholars agreed that before inflicting the punishment, the accusation must be certain and free from doubt. They also agree that the government should be cautious to avoid wrongly punishing an innocent person.²⁹² There are seven types of Hudud crimes: adultery, defamation, drinking alcohol, theft, crimes against public order, apostasy, and rebellion against a Muslim ruler.²⁹³

Adultery:

Islamic law prohibits the act of sexual intercourse outside of marriage. Married and single offenders are punished differently for committing adultery. According to the Quran, a single person who has committed adultery should receive one hundred flogs and

²⁹⁰ NAGATY SANAD, *THE THEORY OF CRIME AND CRIMINAL RESPONSIBILITY IN ISLAMIC LAW: SHARI'A* 50 (Office of International Criminal Justice, 1991)

²⁹¹ SHAHIDULLAH, *Supra* note 289, at 379.

²⁹² VOGEL, *Supra* note 234, at 101.

²⁹³ See BASSIOUNI, *Supra* note 278, at 195-196 (Moreover, the penalty of committing Hudud crime is not intend it to scare people but to deter people who commit or will commit crimes in the future and to build and enhance the security in the society. Also, the penalties even though harsh are fair to the victim and to society.)

be banished for one year.²⁹⁴ Under the Sunnah, if a married person commits adultery, the prescribed punishment is one hundred flogs and death by stoning.²⁹⁵

Because of the severity of the punishment for committing adultery, Allah in the Quran set a high evidentiary standard to accuse someone of this crime. Allah states that: *“Why do they not [demand of the accusers that they] produce four witnesses to prove their allegation? – for, if they do not produce such witnesses, it is those [accusers] who, in the sight of God, are liars indeed.”*²⁹⁶ Therefore, the crime of committing adultery cannot be proven unless there are four eyewitnesses who have seen the act of sexual intercourse “not deliberately but accidentally”²⁹⁷ or the offender voluntarily confesses.²⁹⁸

Defamation:

Defamation is falsely accusing someone of committing adultery or fornication.²⁹⁹ An accusation of adultery is considered false when the accuser cannot provide the required four eyewitnesses as evidence. According to the Quran, defamation is a Hudud crime, punishable by eighty flogs and a lifelong ban on the accuser’s testimony.³⁰⁰

²⁹⁴ Quran, Surat An-Nur 24:2.

²⁹⁵ JAMI’ AT-TIRMIDHI 1434, THE BOOK ON LEGAL PUNISHMENTS (AL-HUDUD), VOL. 3, BOOK 15, HADITH 1434.

²⁹⁶ Quran, Surat An-Nur verse 24:13.

²⁹⁷ BASSIOUNI, *Supra* note 278, at 199.

²⁹⁸ See, SHAHIDULLAH, *Supra* note 289, at 378. (Also, sexual activities other than sexual intercourse such as child pornography are not considered as Hudud crime. Therefore, it is punishable under Tazear crime.)

²⁹⁹ SHAHIDULLAH, *Supra* note 289, at 378.

³⁰⁰ Quran, Surat An-nur 24:4.

Drinking Alcohol:

The Quran also prohibits drinking alcohol or any other intoxicating drink, calling them “an abomination of Satan’s handiwork.”³⁰¹ The Sunnah states that flogging is the appropriate punishment for drinking and indicates that the punishment may be repeated for repeat offenders.³⁰² While the Prophet did not specify the number of flogs, he excluded forty flogs. After the death of the Prophet, the Muslim Caliph raised the number of flogs to eighty.³⁰³

Theft:

The punishment for theft is cutting off the right hand of the defendant.³⁰⁴ Due to the severity of the punishment, Islam requires certain conditions to be present to inflict the punishment.

The first condition is that the thief must have the intent to steal the property.³⁰⁵ Second, the property must have been kept in a safe place. Third, the thief must enter the place where the property was kept and take the stolen property out of the place. Finally, the stolen property must have high value and worth in Islam. If the value of the stolen property is minimal, or has no worth in Islam, like alcohol, the thief can be punished under the Tazear category of crime.³⁰⁶

³⁰¹ Quran, Surat Al-Ma`idah 5:90.

³⁰² SUNAN ABI DAWUD 4482. BOOK OF PRESCRIBED PUNISHMENTS (KITAB AL-HUDUD), BOOK 39, HADITH 4467.

³⁰³ BHALA, *Supra* note 207, at 1239-1240.

³⁰⁴ Quran, Surat Al-Ma`idah 5:38.

³⁰⁵ BASSIOUNI, *Supra* note 278, at 198.

³⁰⁶ *Id.*

Crimes Against Public Order (Hiraba):

Crimes against public order include highway robbery and the use of weapons. Highway robbery is the only crime against public order that fall under the Hudud crime. This crime covers four situations: first, only stopping the victims and scaring them, but not robbing them; second, robbing the victim; third, murdering the victim but not robbing him; and finally robbing and murdering the victim.³⁰⁷ The Quran provides four punishments for these situations respectively: banishment, cutting off one arm and one leg from opposite sides, death by means other than crucifixion, and finally death by crucifixion.³⁰⁸

Apostasy:

Apostasy applies to any Muslim denying Islam or converting to another religion. Apostasy also includes rejecting the Quran, in whole or in part, or rejecting any of its principles.³⁰⁹

Generally, in the Sunnah Muslim scholars have inferred that death is the appropriate punishment for apostasy. Yet, some Muslim jurisprudence contends that because death is not mentioned as an appropriate punishment for apostasy in the Quran and the Prophet never enforced it, a lesser punishment should be imposed.³¹⁰ However, apostasy is one of the Hudud crimes that can be forgiven if the defendant has showed repentance. Thus, before inflecting the punishment, the defendant who is disavowing

³⁰⁷ BASSIOUNI, *Supra* note 278, at 199.

³⁰⁸ Quran, Surat Al-Ma'idah verse 5:33. See, BASSIOUNI, *Supra* note 278, at 199 (The punishment is understood to be cutting the right hand and the left foot, also exile from the land means imprisonment.) See also, Human Rights Watch. Saudi Arabia: Save Convicts from Amputation. Dec. 16, 2011(Saudi court sentence six defendants to get their hands and feet cut from committing armed robbery.)

³⁰⁹ Quran, Surat Al-Imran Verse 3:85.

³¹⁰ BHALA, *Supra* note 207, at 1262-63.

Islam is given time to rethink and repent.³¹¹

Rebellion against a Muslim Ruler:

A person is guilty of rebellion against a Muslim ruler, the king or the president, when he challenges, resists, or uses force against a Muslim ruler. The Quran commands Muslim not to fight against each other and encourage Muslim to “*make peace between them both.*”³¹² However, challenging a ruler who ignores the application of Islamic law is not a crime and not punishable in Islam.³¹³

Generally, the penalties for Hudud crimes are “bodily penalties” rather than prison sentences. Due to the severity of the punishment, the Quran requires a high evidentiary standard. While the punishment for Hudud crimes are limited to bodily penalties, the punishment for Qisas crimes can include bodily penalties, compensation, or prison sentence.³¹⁴

▪ **Qisas Crime.**

Qisas or retaliation means “equality” and can be defined as punishing the person who commits harm or injury in the same way that he hurt the other person.³¹⁵ Qisas crimes fall into four categories: voluntary killing, involuntary killing, intentional physical injuries, and unintentional physical injuries. These crimes are punished under a theory of retaliation, in other words, “an eye for an eye, a tooth for a tooth.”³¹⁶ Also, there are private and public penalties for Qisas crimes.

³¹¹ BHALA *Supra* note 207, at 1260.

³¹² Quran, Surat Al-Hujurat, 49:9.

³¹³ BASSIOUNI, *Supra* note 278, at 197-198.

³¹⁴ *Id.*, at 200.

³¹⁵ *Id.*, at 203- 204.

³¹⁶ Qur’an, Surah Almaeada Verse 5:45. See, Human Rights Watch. Saudi Arabia: Court Orders Eye to Be Gouged Out. 2005 (in 2005, the court ordered an eye to be gouged out of an Indian offender who cause the lose of vision of a Saudi man after a fight. The offender offered compensation but the victim insisted in equal retaliation instead of the compensation. Also, in 2004, a court in Tabouk- north western of Saudi Arabia - ordered an eye to be gouged out for a Saudi offender because he hit a youth eye with a stone which cause him to lose his vision, but the case was settled with compensation.) <http://www.hrw.org/news/2005/12/08/saudi-arabia-court-orders-eye-be-gouged-out>

The Quran and the Sunnah impose the penalty of *Diyah* (compensation), which is money paid to the victim or his family,³¹⁷ for the involuntary killing and unintentional physical injury. The Quran and the Sunnah impose the death penalty for voluntary killing and impose the retaliation for intentional physical injuries, such as teeth for teeth, if it is possible. *Diyah* (compensation) can be imposed when retaliation is impossible, such as cases of severe physical injury that did not result in impairing any part of the victim's body.³¹⁸

The victim or the victim's family can substitute the retaliation penalty with compensation in cases of voluntary killing and intentional physical injuries. When the victim of a *Qisas* crime chooses compensation as his sole remedy, the judge cannot impose a physical penalty on the perpetrator.³¹⁹ However, since *Qisas* crimes include private and public penalties, if the private penalty has been carried out, the public penalty will be omitted.³²⁰ A judge will have discretion to impose a prison sentence on the defendant to preserve public interest if a victim chooses to waive both compensatory and retaliatory penalties.³²¹

³¹⁷ See, BASSIOUNI, *Supra* note 278, at 206. (It is important to point out that *Diyah* as the victim or his family compensation is different than the compensation in civil damage. Compensation under *Qiasa* crime has criminal feature because it is penalty resulted from criminal act. Moreover, the compensation is similar to the fine in certain offence, but they are different in who would receive the money. While *Diyah* goes to the victim or his family, the fine goes to the state.)

See, Human Rights Watch. Saudi Arabia: Free Detainee in 'Eye-for-an-Eye' Case. APR 13, 2013 (Because there is not a specific amount of compensation has to be paid, and it subject to the victim who may request high amount of money, some offenders were not able to pay and remain in prison for many years.) <http://www.hrw.org/news/2013/04/13/saudi-arabia-free-detainee-eye-eye-case>

³¹⁸ BASSIOUNI, *Supra* note 278, at 203.

³¹⁹ SHAHIDULLAH, *Supra* note 289, at 380.

³²⁰ MUHAMMAD AL-RASHEED, CRIMINAL PROCEDURE IN THE SAUDI ARABIAN JUDICIAL INSTITUTION 95 (1973)

³²¹ DANIELS, *Supra* note 272, at 209.

Finally, due to the seriousness of the punishment of retaliation, the crime must be proven beyond reasonable doubt. Otherwise, retaliation punishment cannot be applied and the court can only award the victim compensation. Also, if evidence of the crime cannot be fully established or the crime did not reach the severity of Qisas, the crime can be tried under the Tazear category.³²²

▪ **Tazear Crime.**

Tazear is the third category of crime under Islam. Unlike Hudud and Qisas crime, the Quran and the Sunnah do not discuss the Tazear category of crime. Instead, the government decides the offences and provides penalties in accordance with Islamic law. Islam recognizes that crimes can develop and change over time.³²³

Tazear crimes can be divided into two categories.³²⁴ The first category is crimes that are Tazear in both nature and punishment and include all criminal acts that are not described for Hudud and Qisas. For instance, simple robbery, larceny, attempted adultery, and assault.³²⁵ The second category is crimes that are Hudud or Qisas in nature but are punished as Tazear crimes for several reasons, including failure to reach the required evidentiary standard, uncertainty regarding the evidence, or absence of required conditions required to establish the crime.³²⁶

³²² DANIELS, *Supra* note 272, at 209.

³²³ BASSIOUNI, *Supra* note 278, at 213.

³²⁴ See, Ayoub M. Al-Jarbou, *The Role of Traditionalists and Modernists on the Development of the Saudi Legal system*, 21 ARAB L. Q. 191-195 and 206 (2007) (The codifying of Islamic law is a controversial issue in Saudi Arabia. The Ulama- the religious authority- is arguing against the codifying of Islamic law for the reasons that: the codifying of Islamic law would restrict the judge authority, would prevent the judges from citing the Islamic law as the original source, codifying would prevent the development of judges jurisprudence, and codifying would not solve the problem because cases are not similar. However, their attitude toward the enactment law is unpredicted, they may rejected, request some article to be changed or canceled.)

³²⁵ BASSIOUNI, *Supra* note 278, at 212.

³²⁶ *Id.* at 214. See, DANIELS, *Supra* note 272, at 72. (Since the crime could not be proven in accordance with the crime conditions as in theft or the evidentiary requirement as in adultery. Accused in these cases will be tried under the Tazear penalties.)

In addition, the Tazear category, like the Qisas category, can include a private claim and a public one if the crime affects the public order, society interest, or public safety. In that sense, any act could be considered as a crime and the offender would be punished if it causes a threat to the society. In these situations, if the victim chose to waive his right and to forgive the offender, the judge has total discretion in inflicting punishment if he thinks that punishment is necessary to serve the public interest and to raise public safety.³²⁷ In Saudi Arabia, Tazear are both codified and uncoded.

- Tazear Crimes That have no Criminal Code

Judges over cases regarding uncoded Tazear have total discretion in selecting the proper punishment for each case, since Islamic law does not specify penalties for Tazear category of crime. The judge must decide the case by evaluating Islamic texts in order to derive rules and apply his own interpretation. The process of interpreting the Islamic text is called *Ijtihad*, which means logical reasoning and interpretation.³²⁸ Penalties for Tazear crimes, depending on the seriousness of the crime, can vary from a fine to the death penalty. The penalties fall into the categories of corporal punishment, deprivation of liberty, and monetary penalties.³²⁹

³²⁷ BASSIOUNI, *Supra* note 278, at 214.

³²⁸ DANIELS, *Supra* note 272, at 20-23. See, Al-Arabia News. *Saudi Judge Ruled On Drug Users To Save The Koran Instead Of Prison, If The Young Man Did Not Abide By The Punishment Is Doubled*. Nov. 1, 2010.

<http://www.alarabiya.net/articles/2007/01/23/30992.html> (The sentences judge may consider the Islamic legal doctrine in order to select the proper punishment for the un-codified Tazear crime. One important doctrine states “*Averting harm is to be preferred over bringing benefit*.” Which means, if there is a conflict between harm and benefit, it must be first preventing the harm. Applying this doctrine, if the proper punishment for such a crime is imprisonment, the judge may substitute the imprisonment sentence with community service or any other punishment if he believed that the offender would be seriously harmed whether physically, psychologically, or the offender’s family may be seriously affected.)

See also, Asyraf Wajdi Dusuki & Said Bouheraoua. *The Framework of Maqôid Al-Sharôñah (Objectives of The Sharôñah) and Its Implications For Islamic Finance*, 2 ISLAM & CIV. RENEWAL, 28 (2011)

(Another example of Islamic legal doctrine that the judge can apply “*harm is to be removed*”)

³²⁹ SHAHIDULLAH, *Supra* note 289, at 375. But See, DANIELS, *Supra* note 272, at 72 (Some Muslim scholar believe that the punishment under Tazear crime should not reach the punishment of Hudud crime.)

Corporal punishment includes two types of punishment, the death penalty and lashing. The death penalty can be inflicted for a crime that poses danger and harm to the society, such as rape.³³⁰ To impose the lashing penalty, several rules must be followed. For example, the authority should avoid lashing sensitive areas that might be severely injured, like the head. The number of lashes has been left to the judge's discretion.³³¹ Corporal punishment is the harshest category of punishment for Tazear crimes.

The restriction of liberty is the second type of punishment for Tazear crime. Restriction of liberty includes imprisonment and local banishment. Imprisonment can be imposed on first time offenders, or repeated offender who have been previously punished by lashing. The judge has total discretion in deciding the length of the imprisonment, which can range from one day to more than one year. Local banishment is preventing the offender from traveling. The judge has discretion to decide the period of the local banishment and may place the offender under supervision.³³²

The final category of Tazear penalties is the monetary penalty. Monetary penalties can be imposed on criminal offenders based on the facts and the circumstances of each individual case whenever the judge believed that a monetary penalty is proper. The judge also has discretion to set the amount to be paid to the victim.³³³

³³⁰ BASSIOUNI *Supra* note 278, at 215. See, Amnesty International, Saudi Arabian Court Rejects 'Sorcery' Death Sentence. Nov. 24, 2010.

<http://www.amnesty.org/en/news-and-updates/saudi-arabian-court-rejects-sorcery-death-sentence-2010-11-12> (The court held the death penalty is not appropriate in the case of sorcery because the lack of proof that the offender hurt anyone by his act.)

³³¹ See, *Id.*, at 216 (Lashing is the most encouraged corporal punishment. One reason for that encouragement is that the penalty serve the Islamic aim of making offenders good citizen, and help them return their normal life and continue their work.)

³³² BASSIOUNI *Supra* note 278, at 217.

³³³ *Id.*, at 218.

Besides the three types of penalties, other penalties may be inflicted, based on the circumstances of the case, the nature of the crime, and the type of offender. For instance, the judge can notify the offender that he made a prohibited act and advice him not to repeat his mistake. The judge can also talk to the offender to raise their understanding, sense of responsibilities, and education on how to act in good moral standing and avoid evil acts. Additionally, the judge can blame the offender and increase his awareness on the effect of his act on other and prevent the offender from contacting others until he regrets his act.³³⁴ Finally, judges for uncodified Tazear crimes have total discretion in imposing the punishment. The codified Tazear crimes in Saudi Arabia impose some restriction on judge's discretion.

- The Codified Tazear Crime.

Saudi Arabia has codified several Tazear crimes, such as The Saudi Law against Human Trafficking, The Law of Bribery, and The Saudi Law against Fraud.³³⁵ One important law issued in this category is The Protection From Abuse Act, which criminalizes domestic violence.

The Protection From Abuse Act 2013:

The Protection from Abuse Act, which was issued in 2013, contains 17 articles dealing with the issue of violence against women and children, regulating the reporting of these cases, outlining the responsibilities of the Ministry of Social Affairs, and providing the punishment for the perpetrators. This section will illustrate the important articles in the Act.

³³⁴ BASSIOUNI *Supra* note 278, at 218.

³³⁵ The Saudi Arabian Law Is Available Here <http://www.wipo.int/wipolex/en/profile.jsp?code=SA>

The first article in the Act defined abuse as any form of exploitation—physical or psychological, sexual abuse, or the threat of committing any form of abuse, committed by a person who has authority, or responsibility for another person, or committed by a person against another person who they have family relationship with, maintenance relationship, warranty, guardianship, or consequential living. The crimes also include failing to fulfill responsibilities or obligations toward any family member.³³⁶

The Act indicates the desired goals in article two, which include protecting society from all forms of abuse, assisting victims of abuse by providing medical services, social services, and shelter, making abusers accountable for their acts by punishing them, and raising societal awareness on the negative effect of abuse.³³⁷ Article Three obligates any person to report any cases of abuse that he knows. Also, the article specifically obligates workers in public or private places to report cases of abuse that come to their knowledge.³³⁸ Article four states that cases of abuse should be reported to the police station and the Ministry of Social Affairs. Article Five provides that workers will be accountable for violating articles related to reporting cases of abuse.³³⁹

Article Seven states several steps that the Ministry of Social Affairs must take after receiving a case of abuse. For instance, the Ministry must provide medical services for the victim, take the necessary steps to stop the violence, provide family counseling, and provide a safe place for the victim.³⁴⁰ Article Eight obligates the Ministry to take all necessary measures to protect the victim if it appears from the report that the victim's life

³³⁶ The Protection From Abuse Act 2013. Article 1.

³³⁷ *Id.*, Article 2.

³³⁸ *Id.*, Article 3.

³³⁹ *Id.*, Article 4.

³⁴⁰ *Id.*, Article 7.

is threatened or the abuse was severe.³⁴¹ Article Ten provides that the Ministry should be cautious when dealing with abuse cases and should not take any step that may harm the victim or affect the victim's work status or social life.³⁴²

Finally, Article 11 obligates the Ministry to report the abuse case to the police if the abuse incident is considered a crime.³⁴³ Article 13 provides the punishment for abusing any family member. The Act states that the perpetrator of abuse will be subject to a prison sentence of no less than one month and no more than one year or a fine for no less than 5000 SR and no more than 50,000 SR, or both.³⁴⁴ This act provides protection for women living in abusive relationship. Several other regulations related to marriage and divorce may offer some protection.

- **Section Four: Family Law.**

Saudi Arabia follows the Islamic family law with respect marriage, divorce, child custody, and rights in the marriage relationship. The judicial system of 2013 indicates that family disputes will be tried in the family court.³⁴⁵ Yet, there is no single codified provision of family law in Saudi Arabia and cases of family dispute are subject to the jurisprudence of the judge.³⁴⁶ Several regulations and articles can be found in other Saudi laws that regulate family issues.

³⁴¹ The Protection From Abuse Act 2013, Article 8.

³⁴² *Id.*, Article 10.

³⁴³ *Id.*, Article 11.

³⁴⁴ *Id.*, Article 13.

³⁴⁵ Workshop By Abdulmajeed Aldheishy, Saudi Women Rights Under The Saudi Judicial System (2011)

³⁴⁶ Muscat Document on the Uniform Code of personal status for the GCC countries of the Arabian Gulf (2001)

The ministry of justice has issued a regulation regarding the marriage contract. This regulation aims to protect both parties in the marriage contract. The regulation identifies who may have the license to record the marriage contract. Also, the regulation obligates the writer of the marriage contract to ensure that all marriage requirements under Islam are satisfied, for instance, both parties have consented to the marriage, and the female getting married must have a male guardian. The regulation provides some details for when a woman does not have a male guardian or if her guardian refuses to marry her off for unlawful reasons, stating that court would grant the marriage for her.³⁴⁷

The Reform Committee (islah that albain) was established in 2002. The Reform Committee helps reform all dispute, and specifically family disputes, before the case starts to be processed in court. The committee receives the case from court, police, or any family member. The committee's goals are to protect the family and resolve family disputes in private without the need of court intervention. Yet, if the committee fails in reconciliation, the disputing parties can take the case into court.³⁴⁸

Several other regulations were issued to protect women's right to enter into a marriage relationship with free will and provide a penalty for forced marriage. Regulation Number 91/1 indicates that the woman's consent to the marriage must be obtained, even if her father was her guardian.³⁴⁹ Regulation Number 21/12 indicates that a woman must not enter a marriage relationship by force and the guardian is prohibited from preventing his daughter from getting married.³⁵⁰ Also, regulation Number 13/2599 explains that

³⁴⁷ Saudi Regulation of Marriage Recorder, Article 6-14-15-16-17.

<http://www.lasportal.org/wps/wcm/connect/b72167004e8065da9103bb5cbcbea77a/nekah.pdf?MOD=AJPERES>

³⁴⁸ The Reform Committee (Islah That Albain.) <http://www.islah.gov.sa/islah2/page.php?do=show&action=t3ref>

³⁴⁹ The Ministry of Justice, Women's rights in the Saudi Arabia judicial systems.

<http://www.moj.gov.sa/ar-sa/Pages/WomenRights.aspx>

³⁵⁰ *Id.*

forced marriage can result in a prison sentence for the guardian.³⁵¹ Other regulations illustrate some issues in case of divorce, such as regulation Number 8/26, which states that the divorce instrument should be delivered to the divorced woman.³⁵² Regulation Number 8/25 states that in case of divorce by court decision, the period that the divorced women has to wait before remarrying starts from the day the court issued the decision and not from the day the appellate court ratifies the decision.³⁵³ These regulations govern basic issues in marriage and divorce; other important articles related to the family are illustrated in the Saudi trial procedure law and the Saudi Implementation System.

The Saudi trial procedure law provides one article related to the enforcement of judicial decisions in family cases. This system indicates that implementing judges' decisions in family cases (such as alimony, providing housing, and visiting hours) should be accelerated.³⁵⁴ The Saudi Implementation System, provides the mechanism for enforcing the alimony decision.³⁵⁵ Another provision in the system indicates that the police can interfere in cases related to child custody to enforce judges' decision.³⁵⁶ These articles protect divorced women and her children in case of divorce.

³⁵¹ The Ministry of Justice, *Supra* note 394.

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ The Saudi Trial Procedure, Article 169.

³⁵⁵ The Saudi Implementation System 2013, Article 73

³⁵⁶ *Id.*, Article 74 and 76.

○ **Conclusion**

The legal system in Saudi Arabia is comprised of four sources of law. The two primary sources are the Quran and the Sunnah. The secondary sources are the Ijma, and Qiyas. All laws and regulations in the country must be consistent with these sources. In addition, there are two judicial authorities in Saudi Arabia, the Shari'a Court and the Board of Grievances. Applying rules derived from the four sources of law on cases before the courts enhance judicial independence and impartiality.

Also, Saudi Arabia follows the Islamic criminal justice system, which divides the crime into three categories: Hudud, Qisas, and Tazear crimes. Punishment under Hudud crime and Qisas crime are specifically described in the Quran or Sunnah. Since crime changes and develop from time to time, Islamic law left decisions regarding Tazear crime to Muslim rulers in accordance with Islamic law.

Finally, some Tazear crimes in Saudi Arabia can be found in written codified. One of the important laws that were issued is The Protection from Abuse Act, which seeks to protect women from abuse and violence and punish perpetrators. While family law is not codified in Saudi Arabia, general regulations were issued to help resolve family disputes.

❖ Chapter five: The Protection From Abuse Act.

○ Introduction.

In most parts of the world, domestic violence is considered a crime and is punishable by law. Saudi Arabia has taken many years to realize that violence in the family is a serious issue that needs to be addressed. In 2013, the Protection from Abuse Act was issued. Though the act is a step in the right direction, it needs to be reformed in several ways to provide effective protection for Saudi women. First, the act must be rewritten to include the term domestic violence and the definition must be reformed to cover all forms of abuse. Second, the act must punish abusers in a way that effectively deters future abusive behavior. Third, abuse should always be treated as a crime under the law. Finally, the Ministry of Social Efforts should administer mandatory rehabilitation programs for abuser.

The Protection from Abuse Act was drafted in 2009, but it took four years for the law to be approved. The act was proposed as a response to the local and international calls for protection women and as a replacement for the sexual harassment act, which was faced opposition from many Saudi conservative. Due to cultural misinterpretations of Islamic teachings, some husbands abuse their wives for the sake of gaining power and control. However, human rights principles dictate that women should be protected from violence, even in their family relationships. Establishing penalties for domestic violence would send a clear message that the costs of beating any family member outweigh the reward of controlling another person. Further, codified penalties for domestic violence would provide certainty for victims seeking relief from the courts.³⁵⁷

³⁵⁷ See, AL-JIBREEN, *Supra* note 2, at 107. (Applying the exchange theory on the Saudi society, where there is no law to criminalize domestic violence, the cost of beating family member does not outweigh the rewards.)

The first section of this chapter will discuss how courts were dealing with domestic violence cases before the issuance of the Protection from Abuse Act in its current form. The second section will introduce the reasons for issuing The Protection from Abuse Act and will include two subsections. The first subsection will introduce the local and international calls for protecting women from abuse and the second subsection will discuss the issuance of the Protection from Abuse Act as a replacement for the law about sexual harassment. The final section will cover the problems in the Protection From Abuse Act of 2013 and will provide suggestions for improvement.

○ **Section One: How Courts Were Dealing With Domestic Violence Cases Before The Issuance of the Protection from Abuse Act.**

Several problems appear from the absence of law that criminalizes domestic violence. First, the law only treats domestic violence cases as crimes when either the victim or the public prosecutor presses criminal charges. Otherwise, the case is treated as a family dispute and is only subject to family law. While applying family law to emotional, social, and economic abuse can be effective,³⁵⁸ applying family law to cases of physical violence create problems that may affect the victim and children's right to be protected.

If domestic violence victims are required to press charges for criminal law to apply, judges may focus more on the relationship between the victim and the perpetrator as husband and wife, the presence of children, and the husband as a guardian. Victims in these cases do not receive fair and just trials because judges often prioritize protecting family relationships over holding abusers accountable for their crimes. In prioritizing family relationships, judges are reluctant to apply harsh punishments or long prison sentences and often dismiss criminal claims for abuse because they think that imposing criminal punishments will create additional family problems.³⁵⁹

³⁵⁸ See, for example, General Court in Riyadh, case no 32/160, dated 1427 H, 2006. Modawant Alahkam Alqdaeah, first edition, 387.

³⁵⁹ Abdurahman Al-Mahrag, Criminalizing Domestic Violence Under Shre'a Law And The Written Law (2008) (unpublished Ph.D Thesis, Naif Arab University for Security Sciences)(on file with author) at 243. See also, Case 1 in the attachments at 174-175 (The judge in this case dismiss the wife claim that her husband physically abused her.)

Another problem with this practice is that punishments for the same criminal act vary significantly throughout Saudi Arabia. Because this crime was not codified in Saudi Arabia, Tazear judges had total discretion to decide cases. Victims could not predict the punishment that perpetrators may receive. Penalties range from a formal pledge not to commit the crime again to receiving a number of lashes.³⁶⁰

However, when victims do not press criminal charges in domestic violence cases, the cases are treated under family law with the goal of reforming the relationship between the parties. While this may be an effective method for dealing with emotional or economic abuses, it does not adequately address the safety risks posed to victims of violent acts. In emotional abuse cases judges may stop the abuse by issuing a divorce or requiring the husband to write a pledge that he will respect his wife.³⁶¹ In economic abuse cases the judge can obligate the husband to provide appropriate living arrangements for the family, financial support for his wife, and child support for the children.³⁶² In cases of social abuse, like a father preventing his daughter from getting married, the judge can transfer the girl's custody from her father to himself or to anyone in the family to complete her marriage process.³⁶³

The Reform Committee also does significant work in ending emotional and social-economic abuse. They study the case and work to educate the case parties—raising their awareness on their rights and duties toward each other and illustrating the negative impact of the abuse in their relationship. The committee works to reach an agreement between the parties and gives its recommendations to the judge regarding how to solve

³⁶⁰ BASSIOUNI, *Supra* note 278, at 213.

³⁶¹ General Court in Riyadh, Case no 3/334, dated 1426 H, 2005. Modawant alahkam alqdaeah, first edition, p 284.

³⁶² General Court in Riyadh, Case no 3/243, dated 1426 H, 2005. Modawant alahkam alqdaeah, first edition, p 256.

³⁶³ General Court in Riyadh, Case no 32/160, dated 1427 H, 2006. Modawant alahkam alqdaeah, first edition, p 387.

the issue if the parties do not agree. Even though going through family courts and the reform committee is a long process, when there is no fear for the victim's safety, it can be very effective.³⁶⁴

However, a long process is detrimental when physical abuse is present. For example, in divorce cases, some judges tend to process cases very slowly—hoping to reconcile the husband and wife to prevent the divorce. The judge may ask the woman to provide grounds for divorce, which woman may not be able to provide. In divorce cases, victims of domestic violence and their children may suffer unnecessary acts of violence. Once a divorce is issued, the judge may also determine child custody and maintenance, or the judge may treat child custody as a separate case, which requires divorced women to initiate a new case.³⁶⁵ Without clear protections for children, a victim's children may be at risk of being abused as well.

Finally, when physical abuse cases are treated under family law, perpetrators are not punished for abusing, hurting, or injuring their family members. This results in losing the main issue of the case, which is the violence, and raises the assumption that violence in the family is not a crime. Social exchange theory explains that when there is no cost for the violent acts, more women will experience violence in their homes.³⁶⁶ Therefore, to reduce violence in the society, there must be costs to violence and abuse toward any family member.

³⁶⁴ The Reform Committee, *Supra* note 348. See, ALKAJA, *Supra* note 131, at 41-42 (In choosing the mediators, the judge has to ensure that both mediators are fair, with high moral, with good intent, and have some knowledge of the problem.)

³⁶⁵ Cases Collected from the Family Protection Association. See Case 2 in the attachment at 176. (The victim, who had two daughters, suffered of physical and emotional abuse from her husband. The victim claimed that her husband is a drug and alcohol abuser and she had reported that to the police but her brothers had convinced her to drop the charges. The victim sought divorce and her children custody. The court issue Kule and did not decide the children custody.)

³⁶⁶ Danis, *Supra* note 34, at 237-239.

○ **Section Two: The Issuance of Protection From Abuse Act 2013.**

The Protection from Abuse Act was proposed in 2008 by two university professors, Dr. Munera Al Saud and Dr. Sami Aldama'ge, who were supported by The King Khalid Foundation—a charity established in 2001 by family members of the late king.³⁶⁷ The law was referred to the Panel of Experts, a special department in the Council of Minister that is responsible for drafting laws. After the Panel of Experts approved the law, it was referred to the Shura Council, where it was discussed and referred to the Council of Minister where the law was approved. The Act was a response to the local and international call for protecting women from abuse and replaced the previous law regarding sexual harassment.³⁶⁸

• **First:** International and local calls.

Saudi Arabia has adopted a number of treaties that regulate human rights, provide equal treatment for all citizens, expose any form of discrimination in the country, and illustrate the state's obligation to address any human rights abuses. In 2001, Saudi Arabia signed and ratified The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),³⁶⁹ which was introduced by the U.N and contained 30 articles. Although Saudi Arabia has made general reservation that in the case of contradiction between any provision in the Convention and Islamic law, Islamic law prevails. Also, Saudi Arabia has made another reservation on article 9 section 2 and

³⁶⁷ Mohammad Hayder. *The Panel of Experts Approved The Protection From Abuse That Was Drafted By King Khalid Foundation*. Al-Riyadh Newspaper. Mar. 10, 2009. No. 14869 <http://www.alriyadh.com/414892>

³⁶⁸ National Society For Human Rights, Shura replaces the sexual harassment Law with the protection from abuse.

2012 http://nshr.org.sa/?selected_news=ب-الجنسي-التحرش-قانون-يس-تبدل-الشورى

³⁶⁹ Human Rights Clinic. Human Rights and Domestic Violence, An Advocacy Manual 22 (2010) <http://www.wmd.org/documents/DCS/ASHRSA111408.pdf>

article 29 section 1.³⁷⁰ Both of these articles are not relevant to the issue of women's protection.

In general, CEDAW intended to defend against any form of discrimination against women. In doing so, the treaty encouraged governments to end any act of discrimination against women, whether in public or private sphere, and raise equality between men and women for all opportunities. Countries that signed and ratified the agreement committed to put the treaty's articles into practice and to prepare a report of their progress every four years.³⁷¹

Saudi Arabia also signed the Convention of the Rights of the Children (CRC) in 1996. In this convention, Saudi Arabia made a general reservation to all articles that contradict with Islam, without specifying which articles were applicable to this reservation.³⁷² The convention calls for protecting children from physical abuse, sexual abuse, and neglect in their family and for introducing legislation to protect children from mistreatment.³⁷³

³⁷⁰ Declarations, Reservations and Objections to CEDAW, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm> ("Article 9, 2. States Parties shall grant women equal rights with men with respect to the nationality of their children. Article 29,1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.")

³⁷¹ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979) <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

³⁷² Status of Ratification Interactive Dashboard. <http://indicators.ohchr.org>

³⁷³ Convention on the Rights of the Child. <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

See also, Mohammad alsayg, *Child rights in Islamic jurisprudence and judicial system, with application of Sharia courts*, ALADEL J.15 (2009) (The article provide further treaties that Saudi Arabia signed with respect children rights.)

After the adoption of the treaties, many human rights reports criticized Saudi Arabia for neglecting the issue of women and children rights abuses in the country and³⁷⁴ the gap between what the treaties call for and the protections offered by Saudi law. The Saudi government worked to reduce this gap by establishing several departments, government agencies, and civil society organizations, including the Protection Committee, the Saudi Human Rights Commission, and the National Society for Human Rights. All of these departments focus on the protection of human rights in the country.

The Ministry of Social Affairs established 13 social protections committees in 2004. The committees employ social workers to investigate the issue of violence in the family and provide studies to the committees. The committees also provide hotlines and receive complaints of domestic violence and abuses. They work to provide shelter and social services for victims and help victims resolve the issue within the family. Victims can be referred to the committee by an order from the National Society of Human Rights.³⁷⁵

The National Society of Human Rights was established in 2004³⁷⁶ and the Saudi Human Rights Commission was established in 2005.³⁷⁷ Both departments focus on protecting human rights in Saudi Arabia. Their work includes issuing annual reports on cases they receive and the types of abuse victims suffered, helping the community realize their rights by creating programs and workshops, receiving complaints of cases of abuse, and working to help victims taking their cases to court to receive their rights.

³⁷⁴ ABAS ABDULMAHMUD & MOHAMMAD ALBASHRY, DOMESTIC VIOLENCE IN THE CONTEXT OF GLOBALIZATION 105 (2005)

³⁷⁵ General Department of Social Protection. <http://www.hemayah.org>

³⁷⁶ The National Society of Human Rights. <http://nshr.org.sa/en/>

³⁷⁷ The Saudi Human Rights Commission. <http://www.hrc.gov.sa/sites/ar/default1.aspx>

In summary, the establishment of the human rights department and the protection committee in Saudi Arabia was a good start to put the treaties provisions into practice and for the Saudi government to fulfill its obligation under the international treaties.³⁷⁸ The issuance of the Protection from Abuse Act is further evidence that the government recognizes the seriousness of domestic violence. The issuance of the Act was a result of the negative attitude toward the law of sexual harassment.

- **Second:** The Law regarding Sexual Harassment

The Shura counsel, which is responsible for discussing law, worked to issue a law that protects women from harm or assault. At first, they discussed a proposed law concerning sexual harassment.³⁷⁹ After a long debate on the sexual harassment law, it was replaced by the Protection from Abuse Act of 2013. The Protection from Abuse Act limited the scope of the sexual harassment law in cases of sexual violence, but because of the negative attitude toward the sexual harassment law it was canceled.³⁸⁰

Conservatives have argued against issuing law against sexual harassment. In their point of view, the law is too influenced by Western countries and sexual harassment is rare in Saudi Arabia because of laws prohibiting gender mixing. Conservatives also argued that there is already a government organization in Saudi Arabia to handle these cases and suggest ways to protect women from sexual assault.³⁸¹

³⁷⁸ Human Rights Watch, Saudi Arabia: Abuses In International Spotlight. Oct. 20, 2013

<http://www.hrw.org/news/2013/10/20/saudi-arabia-abuses-international-spotlight>

³⁷⁹ Alshrq Al-Awsat Newspaper, *Saudi Arabia: Studying Proposes Bill to Punishes Sexual Harassment in Work Places*. No 11029. Feb. 7, 2009.

<http://archive.aawsat.com/details.asp?section=43&article=506018&issueno=11029#.VPS75Uvscds>

³⁸⁰ National Society For Human Rights, Shura replaces the sexual harassment Law with the protection from abuse.

2012 http://nshr.org.sa/?selected_news=ب-الجنس-ي-التحرش-قانون-يس-تبدل-الشورى

³⁸¹ Fahad Alhumidan, Sexual Harassment .. Western Idea. Riyadh Newspaper. Dec. 8, 2010

<Http://Www.Alriyadh.Com/2010/12/08/Article583191.Html>

against them.³⁸⁴ These arguments had totally disregarded the victim of sexual harassment's right to be protected.

The opponent's argument, although not persuasive³⁸⁵ and not consisted with the Islamic and human rights principles has lead to the dismissal of the sexual harassment law.³⁸⁶ The Shura counsel then discussed the Protection from Abuse Act, which was not faced with the disagreement as the sexual harassment law because it covers a specific type of relation. However, the Protection from Abuse act may not have the desire effect on reducing the violence in the family because of absence of clear title for the act, which could potentially help spread the message that domestic violence is a crime. There are other problems with the Act with respect the definition of abuse, the punishment, treatment abuse cases as criminal, and the absence of program treatment for offenders.

³⁸⁴ Shetwe Algaith, *The Law Of Sexual Harassment And The Opposite Movement*. Okaz Newspaper. Dec. 3, 2013 <http://www.okaz.com.sa/new/Issues/20131203/Con20131203659074.htm>

³⁸⁵ See, United Nation, Concluding Comments of The Committee on The Elimination of Discrimination Against Women, Fortieth Session 14 January-1 February, 4-5 (2008) http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.SAU.CO.2_en.pdf (The conservative arguments against the sexual harassment law are unpersuasive for several reasons. First, their belief that sexual harassment is uncommon is only supported by the fact that the Saudi government lacks statistics on the matter) also see Royal Decree No. (759/8) In 05/10/1421 AH, and No (11651) On 05/16/1403 AH (The arguments that a law against sexual harassment will lead to gender mixing in the workplace is unfounded because Labor Law already prohibits gender mixing in the workplace.)

³⁸⁶ See, MASHHAD AL-ALLAF, MIRROR OF REALIZATION: GOD IS A PERCEPT, THE UNIVERSE IS A CONCEPT 85-86 (St. Louis, Mo. 2003) (Protecting human life is one of the five essential objectives of Islam, Islam has legislated marriage and made it the center of childbearing and the preservation of human. Islam prohibits assault, killing, or harming another person. Islam also prohibits defamation and insult or any act that may affect the integrity of a person. Islam has also granted exemptions from other laws in times of necessity. For instance, in times of hunger, Islam has legislated the eating of pork.)

○ **Section Three: The Protection from Abuse Act 2013.**

- **First problem:** Title and Definition.

The crime of domestic violence has three important elements: the location of the crime,³⁸⁷ the relationship between the victim and the perpetrator,³⁸⁸ and the abuse as pattern to gain power and control.³⁸⁹ The title of the Act and the definition within the Act has failed to recognize two important element of the crime, which is the location of the crime and the abuse as pattern to gain power and control. All of the three elements must be present for the crime to be considered domestic violence.

With respect the location of the crime, the name of the Act is too broad and fails to specifically cover crimes of abuse within the home. By failing to identify the crimes as “domestic” violence, some victims may think the Act applies only to abuse between strangers. Lay people know about the act by its name, only reading though the act can clarify that the act covers domestic cases. Also, the definition of abuse given in the Act does not match the definition of domestic violence.³⁹⁰

The definition stated in that the act limits the protection from abuse to only person who has some sort of relation with another one. The first article provide that the crime will be covered under this act if it committed by a person who has mandate, authority, or responsibility, against another person, or committed by a person against another person who they have family relationship with, maintenance relationship, warranty,

³⁸⁷ Michelle Madden Dempsey, *What Counts As Domestic Violence? A Conceptual Analysis*, 12 Wm. & Mary J. WOMEN & L. 301-311 (2005-2006)

³⁸⁸ See, *Id.*, at 314. (Like the location of the crime, the relationship in domestic violence distinguishes domestic violence from other crimes where the parties are either unrelated or have a business relationship. The relation between the perpetrator and the victim can be one of several forms of relation such as intimate or any family relation. This element of the crime is mostly recognized in domestic violence laws.)

³⁸⁹ Steve Mulligan, *Redefining Domestic Violence: Using the Power and Control Paradigm for Domestic Violence Legislation*, 29 CHILD. LEGAL RTS. J. 33- 36 (2009)

³⁹⁰ Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 GEO WASH. L. REV. 552- 566-567 (2007)

guardianship, or consequential living. While the act considers the second element of domestic violence, which is a familial relationship between the perpetrator and the victim,³⁹¹ the act did not refer to the term domestic or use any term to specify the location of the crime in the definition.³⁹² Ignoring the location of the crime may lead people to think that the legislature is not ready to consider violence in the family as a public matter.

It is important to stress the location of the crime to distinguish domestic violence from public crime. The location of the crime also draws attention to the concept that homes are regarded as private, secure, and peaceful places and government is not allowed to interfere. Issuing law against domestic violence raises awareness that violence in the family is not solely a private matter and when homes become unsafe, the government is obligated to interfere.³⁹³ Western countries that gave long attention to the issue of domestic violence and introduced laws to criminalize it put the term “domestic violence” in the title of their act. For instance, in New Zealand, the first law against domestic violence was the Domestic violence Act of 1995,³⁹⁴ which was amended by the Domestic Violence Amendment of 2009.³⁹⁵

³⁹¹ Domestic Violence Act 1995, Article 3 (Even though different countries and different laws define “domestic relationships” differently. While some law has focus on listing the types of relation such as the protection from abuse; other laws generally stated that there is a “domestic relationship” such as, New Zealand law of domestic violence. The relation as an element of domestic violence is also connected with using power and control.)

³⁹² The Protection from Abuse Act, Article 1.

³⁹³ Dempsey, *Supra* note 387, at 310-313.

³⁹⁴ Domestic Violence Act 1995.

³⁹⁵ *Id*, Article 124K (2).

Using the term domestic violence in the title for this act is very important to satisfy the first element of the crime and for several other reasons. First, to stress out that violence in the family is regarded as a crime and punishable by law. Second, naming the act as domestic violence will directly shift the judge's attention to the relationship between the perpetrator and the victim, which causes him consider the safety of the victim and children. Third, domestic violence is separated from other crimes between strangers. It has a unique nature and requires different law, procedure, prosecution, and punishment. Fourth, using the correct term in the title may help to deter future violence.³⁹⁶

The term domestic violence is not a new term in the Arabic language. This term is widely used in Saudi Arabia by reports that focus on family violence as a way to indicate the location and the type of crime. The Saudi National Society for Human Rights used the term domestic violence when providing relevant categories of crime.³⁹⁷ Also, the Ministry of Social Affairs has used the term domestic violence or family violence to indicate the types of cases they have received.³⁹⁸ Recognizing the location of the crime cannot by itself lead to understand the nature of the crime, it must be associated with another important element, which is exhibiting a pattern of power and control.

³⁹⁶ Dempsey, *Supra* note 387, at 312.

³⁹⁷ The Ninth Annual Report on The Saudi National Society For Human Rights 34- 35 (2012). The Eighth Annual Report on The Saudi National Society For Human Rights 37- 40 (2011)

³⁹⁸ Kaled Alblahedy, *Riyadh has the Highest Rate of Domestic Violence Cases*, Okaz newspaper. Feb. 5, 2011 <http://www.okaz.com.sa/new/Issues/20110205/Con20110205398963.htm>

While the Act has defined abuse as exploiting or causing physical, sexual, or psychological harm, or omitting responsibility toward another, it failed to recognize that this abuse is a pattern of on-going conduct, which is the core of the crime.³⁹⁹ One possible explanation for not focusing on the abuse as a pattern is that the act punishes a single act of abuse. This explanation is not persuasive since single act of abuse can be covered under the General Criminal Law. The repetitive act of abuse is an important element of the crime and should be stated in the definition because it distinguishes the crime from other isolated crimes. Also, understanding the nature of the crime as a pattern of abusive behavior toward a family member is very important in placing the appropriate punishment and taking other protective safety measures. Viewing abuse in the family as a single act may seem minor and may result in reducing the punishment or even acquittal.⁴⁰⁰

Including the term “pattern” in the definition is necessary because studies in Saudi Arabia indicate that women suffer repetitive acts of abuse in their families. For example in 2009, a study measured the growth, severity, and forms of spousal abuse experienced by women. The study looked at 689 married women who visited the primary health centers in Medina, Saudi Arabia. The study revealed that 57.7% of women reported a lifetime of abuse.⁴⁰¹ Two other studies indicated that repetitive abuse continues even when women are pregnant.⁴⁰² These studies provide evidence that family violence in

³⁹⁹ The regulation for the Protection from Abuse Act states in Article 1 that to consider the crime as psychological abuse, the abuse has to take a form of repeated act.

⁴⁰⁰ Mulligan, *Supra* note 389, at 37.

⁴⁰¹ A.A.Tashkandi & P. Rasheed. *Wife Abuse: A Hidden Problem. A Study Among Saudi Women Attending PHC Centers*, 15 E. MEDITERR. HEALTH J. 1242-1249 (2009)

⁴⁰² See, Rachana C. & Suraiya K. ET AL, *Prevalence and complications of physical violence during pregnancy*. 103 EUR. J. OF OBSTET. & GYNECOL. & REPROD. BIOL. 26-29 (2002) (21% of pregnant women reported that they experience physical abuse during pregnancy.) Also see, Zeinab Emam M. Afifi , Nouriah S. Al-Muhaideb ET AL. *Domestic Violence and Its Impact on Married Women's Health in Eastern Saudi Arabia*. 32 (6) SAUDI MED. J. 612-617 (2011) (11% of pregnant women report that they suffer physical abuse.)

Saudi Arabia is series of abusive behaviors. The definition did not only fail to recognize the nature of the abuse but also did not stress the motive behind the abusive behavior.

Domestic violence is a pattern of on-going conduct, motivated by gaining power and control. This element of the crime has an effect on recognizing several forms of abuse. The person who holds the power in the family relation exercises the power to control other family members. This element of the crime is explained in several laws against domestic violence.⁴⁰³ For example, the State of Massachusetts defined domestic violence as “a pattern of coercive and controlling behaviors and tactics used by one person over another to gain power and control.”⁴⁰⁴ Failing to recognize the motive of abuse in the Protection from Abuse Act has resulted in limiting the form of abuse that the act covers to only neglect, physical, sexual, and psychological abuse. Psychological abuse, as the regulation for the protection from abuse act explains, only includes mistreatment that may affect the person’s dignity or moral rights.⁴⁰⁵

It is very important to recognize the motive of gaining power and control as an element of the crime and to include it in the definition. Doing so acknowledges that wives often suffer financial and economic abuses, as well as restrictions on their mobility and access to public resources. A husband who has a motive to control his wife may use several modes in addition to causing physical, sexual, or psychological harm. For example, a husband may try to control his wife by preventing her from going to work or having access to her income.⁴⁰⁶ Research in Saudi Arabia indicates that often women suffer the forms of abuse described in the act. For example, a community-based cross-

⁴⁰³ Mulligan, *Supra* note 389, at 33- 35.

⁴⁰⁴ Massachusetts The Executive Office of Public Safety and Security, Definition of domestic violence.

⁴⁰⁵ Implementing Regulations the Protection From Abuse Act, Article 1.

⁴⁰⁶ Mulligan, *Supra* note 389, at 36.

sectional survey conducted in 2011, the study included 2000 women who were in a marriage relation at some point of their lives. The study revealed that about 35.9% suffered psychological abuse, 17.9% suffered physical abuse, and 6.9% experienced sexual abuse.⁴⁰⁷ Other studies and reports indicate that women suffered forms of abuse other than psychological, physical, and sexual abuse.

The Saudi National Society for Human Rights reports for 2011- 2012 revealed that the National Society dealt with several abuse cases, including preventing women from getting married, depriving of education, depriving of employment, preventing access to work earnings, or infringing on property rights.⁴⁰⁸ The reports also show that women suffer from a denial of rights to inheritance and husband's abandonment.⁴⁰⁹ These reports indicate that many men gain power and control through exercising many forms of abuse.

In summary, the Protection from Abuse Act ignores the location of the crime and that the abuse is a pattern of power and control. Instead, the Act only focuses on the relationship between the parties. The Protection from Abuse Act should clearly state that it covers domestic violence and incorporate all three elements of the crime of domestic violence. Focusing on one element of the crime is not sufficient to capture and understand the nature of the crime. Ignoring the facts that domestic violence takes place in the home and is a pattern of abuse, led to an unsatisfactory punishment system that does not serve the needs of abused women.

⁴⁰⁷ Emam, *Supra* note 402, at 612. See also, ABDULLAH AL-YOUSEF ET AL. DOMESTIC VIOLENCE – A FIELD NATIONAL STUDY IN KSA 184 (1st ed. 2005). (A national study was conducted in 2005 on 25 women working in prison concluded that the most common form of abuse they worked with was negligence, followed by emotional abuse, physical abuse, and sexual abuse.)

⁴⁰⁸ The Ninth Annual Report on The Saudi National Society For Human Rights 34- 35 (2012). The Eighth Annual Report on The Saudi National Society For Human Rights 37- 40 (2011)

⁴⁰⁹ *Id.*, at 42.

- **Second Problem: The Punishment.**

Article 13 in the Protection from Abuse Act states that the Islamic criminal justice system and other Saudi regulations take precedence over the Act when they provide a severe punishment, otherwise, offenders who commit physical, sexual, or psychological abuse will be punished by a term of imprisonment not less than one month and not more than one year and/or a fine of not less than five thousand and not more than fifty thousand Riyals. In cases of recidivism, the penalty is doubled. The article also gives courts discretion to decide an alternative penalty for imprisonment.⁴¹⁰

Because of the severity of the crime, the legislation provides that Islamic law will dictate the punishment for the forms of abuse that fall under Hodod or Qasis crimes.⁴¹¹ Therefore, Physical abuse can fall under Qasis crime when the act of beating or hitting resulted in the victim's death. If the perpetrator intended to kill his victim he will be punished by the death penalty, but if he did not intend to kill he will be punished by being required to pay compensation to the victim's family. Also, physical abuse can fall under Qasis crime when the abuse maims any part of the victim's body or causes the loss of any body part like an eye or ear. In such cases, the perpetrator will be punished with the same degree of harm caused to the victim.⁴¹² For example, if a husband cuts off his wife's ear, the judge may declare that the husband's ear should also be cut off. But if the retaliation is not possible, the judge can impose compensation that is appropriate for the victim's injury. The judge also can impose a prison sentence for public interest.⁴¹³

⁴¹⁰ The Protection From Abuse Act 2013, Article 13.

⁴¹¹ SHAHIDULLAH, *Supra* note 289, at 377.

⁴¹² Alnoman Almishal, *Provisions of The Disciplinary Offense in Islamic Jurisprudence and Its Applications in Riyadh Courts*. 3 Al-Adel J. 7 (2001)

⁴¹³ Al-ajlan, *Supra* note 138, at 93.

With respect Hodod crime, physically abusing one partner cannot by itself be considered a Hodod crime, but other factors associated with the perpetrator may make the abuser subject to the Hodod punishment. For instance, if the perpetrator is a drug addict or alcoholic, he will be punished for his violent act under Qisas or Tazear crime depending on the severity of the abuse, and he will be punished by lashes under Hodod crime for his alcoholism.⁴¹⁴

Psychological abuse is more difficult to punish. It does not fall under the Qisas category since it does not include physical touching. However, psychological abuse can be punished under Hodod only if it includes verbal abuse, when the offender accused his partner of committing adultery without providing four eyewitnesses. The perpetrator in this case will be punished with lashes for the crime of defamation.⁴¹⁵

Sexually abusing a family member can fall under the Hodod crime only if it resulted in unlawful sexual intercourse. Perpetrators in this case will be punished by stoning to death if married, or 100 lashes if not married. Perpetrator can also be punished by cutting off one arm and one leg from the opposite sides, death by means other than crucifixion, or death by crucifixion if he committed highway robbery and rape.⁴¹⁶ Sexual abuse also falls under the Qisas crime if the attempt to have sexual intercourse resulted in death, maiming, or severe physical injury.⁴¹⁷ If the severity of the abuse does not rise to the level described under the Hodod and Qisas crimes, this article states that imprisonment or fine would be applied and the judge can impose an alternative penalty for imprisonment.

⁴¹⁴ See Chapter four at 75-77.

⁴¹⁵ *Id.*

⁴¹⁶ Fatwa Center, Unlawful Sexual Intercourse. No 183733. July 18, 2012
<http://fatwa.islamweb.net/fatwa/index.php?page=showfatwa&Option=FatwaId&Id=183733>

⁴¹⁷ See Chapter four at 75-77.

Despite the types of punishment, this article made an improvement by codifying the punishment under Tazear crime, which most cases of abuse such as slapping, hitting, and sexual harassment are included. Yet, giving judges the ability to decide alternative penalties for deprivation of liberty, without specifying the penalty, weakens the law. Almost all alternative penalties for deprivation of liberty fall under Tazear punishment. The judge under Tazear crime has total discretion to decide the punishment, which range from the death penalty, fine, pledge, or blaming.⁴¹⁸ By allowing the judge to decide alternative punishment, imprisonment and fine can only be seen as suggested punishments.⁴¹⁹

Another problem with the punishments prescribed under the Act is that they do not differ between the forms of abuse stated in the definition and disregard other forms of abuse. Failure to distinguish punishments for the different forms of abuse may place the victim at a disadvantage. Sexual abuse garners the same punishment as psychological abuse, even if the harm caused is different. Also, victims suffering other forms of abuse, such as financial abuse, cannot benefit from this punishment even if the harm is more painful than physical abuse. This problem is a result of a lack of recognizing that abusers have a motive to gain power and control, which can be achieved by several abusive acts.

⁴¹⁸ SHAHIDULLAH, *Supra* note 289, at 375.

⁴¹⁹ See Mohammad Walad Mohammaden, *Alternative Procedure For Imprisonment*, 2 Al-qadaeia J.107 (2010)

The failure to recognize abuse as a pattern of behavior creates serious issues with respect to punishment. The Act requires that physical abuse cases must result in injury to be covered under this act.⁴²⁰ This requirement leaves many cases of physical abuse unpunished. Perpetrators of domestic violence often do not intend to injure their victims; rather, they seek to gain power or control. This motive can be achieved through acts of physical abuse, including slapping, hitting, and pushing, that do not result in visible harm. Single incidents of abuse may seem minor, but a series of abusive act causes women to suffer more pain, harm, and humiliation.⁴²¹ This series of abusive acts is what differentiates domestic violence from other crimes and should therefore receive attention under the law.

To effectively reduce domestic violence, women should not be required to prove injury, but to prove the male's attempt to gain power and control. It is difficult to prove a single act that resulted in injury in domestic violence because women might not seek help or the husband may prevent her from seeking help. But women can prove their husband attempt to control them, for instance, by withholding access to her income or by preventing her from seeing her family.⁴²² Viewing abuse as a single act may also require the victim to introduce eyewitnesses, which is difficult because the crime takes place in private where the victim is the only witness. While there are problems with the language of this article, other problem appears with the punishment itself.⁴²³

⁴²⁰ Implementing Regulations Protection From Abuse Act.

⁴²¹ Burke, *Supra* note 390, at 582.

⁴²² *Id.*, at 586.

⁴²³ *Id.*, at 591.

Punishment in domestic violence cases is very critical. There is no clear evidence indicating the effectiveness of imprisonment or fines in reducing domestic violence. Generally, studies in the U.S show that imprisonment is effective in reducing crimes among offenders who have a job and a social status, whereas imprisonment is not effective in reducing crimes among unemployed offenders.⁴²⁴ Fines are effective in punishing poor offenders and those who have financial difficulties, but have little effect in deterring rich offenders.⁴²⁵ There are other issues related to societal norms and perceptions of punishment that also lead to conclusion that imprisonment and fines are not effective in reducing domestic violence.

Imprisonment in domestic violence cases will not be effective since this may cause women to avoid pressing charges for financial reasons. Women's economic independence is a critical issue in Saudi Arabia. Several factors may block women's efforts in finding an appropriate job: level of education, ease of transportation, availability of childcare facilities, permission from their guardian, and availability of part time work.⁴²⁶ These difficulties lead to women being financially dependent on their husbands. A family's financial dependency on the husband creates pressure on women to remain silent about their experiences with violence and to sacrifice her rights and wellbeing to allow the family to be connected.⁴²⁷ When women lack financial independence, it is nearly impossible for them to leave abusive relationships.

⁴²⁴ Julia C. Babcock & Ramalina Steiner, *The relationship between treatment, incarceration, and recidivism of battering: A program evaluation of Seattle's coordinated community response to domestic violence*, 13.1 J. OF FAM. PSYCHOL. 46-48(1999)

⁴²⁵ Dan M Kahan, *What Do Alternative Sanctions Mean?* U. OF CHI. L. REV. 591-620 (1996)

⁴²⁶ Will be discussed in details in chapter 6.

⁴²⁷ ABDULLAH GANEM, *PRISONERS' FAMILIES PROBLEMS AND THE DETERMINANTS OF TREATABLE* 90 (Naif Arab University for Security Sciences 2009)

Due to women's financial dependency on their husbands, abused women often accept abuse and avoid pressing charges against their abusers because they fear poverty. A study conducted on the beneficiaries of the work of charities in the Eastern Region of Saudi Arabia concluded that the high percentage of poor women in Saudi society are divorced or widowed.⁴²⁸ Another study in Saudi Arabia reported that 84% of abused women fear divorce because they do not have any other access to support.⁴²⁹ The studies illustrate how women depend on their husbands for financial support and the absence of a man in woman's life may lead to poverty. Imprisonment as punishment for domestic violence cases will discourage abused women from pressing charges. Women in this situation want the violence to stop, but they do not want to be deprived of financial support.⁴³⁰ In addition to husbands losing their jobs and wives becoming impoverished, imprisonment may have other negative consequences for the offender.

Studies in Saudi Arabia showed that imprisonment, whether for short or long term, has an effect on recidivism. One study concluded that first-time prisoners learn new ways of committing crimes from other offenders and ex-offenders due to the mixing of offenders in prison who committed different crimes.⁴³¹ The stigma attached to the offender after leaving prison and the societal refusal to allow reintegration in Saudi Arabia also has an effect on the offender committing more crimes. Once a person has already been in prison, there is little change in social status if the offender returns to

⁴²⁸ Alnajem, *Supra* note 22, at 2-16.

⁴²⁹ Nadia Hejazy, *The Problems of Battered Women in Saudi Society: Propos A Model to Solve The Problem and to Reduce The Severity of The Problem By Using Service Group*. 7 *STUD. IN SOC. SERV. & HUMAN* (2010)

⁴³⁰ STELLA M. RESKO. *INTIMATE PARTNER VIOLENCE AND WOMEN'S ECONOMIC INSECURITY* 46 (LFB Scholarly Publishing LLC. 2010)

⁴³¹ ABDULLAH ALSADHAN, *RECIDIVISM* 23 (1998) <http://elibrary.medi.u.edu.my/books/SDL1790.pdf>

prison. Thus, imprisonment is ineffective in deterring repeat offenses.⁴³² A fine also might not be appropriate punishment for domestic violence.

Fines as punishment for domestic violence might not have the same negative consequences on women and do not deprive the family of their supporter, but the nature of fines as punishment is not applicable for domestic violence cases. Fines are typically only appropriate for crimes that do not cause direct harm to another person, such as bribery or speeding while driving.⁴³³ While fines can deter the offender from committing crimes since they lose some money, fines generally do not involve community condemnation of the act; as a result they do not bring shame, stigma, or guilt to the offender. Fines do not actually provide any redress for the victim, but only benefit the government.⁴³⁴

Fines in domestic violence cases can cause serious effect to the family and may deter victims from pressing charges against their abuser. If a husband has to pay a fine for abusing his wife, it means a reduction in his own income, which may affect the family financially. If the family shares finances, it likely means a reduction in her own income as well. In either case, a fine in domestic violence cases is not an appropriate punishment because it is like punishing the wife again for reporting the abuse. Finally, punishment for domestic violence should reflect the uniqueness of the crime.

⁴³² ABDULLAH ALYOSSIF, COMMUNITY MEASURES AS SUBSTITUTES FOR IMPRISONMENT 67-70 (2003).

⁴³³ Combating Bribery Law (CBL), Royal Decree No. M/36, dated 29/12/1412AH corresponding to 30 June 1992.

⁴³⁴ Berek Heseen & Manar Abdulgany, *The Legal Nature of Fine And Compensation*, TIKRIT U. J. FOR LEGAL & POL. SCI. 61, 2ed Year.

Violence in the family is not merely about a violent act; it has a unique nature that must be understood in order to provide effective punishment for it. Legislative bodies should understand that the punishment stated in this Act might harm the families it is supposed to protect. Abused women may suffer poverty or more violence if the husband is incarcerated. Fine also may not reduce the violence against women since it does not send the message that domestic violence is a crime and it does not have the community condemnation on the act. The legislature should focus on empowering the victim when placing the punishment.

Victims in domestic violence cases need to be empowered by the criminal justice system. Victim empowerment can be achieved by providing effective criminal sanctions for abuse and violence in the family. The Protection from Abuse Act does not facilitate victim empowerment. A woman cannot stop the violence by threatening her husband with imprisonment since she may fear poverty.⁴³⁵ Corporal punishment (lashing) and victim compensation are two punishments that can empower victims.

Corporal punishment can work best for women who are concerned with poverty. Under this punishment, abused woman will press charges against their abuser since the abuser will not be taken away from them. The abuser will be punished and then will resume his normal life and continue his work. Punishing in this way not only empowers the victim, but also will deter the abuser from committing more violence since he will suffer more pain. Moreover, the community perceives corporal punishment as something

⁴³⁵ David A. Ford, *Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships*. 25 L. & SOC'Y. REV. 313-314 (1991)

serious since it involves a bodily penalty similar to Qisas crime, which will send a clear message that domestic violence is a crime.⁴³⁶

Victim compensation is another punishment that is perceived by the community as punishment for committing a wrongful act similar to what has been required under Qisas.⁴³⁷ Requiring victim compensation for abuse will result in community condemnation of domestic violence, which would then create a stigma and shame that will deter future violence. Victim compensation differs from fines because the victim benefits personally and is provided with some redress.⁴³⁸ Providing the appropriate punishment in domestic violence cases can raise the victim's protection and empowerment, yet this protection can be attenuate by allowing the Ministry of Social Affairs to decide the type of abuse that would be cover under this Act.

- **Third Problem:** Abuse Should Always Be Treated as a Crime.

Article 11 of the Protection from Abuse Act states that if the Ministry of Social Affairs deems an abuse case a crime, the Ministry should inform the police.⁴³⁹ The language of this article suggests that not all cases of abuse are crimes. The article did not articulate when the abuse is regarded as a crime and when it is not, nor did the article provide any standard by which to decide which cases should be considered crimes. This article must be deleted because it places abused women at a disadvantage, taking into consideration the cultural understanding of violence in the family, and contradicts the definition of abuse in this act.

⁴³⁶ BASSIOUNI, *Supra* note 278, at 216.

⁴³⁷ Abdullah Alshamrany, *Monetary Penalties In Islamic Law And It Application In Saudi Arabia*. 95 Al-adel J. 263. (2012)

⁴³⁸ Heseen, *Supra* note 434, at 67.

⁴³⁹ The Protection From Abuse Act 2013, Article 11.

Domestic violence in Saudi Arabia is a complicated subject. There are many misconceptions regarding domestic violence and spousal abuse. One study among 112 men and 118 women in Saudi Arabia revealed that 75% of them believed that punishing is a normal act in the Saudi family.⁴⁴⁰ Only severe physical and sexual abuse, since they include an actual act of harm or injury, might attract the authorities' attention. Women might not be protected under this act from several abusive acts, including physical abuse. Society justifies the abuse for many reasons, including male honor, unequal power in the family, a husband's right to authority over his house, and the way men talk about women.

Male honor plays an important role in shaping the male behavior in the Saudi society. Honor may also be viewed as an understandable excuse for using violence and abuse against women.⁴⁴¹ Honor norms require men to be very protective to their reputation. Since a man's honor is strongly connected to his female family members, a man may abuse his wife physically, emotionally, or financially and justify his act as a means to maintaining the integrity of the man and his family. Men who fail to live up to societal expectations of protecting their honor are not considered "real men."⁴⁴² Male honor works alongside unequal power in family relations.

The misapplication of the religious texts regarding the husband's authority over his wife, which requires him to support and protect his family, has resulted in unequal power in family relationships and has led to wives experiencing violence. A man could use several forms of abuse to indicate his authority in the home. For instance, the husband as the guardian of the family may use his authority to abuse his wife financially

⁴⁴⁰ Nora ALmosaed, *Violence Against Women: A Cross-cultural Perspective*, 24(1) J. OF MUSLIM AFF. 86 (2004)

⁴⁴¹ *Id.*, at 74.

⁴⁴² Rubeena Zakar & Muhammad Zakria, ET AL, *Men's Beliefs and Attitudes Toward Intimate Partner Violence Against Women in Pakistan*. VIOLENCE AGAINST WOMEN. 247-260 (2013)

by preventing her from going to work or enjoying her earnings. The husband may emotionally abuse his wife by preventing her from seeing or contacting her family. The misunderstanding of the husband's authority also leads to a wives being beaten by their husband for several reasons. As one study in Saudi Arabia concluded that 35% of men who abuse their wives stated that the man can use violence if his wife misbehaves, 29% for arguing, and 17% for family dispute. About 53% of men sampled agreed that violence is acceptable way to discipline a wife.⁴⁴³

The misapplication of the religious text regarding wife disobedience results in wives being severely beaten by their husbands. For instance, a husband may not follow the three steps in order as instructed by the Quran verse; taking to her, avoiding her, and lastly beating her lightly.⁴⁴⁴ A husband may fail to control his sexual needs, which is a significant step in solving the dispute, and skip to the last step.⁴⁴⁵ In most cases, beating had been only way used to solve problems. The husband may ignore the conditions on beating: taking into consideration his wife safety, using a light object, and avoiding hitting in the face or sensitive area in the body. The husband may also ignore the fact that he is only allowed to discipline his wife if he believes that beating would help in solving the issue.⁴⁴⁶ A husband who abuses his wife may justify his acts by referring to the religious text.⁴⁴⁷

⁴⁴³ ALmosaed, *Supra* note 440, at 86.

⁴⁴⁴ IDRIS, *Supra* note 136, at104.

⁴⁴⁵ See, SAHIH MUSLIM, CHAPTER ON MARRIAGE, VOL. 3, BOOK 9, HADITH 1983 (If the husband failed to control his sexual need, he is not allowed to transfer to the third step as the Prophet condemned this act when he stated "*how loathsome it is one of you should hit his wife as he hit a slave and sleep with her by the end of the day.*" The Prophet statement indicates the prohibiting of beating the wife and having sexual relation with her.)

⁴⁴⁶ MAHMOOD TAH MAHMOOD, CRIMINAL PROTECTION FOR MARITAL RELATIONSHIP A COMPARATIVE STUDY 329 (Naif Arab University for Security Sciences 2002) See, the General Court in Riyadh, case no 16/277, dated 1422 H, 2001. Modawant alahkam alqdaeah. Second edition. P 112. (The husband in this case physically abused his wife. The victim was hospitalized for seven days. In court, the husband stated that he beat his wife to discipline her.)

⁴⁴⁷ NAEIL YAHYA, CRIMINAL RESPONSIBILITY FOR WIFE DISCIPLINE AND TELEMEDICINE 100 (2012)

The justification for abuse by men causes women to tolerate the abuse against them. One study in Saudi Arabia revealed that 36% of women disclosed that violence is an acceptable practice in the family and women deserved when women misbehave.⁴⁴⁸ The woman might be also blamed for provoking the man.⁴⁴⁹ Unequal power in family relationships and the justification of abuse by men is perpetuated by the way men talk about women, which affects how women are treated.

Men may use specific terms to show the way they treat their wives. One such term is “red-eye,” meaning that men are supposed to treat their wives harshly. Using this language when talking about women can raise problems and promote other abusive behavior in the family. This term also shows some cultural acceptance for the use of violence against wives.⁴⁵⁰ In light of cultural factors, the failure of the Protection from Abuse Act to define abuse as a crime places women at a disadvantage. This article will lead to exclude many abuse cases from prosecution, and narrowing to only the cases that the Ministry believes is a crime under this law. This article also contradicts the definition of abuse under the Act.

The definition of abuse in the Protection from Abuse Act indicates that the forms of abuse (physical, sexual, and psychological harm) or omitting responsibility toward another are crimes covered by this Act.⁴⁵¹ The article gives discretion to the Ministry of Social Affairs to determine whether such acts are crimes and contradicts the basic premise of the law—that women deserve to be protected from such acts. This article must be deleted because it may open the door for a wide range of interpretation on abuse cases,

⁴⁴⁸ ALmosaed, *Supra* note 440, at 81.

⁴⁴⁹ Muhammad M. Haj-Yahia, *On the Characteristics of Patriarchal Societies, Gender Inequality, and Wife Abuse: The Case of Palestinian Society*, 20 Adalah’s Newsletter 1-2 (2005)

⁴⁵⁰ ZAHRA TIZRO, *DOMESTIC VIOLENCE IN IRAN: WOMEN, MARRIAGE AND ISLAM* 90-120 (New York: Routledge, 2012)

⁴⁵¹ The Protection From Abuse Act 2013, Article 1.

which may result in reducing the effectiveness of this Act. Punishing an offender can help in protection of women from abuse, but because of the relation between the perpetrator and the victim, offenders also need to be rehabilitated.

- **Fourth Problem:** Offender Program Treatment.

Article 7, section 5 of the Act states that the Ministry of Social Affairs can provide rehabilitations programs or psychological treatment for the parties in the case if needed.⁴⁵² The regulation of the Protection from Abuse Act provides that only the victim or person affected by the abuse can receive treatment.⁴⁵³ Neither the Act nor the regulation stated the type of the program that would be provided or what the focus of the program would be. Punishing offenders in domestic violence cases makes them accountable for their actions, but program treatment would help reform violent offenders.

Western countries such as New Zealand have expanded their response to domestic violence to include program treatment for offenders as a part of the criminal sanctions. The New Zealand Domestic Violence Program Regulations of 1996 requires offenders and victims to attend certain programs.⁴⁵⁴ The goals of the programs are to stop violence in the family and change the offender's behavior. The offender's program focuses on the offender's behaviors and helps explain the nature of the crime and its effects on victims and children. Also, the program helps abusers to develop skills and strategies for how to solve conflicts in the relationship in non-violent ways.⁴⁵⁵

⁴⁵² The Protection From Abuse Act, Article 7 Section 5.

⁴⁵³ The Regulation for Protection From Abuse Act 2013, Article 7.

⁴⁵⁴ New Zealand Domestic Violence Program Regulations 1996.

⁴⁵⁵ *Id.*, Article 32.

One important program is the Duluth program, which follows a feminist psycho-education model. This program views violence in the family as a result of a society's patriarchal structure. To reduce violence, the program focuses on the power and control in the family, which produces the violence, and helps promote equal and nonviolent behavior.⁴⁵⁶ The cognitive behavioral treatment approach ("CBT") is another program that domestic violence offenders are sometimes referred to. The program perceives violence as a learned behavior. In changing the behavior, the program focuses on "cognitive, emotional, and behavioral analyses and skills training techniques."⁴⁵⁷

These programs have become popular and countries heavily rely on them because they meet the victims' needs. Victims in domestic violence cases often want to stop the violence and to continue living with their partners for several reasons—primarily because staying in the relationship provides a level of financial security and there may be children involved. Offender treatment programs provide victims with the safety they need and with the ability to continue living their lives.⁴⁵⁸

Even though studies have shown that treatment programs have little to no effect on reducing domestic violence, this failure can be attributed to other causes. Several elements may have an effect on the studies outcome: failure to complete the program, lack of consequences for dropping the program, lack of follow up with offenders, the program components and hours, and poor implementation of the program.⁴⁵⁹ These elements result in reducing the effectiveness of the program. Studies that only focused on offenders who completed the program, as opposed to studies that focused on the number

⁴⁵⁶ ELLEN PENCE & MICHAEL PAYMA, EDUCATION GROUPS FOR MEN WHO BATTER: THE DULUTH MODEL 17 (New York: Springer Pub. Co., 1993)

⁴⁵⁷ Marilize Slabber, Community-based Domestic Violence Interventions, A Literature Review 1 (2012)

⁴⁵⁸ Julia C. Babcock & Charles E. Green & Chet Robie, *Does batterers' treatment work? A meta-analytic review of domestic violence treatment*. 23. 8 CLINICAL PSYCHOL REV. 1023-1053 (2004)

⁴⁵⁹ Slabber, *Supra* note 457, at 14.

of offenders who were assigned to the program, revealed that recidivism increases if the offender did not complete the program.⁴⁶⁰ Because of the considerable harm caused by domestic violence, even a small positive effect justifies requiring offenders to attend these programs.

The Protection from Abuse Act should require all offenders in domestic violence cases to attend program treatment. The program can be based on both models, the Duluth and CBT. The program should focus on the inequality and power and control in family relationships. The program also should work on promoting nonviolent behavior and correcting cultural norms that justify domestic violence. Offenders in severe abuse cases should receive more treatment hours and there must be follow up and consequences for dropping from programs.

⁴⁶⁰ Babcock, *Supra* note 424, at 47.

○ **Conclusion.**

Introducing a law directly aimed at ending family violence is very important to raise public attention that violence in the family is not merely a private matter. The provisions in the law must be sufficient to serve the goals of the reducing violence against women and to provide women with more protection. This can be achieved by clearly understanding the unique nature of the crime. The Protection from Abuse Act failed to recognize important elements of the crime of domestic violence.

Four articles in the Protection from Abuse Act should be reformed to effectively reduce violence against women. The law must clearly use the term “domestic violence” in the title of this Act and redefine abuse to include the element of a “pattern of conduct with the intent to gain power and control.” These changes in the law will help protect women from several forms of abuse. Also, the article that gives the authority to the Ministry of Social Affairs to decide what cases are considered criminal must be deleted because it will lead to the exclusion of many cases from being covered by the law and the abuser will go unpunished.

Punishment under the Protection from Abuse Act should also meet the victims’ needs. Victims in most cases of abuse are economically dependent on their abusers. Selecting the appropriate punishment for abusers will help deter future crimes and encourage victims to press charges. Treatment programs for abusers will also help in changing behavior, encouraging equality in family relationships, and garnering greater respect for women.

❖ Chapter Six: Clear Procedure For Family Law.

○ Introduction:

Introducing laws that criminalize domestic violence may reduce instances of the crime. Making other legal changes beyond criminal law also can help reduce violence in the family. In particular, making positive changes to family law, where most women's rights are found, will have a great effect on supporting women. Family law in Saudi Arabia should be codified and provide specific procedures in the case of divorce and related matters. The law should also provide an appropriate age for marriage.

Codifying Islamic law in Saudi Arabia is a controversial subject. Muslim scholars disagree with the idea of codifying because they fear that the codified family law might differ from what Islamic law provides, preventing judges from applying Islamic law in their decisions. Yet, other Muslim countries such as Malaysia have codified family law and provide the Islamic Family Law Act to regulate marital relations, rights and duties in marriage, divorce, and child custody. This chapter will focus on effectively codifying family law in Saudi Arabia to best serve women's needs.⁴⁶¹

The first section in this chapter will give a brief overview of the debate regarding the codification of Islamic law and will argue in favor of codifying. This section will argue that codifying the law will benefit the Saudi legal system and will raise women's protections. The second section will focus on proposing procedures on how to deal with divorce, children custody, and alimony cases. The final section will explain how domestic violence should be dealt with in family court.

⁴⁶¹ Malaysia Islamic Family Law (Federal Territories) Act 1984.

○ **Section One: Codifying the Law**

Codifying Islamic law is a hotly debated issue in Saudi Arabia. For many years, there have been debates over whether codifying Sharia is permissible under Islam and how that system would work. The codifying of Sharia means writing down what the majority of Muslim scholars agree is the rule on a particular legal issue and requiring judges to apply those rules.⁴⁶² While the Saudi Board of Senior Ulama and judges have rejected the codifying of Sharia, codification of family law would lead to several benefits in the Saudi legal system and would raise women's status and protection.

In 2000, the Saudi Board of Senior Ulama issued a fatwa No. 8 rejecting the codification of Sharia.⁴⁶³ The Ulama pointed out that codifying Sharia should not be allowed for many reasons. The Ulama first argued that there is no evidence that Islamic law has been codified throughout the Islamic history. Also, codifying would bind the judge to a specific school of law, which is against the teachings of Islam. The Ulama also argued that codifying Islamic law would shift the basis of the judge's decision from the Quran and Sunnah, to man-made law and would limit the judge's independent reasoning (*Ijtihad*), which limits the evolution of Islamic law. Finally, codifying would not solve the problem of variations in judgment because cases both cases and judges are unique.⁴⁶⁴ Judges also have rejected the codification of Islamic law.

⁴⁶² Esmaili, *Supra* note 204, at 30.

⁴⁶³ See, LYNN WELCHMA, WOMEN AND MUSLIM FAMILY LAWS IN ARAB STATES: A COMPARATIVE OVERVIEW OF TEXTUAL DEVELOPMENT AND ADVOCACY 22 (2007) (Judges in Bahrain also oppose the codifying of family law claiming that cases are not similar.)

⁴⁶⁴ The Saudi Board of Senior Ulama Issued A Fatwa No 8
<http://www.alifta.net/Fatawa/FatawaDetails.aspx?View=Page&PageID=4303&PageNo=1&BookID=2>

A statement from the Supreme Judicial Council supported the judges' attitude toward codifying the law. "No one compels a judge in Saudi Arabia to judge according to a ruling that he does not think correct ... As for the type of ruling that the judge gives, this is based on his understanding of the text of Sharia... no one has power to say to the judge 'judge according to such and such a rule.'" ⁴⁶⁵ Judges have negative attitudes toward the codification of Islamic law because it limits their discretion in deciding cases. This is because their decision in a case must be achieved by their own understanding of the religious text. ⁴⁶⁶ However, this opposition ignores the benefits of codification of family law.

- Benefits to the Saudi Legal System.

Codifying the law will bring several important benefits to the Saudi legal system. Even though there is no evidence in Islamic history that Islamic law has been previously codified, nothing in Islamic law prohibits codification. There is a need for codifying family law since Muslim life has changed since the inception Islam. There are more complicated issues, problems, and new crimes. The codification of the law will raise public trust in the judiciary, since judges' decisions in similar cases will be more consistent. ⁴⁶⁷ Codification would also help lawyers and judges in the presenting of the case and help people will comply with the law. ⁴⁶⁸

⁴⁶⁵ VOGEL, *Supra* note 234, at 377.

⁴⁶⁶ *Id.*

⁴⁶⁷ Al-Jarbou, *Supra* note 324, at 199-195.

⁴⁶⁸ Abdul Mohsen Al-Obeikan, *The Codification of Islamic Sharia*. Alsharq Al-Awsat Newspaper. Apr. 6, 2006. <http://archive.aawsat.com/leader.asp?article=356878&issueno=9991#.VRqws0vscds>

Codification of Islamic law in the Saudi legal system will help ensure that judges decide cases with impartiality. The Saudi judicial system is designed such that judges are independent and unaccountable to others for their rulings. The system prohibits the interference with judges' work.⁴⁶⁹ Providing judges with the law and procedure that needs to be applied, especially in family cases, would limit the judges' discretion in deciding cases. Limiting the judges' discretion would reduce the risk of decisions being influenced by the judge's personal beliefs, background, and traditions. Codifying the law will increase judicial efficiency and protect the rights of people.⁴⁷⁰

Codifying Islamic law will not prevent judges from applying Islamic law, as opponents have argued. Rather, codifying Islamic law will ensure that those rules are applied with greater uniformity. The basic law in Saudi Arabia already indicates that the Quran and Sunnah are the constitution of the country. Also, article 48 in the basic law states that Islamic law is authoritative over all cases in court. Therefore, all laws and rules should be derived from Islamic sources.⁴⁷¹ Codifying the law will not entirely prevent judge's discretion but will limit it. Since family law is fact-specific and there can be substantial variation from case to another, judges still can exercise some discretion.⁴⁷² Beside benefits to the legal system, codifying Islamic law, and in particular family law, will also benefit women who are seeking divorce, custody of their children, or asking for alimony.

⁴⁶⁹ The Judicial System Article 1.

⁴⁷⁰ Al-Jarbou, *Supra* note 324, at 191-199.

⁴⁷¹ Saudi Arabia Basic Law.

⁴⁷² Esmaeili, *Supra* note 204, at 30.

- Increase Women's Status and Protection.

Not codifying Islamic law, and in particular family law, in Saudi Arabia makes women subject to several abuses in divorce, child custody, and alimony cases. Judges in these cases have total discretion in deciding the case. Some judges may follow their individual understanding of preceding cases, while other judges may follow the old Muslim jurisprudence.⁴⁷³ Also, the lack of any law governing the minimum age for marriage results in girls marrying too early. Codifying family law and regulating marriage relations is necessary to protect women and children's rights.

Family case—divorce cases in particular—may take several years to be finalized. If the court-assigned mediators fail to reconcile the husband and his wife and the wife insists on getting a divorce, the judge may leave the decision to the husband, who may refuse to divorce his wife. Also, the judge may allow negotiations between the husband and the wife, which places pressure on women. For example, a husband may ask his wife to waive her right to alimony or her custody rights in exchange granting the divorce.⁴⁷⁴ The long process in seeking divorce may also subject abused women to further abuse.

The length of time that a divorce case takes may vary based on the person who initiates the case. The husband can abuse his wife by divorcing her without any legitimate reason. The husband also may take advantage of his wife's weak knowledge and ignorance of the law by asking her to gain divorce by Kule, which require her to pay back the dowry in return of divorcing her, even if she was harmed from living with him and he

⁴⁷³ Léon Buskens, *Recent debates on family law reform in Morocco: Islamic law as politics in an emerging public sphere*, 10(1) ISLAMIC L. & SOC'Y 70-73. (2003)

⁴⁷⁴ Abdullah Al-dahash, *Refraining (Alathel) In Divorce*. Al-adel J.166-173 (1999). Also see, the General Court in Riyadh, case no 31/154, dated 1427 H, 2006. Modawant alahkam alqdaeah. First edition. P 392 (In this case, the husband agreed with this wife that if she waived her right of child custody he would divorce her.)

did not fulfill his obligation toward her.⁴⁷⁵ The lack of regulation of divorce has made women subject to passive abuse.

Particularly, a man may marry another woman and continue to live his life, deserting his first wife without divorcing her.⁴⁷⁶ In better situations, husbands visit their wives—bringing groceries or money for bills—but other times, husbands abandon their wives permanently.⁴⁷⁷ This situation is known in the Saudi society as “*Mualga*,”⁴⁷⁸ which means “hung” in the middle between being married and single. An abandoned wife is considered to be a married woman, but is deprived of her marital rights.⁴⁷⁹ The absence of codified law also creates confusion with other matters related to divorce.

In deciding divorce cases, the judge might not pay attention to other issues that must be decided with the divorce case: child custody, child support, and housing.⁴⁸⁰ Some judges view these issues as separate from the divorce case, requiring the woman to initiate a separate claim. A lack of knowledge about these issues causes divorced women to struggle to support their children, find an appropriate place to live, and may lead to poverty. Uncertainty in deciding divorce cases also extends to the husband’s financial responsibilities toward his children and wife after the divorce is final.

⁴⁷⁵ SHERIF ABDELAZIM, *WOMEN IN ISLAM VERSUS WOMEN IN THE JUDEO-CHRISTIAN TRADITION* 38-39 (2005)

⁴⁷⁶ See, General court in Riyadh. Case no 23/267, dated 1422H, 2000. *Modawant alahkam alqdaeah*. Second edition. P 36. (In this case, the husbands deserted his wife for many years. The court dissolve the marriage applying one of the Islamic objective which is harm is removed.)

⁴⁷⁷ Saudi Women Weblog, *Divorce in Saudi Arabia*. <http://saudiwoman.me/2009/04/07/divorce-in-saudi-arabia/>

⁴⁷⁸ See, Nora Alatwi, *Looking for "freedom" and return to life again*, Al-Riyadh newspaper. Jun. 26, 2008. <http://www.alriyadh.com/2008/06/26/article353923.html> (Report on married women seeking divorce for years. One woman said that the court garneted her the divorce after 5 years from bring the claim.)

⁴⁷⁹ Saudi women weblog, *Supra* note 477.

⁴⁸⁰ Nora Almeahmady, *Children Rights to Alimony*. 54 Al-adal J. 20-29 (2011)

While a divorced woman has the right to alimony and child support,⁴⁸¹ there is no clear process the judge can follow in deciding the amount of alimony to assign. Often, judges decide the amount of alimony based on general information about the husband's income, which often leads to women receiving insufficient money to support their children. In deciding the amount of alimony to assign, judges do not take into consideration children's standard of living before the divorce, the needs of ill and disabled children, or the amount of money needed to live a decent life.⁴⁸²

Even if the judge decides the amount of alimony, the husband can easily evade paying it because of the lack of enforcement mechanisms. In several cases, women go back to court to because their ex-husbands did not comply with the court decision regarding their alimony obligations. The cases become more abusive if the court allows the husband to negotiate his obligations for unpaid alimony and child support with his wife. The husband may place pressure on his wife to waive her or her children's rights to alimony in return for receiving the custody of the children.⁴⁸³

In addition to child custody being used to manipulate a divorced woman into waiving her rights, the situation also places children at a disadvantage. Child custody should be decided based on the best interests of the child. However, judges often do not require the custodial parent to have necessary parenting qualifications, including providing a fit home. In most cases, judges decide the case depending on the child's age.

⁴⁸¹ Almohmady *Supra* note 480, at 29.

⁴⁸² See, the General Court in Riyadh, case no 3/243, dated 1426 H, 2005. Modawant alahkam alqdaeah. First edition. P 256 (The judge in this case decided that the husband has to pay 1000 SAR (\$267) monthly to support his wife and children. The judge decision was not based on financial information.)

⁴⁸³ See, the General Court in Riyadh, case no 89, dated 1426 H, 2005. Modawant alahkam alqdaeah. First edition. P 306. (In this case, the wife claimed that her husband abused her and she requested divorce and the custody of her children. The court agreed in issuing divorce and the wife has to waive her right of unpaid dowry. The court also decided that the father will receive the custody of his 12 old-year daughter and the mother will receive the custody of the younger children.)

If the child is under seven years old, the mother will receive custody, and if the child is over seven, the father will receive the custody.⁴⁸⁴

Deciding child custody separately from the divorce case and without considering certain parental qualifications creates a serious problem. A wife may ask for divorce because her husband is abusive and violent. When the divorce and custody cases are severed, a judge may not consider the husband's abusive nature when deciding custody, and therefore the children face a greater risk of abuse. A study was conducted in Saudi Arabia to measure the problems that abused women face and concluded that 79% of abused women are reluctant to leave because they fear they will lose custody of their children.⁴⁸⁵ Also, because there is little enforcement of visiting hours, the husband may continue to emotionally abuse his wife by preventing her from seeing the children. The lack of family law that regulates child custody may result in child mistreatment; it also results in lack of determining the minimum age of marriage.

Child marriage in Saudi Arabia is a controversial issue and most often child marriage is considered a family matter. Several reasons are given by parents to justify a girl's early marriage. Poverty is regarded as an important factor that inspires parents to permit their daughters to marry early. Because of the husband's obligation to pay the dowry, poor families believe that marrying their daughter off will benefit the family financially.⁴⁸⁶ Another reason for early marriage is tribal disputes; parents may marry their daughters off as a way to solve problems between tribes.⁴⁸⁷ Families may also

⁴⁸⁴ See, the General Court in Riyadh, case no 3/339, dated 1426 H, 2005. Modawant alahkam alqdaeah. First edition. P 296 (The judge in this case decided that the father will receive the children custody since the mother lives in a different city.)

⁴⁸⁵ Hejazy, *Supra* note 429. See, ALmosaed, *Supra* note 440, at 81 (47.5% of women did not leave the relationship because of fearing of losing children.)

⁴⁸⁶ UNICEF. Early Marriage Child Spouses 1-6 (2001) <http://www.unicef-irc.org/publications/pdf/digest7e.pdf>

⁴⁸⁷ DAVID GHANIM, GENDER AND VIOLENCE IN THE MIDDLE EAST 28 (2009)

marry their daughter off at an early age as a way of protecting the child, family honor, and reputation.⁴⁸⁸

Since neither the law nor the regulation of the marriage contract (Mathoun)⁴⁸⁹ states the minimum age for marriage, child marriage will continue.⁴⁹⁰ Also, the Ulama failed to discourage this practice when asked about the legitimacy of child marriage, instead stating that the issue “needed further research.”⁴⁹¹ Because of the acceptance of this practice, a father, as the guardian of the family, could marry his daughter off without seeking her consent and no one can prevent him from doing so. Codifying family law and providing regulations for marriage, divorce, and the minimum age for marriage is necessary to protect women and children’s rights.

⁴⁸⁸ UNICEF, *Supra* note 486, at 6.

⁴⁸⁹ The person responsible for writing the marriage contracts.

⁴⁹⁰ Saudi Arabia Nikah Regulation.

⁴⁹¹ Bayan Perazzo, *Combatting Child Marriage in Saudi Arabia*, Jan. 10, 2013.

<http://muftah.org/combating-child-marriage-in-saudi-arabia/#.VecavrrsdUQ>

But see, ALarabiya. *Saudi Arabia activists liken child marriage to slavery*. Al-Arabia newspaper. June 19, 2009.

<http://www.alarabiya.net/articles/2009/01/19/64532.html> (A member of the Islamic and Judicial Affairs and Human Rights Committee of Majlis Ash-Shura, the Consultative Council, was quoted as saying: “The bride has to have reached puberty and to consent to the marriage.”)

Also see, MUHAMMAD IBN SALIH AL-UTHAYMIN, *ASH-SHARH AL-MUMTI ALA ZAD AL-MUSTAQNI* 57. (Vol. 15, 1st ed. 1999) (Sheikh Muhammad ibn Uthaymin, the late member of the Saudi Council of Senior Scholars, was oppose child marriage where he stated: “Such a marriage is illegal, for the Prophet -pace be upon him- said, ‘*A virgin should not be married off until her consent is obtained.*’ Therefore, a virgin must not be married off until she reaches the age when she becomes qualified enough to give her consent.”)

- **Section Two: How to Effectively Codify Family Law to Make it Serve Women's Needs.**

Improving the process of resolving family disputes can help protect women and children from abuse. The long process in divorce cases can lead to women suffering several forms of abuse, including physical and emotional abuse. The husband can abuse his ex-wife economically by ignoring her and failing to pay child support.⁴⁹² Also, deciding child custody without focusing on guardian's ability to provide appropriate environment to the child may disadvantage children.⁴⁹³ The absence of a minimum age for marriage has led to early marriages for girls, which is regarded as a risk factor for domestic violence.⁴⁹⁴ To effectively protect women from abuse, family law should be codified and provide clear processes with respect to divorce cases, alimony, and child custody. The law should also state that the minimum age for marriage is 18 years.⁴⁹⁵

- Divorce cases:

To effectively process divorce cases and related matters, the government should establish a special department in family court that can receive divorce cases before the judge hears the case. The department can provide recommendations for the judge to follow in deciding the case. Their tasks could include attempting to reconcile the parties in the case, informing the parties about their rights, doing a study to decide child custody, and providing clear information about the husband's income and property.⁴⁹⁶

⁴⁹² Edward Pokorny, *Practical Problems in the Enforcement of Alimony Decrees*, 6 L. & CONTEMP. PROBS. 274. (1939)

⁴⁹³ Robert H. Mnookin, *Child-custody adjudication: Judicial functions in the face of indeterminacy*, L. & CONTEMP. PROBS 226, 246-248 (1975)

⁴⁹⁴ International Center for Research on Women, *Child marriage and domestic violence* (2006)

<http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Domestic-Violence.pdf>

⁴⁹⁵ See, WELCHMA, *Supra* note 463, at 33. (The book introduces the process of codifying family law in many Arab countries.)

⁴⁹⁶ Al-damaq, *Supra* note 131, at 171.

The family department should have a special section that includes a social worker and a specialist in law and religion who can work to reconcile the parties. The department can also depend on close family members of the husband and wife to aid in seeking reconciliation between them.⁴⁹⁷ The period for reforming may not be extended for more than three months unless the husband and wife agree. In case the husband and his wife do not reach an agreement, the family department must start working through the divorce process.⁴⁹⁸

The department can work to raise the parties' awareness of their rights and responsibilities after divorce. The department can also educate the parties on the different forms of divorce, which are divorce by the husband, annulment of the marriage contract by court decision, and Kule. Also, if the wife initiates the divorce claim, the department must inform her that she must ask the court to decide child custody, visiting hours, and the amount of alimony.⁴⁹⁹ After providing this information to the parties, the department has to focus on the issue of child custody.⁵⁰⁰

The family department should undertake a study of the family situation to decide who should be the custodial parent. The department should study the parents' economic, social, and psychological environment and each parent's ability to raise the child in a healthy and appropriate home. The department should also include the reasons for divorce and each parent's criminal record in their assessment of child custody. When

⁴⁹⁷ ALKAJA, *Supra* note 131, at 41-42.

⁴⁹⁸ Egypt Personal Status Law Article 20.

⁴⁹⁹ Al-damaq, *Supra* note 131, at 173.

⁵⁰⁰ JOSEPH GOLDSTEIN & ANNA FREUND & ALBERT J. SOLNIT, BEYOND THE BEST INTERESTS OF THE CHILD 3-4 (1984)

both parents are unfit, the department must to look for close relatives that have the ability to take care of the child.⁵⁰¹

After reaching a decision on child custody, the department can decide visiting hours. In deciding visiting hours, the department has to focus on the parent who claims the visiting hours, where he or she lives, and whether the place is safe for children. They also must take into consideration the length of the visit and a location for picking up and dropping off children.⁵⁰² Besides deciding the child custody and visiting hours, the department must also decide the father's financial capacity and ability to pay alimony.

The family department must contact with the Saudi Arabian Monetary Agency ("SAMA") to provide clear information about the father's financial position to assist the judge in deciding alimony amounts. The department also should contact the husband's workplace to maintain information about his income. The department should consider the father's property in deciding alimony. The alimony must be consistent with the father's income and financial capacity, the number of children, and the children's needs—including housing, clothing, food, transportation, medical services, and educational needs.⁵⁰³

Moreover, the department must prevent the husband from placing pressure on his wife to waive her right to alimony or her children's rights to child support in return for granting the divorce. The wife must be made aware that alimony is an unconditioned right for her and her children. Also, the department must annually evaluate the alimony to be consistent with inflation, changes in the father's income, and changes in the children's

⁵⁰¹ American Psychological Association, *Guidelines for child custody evaluations in divorce proceedings*, FAM. L. Q. 51-54. (1995)

⁵⁰² Al-damaq, *Supra* note 131, at 173.

⁵⁰³ *Id.*, at 175-76.

ages and needs. Besides deciding the future alimony, the department must decide alimony for the period that the husband abandoned the wife.⁵⁰⁴

The department must ensure that the wife receives alimony for any period of abandonment. The department must prevent the husband from placing pressure on his wife to waive her right in return for divorcing her. Also, when the divorce was by Kule, the department can prevent the husband from asking more than what he had paid for his wife as dowry.⁵⁰⁵ After deciding the divorce and all issues related to it, the department could send the case and the recommendation to the judge. The divorce instrument must include the type of divorce and all issues related to it.

Preparing divorce cases in the family department can help the judge issue his decision based on accurate information with respect to the custodial parent and the amount of alimony. It also reduces the number of cases divorced women have to raise to receive their rights and the period a woman has to wait to before the divorce is granted. This method of ending divorce cases can protect women and their children from being emotionally, economically, and physically abused.⁵⁰⁶ After the family department has helped the judge reach a fair decision regarding family disputes and alimony, an enforcement mechanism needs to be implemented to ensure that ex-wives receive their alimony.

⁵⁰⁴ Mordiah Albardasy, Drafted regulation for divorce cases and its consequent on wife and children 4.

⁵⁰⁵ *Id.*, at 5.

⁵⁰⁶ Valentine M. Moghadam, *Patriarchy in transition: Women and the changing family in the Middle East*, J. OF COMP. FAM. STUD. (2004): 137-146-47.

- Enforcement Mechanism for Alimony:

Divorced women struggle to receive alimony even when judges state that they have the right to financial support. The absence of any enforcement mechanism leads to fathers ignoring their responsibility, paying less than what the judge decided, or not complying with the time limit for paying the alimony. Several studies in Saudi Arabia indicate that the judicial decision in alimony cases is not sufficient to make the father pay. One study revealed that 72% of divorced women do not receive the alimony to which they are entitled.⁵⁰⁷ Another study in Saudi Arabia disclosed that 70% of divorced women have never received alimony, and 81% are responsible for supporting their children.⁵⁰⁸

To provide more enforcement of judges' decisions, the Implementation system was introduced in 2013. Article 73 states that if the father has a bank account and income, the court can order the bank to deduct the alimony monthly and transfer it to the ex-wife's account. When the father does not have a bank account, but the court discovers that he has money with other person or organization, the court can order them to deduct the amount of alimony and transfer it to the ex-wife. If the father has no bank account and no money held by other persons or organizations, the judge can require him to write a pledge to pay the alimony.⁵⁰⁹

⁵⁰⁷ Albardasy, *Supra* note 504, at 5.

⁵⁰⁸ Amaal Al-freeh, *Studying the Personal, Social, and Economic Status for Divorced Women in Saudi Arabia 2006*.

⁵⁰⁹ *The Saudi Implementation System 2013*.

This system of deducting alimony can help a divorced woman to receive her rightful funds only if the father has a bank account and money.⁵¹⁰ In case the father has no bank account and he claims he has no money to pay, divorced women will struggle economically. The current system is inadequate and causes many divorced women to suffer from poverty. More importantly, divorced women need to be supported immediately after court case ends; often there is a delay in receiving alimony payments and leaving the woman without the ability to support her family.

To effectively protect women economically, several Arab countries have developed a successful strategy to support divorced women. They established a special department called the “Alimony Fund” from which divorced women can request alimony payment. In Tunisia, for instance, the law number 56 in 1993 stated in article 2 that divorced women, who did not receive the rightful alimony has the right to receive the alimony from the fund. The law also stated that the divorced women would receive the support within 15 days from presenting their divorce papers and other important documents. The fund can be supported by the government, social insurance, payments from husbands, charities, and the fund investments. The amount paid to the divorced women would be regarded as a loan for the husband. Therefore, the alimony fund can request to the husband to pay it back.⁵¹¹

⁵¹⁰ The Saudi Implementation System, Article 73.

⁵¹¹ Tunisian Family Fund and Divorce, 56 in 1993.

In cases where the husband does not pay or refused to pay the amount paid to the ex-wife, the fund can seek legal procedures to receive the alimony by initiating a claim in court to obligate the husband to pay back the alimony. The fund can also levy fines for failure to pay, late payment, or for collection expenses.⁵¹² There are other ways the fund can receive the alimony. In Egypt, for instance, the fund depends on the system of wage garnishment. The Egyptian law number 11 for the year 2001 that established the family fund states in article 76 that if the husband is an employee in public or private sector,⁵¹³ the agency can deduct the loan from the husband's income and save it in a special account in Nasser Bank after receiving a request from the bank and a copy of the court decision.⁵¹⁴

Establishing an alimony fund under family court in Saudi Arabia will work as enforcement mechanism for judges' decisions on alimony. Divorced women can request payment from the alimony fund when the ex-husband does not pay the alimony to her directly. The alimony fund can then claim the payment from the husband. If the husband were to ignore the fund's request for payment, the fund can seek the payment in one of two ways—by court order or by garnishing the husband's wages. These methods of collecting alimony will have a great impact on increasing the dignity and economic status of divorced women.

⁵¹² Tunisian Family Fund and Divorce.

⁵¹³ Egypt Personal Status Law 2001, Article 71-76.

⁵¹⁴ ELIZABETH WARNOCK. FERNEA, WOMEN AND THE FAMILY IN THE MIDDLE EAST: NEW VOICES OF CHANGE 129- 130 (Austin: University of Texas Press 1985)

Women can gain several important benefits from the alimony fund. For instance, divorced women do not need to repeatedly enter court to initiate additional claims to force her husband to pay the alimony since she will receive it monthly from the fund. Also, the fund will lead to consistent alimony for divorced women, which can protect from poverty and support the children. The alimony fund also has a great impact in improving justice, reducing the number of cases in court, and enforcing the court's judgment.⁵¹⁵ The final step in protecting women is determining the age of marriage.

- Girls' early marriage.

Child marriage may cause serious damage to girls' mental, sexual, and physical health. Early marriage makes girls sexually active earlier and often results in pregnancy. Child pregnancy may cause significant health problems and even death.⁵¹⁶ Besides exposing girls to sexual abuse, girls' early marriage also exposes the child to physiological abuse, which results in feelings of powerlessness and worthlessness.⁵¹⁷ Moreover, early marriages imperil the child's right to education, deprive girls of their right to choose their spouses, and compromise a girl's development.⁵¹⁸ According to UNICEF, women who married young are at a greater risk for domestic violence. Girls who marry early are more likely to believe that violence between spouses is acceptable.⁵¹⁹

⁵¹⁵ Albardasy, *Supra* note 504, at 14-15.

⁵¹⁶ Equality now, Urgent Alert: Saudi Arabia: Urgent Call for Annulment of Marriage of 10-Year-Old Girl. Jun. 1, 2009

http://www.equalitynow.org/take_action/adolescent_girls_action

⁵¹⁷ International Center for Research on Women, Child marriage and domestic violence (2006)

<http://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Domestic-Violence.pdf>

See, Child Rights Information Network, Special Edition on Child Marriage

http://www.crin.org/email/crinmail_detail.asp?crinmailID=2280 (Provide explanation for child marriage, why it happens and are both boys and girls get involved.)

⁵¹⁸ Equality now, *Supra* note 516.

⁵¹⁹ UNICEF, *Supra* note 486.

In Saudi Arabia, child marriage not only causes many problems for little girls, but is also a violation of the Nikah regulation.⁵²⁰ One provision states that the Mathoun, the responsible for writing the marriage contract, must make ensure that all marriage conditions are satisfied before writing the contract. Marriage conditions include the bride's consent to the marriage. In some cases the Mathoun may ask for written or verbal consent form the bride to the marriage.⁵²¹ Traditionally, the father signs on behalf of his daughter and the Mathoun expects that the father already sought his daughter consent to the marriage. Most cases of girls' early marriage, the bride does not know about the marriage until the marriage contract has been signed.⁵²²

The Ministry of Justice prepared a draft to regulate a minimum age for marriage, thereby ending child marriage. The regulation fixed 16 years as the minimum age of marriage. It also preserves the guardian's right to appeal to the court to exempt his daughter from this age requirement if he can present "a medical report from a committee comprising a female gynecologist, a psychiatrist and a social worker to prove that his daughter has matured physically and mentally and that marriage will not be hazardous to her."⁵²³ The regulation requires the guardian not rush into marrying off his daughter after engagement and to wait until she is prepared for marital life and responsibilities. The regulation also requires the consent of the mother and the bride before the wedding.⁵²⁴

⁵²⁰ The system that regulate the marriage contract.

⁵²¹ Nikah Regulation, Article 14.

⁵²² See, Abdulrahman Buqami & Badr Al-Otaibi, *Buraydah Girl scream: «Save me, I do not want!* Al-Riyadh newspaper. Jan. 12, 2010 <http://www.alriyadh.com/2010/01/16/article490248.html> (Al Riyadh newspaper, reported the case of a father who sold his 12-year-old daughter to a 80-year-old man under the pretext of marriage. The groom paid \$22,600 as a dowry. In this case, the groom did not seek out the girl, but her father offered her and he accepted. As the newspaper report showed, the father made his decision based on the development of the girl body and not her age. Her mother was strongly opposed to the marriage but could not prevent it.)

⁵²³ Alyome Alsabea, *Saudi Arabia Imposes Strict Restrictions on Young Marriage*. Al-yome Al-sabea Newspaper. Mar. 20, 2013. <http://www.youm7.com/News.asp?NewsID=986859&>

⁵²⁴ *Id.*

Apparently, this regulation, even if the Shura counsel approved it, is not effective in putting an end to child marriage because it allows the guardian to appeal for exemption.⁵²⁵ The regulation does not specify a minimum age for that appeal, which can be any age under 16. Another problem with the regulation is that most child marriages are done by force. Little girls are married to older men, and the age gap between them can exceed 30 years. The regulation does not provide instruction on how to verify the mother's and daughter's consent to the marriage and it ignores the age difference between the husband and the wife.⁵²⁶ Girls' early marriage should not be merely regulated but should be prevented entirely.

To provide more protection for girls, family law should state a minimum age for marriage. The age must be congruent with the definition of "child" in the child protection agreement, which Saudi Arabia has signed. This treaty considers anyone under 18 a child. Also, to solve the problem with the age gap between the bride and the groom and to satisfy the marriage conditions, family law should require the Mathoun to seek the bride's clear consent to the marriage. Fathers' acceptance to the marriage must not be sufficient to conduct the marriage contract.⁵²⁷ Finally, defining the minimum age for marriage will reduce girls' risk of experiencing violence.

⁵²⁵ BBC, *New Marriage Contracts in Saudi Arabia Sets the Age of Marriage for Women*, BBC NEWS. Jan. 3, 2010 http://www.bbc.co.uk/arabic/middleeast/2010/06/100603_saudi_marriage_contracts_tc2.shtml

⁵²⁶ Suhaila Zain Al-Abideen, *A Law Full of Loopholes*, Saudi Gazette, Mar. 14, 2013. <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20130314156749>
See, AL-arabiya, *After a long debate: Saudi court divorce a child from 50 year old man*, Al-Arabia Newspaper. May 3, 2009. <http://arabic.cnn.com/2009/entertainment/4/30/Child.marriage/index.html>

(In 2008, Onaiza City, Saudi Arabia, the mother of 8-year-old girl raised a petition asking for her child divorce. Her father had married her off to a 50 year-old man as a deal to settle his debt. The Saudi court held that "it was the male guardian's right to contract such a marriage and only the girl (and not her mother) could contest her own marriage when she reached puberty." The court of appeal refused to ratify the judge's ruling and returned the case for review. The same judge refused for the second time to issue a divorce, but due to the public outrage of that decision, the husband divorced the girl.)

⁵²⁷ Jordan Personal Status Law 2010, Article 11. See, Equality Now, Saudi Arabia: End Child Marriages and Male Guardianship over Women. Nov. 6, 2012 <http://www.equalitynow.org/node/725> (In 2010, Fatima, a 12-year-old girl, was married to a 50 year-old man who's already married and has ten children. Fatima's father asked for \$10,665 as a

- Special Treatment For Divorce Cases That Involve Domestic Violence Cases.

A procedure for divorce cases, child custody, and alimony will have an effect in protecting women rights. However, divorce cases that involve domestic violence need to be treated in a differently under the family department in family court because of the sensitivity and the dangerous nature of these cases. An abused woman may not be able to help as much with her case and may only focus on gaining divorce to stop the violence.⁵²⁸ If the family department discovers that the woman is being abused by her husband, the department must follow certain procedures that increase her protection and assist her in seeking divorce and child custody.

To increase protection for abused women, the department must inform the abused woman of her right to press charges against her abuser in criminal court. They must also inform the Ministry of Social Affairs, since it is the Ministry's responsibility to interfere in domestic violence cases and have the police investigate so the abuse can be stopped and the husband can be prosecuted. The family department should also follow certain procedures with respect divorce and child custody.⁵²⁹

dowry and kept it for himself. The father had gained a benefit from this marriage because he was jobless and a drug abuser. Fatima's family, and in particular her grandfather and uncle, were against the marriage but could not stop it. Under the Saudi law Fatima's father, as her guardian, is the only one who has the right to accept the marriage or reject it.)

⁵²⁸ Hejazy, *Supra* note 429.

⁵²⁹ The Protection From Abuse Act 2013.

In processing divorce in domestic violence cases, the family department should not refer the couple to the reform committee. Mediation may not be suitable in domestic violence cases because of the lack of equal power in the marriage relationship, which is a necessary factor to maintain an effective mediation.⁵³⁰ Abused women are often unable to express their needs and feel pressure to return to their husbands despite the abuse.⁵³¹

The family department should inform abused women of the type of divorce they should seek from the court. If a husband refuses his wife's request for a divorce, the court should annul the marriage, since Islamic family law allows the judge to annul the marriage if the wife is harmed. The wife should not be compelled to divorce her husband by Kule, because this type of divorce is applied when the wife has no reason to seek divorce besides disliking her husband.⁵³² The family department should also have special treatment for child custody.

Domestic violence should be an essential element in the child custody decision. Abused women should not be prevented from seeking divorce because they fear losing their children. Evidence of violence against one family member should deprive the abuser from child custody even if children were not subject of the abuse. Family court should take into consideration that witnessing violence in the family affects children's health and emotions.⁵³³ The family department can focus on awarding custody to the mother.

⁵³⁰ Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100(6) YALE L.J.1545-1567 (1991)

⁵³¹ Salwa Al-Khatib, *Domestic Violence Against Women in Riyadh A Study of Women Attending The Riyadh Central Hospital and The Center For Social Aid Charity and Family Counseling* 1- 38 (2005)

⁵³² ALKEBESY, *Supra* note 129, at 238-239.

⁵³³ Naomi R. Cahn, *Civil images of battered women: The impact of domestic violence on child custody decisions*, 44 VAND. L. REV. 1041- 1074. (1991)

In assigning custody to the mother, the family department should perform a complete study on the effect of children living in violent environments, the concerns for child safety and well being, and the risk of children experiencing violence. The family department should recommend that the judge limit the father's visiting hours and assign a place where children can be safe with their father. In severe abuse cases, the department should work to remove all guardianship from the husband and assign it to the mother or a close family member who can take care of the children.⁵³⁴

The different treatment for divorce in domestic violence cases compared to other family disputes will help abused women find greater support. There will be no pressure on her to drop the charges against her husband in return for gaining divorce or the custody. The clear and fast process in divorce and child custody cases will protect abused women and children from experiencing more abuse. The nature of domestic violence requires the intervention of an outside agent.

⁵³⁴ Cahn, *Supra* note 533, at 1089-1092.

- **Conclusion.**

To raise women's status and protection in Saudi Arabia, there should be changes to family law. Lack of codification of family law in Saudi Arabia has put women at a disadvantage in family relationships. Divorce cases may take several years to be finalized and women struggle to obtain custody of their children and alimony. Girls' early marriage is also a problem since there is no law that designates the minimum age for marriage.

Family law in Saudi Arabia should establish a family department under the family court. The family department can work to reconcile husbands and wives and help the judge reach a decision in divorce, child custody, and alimony cases. The family department can also work to increase awareness of the parties' rights and duties after divorce. Family law should also state 18 years as the minimum age for marriage.

To resolve the issue of receiving the alimony, family law should establish an alimony fund. The fund can work to support women economically from the day the court decides the divorce. Under the fund system, a divorced woman does not have to interact with her ex-husband or initiate another case to force her ex-husband to pay. The fund can claim the payment from the husband. Finally, the family department should have special treatment for domestic violence cases. Cases of abuse should not be referred to the reform committee and evidence of abuse should prevent the abuser from receiving custody of children.

❖ Chapter Seven: Explaining How to Improve The Law.

○ Introduction.

Domestic violence is a serious crime that not only affects women, but also their children and the community at large. There are cultural and social barriers that prevent abused women from seeking help. These barriers also prevent family and friends from interfering or reporting abuse cases. Several steps should be taken to encourage women to speak about their experiences with abuse, to change the public response to the crime, and to assist abused women in making decisions about their relationships. As well, these steps will have an impact in achieving major changes and reforming the laws. These steps can include launching educational campaigns, integrating human rights education into the public school curriculum, focusing on religious speeches, increasing the economic independence of women, and finally establishing female non-governmental organizations (NGOs.)

These steps will have an impact on changing the public perception on a specific matter. In the United States, for instance, several campaigns were launched to raise awareness of the serious effects of drunk driving. Research on the issue of drunk driving indicates that these campaigns have had a vital impact on raising awareness and reducing the harms of drunk driving.⁵³⁵ These steps can also have an impact on improving the law. In Jordan, for instance, the publication of CEDAW in the official gazette was a result of efforts made by female NGOs.⁵³⁶ This chapter will focus on applying these steps to improve the status of women in Saudi Arabia and reduce actions that may cause harm to them.

⁵³⁵ Randy W. Elder, ET AL. *Effectiveness of Mass Media Campaigns For Reducing Drinking and Driving and Alcohol-Involved Crashes: A Systematic Review*. 27 (1) AM.J. OF PREVENT. MED. 57-65. (2004)

⁵³⁶ Arab Women Today. <http://www.awtministries.com/english/radio.php>

The first section will give a brief overview of the negative impact of domestic violence on children, victims, and the community. The second section will focus on educational campaigns as a way to improve the public response to and awareness of domestic violence. The third section will cover introducing human rights education in school curriculum as a means for spreading the culture of human rights. The fourth section will suggest how religious speeches could be utilized to reduce violence against women. The fifth section will advocate for increasing the economic independence of women and how that will help abused women leave violent home situations. The final section will focus on female NGOs ability to change and improve women's rights.

- **Section One: The Impact of Domestic Violence.**

While there can be several perpetrators of domestic violence like the husband, father-in-law, and mother-in-law, the impact of domestic violence is not limited to the victim who is subject to the violence. Domestic violence can also impact any children who witness the violence. Further, communities are affected because domestic violence raises the rate of crime in communities.⁵³⁷ This indicates the need for increasing the awareness of the hazards and impacts of domestic violence on children, women, and communities.

Research indicates that children living in homes where their father abuses their mother experience emotional abuse. Children may directly observe the violence by seeing their father physically or sexually abuse their mother. Children may also indirectly observe the violence, by overhearing it, observing the destruction of furniture, or noticing that their mother is injured. In either case, the children might not be directly subject to violence, but living in this home environment is regarded as emotional abuse, which may lead to the children developing health and mental problems.⁵³⁸ Besides suffering from emotional abuse, children living in homes with domestic violence are at greater risk of physical abuse.

⁵³⁷ Emam, *Supra* note 402, at 612-617.

⁵³⁸ Stephanie Holt, Helen Buckley, Sadhbh Whelan. *The Impact of Exposure to Domestic Violence on Children and Young People: A Review of The Literature*. 32 CHILD ABUSE & NEGLECT 797, 800-801 (2008)

One study in Saudi Arabia revealed that 96% of children living in violent environments have been victim to some form of violence themselves.⁵³⁹ Another study on the impact of domestic violence in Saudi Arabia showed that between 50%-70% of men who abuse their wives have used some form of violence against their children.⁵⁴⁰ About 70% of women who have experienced violence in their home agreed that their children have experienced violence, too.⁵⁴¹ Besides experiencing physical abuse, several studies indicate that there are other serious consequences of children living in homes where the father abuses the mother.

Living in a home with domestic violence can have serious effects on a child's personal and social development. Lifetime exposure to domestic violence can also cause children to develop violent tendencies as adults, particularly in future domestic relationships.⁵⁴² One study in Saudi Arabia showed that 95% of abusers have experienced some form of abuse in their childhood.⁵⁴³ Another study showed that 92% of children who experienced domestic violence tend to act in violent way⁵⁴⁴ and 79% of children treated their mother disrespectfully after seeing the father abusing her.⁵⁴⁵ Domestic violence jeopardizes child development and affects the child's health and mental development.

⁵³⁹ Hejazy, *Supra* note 429.

⁵⁴⁰ Aleqtsadia news, *Report on: Householder commits 70% of assaults against children*, Al-eqtsadia newspaper 6966. Nov. 06, 2012.

⁵⁴¹ *Id.*

⁵⁴² Holt, *Supra* note 538, at 802.

⁵⁴³ KHALED ALHELEBY, DOMESTIC VIOLENCE, CAUSES, CONSEQUENCES, MANIFESTATIONS, AND TREATMENT 30 (2009)

⁵⁴⁴ Hejazy, *Supra* note 429.

⁵⁴⁵ *Id.*

A study of children living in violent homes in Saudi Arabia showed the effect of violence on a child's health. 87% of children lost the ability to concentrate, and 84% of children have general health problems.⁵⁴⁶ The study also showed the effect of domestic violence on children's education; it revealed that about 82% of abused women disclosed that because of the low income, their children were deprived of school at an early age.⁵⁴⁷ Furthermore, children who live in abusive homes find themselves overloaded with household chores, such as taking care of their siblings, cooking, and cleaning.⁵⁴⁸ Children may also start to work outside the home at early age to support their family, as one study indicated. In fact, 79% of children living in abusive homes were looking for jobs to help their mother.⁵⁴⁹

The Saudi Ministry of Interior has disclosed that domestic violence is the reason why so many girls run away from home. The Ministry has revealed that in 2005, 1334 girls fled their homes because they experienced sexual abuse.⁵⁵⁰ Also, a study on domestic violence in Riyadh, Saudi Arabia has disclosed that domestic violence is the reason why increasing numbers of girls commit suicide. The study stated that 11 to 16 girls attempt suicide each month.⁵⁵¹ Besides the effect of domestic violence on children's life, violence in the family affects all aspects of women's lives.

⁵⁴⁶ Hejazy, *Supra* note 429.

⁵⁴⁷ *Id.*

⁵⁴⁸ AL-JIBREEN, *Supra* note 2, at 124.

⁵⁴⁹ Hejazy, *Supra* note 429.

⁵⁵⁰ ALHELEBY, *Supra* note 543, at 29.

⁵⁵¹ *Id.*

Mostly, women subjected to violence are at risk of physical health issues. Specific injuries are more common among abused women such as head, face, and back injuries and women may suffer from cuts and bruises.⁵⁵² Pregnant women subjected to violence often experience dizziness and are at risk of having a miscarriage.⁵⁵³ The longer-term effects of domestic violence include chronic headaches and backaches.⁵⁵⁴ Physical violence also will lead abused woman to suffer from “gastrointestinal disorders like loss of appetite [and] eating disorders.”⁵⁵⁵ Abused women experience of physical health issues that lead to mental health problems.

A woman subjected to violence may suffer from mental health issues such as anxiety, depression, stress, low self-esteem, and feelings guilt.⁵⁵⁶ A study on the impact of domestic violence on abused women in Saudi Arabia showed a number of problems that abused women are surrounded with. The study disclosed that 96% of abused women suffer from insomnia, 98% of abuse women feel a lack of appreciation from their partners, and 93 % of abused women feel lonely even with the presence of their partners.⁵⁵⁷ Abused women who suffer from these physical and mental issues will also often suffer financially. Due to the physical and mental problems, abused women continually use the help of health services, emergency rooms, and medicine and drugs, which will increase the abused women’s spending on medical care. Thus, domestic violence damages women’s lives by causing her to suffer physically, mentally,

⁵⁵² A. K. Agnihotri, ET AL. *Domestic violence against women—an international concern*. 16(1) TORTURE 30-34 (2006).

⁵⁵³ Emam, *Supra* note 402, at 613.

⁵⁵⁴ Agnihotri, *Supra* note 552, at 34.

⁵⁵⁵ *Id.*

⁵⁵⁶ Emam, *Supra* note 402, at 618

⁵⁵⁷ Hejazy, *Supra* note 429.

financially, and socially even after the violence has ended.⁵⁵⁸ Due to the serious effects of domestic violence on women and children, the negative impact of domestic violence also appears in the community.

Although domestic violence is usually kept within family boundaries, its impact extends to the community. As the family is considered to be the first unit in the community, any deviations or problems in the family will affect the society. Thus, the integrity of the community begins with the integrity of family and the individual. Also, because violence is cyclical, when children learn that violence is a normal way of life, their ignorance regarding domestic violence imposes costs on society because homes and public places are not as safe.⁵⁵⁹ Domestic violence raises the rate of crime in the community.

A study of prisoners in Saudi Arabia illustrates the serious effects of domestic violence in the community. The study revealed that the majority of female prisoners, about 86%, committed crimes as a result of the emotional abuse they suffered. However, only 13.2 % of women and girls were imprisoned because of other issues, like financial ones.⁵⁶⁰ Further, in men's prison, 80% of drug abusers have experienced some form of violence in their childhood and about 78 % of men prisoners had experienced violence in their childhood.⁵⁶¹ Domestic violence may lead the community to lose safety and security.

⁵⁵⁸ Emam, *Supra* note 402, at 618.

⁵⁵⁹ MOHAMMAD ALSGEER, DOMESTIC VIOLENCE IN THE SAUID SOCIETY, REASONS AND SOCIAL IMPACT 197 (Naif Arab University of Security and Sciences 2012).

⁵⁶⁰ AL-YOUSEF, *Supra* note 407, at 185.

⁵⁶¹ See, *Id*, at 30. (The study indicates the reasons why women are imprisoned. The first reason is escaping the abusive home, second reason is betting by the family member.)

In summary, domestic violence affects women and girls in all levels of society as well as their children. It may also cause children from abused homes to become abusers in their future relationships. Domestic violence harms society by raising crime rates. Making changes in the Protection from Abuse Act and codifying Family Law are very important, not only to protect women and children's rights, but also to raise the security of the family and society. A part of the changes described in chapter five under family law, particularly establishing a special department for family cases and domestic violence cases, can be expected to be the first steps in making changes, since the judicial system already establishes a special court for family cases and the system also allows the establishment of special departments under the family court as needed.

Huge efforts should be taken to achieve the major changes, which is reforming The Protection from Abuse Act and codifying Family Law, specifically providing an enforcement mechanism for alimony and determining the marriage age. Here are several important steps that can be taken to achieve the long-term goals of reforming the law. These steps include launching educational campaigns, integrating human rights education in school curriculum, enhancing religious teachings, and raising women's employment opportunities. These steps will have an effect in raising the community's understanding of the issue, raising women's awareness and empowerment, and reduce the society's acceptance of violence.

The final step that should be followed is establishing women-focused NGOs. This step will give women a voice to speak up about their needs and advocate for their rights. When woman's voices are supported by the societal awareness of the individual rights and the discouragement of violence in the family, NGOs would have an impact in reforming and changing the laws. The next section will provide an explanation for each step and provide examples of how other countries have used these steps to improve women's rights and to change the law.

○ **Section Two: Steps That Should be Taken.**

- Campaign Program Awareness.

Domestic violence in the Saudi society has only recently become a topic of public discourse. There are both social and individual circumstances that can prevent abused women from seeking help. At the social level, violence against wives is generally accepted due to the patriarchal structure of society and male sovereignty over female family members.⁵⁶² A person may know about an abused woman but choose not to interfere since most people believe that domestic violence is a family matter. At the individual level, abused women may not seek help because they fear judgment from family and friends, feel ashamed, fear being blamed, or are embarrassed.⁵⁶³ A public campaign is a powerful tool that can be used to transfer new messages to help change behavior and social norms.

⁵⁶² See, Al-Khatib, *Supra* note 531, at 15-16. (A study of some cases of abused women attending the Riyadh Central Hospital.)

⁵⁶³ Tania Wahed & Abbas Bhuiya, Battered Bodies and Shattered Minds: Violence Against Women in Bangladesh. 126 INDIAN J. MED. RES. 341-346 (2007)

The drinking and driving campaign is a great example of the effect a campaign can have in changing behavior. In the U.S, the campaign encouraged people to refrain from drinking and driving. A study of this campaign showed the effectiveness of the campaign in raising the issue, changing the public perception on the issue, and changing individual behavior, which led to a reduction in drinking and driving.⁵⁶⁴ Generally, the effectiveness of the campaign depends on content of the campaign's message and the conduct the campaign encourage or discourages. It also depends on how the message is delivered, including the target audience and providing that audience with the information needed.⁵⁶⁵

In 2013, the King Khalid Foundation in Saudi Arabia launched the first anti-domestic violence campaign. The foundation introduced the poster of the campaign that displayed a veiled woman with one black eye. Under the picture a caption states "And what is hidden is greater, together we can combat violence against women." The goals of this campaign are to raise awareness on the issue of domestic violence and encourage reporting of these cases. The poster was spread on the Internet and reached large audiences through social networks. Two local newspapers also published the poster. To encourage victims to report cases, the foundation created a website that contained information on how to report cases of abuse.⁵⁶⁶ Due to the limited content in the campaign and the way used to deliver the message, this campaign has had a limited effect on raising awareness. The effective implementation of a public educational campaign

⁵⁶⁴ Elder, *Supra* note 535, at 57-65.

⁵⁶⁵ *Id.*, at 57-58.

⁵⁶⁶ King Khalid Foundation <http://www.kkfeng.org/no-more-abuse.php>

would help raise awareness about domestic violence, reduce social tolerance for the crime, and change individual behavior.⁵⁶⁷

Other countries have used educational campaign to protect women from domestic violence. These campaigns had a positive impact on abused women because of the rich content and utilization of mass media.⁵⁶⁸ In Malaysia, for instance, the campaign “Be it physical, verbal or emotional, there’s #No Excuse For Abuse.” Was launched by the Women's Aid Organisation (WAO) to raise awareness regarding domestic violence and to encourage abused women to seek help. The campaign focuses on identifying signs of domestic violence and helping abused women who are unable to make difficult decisions about their violent relationship.⁵⁶⁹

The campaign began with art exhibition launched in a shopping center, which displayed “blouses with hand-stitched words representing the voices of victim survivors.” Each blouse shows an excuse that prevents the victim from seeking help and remains silent about her experience. For instance, “I’m afraid of him, but leaving him will just bring shame to my family,” or ‘It’s alright, he apologized. He said he’ll never do it again.” The campaign encourages all women to show their support to the campaign by wearing the #No Excuse For Abuse T-shirt. The campaign also provides a helpline for victims and utilizes radio, newspaper, and social networks to spread the campaign

⁵⁶⁷ See, WILLIAM G MAYER, THE CHANGING AMERICAN MIND: HOW AND WHY AMERICAN PUBLIC OPINION CHANGED BETWEEN 1960 AND 1988, 9 (University of Michigan Press 1992). (This book provides explanation on how public opinions have changed over time.)

⁵⁶⁸ See, Arab Women Today. <http://www.awtministries.com/english/radio.php> (In Jordan, the radio program “Arab Women Today” (“AWT”) began in October 1999. On the social level, the program seeks to raise women’s awareness about their rights, raise awareness about domestic violence, and change the position of women in the society. The program focuses on opening dialogs on sensitive issues and discussing them. By using the radio, which is accessible to poor people, the program has reached its target audience. The AWT program also provides training for women on family issues, abuse and violence, and personal skills like computer literacy. In addition, the program staff follows up with their listeners and holds annual conferences to discuss new issues.)

⁵⁶⁹ Women's Aid Organisation (WAO). #NoExcuseForAbuse http://www.wao.org.my/news_details.php?nid=320&ntitle

message.⁵⁷⁰ Kristine Yap, the Advocacy Officer with Women's Aid Organisation, states that that campaign has received 169 calls from women seeking help since the campaign was launched in March 2014.⁵⁷¹

Another example of the successful use of the mass media to reduce violence against women is in Western Australia. The "Freedom from Fear" campaign started in 1995 as a recommendation on how to assist victims of abuse under the Western Australian Government's Family and Domestic Violence Action Plan. The campaign involves "long term community education programs" that are supported by government agencies. It employs TV, radio, and poster advertisements to promote its message. The program focuses on changing individual behavior and was encouraging perpetrators of domestic violence to reconsider their violent actions and ask for help. Abusers seeking help would receive several services, including counseling sessions and rehabilitation programs focused on preventing future violent behavior.⁵⁷² As a result of utilizing mass media to deliver the message, the campaign succeed in reaching its goals, which is protecting victims of abuse. An evaluation of the campaign showed that the campaign received 6000 calls from men seeking help over two years.⁵⁷³

⁵⁷⁰ Women's Aid Organisation (WAO), *Supra* note 596.

⁵⁷¹ Women's Aid Organisation (WAO). Domestic Violence Awareness Campaign #NoExcuseForAbuse Wins Effie. http://www.wao.org.my/news_details.php?nid=337&ntitle=+Domestic+violence+awareness+campaign+

⁵⁷² Leonie Gibbons & Donna Paterson, *Freedom From Fear Campaign Against Domestic Violence: An Innovative Approach to Reducing Crime, Reducing Criminality: Partnerships and Best Practices* 1-3. (Adam Graycar, ed. 2000)

⁵⁷³ *Id.*, at 14.

To launch a successful domestic violence campaign and education program in Saudi Arabia, the campaign should be more comprehensive in its content and should take advantage of mass media. The program should also have clear goals for changing the social norms and individual behavior. Utilizing television, radio, and the Internet to talk about women's rights in the family and to discuss the issue of domestic violence and its effect on the community will help reach a broader audience, raise awareness about the crime, and change public perceptions about violence and abuse. The campaign can also provide educational programs for students and their families.⁵⁷⁴

The Ministry of Social Affairs combined with the National Society of Human Rights could visit schools annually to raise awareness and provide students with information about violence, causes and effects, and how to seek help and report cases. The program could also focus on teachers and encourage them to report cases of abuse. Another way to launch the campaign is to establish educational programs in selected neighborhoods and encourage men and women to participate. These programs can provide childcare facilities and transportation that would be accessible for women. Several topics related to violence in the family could be addressed.

The program can work to provide a clear understanding of violence in the family, decrease the acceptance of abuse in the family, illustrate the criminal sanctions for abusive acts, provide information on how to seek help or report cases, and explain healthy relationships and the importance of equal power in family relations. Finally, integrating human rights education into the school curriculum will work with the education campaign to spreading the culture of human rights.

⁵⁷⁴ ETHEL KLEIN, ET AL, ENDING DOMESTIC VIOLENCE: CHANGING PUBLIC PERCEPTIONS/HALTING THE EPIDEMIC 90-94 (Sage Publications, Inc. 1997)

- Human Rights Education.

The UN has paid major attention to education regarding human rights. In 2004, the UN launched a world program to promote human rights education in all fields. The program was divided into two phases. The first phase focused on introducing human rights education into elementary and secondary school curricula. The second phase introduced human rights in the higher education.⁵⁷⁵ Human rights education in Saudi Arabia is necessary to raise active citizens who know about their own and others' rights and responsibilities.

Human rights education in Saudi Arabia means introducing human rights as curriculum in school and explaining the principles of human rights in accordance with Islamic law and international treaties. Several goals can be achieved by integrating human rights into the curriculum.⁵⁷⁶ Human rights education will shape individuals by increasing each person's understanding, respect, knowledge, and exercise of his or her rights. It will also promote the rights of others people without discrimination for gender, race, or color and teach people they have a responsibility to prevent violations of human rights. Human rights education can also reduce crime in society.⁵⁷⁷ For these reasons, Saudi Arabia should focus on introducing human rights education in school curricula.

In 2008, the Saudi National Society for Human Rights issued a recommendation to the Minister for Education calling for the introduction of human rights as an independent course in school curriculum. The recommendation requests teachers to focus on teaching human rights in the context of Islam, international treaties, and local law. The recommendation also encourages researchers and graduate students to focus their

⁵⁷⁵ United Nations, World Program For Human Rights Education, Second Phase 16-17 (2012)

⁵⁷⁶ National Society for Human Rights in Saudi Arabia Recommendation To The Ministry Of Education (2008)

⁵⁷⁷ Cairo Declaration To Educate And Spread The Culture Of Human Rights (2000)

researches on human rights topics.⁵⁷⁸ So far, this recommendation has not been implemented. The education system in Saudi Arabia has no specific classes that teach about human rights in school or any classes that raise students' awareness about their rights and duties.

Human rights education in Saudi Arabia should start in the early school years with casual information about individual rights. Human rights education is essential in elementary, secondary school, and higher education.⁵⁷⁹ In specific fields, such as law, human rights education must focus on sensitive issues like women rights and violence. Research on human rights education and the experience of other countries reveals that the successful implementation of human rights education includes five elements: “educational policies, policy implementation, the learning environment, teaching and learning processes and resources, and professional development.”⁵⁸⁰ While all of the five elements are important, the Saudi educational system should pay extra attention to the development of teacher's skills. Teachers, as the disseminators the information, must be given more training and development programs to allow them to achieve the educational goals of spreading a culture of human rights. Teachers must be supported and appreciated for their work.⁵⁸¹ Finally, human rights education, and in particular focusing on human rights in Islam, will have a vital impact in raising equity and respect in the family and the community.

⁵⁷⁸ National Society for Human Rights in Saudi Arabia Recommendation To The Ministry Of Education, *Supra* note 576.

⁵⁷⁹ NORMA TARROW, HUMAN RIGHTS, EDUCATION, AND GLOBAL RESPONSIBILITY 34 (James Lynch et al. eds.1992)

⁵⁸⁰ Bernie Froese, *Human Rights Education in Canada, Results From a CTF Teacher Survey*, Canadian Teachers' Federation, 1 (2013)

⁵⁸¹ *Id.*

- Religious effect.

Since Saudi Arabia is an Islamic country, people highly respect and are influenced by religious speeches. In Friday prayer, which takes place in the afternoon, the Imam gives a speech before reciting the prayer. The Imam's speech may contain preaching and guidance for Muslims on matters related to the religion or their lives. The Imam can also give a speech on social issues, problems in the community, or about religious occasions. The Friday sermon is regarded as one effective way to disseminate Islamic education.⁵⁸² Therefore, Friday sermons can be used to raise awareness about how Islam views violence in the family.

The Friday sermon has a significant effect on improving people's lives. King Abdul Aziz Center For National Dialogue in Saudi Arabia conducted a study on 685 persons to measure the impact of Friday sermon on their lives. The study revealed that 52.4% of the sample agreed that Friday sermon's topics are related to their lives.⁵⁸³ About 67.4% of the sample revealed that Friday sermons have an influence in their lives by promoting social and religious values and correcting undesirable behaviors. This study indicates that Friday sermon has a positive impact on people's lives.⁵⁸⁴

⁵⁸² ABDULGANY MOZHER, FRIDAY SERMON AND ITS ROLL IN THE UPBRINGING THE SOCIETY 33-34 (2008)

⁵⁸³ King Abdul Aziz Center For National Dialogue.

http://kacnd.org/news_descres.asp?newsid=1065&keywordd=%E6%CD%CF%C9%20%C7%D3%CA%D8%E1%C7%DA%C7%CA%20%C7%E1%D1%C7%ED

⁵⁸⁴ *Id.*

Friday sermons are influential for several reasons. First, the Friday sermon has a high status throughout Muslim history, and Muslim jurisprudence has given it much attention by studying its provisions and its relation to Friday prayer. Second, in the Quran, God commanded Muslim to seek a mosque when hearing the prayer's call and promised to reward Muslims who attend the sermon. Finally, the Friday sermon occurs every week and touches issues related to people's lives.⁵⁸⁵

While the Imam is free to choose the topic for Friday sermon, the Ministry of Islamic Affairs, Endowments, Da'wah, and Guidance can issue circulars for mosques on topics that Imam should discuss in Friday sermon. For instance, the Ministry has required the Imams to discuss the issues of drug abuse, vehicular speeding, domestic violence, and the importance of enhancing family relationships.⁵⁸⁶ Since some men do not have full understanding of domestic violence and use the Quran text to justify their physical abuse, the Ministry should require Imams to clarify the misconception that Muslim men are permitted to use physical violence against their wives.⁵⁸⁷

The Imam could explain that domestic violence cannot be linked to Islam, but to human misunderstanding and misapplication of the Quran text.⁵⁸⁸ The Imam could focus on explaining that men are not permitted to physically abuse their wives and that the husband's right to discipline his wife under Islam is only symbolic to show that the husband can show his dissatisfaction. Also, the right to discipline has to be with a light

⁵⁸⁵ Abdulhaleem Garby, *The Role Of Friday Sermon in Addressing The Economic Problems*, GLOBAL ISLAMIC ECON. MAG. 1-2 (2014)

⁵⁸⁶ The Ministry of Islamic Affairs, Endowments, Da'wah, and Guidance.

<http://www.moia.gov.sa/Eng/Menu/Pages/AllForms.aspx>

⁵⁸⁷ Douki S. & Nacef F. & Belhadj A. ET AL. *Violence Against Women in Arab and Islamic Countries*, 6 (3) ARCH. WOMEN'S MENT. HEALTH 165-170 (2003)

⁵⁸⁸ See, *Id*, at 165-170 ("It is impossible for anyone who is truly informed to justify any mistreatment of woman by any decree of rule embodied in Islamic Law, nor could anyone dare to cancel, reduce, or distort the clear-cut legal rights of women given in Islamic Law.")

object, leave no mark, and he has to avoid the face and can be exercised only if the husband follows the required previous two steps in order—talking to her and separation—and have failed in solving the dispute. The husband can exercise this right only if he believes that it would help in reconciliation. The Imam should stress that Islam prohibits the husband from inflicting harm on his wife or beating her.⁵⁸⁹

Finally, religious speeches have a great influence in the Muslim community, in changing Muslims' behavior, and in correcting their beliefs. The Friday sermon is one of the most effective ways to increase Muslims' knowledge about acts that are encouraged or discouraged by Islam. Using Friday sermons to deliver the message that Islam is against violence will clarify the difference between the husband's right to discipline his wife and domestic violence. It will also cause society to condemn violence in the family and raise protections for women. The final step to promote protection for women and to increase their ability to leave abusive relationships is to increase women's economic independence.

- Women's Economic Independence.

Economic independence for women refers to a woman's ability to access work opportunities and gain income to satisfy her needs on an equal basis with men. Women's economic independence has an effect on women living in abusive relationships; it may decrease or increase the risk of experience violence.⁵⁹⁰ Since studies in Saudi Arabia indicate that abused women do not leave because of they fear poverty, greater economic independence for women will assist abused women in leaving the abusive relationship.

⁵⁸⁹ Al-ajlan, *Supra* note 138, at 83-85.

⁵⁹⁰ Government of Newfoundland and Labrador, Discussion Paper, Economic Independence for Women Leaving or Living in Abusive Relationships 2 (2002)

In general, a woman's employment status leads to an increase or decrease in violence against her depending on the husband's character. Some studies show that, on the one hand, woman economic independence may have an important impact on decreasing the violence against her. Women's employment decreases a woman's reliance on her husband and gives her alternative choices outside the relationship. A husband who does not want to end the relationship will refrain from using violence against his wife.⁵⁹¹

On the other hand, women's financial and economic independence may increase the risk of experiencing violence from her husband. Due to the traditional view of women's position and responsibilities inside her home as a wife and mother and the husband's responsibility to provide the family's income and to support his family, the husband may feel powerless because of his wife's independence. As a result, a husband may use violence against his wife as one way to express his power and control in the home.⁵⁹²

While employed women and unemployed both can experience violence in their homes, a woman who is not dependent on her husband for economic support would benefit from her independence. Studies on female employment and domestic violence indicate that a woman's economic independence is necessary to allow her to decide to leave the abusive relationship. Abused women with fewer economic resources are more likely to remain in the abusive relationship.⁵⁹³ Raising the employment level of Saudi women will lead to assisting women in making her decision to leave.

⁵⁹¹ Christina M. Gibson Davis & Katherine Magunson & Lisa A. Gennetian, *Employment and the Risk of Domestic Abuse Among Low-Income Women*, 67 J. OF MARRIAGE & FAM. 1149-1165 (2002)

⁵⁹² Gibson Davis, *Supra* note 591, at 1150. See also, Susan Lloyd, *The Effects of Domestic Violence on Women's Employment* 19 L. & POL'Y 139-157 (1997) (Domestic violence effects women work, abused woman can be less productive, absence from work, or may lose her job.)

⁵⁹³ Michael J. Strube & Linda S. Barbour, *The Decision to Leave an Abusive Relationship: Economic Dependence and Psychological Commitment*, 45(4) J. OF MARRIAGE & FAM. 785, 790-791 (1983)

The Labor Code in Saudi Arabia has granted the right to work for all citizens. Article 3 states, “Work is the right of every citizen. No one else may exercise such right unless the conditions provided for in this Law are fulfilled. All citizens are equal in the right to work.”⁵⁹⁴ The Labor Code also introduced articles that only apply to female workers, for instance, Article 149 points out that women shall work in all fields appropriate to their nature, which prevents women from working in dangerous places.⁵⁹⁵ The Labor Code indicated that women are entitled to maternity leave for four weeks before giving birth and six weeks after.⁵⁹⁶ Also, all maternity medical care expenses are on the employer.⁵⁹⁷

While the labor code has protected women’s right to work, in practice, there are some restrictions on women’s ability to seek jobs in Saudi Arabia. One of the obstacles that women struggle with when applying for a job is obtaining a guardian’s permission. Even though the Labor Code does not require the guardian’s permission for women to work, some private sector employers require women to provide permission in order to start working.⁵⁹⁸ This restriction refers to the social custom that a woman’s guardian is responsible for her decisions. Requiring guardian’s permission has become a way for men to manipulate and abuse women. Many women have complained that their guardians refuse to give them permission to work unless they give their salaries to the guardian.⁵⁹⁹

⁵⁹⁴ Saudi Arabia Ministry of Labor, The Labor Code Article 3, available at <http://portal.mol.gov.sa/ar/Pages/OrganizeWork.aspx?m=4>

⁵⁹⁵ *Id.*, Article 149.

⁵⁹⁶ *Id.*, Article 151.

⁵⁹⁷ *Id.*, Article 153.

⁵⁹⁸ Human Rights Watch, Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia 1-3 (2008)

⁵⁹⁹ Doaa Bahauddin, *Men Slogan "Marital Bribery" Against The Wife's Salary*, Sabq Press, Oct. 09, 2012 <http://sabq.org/kZPo5D>

Besides needing a guardian's permission, transportation is another obstacle that can prevent a woman from seeking a job.

Easy access to transportation is an important factor that helps women to look for a job and continue working. Since women in Saudi Arabia are not allowed to drive, a woman finds it difficult to seek a job a far distance from her home. A woman has to depend on her male relatives to drive her to and from work. When her male relative is not able to drive her, a woman may hire a driver, which leads to more expenses.⁶⁰⁰ A working mother may also face more difficulties in seeking a job because of the lack of childcare facilities.

Childcare is an important factor that enhances a working mother's ability to look for a job. The Saudi Labor Code states in Article 159 that an employer who employs fifty or more women shall provide a childcare facility for children under the age of six years if the number of children is more than ten.⁶⁰¹ This article, while intended to support working mothers, has been ignored by private sector and has led some private sector employers to refrain from employing high numbers of women. The lack of adequate childcare facilities, whether independent or subservient to the agency, has contributed to mothers' unemployment. To enhance Saudi women's economic independence several steps should be taken by the Ministry of Labor.⁶⁰²

⁶⁰⁰ Al-Dehailan, *Supra* note 96, at 229-230.

⁶⁰¹ Saudi Arabia Ministry of Labor, The Labor Code Article 159.

⁶⁰² Al-Dehailan, *Supra* note 96, at 238.

The Ministry of Labor should require public and private sectors to provide transportation for female workers or to increase the transportation allowance to assist workingwomen with driver expenses. The Ministry of Labor should ensure that officials do not require a guardian's permission for a woman seeking a job. Also, the Ministry should ensure that the Labor Code is applied with regard to establishing childcare facilities or granting working mothers childcare allowances to help with hiring assistance. Finally, the Ministry of Labor should establish trade unions that monitor complaints of women for labor rights abuses.⁶⁰³ Enhancing women's economic independence will protect women from poverty and raise abused women's ability to leave abusive relationships.

In sum, after raising society awareness and understanding of domestic violence and the individual rights, non-government organizations that focus on women rights can further advocate in raising women rights and protection and will have a positive impact in changing the law.

- Female Non-Governmental Organizations (“NGOs”).

A non-governmental organization is an organization that involves a group of volunteers who share the same interest. NGOs can perform several functions, including advocating for human rights, providing education and research, and operating business, professional, health, and social services. Also, NGOs can work to meet citizens' needs and lobby for governmental change in policies and laws.⁶⁰⁴ Introducing a comprehensive

⁶⁰³ Mona AL-Munajjed, *Women's Employment in Saudi Arabia A Major Challenge*, Booz & CO. Inc. 1- 12 (2010)

⁶⁰⁴ Nidhi Srinivas, *Against Ngos? A Critical Perspective on Nongovernmental Action*, 38.4 NONPROFIT & VOLUNTARY SECTOR Q. 614-626. (2009)

law that regulates NGOs in Saudi Arabia will improve the work of current NGOs and will allow for the establishment of other groups that focus on women and human rights.

Generally in Saudi Arabia, NGOs are regulated and supervised by several authorities depending on their fields. Both the government and local donors fund these NGOs. For instance, the Ministry of Social Affairs has the authority to register NGOs that perform charitable activity assisting families with their needs. The Ministry also registers social and cultural activities that provide family counseling and programs for youth development.⁶⁰⁵ The Ministry of Higher Education has the authority to register NGOs that focus on science and profession.⁶⁰⁶ The absence of a unified law that regulates the work of NGOs and illustrates the process for registering them has led to several barriers to the work of NGOs.

These NGOs are not independent and are controlled by their registering Ministry.⁶⁰⁷ Since NGOs are not independent, they do not enjoy the freedom of working with international organizations, are restricted in receiving financing from foreign donors, and have limited freedom of expression. Also, since there are several authorities that can register NGOs depending on their field, many NGOs have been excluded and rejected from being registered, specifically those focusing on public issues and human rights. These NGOs have been rejected because there is no agency with the authority to register this type of NGO's activities. Introducing a unified law for NGOs will lead to several benefits. One important benefit is the allowance of many activities, particularly those that focus on women's rights, which will lead to raising women's status and protection.⁶⁰⁸

⁶⁰⁵ The Ministry of Social Affairs. <http://mosa.gov.sa/portal/modules/smartsection/item.php?itemid=6>

⁶⁰⁶ Administration of Scientific Societies. <http://www.aicss.org/BrowseCommitteesAR.asp>

⁶⁰⁷ The Ministry of Social Affairs, *Supra* note 605.

⁶⁰⁸ Husain Al-Sharif ET AL, *Civil Society and Human Rights in Saudi Arabia Status and Future Prospects*, EU- GCC Civil Society Conference 7 (2008)

Women-focused NGOs in many countries start to perform and to pursue their goals in enhancing women's rights.⁶⁰⁹ In Jordan, for instance, female NGOs are making remarkable progress in addressing the issue of domestic violence. Women NGOs have worked to increase women's rights in Jordan, illuminating gender discrimination and establishing shelters, hotlines, medical and legal services, and programs that change the social view of women in the society.⁶¹⁰ More than 120 women NGOs seek these goals with the support of government agencies, as well as independently, to establish a "women's civil society network."⁶¹¹

One of the important goals that women-focused NGOs in Jordan accomplished is persuading the government to lift the reservation on CEDAW under article 15(4), which is related to the freedom of house and movement. The work of women NGOs also led to the publication of CEDAW in the official gazette.⁶¹² Another important achievement by women-focused NGOs is the restriction on marriage age. Female activists objected to the civil article that permits a judge to conduct marriages for girls under the age of 15 years.⁶¹³ Due to opposition from women NGOs, the law was amended to determine 18-year-old as the minimum age for marriage, and only in specific circumstances and with the approval of the Chief Justice is a judge allowed to marry a younger girl.⁶¹⁴ Even

⁶⁰⁹ DAWN CHATTY & ANNIKA RABO, ORGANIZING WOMEN: FORMAL AND INFORMAL WOMEN'S GROUPS IN THE MIDDLE EAST 24 (Oxford: Berg 1997)

⁶¹⁰ RANA HUSSEINI, WOMEN'S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: PROGRESS AMID RESISTANCE 198 – 205 (Sanja Kelly & Julia Breslin eds. 2010)

⁶¹¹ UN Report, Violence Against Women Assessing the Situation in Jordan 7 (2008-2012)

⁶¹² HUSSEINI, *Supra* note 610, at 205. See Also, UN report, *Supra* note 611, at 19. (Provide more examples of organizations that work in advancing women rights in Jordan.)

⁶¹³ DAWN. Teenage Marriage In Jordan Stirs Up Debate. July, 16,2010

<http://www.dawn.com/news/547319/teenage-marriage-in-jordan-stirs-up-debate>

⁶¹⁴ Jordan Personal Status Code, Article 10(B)

http://www.lob.gov.jo/ui/laws/search_no.jsp?no=36&year=2010

though the law that regulates NGOs in Jordan contains some restrictions on NGOs' work, women NGOs continue to advance women's status and protection.⁶¹⁵

Introducing a unified law that regulates the work of NGOs in Saudi Arabia will lead to an expansion of the activities of NGOs and will not limit them to specific fields, which may benefit other groups who have also been rejected from registering under the current system. Introducing a unified law would also have other benefits to the system. The law will lead to unified administration for all NGOs. It will help NGOs become more independent, prevent interference and restriction on NGOs' work, and improve the work of NGOs by allowing them to collaborate with international organizations.

⁶¹⁵ See, International Center for Not-for-Profit Law (ICNL), Jan. 29, 2014. <http://www.icnl.org/research/monitor/jordan.html#top> (The law in Jordan allowed for the establishing of civil society organizations and was governed by the Law on Societies and Social Body 1996. The Law on Societies was reenacted in 2008 with some restrictions on the NGOs and was faced with criticism, which resulted in issuing the Law Amending the Law of Societies 22 of 2009 which also contain restrictions.)

- **Conclusion**

The successful implementation of educational campaigns, human rights education in school, religious speeches, women's economic independence, and women NGOs can lead to many benefits to women in Saudi Arabia. A comprehensive campaign program that utilizes mass media to reach large audiences will lead to changing people's attitudes about the crime of domestic violence and raising their awareness. Also, integrating human rights into the school curriculum will help raise generations of citizens that know their rights, the rights of others, and their duties to protect the rights of others.

In addition, using Friday sermons to deliver a message about domestic violence will have an effect in correcting misconceptions in Islam and will teach about Islamic perspectives on family violence. Increasing women's employment rates will increase women's independence and security, which will allow women to leave abusive relationships. Finally, establishing women NGOs will lead to advancing women's status and protection by advocating for changes in the laws that are most relevant to women.

❖ **Chapter Eight: Conclusion.**

Domestic violence has been defined as a pattern of abusive behavior against any family member for the purpose of gaining power and control. Domestic violence is a serious phenomenon that affects women and children in all levels of society. Women who are subject to violence suffer from physical, sexual, emotional, and economic abuse. Children who observe violence in their homes are at higher risk of being violent themselves. Violence in the family also raises the rate of crime in the community.

This dissertation explores the issue of domestic violence against women in Saudi Arabia. It first seeks to indicate that women in Islam enjoy several rights, including the right of independent ownership, the right to work, the right to inherit, the right of education, and the right to be respected. Islam also prohibits violence and abuse between spouses. This dissertation argues that the Quran verse that discusses the issue of a wife's disobedience does not allow the husband to beat his wife. Wife beating contradicts the Islamic teachings on the relationship between husband and wife.

To raise women rights and protection in Saudi Arabia, four articles in the Protection from Abuse Act of 2013 must be reformed. First, the title of the act must include the term "domestic violence" to specifically illustrate the type of crime that the act covers. Also, the definition stated in the act must indicate that abuse is a pattern of behavior to gain power and control. Second, the punishment stated in the act must take into consideration the needs of abused women. Thus, imprisonment and fines may not be appropriate punishment for perpetrators.

In addition, the Protection from Abuse Act must treat all abuse cases as crimes without giving the Ministry of Social Affairs the authority to decide what cases can be covered under this act. This article must be deleted because it will exclude cases from being heard. Finally, the Act must implement a mandatory rehabilitation program for abusers and victims. Making these reforms in the Act will help send a clear message that domestic violence is a crime.

Another way to improve women's status in Saudi Arabia is through family law. This dissertation provides a clear procedure that can be followed to govern divorce cases, to decide child custody, and to decide the amount of alimony. A family department can be established in family court to assist the judge in reaching a decision in family cases. The department can also work to increase the case parties' understanding of their rights. Also, the dissertation argues for ending child marriage by implementing a law that requires all spouses to be at least 18 to be married. Improving family law can enhance women's rights and raise their protection.

This research further argues that seeking changes to the laws may take several years and reform cannot be achieved without changing the public's response to violence in the family. Many small steps can be taken in the short term to raise women's protection. These steps can be regarded as the first step in reaching the major goal of improving the laws. These steps can include launching educational campaigns, integrating human rights education into the public school curriculum, focusing on religious speeches, increasing the economic independence of women, and establishing female non-governmental organizations (NGOs).

Educational campaigns were used by many countries to raise the public knowledge about a particular issues. Educational campaigns that focus on domestic violence would help raise awareness about the seriousness of violence in the family and would help change violent behavior. The second step to raising women's status is integrating human rights education into the public school curriculum. Introducing human rights education would offer individuals more knowledge about their rights and would lead to the respect and protection of the rights of others.

In addition, since Saudi Arabia is an Islamic country, religious speeches have a great influence on people's lives. Religious speeches can be used to clarify the Islamic point of view about violence in the family and to raise husbands' knowledge about their rights and responsibilities. Another way to protect women from abuse is by increasing the economic independence of women. Studies show that women's dependence on their husbands for financial support is one reason some women continue living in abusive relationships. Increasing women's employment will allow women to leave abusive relationships.

The final step that will have impact in reforming the laws is establishing female non-governmental organizations (NGOs). In several countries, like Jordan, women-focused NGOs have done a great job in raising women's status and reforming the law. One of the great accomplishments that women-led NGOs achieved in Jordan is setting a minimum marriage age. Establishing a unified law for NGOs in Saudi Arabia would allow many groups of women to work in advocating for women's rights and for enhancing the law.

- Case 2



الاسم : ص إ ح الحالة تعرضت العنف الجسدي والنفسي من الزوج حيث افادت انها متزوجة من 16 سنة ولها ابنتين وافادت ان زوجها مدمن على المسكر والحشيش مما دفعها الى تقديم شكوى بالشرطة ولكن حفظ البلاغ تحت ضغط اخوتها عليها والحالة تركت منزل الزوجية لحين حصولها على الطلاق وحضانة الطفلتين

الخدمات المقدمة للحالة :

توجيه الحالة الى المحكمة لطلب الخلع من الزوج وطلب حضانة لبناتها

توجيه الحالة الى مستشفى الصحة النفسية لأثبات وقع العنف ضدها من الزوج

تسجيل الحالة في مستودع الجمعية

تم صدور حكم قضائي بخلع الحالة من زوجها ومقايضة قيمة المهر بنفقة وجاري المعاملة القضائية بطلب الحالة حضانة بناتها