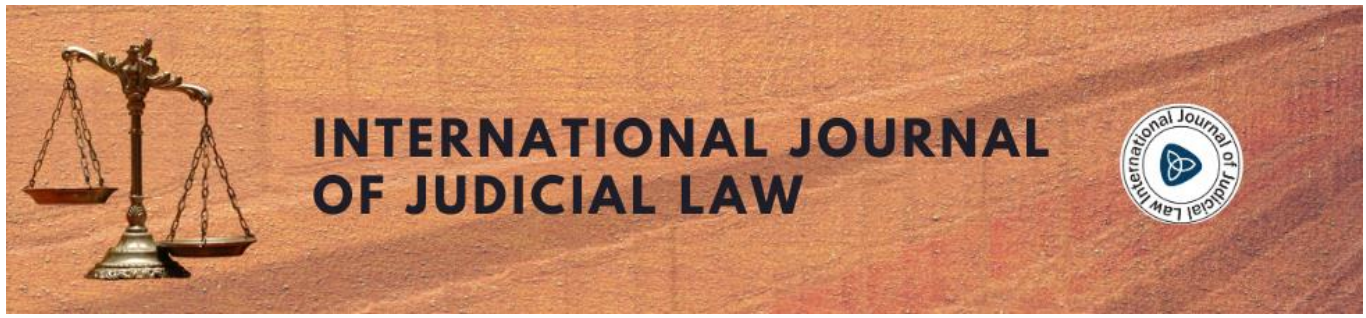




The Criminal Dimension of Domestic Violence in Iraqi Legislation

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Abstract

This study aims to analyse the existing legislation regulating criminal offences against persons in cases of domestic violence, focusing on either legal concepts that underpin qualifying said acts. This study addresses the legal and scientific elements of these crimes under Iraqi legislation, while comparing them with some similar legislations in order to enhance the analytic surface of similarities and differences between legislative systems. Further examination of this work: Such acts of domestic violence are included further into general criminal codes where such offences are treated as part of the set rather than having their own, allowed forms and consequences. The work also achieves an assessment on how this approach favors that a victim is protected. Furthermore, the analysis paints a detailed picture of the legal consequences stemming from domestic violence offenses, touching on matters of criminal culpability, burden-of-proof standards and judicial latitude. It addresses practical challenges experienced in the real life application of these legal provisions including social barriers and enforcement limitations as well as interpretative ambiguities. The methodology used is descriptive-analytical, and the comparative method is valid where it facilitates reaching research goals and in making comprehension of the subject matter clearer.

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Introduction

Crimes of this organization such type of serious social phenomena that jeopardizing family stability & structure. Its threat is augmented due to the fact that it takes place in a closed environment away from the public eye, which makes detection difficult and continues to amplify its adverse effects. It is not that violence is a new or emerging phenomenon, it is part of our history and a long-standing social problem. But even the attention to this kind of violence was limited over long periods. Across the globe, but especially in recent years, domestic violence has arisen as an issue of law needing a clear footing by legislation and courts since there have been a rise in these types of crimes committed against men, women, and children. These deeds are contrary to the laws of Islam and against human rights principles ^[1]. Violence here is referred to as the act of using force, through which it aims to cause a psychological or physical destruction of a family member and unstick the family process. The Iraqi legislator, in the dispersion of the provisions related to violence against women in general and within the framework of his constitutional protection enjoyed by family members without paying attention to issuing legislative texts that deal with domestic violence as an independent phenomenon subject to its legal complexities and procedural ^[2].

This study through clarifying the concept of domestic violence, its forms, and the position of both Iraqi legislator in particular or other legal systems worked to look at domestic violence from a legal view. The study uses an analytical style and a comparative

¹ Layla Abdul Wahab, *Violence in the Family: Social and Legal Perspectives* (Damascus: Dar al-Mada, 2000), p. 17

² Saadi Muhammad Al-Khatib, *Domestic Violence and Family Protection* (Baghdad, 2017), p. 27

method that suits the nature of the topic, as well as its objectives. It is divided into two sections: the first addresses the definition of domestic violence and the position of Iraqi and comparative legislation, while the second discusses the forms of domestic violence and distinguishes them from related or overlapping forms.

Section One: Definition of Domestic Violence and the Position of Iraqi and Comparative Legislation

The definition of domestic violence crimes requires examining both the linguistic meaning and the terminological meaning. Accordingly, this section is divided into two subsections: the first addresses the definition of domestic violence, while the second examines domestic violence in Iraqi and comparative legislation, as follows:

Subsection One: Definition of Domestic Violence

First: Linguistic Definition

Violence, in the linguistic sense, refers to harshness in dealing with matters and a lack of gentleness; it is the opposite of kindness. To act violently toward something means to handle it with severity, and "reproach" denotes the expression of blame. In this sense, violence implies the use of physical force or energy by the person engaging in it^[3].

In the philosophical dictionary, violence is described as the opposite of gentleness and synonymous with severity and cruelty. A violent person is one characterized by violence, and any harsh act that contradicts the nature of a thing and is imposed upon it from the outside may be considered a violent act. Violence is also defined as severity and harshness, and to act violently in a matter means to deal with it forcefully and harshly^[4].

From a social perspective, the linguistic origin of the term "violence" derives from the Latin word *violence*, which refers to the use of force. As a result, violence is the forceful manifestation of an overt or visible aggression which can be as physical as killing or murder^[5]. The Dictionary of Social Sciences defines violence as "the unlawful or illegitimate use of control or force intended to influence the will of an individual." Thus, the linguistic connotation of the word violence in Arabic generally reflects^[6] material acts involving the use of force characterized by severity and cruelty, and such acts are typically described as unlawful. Some definitions have expanded the linguistic meaning of violence to include not only the use of physical force but also the threat of its use^[7].

Second: Terminological Definition

Violence is defined as the use of physical force with the intent to cause harm or injury. It is a social phenomenon as old as human history itself, exemplified by the conflict between Cain and Abel, which ended with one killing the other^[8].

A number of jurists have defined violence as "any verbal or physical behavior that involves the use of force or the threat of its use with the aim of causing harm to oneself, others, or property in order to achieve certain objectives."^[9] It has also been defined as behavior or actions directed against women as a result of discrimination, oppression, and aggression arising from unequal power relations between men and women, and as a consequence of patriarchal dominance in most families. Additionally, violence has been described as one of the various forms of physical and moral harm directed against weaker members of the family by those who exercise control over them through the use of force^[10].

The Holy Qur'an has also intervened in what is valid for the rejection of this infamous phenomenon and against it in many verses from the Islamic point of view. The traditional view of violence implies through coercion, severity and hardness: "There shall be no compulsion in religion. The right path has become distinct from error"^[11].

In the same vein, our Prophet Muhammad (peace be upon him) said: "Indeed Allah is gentle and loves gentleness, and He grants through gentleness what He does not grant through violence, nor anything else"^[12].

Looking from the word of Islam men and women are created to live equally with dignity as a human being sharing same aspect of creation and origin. It lays down that they are equal in all things Human dignity and responsibility between them. This statement does not esteem women as a whole to a lesser degree, and the wife even less so; on the contrary, it honors each one's place and their roles within family and society. Among the most unequivocal declarations of equality is the Qur'anic verse: "O mankind, fear your Lord, who created you from a single soul, and created from it its mate, and dispersed from both of them many men and women..."^[13].

Harsh treatment and violations of rights, both material and moral, which include deprivation of maintenance to women or unlawful ways in dealing with them are forbidden by Islamic law^[14]. Numerous Qur'anic verses and Prophetic traditions emphasize granting women their rights, treating them kindly, and maintaining good companionship.

Muslim jurists have often not distinguished between the concepts of coercion and violence, considering them closely related^[15]. Coercion has been defined as an act performed by one person upon another that negates consent or corrupts free choice. Accordingly, a threat is considered violence if it causes physical harm to the victim, whereas pressure limited to influencing the victim's will is considered coercion. Thus, in Islamic jurisprudence, violence is realized through the use of material means that directly affect the victim's body and cause harm. It may also occur through speech, threats, omission, or deprivation whenever such actions result in physical injury to the victim.

In criminal law terminology, criminal law scholars have

³ Ibn Manzur, *Lisan al-Arab* (Beirut: Dar al-Printing, 1956), p.902

⁴ Jamil Saliba, *Philosophical Dictionary* (Beirut: Dar al-Kitab al-Lubnani, 1982), p. 112

⁵ Ahmad Zaki Badawi, *Dictionary of Social Sciences* (Cairo: Lebanon Library, 1986), p. 1145

⁶ Muhammad Aref Gheith, *Sociology of Violence* (Cairo: Egyptian General Book Organization, 1979), p.192

⁷ Layla Abdul Wahab, *Violence in the Family: Social and Legal Perspectives*, p25

⁸ Layla Abdul Wahab, *Violence in the Family: Social and Legal Perspectives*, p39

⁹ Saadi Muhammad Al-Khatib, *Domestic Violence and Family Protection*, p40

¹⁰ Layla Abdul Wahab, *Violence in the Family: Social and Legal Perspectives*, p30

¹¹ Qur'an, Al-Baqarah 2:256

¹² Muslim ibn al-Hajjaj, *Sahih Muslim*, vol. 16, 2nd ed. (Beirut: Dar al-Ma'arif, 1995), Hadith no. 362.

¹³ Qur'an, An-Nisa 4:1

¹⁴ Hussein Mahmoud Khalil, *Women's Rights in Islamic Law* (Cairo: Egyptian General Book Organization, 1993), p. 42

¹⁵ Mahmoud Najib Hosni, *Theories of Violence and Coercion* (Cairo: Dar al-Nahda al-Arabiya, 1986), p. 588

attempted to define violence within the framework of two competing theories:

The Traditional Theory

Supporters of this theory, such as Tied Henrich and Charles Rivera, define violence according to the meaning deeply rooted in social consciousness^[16]. Violence, in this sense, is the exercise of natural forces by a person to overcome another. These natural forces do not refer solely to physical energy, but also include animals and other mechanical forces that can be used and controlled, such as causing harm through electrical energy^[17]. Regarding the victim or the person subjected to violence, it is not necessary that force be applied directly to the body; it is sufficient that the person perceives or feels restraint when attempting to use their limbs in accordance with their will, such as confinement in a room by locking the door and preventing departure^[18].

Within traditional jurisprudence, a distinction is made between physical and moral violence. Physical violence corresponds to material coercion resulting from the use of physical or natural forces, whereas moral coercion refers to violence through threats. Some scholars further distinguish between absolute violence, which completely nullifies the will, and relative violence and threats^[19]. This approach focuses on the result achieved by the offender. However, violence should be regarded as a means of criminal conduct rather than the result that the legislator intended to criminalize. Coercion of the will may occur through violence, threats, deception, or fraud^[20].

Moreover, equating physical violence with absolute violence is inaccurate and results from conceptual confusion. Physical violence may be used without necessarily aiming to eliminate the victim's will entirely. It may be directed at persons or objects to influence the victim's will in a manner consistent with the offender's intent, such as torture used to compel a confession^[21]. Thus, while this theory relies on the notion of violence as a means of achieving criminal conduct, its classification of threats as violence depends on the outcome namely, pressure on the victim's will thereby creating an inconsistency within the theory itself^[22].

The Theory of Violence as Coercion of the Will

This theory dominates contemporary criminal jurisprudence. It emphasizes coercion and pressure on the will without focusing on the means employed, but rather on the outcome represented by forcing another person's will, through a particular method, to perform a specific act^[23, 24]. For example, on this view, there are some scholars who consider violence to include any violation of bodily integrity

regardless of severity and therefore includes minor assault or harm.

This theory is premised upon the fact that legislator acts intended to protect individuals moral freedom, especially such one as will by criminalizing violence. Hence, any method which brings pressure or coercion to bear on one's will falls within the scope of consideration^[25]. In this view, violence is an struggle of the will between two parties, in which the aggressor tries to will his own desire over the desires of those he assaults. To subjugate the will of the victim is seen as both an end in itself and an integral component of violence^[26].

Scholars design to violence and threats within this framework. For violent acts are any conduct able to act upon the will except mere threats. For instance, violence can occur even when the victim is in a state that hinders voluntary decision-making, such as during hypnosis or extreme pain^[27]. In contrast, threats are seen as violating a person's ability to freely decide how to act for one's own goals.

Supporters of this theory have sought to craft the concept of violence in accordance with social development, condemning classical theories for their perception that violence is simply brutal projection of corporeal forces^[28] and of will against man. In so doing, however, they dissolved the distinction between means and outcome and broadened the definition of violence too far. If violence is to be identified with its outcome that is coercion of the will then no distinction can be drawn between fraud or deception. Getting tricked or deceived are two other ways to force mechanical action against the true will; thus an individual may do according to their own desire, but this isn't strictly exertion of benevolence. However, these are essentially different premises, and they should not be conflated^[29] just because the results of both lead to miraculous solutions.

If violence simply meant coercion of the will, Terra would be considered violent because most crimes are committed against the victim's will^[30]. Adopting the will of a particular victim as the standard instead would either exclude some actions that have historically been recognized as violent (murder and bodily injury for example), or crimes committed with the apparent consent of the victim (theft from a minor obtained through deception for instance). Positive law does not define violence solely in terms of coercion of the will; rather, murder and bodily injury are regarded as classic examples of violence irrespective of the victim's will.

Definition of Violence in International Documents

The World Health Organization (WHO) defined domestic violence in 2002 as: "Any behavior within the context of intimate relationships that causes or is likely to cause

¹⁶ Tied Henrich, *Violence in Social Theory* (Berlin, 1978), p. 72

¹⁷ Charles Rivera, *Social Perspectives on Violence* (New York, 1982), p.182.

¹⁸ Mahmoud Najib Hosni, *Theories of Violence and Coercion*, p. 599

¹⁹ Abdel Fattah Bayoumi Hijazi, *Criminal Law and Violence* (Cairo, 2005), p. 89

²⁰ Mahmoud Najib Hosni, *Theories of Violence and Coercion*, p. 599

²¹ Abdel Fattah Bayoumi Hijazi, *Criminal Law and Violence*, p. 89

²² Mahmoud Najib Hosni, *Theories of Violence and Coercion*, p. 599

²³ Mahmoud Najib Hosni, *Theories of Violence and Coercion*, p. 599

²⁴ Abdel Fattah Bayoumi Hijazi, *Criminal Law and Violence*, p. 89

²⁵ Diyaa Riyadh Sabri Al-Ajouidi, *Filing Criminal Cases for Domestic Violence Crimes (Comparative Study)* (Master's thesis, University of Thi-Qar, 2021), p. 78.

²⁶ E. A. Fadhil and M. M. Abdullah, "Domestic Violence under Iraqi Law," *Iraqi Journal of Science* 61 (2020): p:145

²⁷ Abdel Fattah Bayoumi Hijazi, *Criminal Law and Violence*, p. 67

²⁸ Mahmoud Najib Hosni, *Theories of Violence and Coercion*, p. 508

²⁹ Mahmoud Najib Hosni, *Theories of Violence and Coercion*, p. 508

³⁰ E. A. Fadhil and M. M. Abdullah, "Domestic Violence under Iraqi Law," *Iraqi Journal of Science* 61 (2020): p:145

physical, psychological, or sexual harm to the parties involved, potentially resulting in injury, death, impaired development, or deprivation”^[31] (World Health Organization, 2002).

In its 1996 resolution (WHA49.25), the WHO called for the establishment of a classification system for violence to identify its different patterns and interconnections. It categorized violence into three groups based on the characteristics of the perpetrators^[32]:

- a. **Self-directed violence:** This includes suicidal behavior and self-harm. Suicidal behavior encompasses suicidal thoughts and attempts, while self-harm includes acts such as self-mutilation.
- b. **Interpersonal violence:** This is subdivided into two categories:
 - **Family (domestic) violence:** Violence occurring primarily among family members and close relatives of the victim, usually within the home.
 - **Community violence:** Violence occurring between individuals who may or may not know each other, generally taking place outside the home.
- c. **Collective violence:** Violence occurring between groups of people to achieve economic, political, or social objectives. It takes various forms, including mass killings, oppression, human rights violations, and terrorism.

The United Nations Declaration on the Elimination of Violence Against Women, adopted by the General Assembly under Recommendation 48/104 on 18 December 1993, defined violence against women as “any act of gender-based violence resulting in physical, sexual, or psychological harm or suffering to women, including threats and deprivation of liberty”^[33]. This declaration provided a detailed explanation of domestic violence, defining it as “physical, sexual, and psychological violence occurring within the family, including battering, sexual abuse of children and women, marital rape, and other harmful practices”^[34]. In 1999, the United Nations designated 25 November as the International Day for the Elimination of Violence Against Women^[35].

Scholars have defined domestic violence as: “A form of multiple physical and psychological abuses directed toward weaker family members by those who exercise control over them, or resulting from maladaptive behaviors of the stronger members within the family, leading to the use of physical and psychological violence against those in need of care, guidance, and protection”^[36].

The concept of domestic violence generally refers to the mistreatment of one person by another with whom they have a close relationship, such as between spouses, parents and

children, or siblings. Most acts of domestic violence are perpetrated by husbands against wives, although some wives may also commit acts of violence against their husbands. Children are typically subjected to violence by their father, mother, or their substitutes in the absence of one or both parents. Also, grandparents also learn victim of domestic violence^[37].

To combat these crimes, the Iraqi judiciary has issued a series of decisive rulings to limit their spread. To give an example, the Federal Supreme Court decided that: “The right to discipline does not permit violence against a wife, children, or minor students. Reform and correction must comply with legal and religious principles to ensure the protection of the family.” This ruling dealt with a constitutional challenge regarding Article 41(1) of the Penal Code, affirming that the usage of “discipline” does not include domestic violence, but is limited to corrective measures, governed by law, Sharia and custom. The court added that crossing the boundary of disciplinary power is a punishable offense^[38].

From a legal perspective, the term “violence” appears in number of Iraqi statutes, including laws that criminalize acts such as physical assault, murder, threats and torture, prescribing penalties based on degrees of the crime committed. But the law does not spell out a legal definition of violence^[39].

Branch Two: Domestic Violence in Iraqi and Comparative Legislation

Recently, the term domestic violence has attracted wide attention in society, especially in the context of a destructive social phenomenon that is characterized by cruel and abusive behavior towards women and children, causing physical or psychological injury and suffering^[40]. Defining what domestic violence is, it refers to using physical or psychological force over a family member in one way or another, whether through direct assault or controlling his will and freedom^[41].

Domestic Violence in Iraqi Legislation

Take for instance the Iraqi Constitution dating back to 2005 that stipulates family is the basis of society. It includes an explicit prohibition of forced labor, slavery and human trafficking as well as prostitution and the trafficking of women and children^[42]. Although Iraqi legislation does not define the term “domestic violence,” it criminalizes acts committed against any person, including those that affect the family^[43], according to a translation of the law. The Personal Status Law contains similar provisions that protect the family^[44].

The Penal Code Family related crimes are defined in Articles 376–380 which includes adultery, invalid marriage contract

³¹ World Health Organization, WHA49.25, “Resolution on Violence Classification” (Geneva, 1996).

³² World Health Organization, WHA49.25 (Geneva, 1996).

³³ United Nations, Declaration on the Elimination of Violence Against Women, Resolution 48/104 (1993).

³⁴ United Nations, Declaration on the Elimination of Violence Against Women, Resolution 48/104 (1993).

³⁵ United Nations, International Day for the Elimination of Violence Against Women, 25 November 1999.

³⁶ Saadi Muhammad Al-Khatib, Domestic Violence and Family Protection, p. 27

³⁷ Layla Abdul Wahab, Violence in the Family: Social and Legal Perspectives, p. 25

³⁸ Federal Supreme Court of Iraq, Decision on Article 41 of Penal Code

³⁹ Iraqi Penal Code No. 111 of 1969, as amended

⁴⁰ United Nations, 1993; World Health Organization, 2002

⁴¹ Saadi Muhammad Al-Khatib, Domestic Violence and Family Protection, p. 27

⁴² Constitution of the Republic of Iraq, 2005, Art. 29; Art. 37

⁴³ Iraqi Penal Code No. 111 of 1969, as amended

⁴⁴ Iraqi Personal Status Law No. 188 of 1959, as amended

and incitement of spouse to commit adultery ^[45, 46]. Criminal acts that refer to parentage, children being taken care of, endangering minors and elderly people as well as family abandonment mentioned in articles 381, 383, 384 and 385.

Iraqi legislator has put the word violence explicitly in the title of third book in Penal Code under Crimes Against Persons letter thereof, which titled the crimes affecting human life and personality. This applies particularly to offences such as slander, insults and threats in section 27 because they cause pain and suffering so these sections can be applied to family members ^[47].

The Personal Status Law includes certain family protections for spouses and children. It adds a provision that either spouse may ask for judicial separation if it is impossible to continue married life because of one's harm to the other or any child ^[48, 49]. Severe beatings by a husband on his wife, for instance, cause considerable harm to the wife and would provide her enough grounds for seeking judicial separation ^[50]. Some harm is beyond the husband's legally sanctioned right to discipline and will damage the children and family without regard for the couple.

It also bans forced marriages where tribal or family pressure has been applied to induce a woman into marrying. If the marriage contract concluded prior to at least one of the spouses reaching the age of 18 without judicial consent, then either spouse may request for separation ^[51]. Moreover, the law punishes any person related or not who forcibly circumcise a male or female without their consent to marriage ^[52].

Criminal law does not monopolies the protection of the family from violence. Other Iraqi laws, including the Juvenile Welfare Law No. 76 of 1983 (amended), also address domestic violence and stress the family's role in raising children properly ^[53]. This law punishes guardians who failed to provide care and support for minors or juveniles that resulted in the youth being delinquent, a vagrant, or committing an intentional crime ^[54]. Guardians can face penalties for promoting or forcing deviation from behavioral norms or encouraging vagrancy in minors.

But it remains to be seen whether the protection afforded to domestic violence under Iraqi legislation is sufficient, especially as traditional arts of criminal law normally fail the family (and/or social) in the face of new forms of abusive violence that manifests due to modern technological developments which change the nature of interpersonal relationships ^[55].

To answer the question above honestly requires a look at the underlying purpose of criminalization, and whether that purpose is just protecting privacy and preserving family. A review of the provisions set by the Iraqi legislator to protect

the family within the Penal Code No. 111 for 1969 clearly indicates that those provisions were classified under social crimes. On the one hand this classification mirrors the intention of legislator to protect society and its values. In contrast, the Iraqi legislator aimed to protect society and defend moral values through these provisions that criminalized physical/psychological harm ^[56].

Likewise, Personal Status Law governing relations in the family focuses on ensuring that all members of the family (the wife and children) have rights. Moreover, the Juvenile Welfare Law sufficiently protects persons from exposure to violence which includes functions on violence against children and aims both to protection and rehabilitation ^[57, 58]. Then, the specific application of these legal regulations constitutes a legal mechanism; on the contrary, it is not enough to provide comprehensive protection for all family members from violence. Also, new law need to be consistent with existing legislation. Such as Article 3 of the Code of Criminal Procedure, which provides that certain offenses are prosecuted only upon complaint from a victim, with the idea of maintaining family ties. This also, indirectly, contradicts articles 11 and 12 of the Draft law on combating domestic violence.

Two legislative drafts have also been addressing domestic violence issues. The first is the 2019 "Law on Combating the Domestic Violence," which was submitted by the President to the Council of Representatives, defining domestic violence crimes in Article 1. The second is the Draft Law on Protection from Domestic Violence, which has been submitted by the Council of Ministers to the Council of Representatives. The criminalization of acts of violence is currently a principle in generalities relied upon by the Iraqi legislator ^[59].

The Law on Combating Domestic Violence in the Kurdistan Region of Iraq No. 8 of 2011 also makes reference to domestic violence; however, the law does not define "violence," as if to evade determining and specifying a concept that is very difficult, if not impossible to accomplish ^[60].

Comparatively, the Egyptian Constitution provides for the care families needed, and the protection of motherhood and childhood, as well as equality between men and women in all walks of life. It clearly states that the family is the basis of society, rooted in religion, ethics and patriotism, and highlights that it is up to the state to maintain its original character, values and traditions of the family while promoting social relations. The Constitution enshrines also equality between men and women.

As such, the Egyptian legislator has not taken a specific position related to domestic violence crimes under comparative law because there is no law within this

⁴⁵ Iraqi Penal Code No. 111 of 1969, Arts. 376–380

⁴⁶ Iraqi Penal Code No. 111 of 1969, Arts. 381, 383–385

⁴⁷ Iraqi Penal Code No. 111 of 1969, Book Three – Crimes Against Persons

⁴⁸ Iraqi Personal Status Law No. 188 of 1959, Art. 40

⁴⁹ Mahmoud Najib Hosni, *Theories of Violence and Coercion*, p. 599

⁵⁰ Iraqi Personal Status Law No. 188 of 1959

⁵¹ Iraqi Personal Status Law No. 188 of 1959, Art. 7; Art. 44

⁵² Iraqi Penal Code No. 111 of 1969, Arts. 397–398

⁵³ Juvenile Welfare Law No. 76 of 1983, Arts. 4–10

⁵⁴ Iraqi Juvenile Welfare Law No. 76 of 1983, Art. 8

⁵⁵ Saadi Muhammad Al-Khatib, *Domestic Violence and Family Protection*, p. 27

⁵⁶ Iraqi Penal Code No. 111 of 1969, Book Three – Crimes Against Persons

⁵⁷ Iraqi Personal Status Law No. 188 of 1959

⁵⁸ Juvenile Welfare Law No. 76 of 1983, Arts. 4–10

⁵⁹ Draft Law on Combating Domestic Violence, 2019

⁶⁰ Law No. 8 of 2011, Kurdistan Region

designation, rather it follows general rules in the Penal Code^[61].

A review of the legal texts and linguistic meaning of violence shows that the term “violence” in legal texts is not a uniform concept; each provision represents a somewhat different intent. Nevertheless, the linguistic meaning corresponds with how the legislator understands that violence means “to use force against,” and especially “a treatment so severe that it creates a sense of motion in one direction.” The criminalization of acts defined by physical force and savagery toward individuals is a testament to this. The definition of violence includes acts which result in physical or psychological damage to the victim, evidence like beating or torture (this is actually aligns with its linguistic meaning). Furthermore, in language violence is understood in its pejorative sense as unlawful actions that fall under the category of prohibited domestic violence both legally and morally by the legislator.

Herein the Islamic definition of violence does correspond in some points to the legislation provided, especially concerning the use of force and its impact on human will, which equals the physical coercion concept used in criminal law. Likewise, the social and philosophical definitions of violence agree with the legislator’s view that violence constitutes the unlawful use of force to influence the will of individuals^[62].

Section Two: Forms of Domestic Violence and Distinction from Related Concepts

Domestic violence takes multiple forms, and the term “violence” is often conflated with other concepts such as aggression, coercion, and threats. This necessitates distinguishing between violence and these related concepts, as well as clarifying the types of domestic violence. This section is divided into two subsections: the first addresses the forms of violence, and the second distinguishes violence from other related concepts.

Subsection One: Forms of Violence

1. Physical (Bodily) Violence

Physical violence refers to any intentional violent behavior that causes or results in harm to the victim’s body, perpetrated by one or more family members. This includes:

- Beating with an object or hand, burning, slapping, kicking, binding, or other acts that indirectly cause harm.
- Denying or withholding medical treatment.
- Failing to provide adequate nutrition.
- Forcing the victim to take drugs or drink alcohol against their will.
- Placing responsibilities outside the victim’s bodily or mental ability.

These same acts, though they may not manifest in terms of an injury or broken bone, are assaults in themselves and constitute one of the most straightforward forms of violence because the effects like bruises or damages can be seen. Such acts run counter to human rights as per Article 5 of the Universal Declaration of Human Rights (1948), which states that no one shall be subjected to torture or to cruel, inhuman

or degrading treatment.

Physical violence, experts note, can in severe cases require medical or psychological care for women or children. Physical aggression is not always the product of intentional harm, and many manifestations stem from harsh approaches to discipline or inappropriate corporal punishment for the age of the victim.

Physical violence usually occurs with or is augmented by verbal or psychological abuse. For instance, while a child is being spanked, he may also simultaneously be receiving a rain of insults; thus there will also be combined physical abuse and verbal and psychological abuse. These are a few very harmful effects of health hazards; even life may be at risk. Among the different types of domestic violence, that of beating women is widespread and can be both bodily and mental making the husband/wife ties weak. The Personal Status Law in Iraq grants a wife the right to petition for divorce in instances of beatings or other kinds of severe harm^[63].

In societies where severe punishment of minors and spouses is not only legally but also religiously sanctioned, the question has to be asked of when one crosses the line into serious violence. Beyond these limits represents severe violence.

Also, an example of misuse that has spread is when a husband abuses his legal right to discipline according to Article 41(1) of the personal status law for actions against its objectives in order to commit humiliating or abusive acts against his wife. In one case, the Karbala Court of Appeal, functioning as a court of cassation, convicted a husband who physically attacked his wife near her family home, ripped her clothes and exposed her veil in public. The court stressed that spousal correction must be nonhumiliating and no coercive measures should be taken with the purpose of correcting a spouse, and these efforts need to happen within the household^[64].

Although an Iraqi legislator has not yet specifically addressed crimes of domestic violence The Penal Code (Articles 412), criminalizes intentional bodily harm including beating, wounding, using force or violence against other people, administration of harmful substances to another person or whoever commits any act that violates rights protected by law out as it constitutes an attack on the body integrity. The articles of the penal code, Article 419 punishes abortion caused by domestic violence committed by the husband or other family members^[65].

2. Psychological (Emotional) Violence

Psychological or emotional violence is understood as any act that does harm to a person’s psyche or dignity. Such violence is a sort of indirect pressure and often a covert one that may not be acknowledged consciously by either party. It is made up of verbal abuse used against women, disregarding parents or children, as well as hate language or different harsh speech that represent a risk to social relations for the people in question. This form of demeanor creates adverse consequences in personality developing and promoting psychological disorder, mental breakdown or some hard-to-treat illnesses. Such as when a husband verbally abuses his wife, father, children, brother and sister or son and mother.

⁶¹ Egyptian Constitution, 2014; Egyptian Penal Code

⁶² Qur’an, 2:256; 4:1

⁶³ Iraqi Personal Status Law No. 188 of 1959, Art. 41(1)

⁶⁴ Karbala Court of Appeal, Domestic Violence Case, 2020

⁶⁵ Iraqi Penal Code No. 111 of 1969, Arts. 412–416, 419

Because it is often imperceptible, silent, and leaves no physical evidence psychological violence is considered one of the most dangerous forms of domestic abuse but with possibly devastating consequences for mental health. While it is difficult to theoretically and practically define psychological violence, its characteristics can be identified: humiliation, degradation and abandonment are some of them. Types of psychological violence include:

- a. **Verbal Harm:** Any act that can effectively hurt feelings, such as insults, cursing or statements meant to humiliate or belittle others.
- b. **House Confinement:** Commonly imposed in some families when the wife or children are deemed to have acted inappropriately.
- c. **Expulsion from the Home:** Usually used by the husband against his wife and children.
- d. **Coercive Violence:** Another type of violence linked closely to freedom and rights, it refers to any behavioral act by one family member that confines the other's ability for choice; like, making a daughter unable to get education or marry.
- e. **Divorce Imposed by the Husband:** Whether physically or superfluously, leading to the contravention of God given laws for their wives that leads to higher individual reasons or factors stemming from family.
- f. **Economic Violence:** Considered a type of psychological violence against women and children, this includes instances in which their financial resources are taken away as well as instances where, for instance, they are forced to beg or undertake arduous or degrading work to provide themselves with a living even at the risk of harm.

As a result, suicide due to domestic violence is regarded as an act of domestic abuse, and incitement to suicide under Article 408 has been punished by the Iraqi legislator. For instance, a husband who physically abuses his wife with no cause such that she commits suicide; or a brother preventing his sister from pursuing education without justification because of which the sister commits suicide shall be liable for crime due to infliction of physiological harm.

The Iraqi legislator also criminalized psychological abuse under the framework of Article 434, which describes acts through insults, cursing or attacking one's honor or feelings. A husband who verbally insults, humiliates, or ignores his wife constitutes psychological domestic violence, whether the abuse occurs publicly, such as shouting or repeating offensive phrases in public, or privately, such as gestures or written communication that clearly convey insult. The perception of insult may vary depending on the familial or social environment ^[66].

3. Sexual Violence

Sexual violence refers to any sexual harm inflicted on a family member by another family member. This form of abuse has profound and long-lasting effects on the victim,

both psychologically and physically ^[67]. Mortality related to sexual violence may result from suicide, HIV infection, or homicide occurring either during the assault or subsequently, such as "honor killings" ^[68].

Under the Penal Code, sexual violence is considered an aggravating circumstance if the perpetrator is a relative of the victim up to the third degree or holds guardianship, supervision, or authority over the victim ^[69].

The United Nations recognizes sexual violence, physical assault, and sex trafficking as crimes for which perpetrators must be held accountable. The International Criminal Court, similarly, defined sexual violence as a war crime in 2003 ^[70].

Section Two: Distinguishing Violence from Related Forms

1. Violence and Aggression

Aggression is a broad term used to cover many types of actions that may include attacking others or showing some sort of hostility towards someone. Aggression is defined as an intentional behavior to hurt someone or something psychologically or physically. In contrast, aggression refers to the actual use of force; it is the extreme end of being aggressive. If aggression is the general, then violence can be viewed as the specific. Aggression is overt attack of self or others, violence is an act of aggression ^[71].

Aggression is wider than violence but an intentional act resulting in harming a person or property, however may be rationalized as response to individual / environmental factors. Aggression may stem from instinct, whereas violence is a visible act. Both violence and aggression often arise from frustration or deprivation of various kinds. In conclusion, violence is a form of aggression, and all acts of violence are, by definition, aggressive, although not all acts of aggression are violent.

2. Violence and Coercion

Coercion involves any physical or psychological pressure applied by one individual over another to weaken, override, or influence the latter's will, compelling them to act according to the coercer's desires ^[72]. Coercion encompasses numerous methods, broadly classified as either physical or psychological. Physical coercion is applied directly to the body, such as forcibly holding someone's hand and triggering a firearm that injures the victim. Psychological coercion targets the individual's will and may include acts that harm their reputation, physical well-being, position, or property ^[73].

Coercion must originate from one person toward another. Legally, in cases of coercion especially physical coercion the effect on the victim is recognized, with the primary focus on completely overriding or weakening the victim's will ^[74]. Violence, however, is realized through the exercise of force and does not require compelling someone to perform a specific act, nor does it depend on the effect on the victim's will. Violence is used to assert control or dominance over

⁶⁶ Iraqi Penal Code No. 111 of 1969, Arts. 408, 434

⁶⁷ World Health Organization, 2002

⁶⁸ United Nations, 1993

⁶⁹ Iraqi Penal Code No. 111 of 1969, Articles 376–380

⁷⁰ International Criminal Court, 2003

⁷¹ E. A. Fadhil and M. M. Abdullah, "Domestic Violence under Iraqi Law," *Iraqi Journal of Science* 61 (2020): p:165

⁷² Mamoun Muhammad Salamat, "Criminal Acts of Violence," *Law and Economics Journal*, no. 2, p. 15.

⁷³ World Health Organization, 2002

⁷⁴ Iraqi Penal Code No. 111 of 1969, Articles 376–380

others, regardless of its impact on the victim's freedom or autonomy. Moreover, the concept of violence is broader than coercion, as it can be directed toward both people and objects. In practice, violence may also serve as a means of coercion.

3. Violence and Threats

A threat involves instilling fear in the victim by warning of imminent harm to themselves or their property. Threats are used to pressure the victim's will to achieve the desired outcome of the perpetrator^[75]. Violence differs from threats in that it refers to an observable external behavior involving the actual use of force to cause harm or damage, whereas a threat exerts pressure on the victim's will without directly eliminating it.

A threat also affects only the mind of the victim, which has to mentally envisage the expected harm; violence instead causes its own damage immediately, without being mediated by thought^[76]. A person who is unconscious or asleep cannot be threatened, but they can be beaten, injured or murdered. Essentially, violence includes the use or threat of physical force that leads to harm either physical or psychological whereas a threat just communicates to the person that they someday will be harmed, so it cannot inflict immediate damage.

Conclusion

This paper investigated the legal context surrounding domestic violence, as well as procedural arrangements that seek to protect victims. This analysis leads the study to set forward its main findings and recommendations as follows:

1. Findings

1. The current laws on domestic violence are half-hearted, consist of scattered provisions, and vary wildly in legal drafting techniques and practical usage. The laws do not offer a clear, comprehensive definition of domestic violence.
2. Lawyers and judges also have a list of issues that involve existing laws inadequate to deal with emerging problems. The Penal Code references domestic violence in wide terms with no consideration for the fact that these crimes require specific attention.
3. Judicial practice on the matter has not provided much-needed clarity; that is, domestic violence incidents have been classified inconsistently, dependent on the discretion and interpretation of each court with a case before it.
4. Despite the experiences in investigation and trial stages being different for domestic violence file victims, procedural laws do not have any special provisions to protect their circumstances and instead have adapted general procedural rules.
5. Agency in social protection is not well defined in the law, comprising mostly general references with lack of structure.
6. The impact of domestic violence is not just physical either; biting, slapping and punching are generally common with this kind of abuse but it also encompasses psychological and verbal abuse that can severely affect the subject's physical and mental health.
7. According to her, certain forms of violence, justified

under the guise of disciplinary rights, are still permitted and show how poorly we limit discipline before it becomes abuse.

2. Recommendations

1. Enshrine specific legislation on domestic violence crimes with a clear definition of domestic violence in all its forms economic, psychological and physical abuse.
2. Propose legislation that acknowledges the particular nature of these types of offenses, which take place in the context of a family or home setting and therefore differ from other criminal acts.
3. Put in place judicial and non-judicial measures for dealing with the consequences of domestic violence that protect victims against physical or psychological harm.
4. Become specific about what constitutes lawful disciplinary action and how it differs from abusive behavior that is criminalized, amending laws like the Personal Status Law and the Penal Code to provide enhanced protection.
5. Implement mandatory family counseling and rehabilitation programs, synchronized with legal penalties, to support victims and prevent recurrence.

References

1. Qur'an. Al-Baqarah. 2:256.
2. Qur'an. An-Nisa. 4:1.
3. Hijazi AFB. Criminal Law and Violence. Cairo: [publisher unknown]; 2005.
4. Badawi AZ. Dictionary of Social Sciences. Cairo: Lebanon Library; 1986.
5. Fischer B, Kramer M. Plasma physics and controlled fusion. Plasma Phys Control Fusion. 1989;31:453.
6. Rivera C. Social Perspectives on Violence. New York: [publisher unknown]; 1982.
7. Arab Republic of Egypt. Constitution of the Arab Republic of Egypt. Cairo; 2014.
8. Republic of Iraq. Constitution of the Republic of Iraq. Baghdad; 2005.
9. Al-Ajouidi DRS. Filing Criminal Cases for Domestic Violence Crimes: A Comparative Study [thesis]. Thi-Qar: University of Thi-Qar; 2021.
10. Republic of Iraq. Draft Law on Combating Domestic Violence. Baghdad; 2019.
11. Fadhil EA, Abdullah MM. Domestic violence under Iraqi law. Iraqi J Sci. 2020;61:1645.
12. Arab Republic of Egypt. Egyptian Penal Code.
13. Khalil HM. Women's Rights in Islamic Law. Cairo: Egyptian General Book Organization; 1993.
14. Ibn Manzur. Lisan al-Arab. Beirut: Dar al-Printing; 1956.
15. Ibn Manzur. Lisan al-Arab. Vol. 4. Cairo: Dar al-Ma'arif; 1979.
16. Republic of Iraq. Draft Family Protection from Violence Law. Baghdad; 2020.
17. Republic of Iraq. Juvenile Welfare Law No. 76 of 1983, as amended.
18. Republic of Iraq. Penal Code No. 111 of 1969, as amended.
19. Republic of Iraq. Personal Status Law No. 188 of 1959, as amended.

⁷⁵ World Health Organization, 2002

⁷⁶ Mamoun Muhammad Salamat, "Criminal Acts of Violence," *Law and Economics Journal*, no. 2, p. 20.

20. Saliba J. *Philosophical Dictionary*. Beirut: Dar al-Kitab al-Lubnani; 1982.
21. Karbala Court of Appeals. Decision No. 16/T/Criminal/2019. May 21, 2019.
22. Kurdistan Region, Iraq. Law No. 8 of 2011.
23. Abdul Wahab L. *Violence in the Family: Social and Legal Perspectives*. Damascus: Dar al-Mada; 2000.
24. Hosni MN. *Theories of Violence and Coercion*. Cairo: Dar al-Nahda al-Arabiya; 1986.
25. Salamat MM. Criminal acts of violence. *Law Econ J*. Issue 2.
26. Gheith MA. *Sociology of Violence*. Cairo: Egyptian General Book Organization; 1979.
27. Al-Razi MAB. *Mukhtar al-Sihah*. Kuwait: Dar al-Risalah; 1983.
28. Muslim ibn al-Hajjaj. *Sahih Muslim*. 2nd ed. Vol. 16. Beirut: Dar al-Ma'arif; 1995.
29. Al-Ghalbi RA. *The Crime of Domestic Violence and Mechanisms to Address It in the Republic of Iraq*. Published research.
30. Al-Khatib SM. *Domestic Violence and Family Protection*. Baghdad: [publisher unknown]; 2017.
31. Supreme Federal Court of Iraq. Decision No. 27/Federal/Media/2019 [Internet]. 2019 [cited 2026 Jul 21]. Available from: <https://www.iraqfsc.iq/>
32. Henrich T. *Violence in Social Theory*. Berlin: [publisher unknown]; 1978.
33. United Nations. *Declaration on the Elimination of Violence Against Women*. Resolution 48/104. New York: United Nations; 1993.
34. United Nations. *International Day for the Elimination of Violence Against Women*. New York: United Nations; 1999.
35. World Health Organization. *World Report on Violence and Health*. Geneva: World Health Organization; 2002.
36. World Health Organization. WHA49.25: *Prevention of Violence: A Public Health Priority*. Geneva: World Health Organization; 1996.

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