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## Penal Provisions for the Act of Forced Marriage

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### Abstract

Forced marriage is one of the marriage forms that take place despite the rejection of one or both of the parties to this marriage, and the matter may lead to its conclusion by force. There are legal treatments for the phenomenon, through declarations and agreements that Iraq has joined or ratified, such as the Universal Declaration of Human Rights, the Covenant on Civil, Political and Social Rights, the Convention on the Elimination of All Forms of Violence and Discrimination against Women, and the Convention on the Rights of the Child, all of which contain texts stating that no one is forced to marry. The problem lies in the fact that the perpetrators of forced marriages are not criminalized in the penal laws and legislation. The Iraqi Penal Code of 1969 did not include any criminalization of it, but the Personal Status Law No. 188 of 1959 mentioned the imprisonment penalty for the person who forces another to marry if he is a first-degree relative of the victim. Imprisonment for a period not exceeding 10 years.

**Keywords:** Forced, Marriage, Crime, Penal, Legislation, Personal, Status, Criminalization, staff, kidnapping.

### 1.0. Introduction

In the provisions of Islamic legislation, marriage must be by consent and agreement between the two parties, but the predominance of the physical aspect and the desire for pleasure in using the woman as a vessel for emptying stripped him of all its human content "and this is clearly represented in this type of marriage" and forced marriage is nothing but a legally invalid marriage because it is not subject to the consent of the wife who has the primary interest in this marriage along with her male partner (Al-Zamanan Kholoud Badr, (2017)).

The available indicators from the results of the cluster survey carried out by the Iraqi Ministry of Planning issued in 2019, confirm the high phenomenon of early marriage in the governorates of (Maysan, Basra, Karbala, Najaf) and at rates (35%, 31.7%, 31.2%, 30.7%), respectively, while it was recorded the governorates (Kirkuk, Dohuk) have the lowest percentages (15%, 18%), respectively (Yousef, Duaa (2021)).

Recent years have also recorded a significant increase in the rate of forced marriage, amounting to more than 20%, according to the statistics of personal status courts, while the percentage of victims of these marriages is more than 40% of women, indicating that most divorce cases are among young people who were forced to marry before reaching their age. The phenomenon was very few during the nineties, but it increased significantly after the American occupation of Iraq in 2003 (Al-Jaffal, Omar (2012)).

One of the most prevalent types of coercion to marry is reciprocal marriage, by offering the woman as an alternative to the dowry, whether it is the sister or the daughter to another clan if a member of its clan kills a member of that clan, and there is the gift, and such marriages had receded but re-spread again. And there is kidnapping marriage, which is widespread in one of the sects, and the penal code criminalizes it with life imprisonment for its perpetrator.

From all of the foregoing, it becomes clear how important the research topic is, as it affects the human rights and freedoms of girls and women and negatively affects the family and society, and consequently on peace and security in the community.

### **1.1. Research importance:**

There has been an increase in the rate of this type of marriage, which is called forced or compulsory marriage, violence marriage, and all of these are names for a pathological situation that Arab and Islamic societies suffer from and even acknowledge, despite their blatant contradiction with the prevailing law and with the laws of heaven and the five religious doctrines recognized in Islam. It usually ends in divorce, but it is one of the most important reasons for the rise in divorce cases.

### **1.2. Search problem:**

Forced marriage is still prevalent in many parts of the world, and women in these countries are subjected to violence and forced marriage in addition to other horrific acts and practices committed against women.

In Iraq, many Iraqi girls are victims of forced and early marriage, which deprives them of their basic rights and constitutes a violation of human rights. These marriages are used to settle debts or to enhance the family's status through social alliances or to defuse mutual revenge between tribes, some girls are forced who are still unable to attend school due to social restrictions and economic conditions, which contribute to pushing them into early or forced marriage.

### **1.3. Research aims:**

Inclusion of the forms of the crime of forced marriage in their provisions in the Penal Code and not in the Personal Status Law, and that severe penalties are imposed on perpetrators, as well as addressing legislative contradictions and mitigating or exempt excuses stipulated in the Penal Code that allow perpetrators to escape punishment. It also includes detailed texts in the Personal Status Law that include all forms of forced marriage and its physical, moral and psychological aspects, all parties and persons involved in this forced act or the reason for its occurrence and the various cases of its occurrence, and that the degree of the offender's relationship with the victim is a reason to intensify the punishment and not to reduce it, so that the closer the degree, the more severe the punishment.

### **1.4. Induction scheme:**

- The first requirement / What is forced marriage?
- Section One / Legislative Regulation of the Crime of Forced Marriage.
- Section Two / Elements of the Crime of Forced Marriage.
- Section Three / The penal effects of the crime of forced marriage.
- The second requirement / aspects of the crime of forced marriage in Iraqi society.
- Section One/ Reciprocal Marriage.
- Section two/Marriage instead of blood (Faslia).
- Section three/ Child Marriage (Early Marriage or Marriage of Minors).
- Section four/ Marriage by kidnapping.

### **1.5. The first requirement / What is forced marriage:**

Compulsion in the language: He rose up against compulsion, i.e. upon hardship, and established him upon disapproval, i.e. he compels him to do, or it is to force a person to do something that he does not want, of course or according to Islamic legislation, and by joining what you compel yourself to do, and by conquering what others have forced you to do, and hate meaning hardship. It is what a person hates and is difficult for him, but evil is called hated because it is against the beloved and a despised woman who raped herself and was forced to do so, and compulsion in the origin of the language is to make a person do something that he hates.

From the above coercion in language does not agree with love, but rather contradicts it, and all the meanings indicate that coercion is in the case if a person is forced to do something he does not like to do.

As for idiomatically, it is defined as: it is an act that a person does to someone else, in which his consent is negated or his choice is nullified, without the lack of capacity for the right of compulsion or the error is waived from him, or it is "a verb, or it is an act that exists from compulsion, so it creates in the place a meaning that becomes motivated by it." to the act that was requested of him" or it is an expression of supplication to the act by exclusion and threat.

As for forced marriage, it is defined as marriage without the free and full consent of one or both individuals, and forced marriage is usually imposed on girls mostly and to a lesser extent on young men. This marriage has existed since ancient times, and that is why the Christian religion, and later the Islamic religion, clearly prohibited forced marriage, and they stipulated the consent of the two parties to the marriage in order for it to be a religiously valid marriage, because of the painful effects that forced marriage may have on marital and family life (Dr. Abdel Qader, Rahal(2016)).

Since forced marriage is a criminal act within international and Iraqi legislation, we will discuss the legislative regulation of it, as well as the elements of this crime, its punishment, and the penal effects of this crime, in three branches, according to the following.

## **2.0. Legislative Regulation Of The Crime Of Forced Marriage**

Forced marriage has a legal treatment within the international legislation in the United Nations conventions, and in the Iraqi national legislation.

In the United Nations conventions, it was mentioned in the Universal Declaration of Human Rights of 1948 and in Article (16) which states: 1. A man and a woman, when they reach the age of puberty, have the right to marry and found a family, without any restriction on grounds of race, nationality or religion. They are equal in rights at marriage, during marriage and at its divorce. 2. Marriage shall not be concluded without the complete consent of the two parties to be married, without coercion. 3. The family is the natural and basic cell of society, and it has the right to enjoy the protection of society and the state. And also in the International Covenant on Civil and Political Rights of 1966 within Article (23-2 and 3), which states: 2. From reaching the age of marriage, both men and women have a right to marry and found a family. 3. No marriage can be concluded without the consent of both parties. Their marriage is intended to be with complete consent, without compulsion, also in the Convention against All Forms of Discrimination against Women in Article (16-1 and 2), which states: (1) States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and to ensure, on the basis of equality between men and women:

- a- The same right to contract marriage.
- b- The same right to freely choose a spouse, and to enter marriage only with her free and complete consent.
- c- The same rights and responsibilities during marriage and at its divorce.
- d- The same rights and responsibilities as parents, regardless of their marital status, in matters relating to their children in all cases, the interests of the children shall be paramount.
- e- The same rights to decide, freely and with awareness of the consequences, the number of her children and the spacing between the child and the next, and to have access to information, education and means to enable her to exercise these rights.
- f- The same rights and responsibilities with regard to guardianship, trusteeship and adoption of children, or similar customs, when these concepts exist in national legislation, and in all cases the interests of the children shall be the primary consideration.
- g- The same personal rights as husband and wife, including the right to choose a family name, profession and type of work.
- h- The same rights for both spouses with respect to the ownership, possession, supervision, management, enjoyment, and disposal of property, whether free of charge or for consideration.

2- The minor marriage or marriage of a child shall have no legal effect, and all necessary measures, including legislative ones, shall be taken to establish a minimum age for marriage and to make the registration of marriage in an official registry mandatory.

As for the Iraqi legislation, the Iraqi constitution in force for the year 2005 stated, and in Article (17 - first) of it that (everyone has the right to personal privacy, in a manner that does not conflict with the rights of others and public morals). And Article 46, which states: "Restricting or limiting the exercise of any of the rights and freedoms stipulated in this Constitution shall only be by a law or on the basis of it, provided that such limitation and restriction does not affect the essence of the right or freedom."

The act of coercion to marry is a crime punishable by law, however, its provisions were not regulated in the enforceable Iraqi Penal Code No. 111 of 1969, but rather in the enforceable Personal Status Law No. 188 of 1959, while - and being a crime from the point of view of the law - its provisions should have been established in the Iraqi Penal Code.

Article (9) of the Personal Status Law deals with the issue of forced marriage and the issue of prohibition of marriage. As this article stipulates: (1) No relative or third party has the right to compel any person, male or female, to marry without his consent.

3- Whoever violates the provisions of Paragraph 1 of this Article shall be punished with imprisonment for a period not exceeding three years and a fine or one of these two penalties if he is a relative of the first degree. If the violator is other than these, the penalty shall be imprisonment for a period not exceeding ten years or imprisonment for a period of not less than three years.

4- The Personal Matters Court shall notify the investigation authorities to take legal action against the violator of the provisions of Paragraph 1 of this Article and may arrest him to ensure his presence before the mentioned authorities, and whoever was subjected to coercion or prevention has the right to directly review the investigation authorities in this regard.

This article was preceded by articles that defined marriage and indicated the conditions for its validity. Marriage is defined in Article (3-1) of this law as (a contract between a man and a woman that is legally permissible for him, with the aim of establishing a bond for a common life and offspring).

So, the two conditions of consent and acceptance must be present between the two parties to the contract, and this consent must be valid and not defective with any of the defects of consent. Article (6) of the law stipulated several conditions for the conclusion of the marriage contract: 1- The marriage contract shall not be concluded if it loses one of the conditions of the contract or validity shown in the following:

- a. offer and acceptance appears;
- b. each of the two contracting parties hears the words of the other and understands that what is meant in the marriage contract;
- c. Acceptance consent for the offer.

### **3.0. Elements Of the Crime of Forced Marriage**

By reading the texts of the articles that included the provisions of marriage and criminalized the act of coercion or forbidding it becomes clear that the elements of this crime are embodied in the following:

#### **1. The element of the offender's description:**

He is a relative of the victim or a stranger to her, but if he is a relative of the first degree (origins and descendants), then his punishment is less than that of the offender who is not considered a relative of the first degree or a stranger to the victim. Here the legislator made a big mistake when he made first-degree kinship an excuse for mitigating punishment. The mistake was made that the vast majority of the perpetrators of the crime of forced marriage are the first-degree relatives of the victim and often the father or grandfather, and the legislator here seems to encourage the offender to commit this crime, and encourages society to Maintaining this bad custom or this criminal culture.

#### **2. The material element of the crime:**

Embodied here by the behavior, which is the act of forcing the victim to marry. The effect or result of this behavior is the marriage contract, but void and the causal relationship between the behavior and the result.

As we explained previously, coercion in a language is causes a person to do what he does not want. In Islamic legislation, it is to make a person do an act and push him to do it by instructing and threatening specific conditions. As for coercion in law, it is putting pressure on a person's will by any means, which would paralyze or weaken the will, and make it submit to what it is commanded without it being possible to push it or get rid of it, also defined as: Putting the individual on physical and psychological burdens beyond his capacity and forcing him to come up with words and actions that he rejects in his heart and may be contrary to the truth, or it can be defined as putting pressure on the will of the confessor in a way that frightens him, such as physical harm represented by beating or torture, that is among the means by which coercion is achieved.

There are two types of coercion: one that destroys the will in its subject, and is called physical coercion, and another that weakens it, and is called moral coercion.

a. **Physical coercion:** The coercion is physical, when a person is compelled to conclude an action or perform a certain action with a material force that he cannot resist, and he does not have a way to push it, so his will fails and he loses freedom of choice, and becomes like a machine harnessed with it: like holding his thumb and making him fingerprint on a document in recognition of a certain commitment. Physical coercion is a case of force majeure on the part of a person. Accordingly, material coercion takes away contentment by force.

b. **Moral coercion:** It is a threat directed from one person to another by some means, which generates in him a psychological state of fear and panic that makes him accept what he would not willingly accept. The difference between physical coercion and moral coercion is that the will in the case of physical coercion is paralyzed or blinded as if it does not exist at all, while it is present in the case of moral coercion, but it is defective and corrupt, as its owner chooses between the lesser of two evils. It is between accepting the conclusion of the act, or facing the danger that threatens him.

As for the result or effect of the act of coercion, it is the conclusion of a marriage contract between the victim and the one whom she was forced to marry. This contract is void, but its invalidity is conditional on the non-occurrence of entry. It is a concept contrary to this phrase contained in the text of the article means that the consummation makes the contract valid as it will stop the invalidity (and the forced marriage contract is considered invalid if the consummation is not). This matter is not legally permissible because what is built on falsehood is void and may not be legitimate if the purpose of the invalid contract falls. Nor can we consider the entry into the tacit consent of the victim, which was achieved after the contract, as it is possible that this entry also took place without the consent of the victim, in this case, the situation turns into a crime of rape, because the invalid contract does not confer the legitimacy that allows the husband to have intercourse with his wife, even if it is not with her consent. Accordingly, it is more correct legally that this situation will result in two crimes, the first being forced marriage and the second being rape (Articles 393 and 394 of the Iraqi Penal Code, depending on the situation), and the legislator should not make entry into a reason to legitimize the invalid contract, but the crime remains and another crime is added to it, which is rape. In this way, the legislator prevents the perpetrators of the crime of forced marriage from impunity, and the punishment for the crime of forced marriage must include those who married the victim knowing that he is forced to marry her.

As for the causal relationship, it is the link between the behavior represented by the act of coercion to marry and the achieved result, which is the conclusion of the marriage contract without the consent of the victim. By severing this relationship, i.e., if this contract was not based on the victim's compulsion to marry, but rather for any other reason, or if the offender was not the one who forced the victim to marry, the crime is not realized against the offender or the crime is not realized at all, depending on the situation.

### **3. The element of the victim's lack of consent:**

As it is an element for the realization of the crime, but the basis for criminalizing this act - the act of marriage - is the lack of consent of the victim. Its premise nullifies the crime. This dissatisfaction must have preceded the act of coercion to marry or during its contract, provided that the offender knew of it, that is, he knew of the victim's lack of consent to the marriage. As for the subsequent dissatisfaction with the contract, it does not result in the crime as long as the contract was concluded on the basis of prior consent.

### **4. The moral element:**

Which here is the criminal intent, as this crime is a premeditated crime that can only be realized if the offender knows that he is forcing the victim to marry and knows that she is not satisfied with this marriage and he wants this contract and wants its result, provided that his will is free from any defect of consent or impediments to responsibility, such as if he is also coerced to compel the victim into this forced marriage, or that he is in a state of necessity, or that during his conduct of this coercive act he was unconscious or unwilling because of involuntary drunkenness or because of insanity or a mental disorder (Articles 60 - 65 of the Iraqi Penal Code).

## **4.0. The Penal Effects of The Crime of Forced Marriage**

According to Article (9) of the Personal Status Law:

1. The penalty shall be imprisonment for a period not exceeding three years and a fine or one of these two penalties if the offender is a first-degree relative (ascendants and descendants).
2. The penalty shall be imprisonment for a period not exceeding ten years or imprisonment for a period of not less than three years if the offender is any person who is not a first-degree relative of the victim.

It is clear to us from the extent of the penalty that the legislator made the degree of the offender's relationship to the victim an excuse for mitigating punishment, and this is a strange approach from the legislator, as it thus gives the offender the opportunity to escape punishment when the judge issues a sentence of imprisonment for a year or less with suspended execution, and his approach is in The mitigation of punishment allows the spread of this crime, especially since most of the perpetrators of this crime are parents (first degree relatives).

We recommend that the penalty be tightened whenever the offender is closer to the victim, and that the legislator includes criminalizing and punishing the one with whom the contract was made - the husband - if he knows that he is contracting his marriage with someone who is forced to marry, so that the perpetrators do not escape punishment and until we put an end to this crime that has become phenomenon in society.

#### **4.1. Aspects of the crime of forced marriage in Iraqi society:**

Forced marriage has many forms, the most important of which are reciprocal marriage and marriage instead of blood (faslia), and minor marriage. There is a type of forced marriage known to the Yazidi sect, namely, kidnapping marriage. We will discuss these forms in the following sections:

### **5.0. Reciprocal Marriage**

Reciprocal marriage is the forehead and lies between the junction of the hair and the eyebrows, and from this came the name of the reciprocal marriage, with customs and traditions well established since ancient times in a society that is still captive of the past with all that it carries of injustice, persecution, denial and transgression of the rights of women whose role in the field of political and social life is absent in a country considered one of the first countries to sign agreements whose provisions require respect for all their rights, including the right to choose a spouse.

This marriage is sometimes called the dowry marriage. This marriage has many reasons, including the poor financial condition of the young man who wants to marry. When he proposes to marry one of the young women and her family asks for a large dowry that he cannot pay, then he offers them his sister to marry her to a family member, even if he is married to more than one or is old, or that the girl's family rejects the young man who proposes to her, and they say that our daughter is prepared for the marriage of her "brother", and they force him to marry them to his sister, and it is agreed that the marriage will take place in one day, one by one (Heikal (2021)).

Unfortunately, the Iraqi society encourages this type of marriage, which results in dozens of victims of divorced women who were victims of traditions considered by many to be (backward), especially in the city of Mosul because Mosul families are still adopting him, while the Personal Status Court in Mosul records many divorce cases as a result of this marriage.

Mrs. Iman Subhi, 36 years old, says: I am one of the victims of the reciprocal marriage. My older brother gave me a gift to his wife's brother at his request. Our marriage lasted for more than 15 years.

Mrs. Naglaa Raouf says: "My father married me before his death by force to an old man and he married my husband's daughter, but what happened was that my father did not congratulate him on his marriage, and the result was his divorce and then my divorce as well.

In the rural community of Nasiriyah, specifically the marsh dwellers, women's rights are violated and their desires are marginalized, as the girl falls victim to the desire of her father sometimes or her brother sometimes when either of them wants to marry another, so he is required to provide one instead of her. Strengthen the bonds of relationships, so the exchange of a girl for another takes place like any commodity for barter and without taking into account the girl's interest or her desire to choose a husband for her. Therefore, the marital relationship ends in divorce, leaving children whose fate is unknown and she is in a tragic situation full of mental illnesses.

Lawyer Jamal Al-Taie says: "The (Shugar) marriage carries the seeds of discrimination and failure in its folds, and disturbs the peace of marital life. He adds: "Legally, the first wife may not be considered a dowry for the second wife", because this means that the woman is a negotiable need. He continues: "But what we notice now is that when some want to marry within this concept, a contract is concluded for each of the two betrothed separately, and rights such as the dowry are established in the contract". The received dowry or its deferred dowry is usually symbolic, and the law is not obligated to reveal secrets and intentions that only God Almighty knows. Al-Tai explains: "Therefore, a woman cannot claim her rights as an alternative, and this marriage often ends in khula' and each party waives his rights".

Concerning the opinion of Islamic legislation regarding this marriage, Sheikh Muhammad Hamid, the imam and preacher of one of the mosques of Mosul, says: "The word (Shugar) is rooted in (emptiness), so it is said that a town is vacant if it is devoid of the sultan, and what is meant by it is devoid of dowry. He adds: "Our Prophet Muhammad, peace and blessings be upon him, forbade this marriage, so he said (there is no strife in Islam) and the scholars differed about the reason for forbidding the marriage of (Shugar). So, quarrels do not fit at all with our modern societies. A real society cannot accept that a woman becomes a commodity or a commercial transaction negotiable between the conflicting parties".

## **6.0. Marriage Instead Of Blood (Faslia)**

As for the other phenomenon or the other type of forced marriage, it is the marriage of the "faslia", which is a woman who is chosen for marriage in return for the price of killing or a great mistake committed against a clan. The woman's clan resorts to compensate for her mistake by giving the other clan a woman called the faslia for the purpose of reconciliation and forgetting revenge, and (Fasil) is the meeting of the parties to the conflict to compensate the aggrieved party if his tribal right is confirmed, so it is included as part of the blood money that is agreed upon, and it is called (Faslia). In the case of murder, a girl is presented to the victim's clan to be forcibly married to one of the dead's relatives, Sometimes the characteristics of a woman are valued and her price is evaluated, and the people of her clan bargain over her for money. This phenomenon is widespread in Iraqi Kurdistan, in southern Iraq, the central Euphrates, and the desert regions of western Iraq, where tribal customs prevail(Al-Ta'i ,Safa, 2021).

Faslia marriage is one of the ancient and modern phenomena imposed by the prevailing societal conditions at every time and place, especially when the law is absent or its apparatus is weakened, the laws of the jungle rule, and the strongest survive. The marriage formula depends on tribal and clan legislation by forcing the girl to marry someone she does not know and who is unequal with her in everything as a result of committing an anti-dominant mistake by one of her clan members to be the victim of a crime she did not commit.

The term "faslia marriage" is a well-known concept among men, especially the sheikhs, to inform them about what is going on in the hostels of the clans, and almost everyone knows the details of marriage. Sheikh Fadel Abbas Al Kinana explains the phenomenon of faslia marriage: It is a very old phenomenon, as it was enacted by the laws of clans and tribes, as is the case with other types of chapters specified by the clan law, to guarantee the rights of clans and tribes and to put an end to any transgression against each clan. He adds that choosing a woman as compensation for the forgiveness of the guilt of a member of her clan is a harsh penalty paid by the clan members and a strong deterrent to them from doing any tyrannical act, on the other hand, to stop the blood between the two clans and bring them closer together through lineage and affiliation, describing the woman as a fruitful tree that gives birth to daughters and sons, so that the rapprochement and then bloodshed and the final elimination of the problem, pointing out that the separation is currently done by pushing the context of the woman (her dowry) instead of her for the progress of society and change his view of women, because the feminine woman does not have any rights, not to choose or to demand anything like regular marriages, as all her rights in this marriage are forfeited from her. Therefore, the clans have now adopted a method of paying money instead of women, in addition to the fact that the clans are now very far apart and the division between the ranks of one clan, let alone two different clans, as women there have no role in bringing them together. In addition, it is a backward, old, and unjust phenomenon against women.

As for Ali Hussein Hadi, from the village of al-Sahwi, he shows that the reasons for the marriage of al-Fasliya are many, the most important of which is what is related to the woman herself, such as an agreement between a woman from one clan with a man from the second clan. A number of women instead of his daughter. In the past, he adds, the father would chase his daughter and kill her, come with her palm and hang her in the clan's host, indicating that his face was whitened in front of his family and clan, as well as his

demand for the woman to separate and the man's clan to bear his demands. The other reason is that one of the clan members committed a crime by killing someone from a second clan during a quarrel, so the family of the dead man asks a *fasil* from the killer's family, and thus one, two or more women are presented with sums of money. Hadi agrees with Fadhil Al Kinana that the woman works to bring the two clans closer to obtaining bloodlines between them, thus sparing blood and fading out the problems, pointing out that the woman is a victim in marriage and loses all her rights, but the clan is a reason for that for her children to depart from custom and traditions and thus be the best deterrent.

In the woman's *faslia* marriage, it takes on a strange appearance, as well as being rejected, as it is a special kind of marriage that has nothing to do with joy. Where the girl is handed submissive, her facial features are hidden and she is clothed in black. The girl is entered quietly without fuss, and in an atmosphere fraught with sadness and psychological tensions.

This phenomenon - crime has receded in certain areas of Iraq, especially after the stability of the situation in it and the intellectual and scientific revolution that the country specifically witnessed in the seventies of the last century, when the perception of women changed and the emergence of men demanding their rights and allowing them to contribute to the various sectors of society. However, this phenomenon is restoring it has recovered at the present time after the changes that have occurred in the country and the confusing situation of laws and legislation because its roots are still in the tribal and clan mind.

From a legal and religious point of view, the marriage of the *faslia* is rejected, and the marriage contract in the event that the girl is presented as a *fasil* is considered a void contract due to the presence of the element of compulsion that destroys the pillar of consent, and the contract, whatever its nature, is considered void if one of its pillars is lost. Also, Article 9 of the Personal Status Law provided for the invalidity of a marriage contract coupled with the element of coercion, and stipulated a penalty of up to ten years imprisonment. Marriage is a legal contract that requires the legal judge to ask the girl if she agrees or not, so her answer is either yes or no, if the girl does not agree to the person who proposes to her and is unable to declare this for fear of a threat, then she can sign, then the Islamic judge can find out that she does not consent to the marriage, but this never happens because of the inability of the "faslia" woman to express her opinion and her clan members and brothers have gathered around her, as she threatens to kill sometimes if she refuses to do so.

The suffering and problems of women stem from the suffering and problems of society, regardless of its customs and traditions. Therefore, the solution to the suffering and problems of women must be consistent with the solutions to other social problems related to that society, and the solutions must be within a comprehensive and broad civilized program, because the solution will not take place unless it is taken in the right direction.

## **7.0. Child Marriage (Early Marriage Or Marriage Of Minors)**

Minors in language: means that a thing does not reach its end and extent, and it is said that it is shortened if you imprison it, and as for a minor girl, she is the girl who has not yet reached the age of majority. As for the meaning of a minor idiomatically: there is no explicit definition of the concept of a minor in jurisprudence, however, the word has been mentioned by some jurists, and it was noted that the jurists used it for those who have not yet reached the age of puberty, and in sum, the minor denotes the one who has not reached the age of puberty, or the one who has not reached the age of majority. The meaning of the minor in the law: it comes in the sense of a child, or a person who is under the age of 18, and a minor girl is a girl who has not reached the legal age for marriage.

Child marriage is defined as any formal marriage or any informal union between a child under the age of 18 and an adult or other child. As for early marriage, it can be defined as a relationship that occurs between two parties at an early age that qualifies them to rely on themselves with regard to the obligations of each person in the relationship, as well as qualifying them to have children and raise them within that legal relationship, and it can also be defined as a marriage that occurs before the legal age (Daqamseh, Amal(2022)).

Child marriage is often the result of deep-rooted gender inequality, leaving girls disproportionately affected by this practice. Globally, the prevalence of child marriage among boys is only one-sixth of that of girls.

According to a 2001 study by UNICEF's Innocently Research Center on the marriage of young girls and adolescents, which was subsequently printed as a brochure. This phenomenon is considered a normal

phenomenon in the sub-desert regions of Africa and South Asia. In these regions, marriage before puberty is not abnormal, especially in West and East Africa and South Asia. The center also recorded that marriage immediately after puberty is considered normal among many of the population who still follow traditional lifestyles, especially in the Middle East and North Africa and some parts of Asia. While teenage marriage between the ages of sixteen and eighteen is widespread in large parts of Latin America and Eastern Europe. Mostly, in such marriages, the girl does not have the right to accept or reject the marriage but someone else agrees in her stead. Early marriages are called forced marriages (Abdul Rahman ,Halima Muhammad(2016)).

Despite the different environments in which such marriages took place, their consequences are almost common to all women. Most of them suffer from continuous domestic violence, in addition to the fact that early marriage is often associated with desertion, whereby the husband abandons the young girl. Then the girl finds herself divorced or abandoned, before or at the beginning of her twenties and without educational qualifications or financial sources. These new conditions, and the worsening poverty around them, expose them to the dangers of the sex trade, whether inside or outside the borders, in other countries, like the case in some societies.

Dr. Khaled Montaser summarizes in the electronic magazine "Civilization Speech" in issue No. 759 issued on February 29, 2004 the risks of childbirth at an early age as follows:

Health risks such as pre-eclampsia, anemia, difficult childbirth, miscarriage, and the risks of repeated childbearing without a reasonable interval between birth and others that have health risks to the mother and fetus. High death rate, deprivation of education, the prevalence of divorce.

The author summarized the reasons for early marriage in the following points:

- a. preserving the chastity of girls;
- b. preserving their honor;
- c. fearing that they may become spinsters;
- d. to get rid of the burden of providing for them, especially if the number is large;
- e. to benefit from their dowries;
- f. the desire to increase the marriage;
- g. to reduce the age difference between Fathers and sons;
- h. proving the power of fathers over daughters.

The United Nations Children's Fund (UNICEF) stresses that the marriage of minors has serious and harmful consequences, including the deprivation of education, as once a girl is married, she is forced to stop attending school. There are health problems, including preterm pregnancy, which leads to high rates of maternal and infant mortality. Young girls are also more likely to contract sexually transmitted diseases, including HIV [AIDS]. UNICEF also confirmed that girls are subjected to abuse, as females who refuse to marry, or choose a partner against the wishes of the guardian, are often punished, or even killed by family members, which is called "honor crimes". UNICEF called on governments and local organizations to warn families against the marriage of minors, and to inform parents of the risks involved (Al-Abdali, Muhammad ibn Fankhour (2022),). (UNICEF) also confirms that the marriage of a minor is a violation of her rights, and that the Universal Declaration of Human Rights affirmed that marriage must be with the consent of the two parties, without coercion, and that the marriage should not take place when either of the parties is a child who is unable to make an informed decision, UNICEF confirmed that the marriage of minors is inconsistent with accepted international standards for human rights, and that the phenomenon of early marriage of young girls exposes them to physical and psychological pain and causes them serious health problems. The international organization confirms the prevalence of the phenomenon of girls' marriage at an early age on a large scale in Africa and South Asia, and to a lesser extent in other regions of Asia, North Africa and the Middle East.

According to the Ministry of Planning, 3 out of 10 women marry in courts, and they are minors. These marriages are distributed roughly between urban and rural areas. Maysan ranks first for married women under the age of majority, followed by Nineveh.

Activists in the field of defending women's rights have confirmed the prevalence of the phenomenon of minors' marriage in the regions of Iraqi Kurdistan, despite the existence of an explicit legal text prohibiting any marriage before the boy or girl reaches the age of eighteen. Civil organizations confirm the suicide of many girls after forcing them to marry, and blamed Parliament for its inability to legislate a law limiting this phenomenon, and demands by some clerics not to encourage the marriage of minors. There are tribal and

clan traditions and customs, some of which constitute a flagrant violation of the rights of children and women, including cradle or minor marriage, forced marriage, and early marriage (Al-Abdali, Muhammad ibn Fankhour (2022)). Although the law is clear in this regard, forbidding any marriage contract between two parties without either of them reaching eighteen years of age, and without the consent of the two parties, and the parents bear the legal consequences if they allow the marriage of their minor children, many linking some customs and traditions with the Islamic religion and its laws. Is the Islamic religion permitted or forbidden child marriage? Some clergymen confirm that there is a dispute on this subject, as some religious scholars did not allow it, while others assert that the permissibility of minors' marriage is a rule of jurisprudence, and not a rule of Islamic legislation. And the axioms of jurisprudence are not necessarily from the axioms of Islamic legislation, which are taken for granted, and definitive, and must be adhered to, while the provisions of jurisprudence bear conjecture and guesswork. Some religious scholars have emphasized that the provisions of Islamic legislation alone determine what is permissible and what is forbidden, however, these provisions did not analyze or prohibit the marriage of minors. Sheikh Abdul Rahim Saeed, a member of the Fatwa Committee in Sulaymaniyah, stated that it is not possible to place minors' marriage within the taboo, but it is a phenomenon imposed by the necessities of a time gone by, and it is no longer needed, because it causes many social problems.

## 8.0. Marriage By Kidnapping

Kidnapping: Bride kidnapping, the definition of abducted marriage is marriage without the consent of the parents, then it is kidnapping, and this marriage is widespread without taking into account its consequences in terms of social and legal terms, especially if the girl is a minor where the parents pursue the husband legally, which is the process of kidnapping the woman he wants to marry. The practice of bride kidnapping has spread around the world throughout history. This practice continued in some countries in Central Asia, the Caucasus region and some parts of Africa, and among different spectrums of people, such as the Hmong people in Southeast Asia, the Zaltal people in Mexico, the Romans in Europe, and in Indonesia, the phenomenon is known locally as "Kawin Tang Kap", which means is that a man from one of the women's acquaintances or relatives abducts her to force her to marry him by force. This phenomenon is known to people throughout the history of humanity, and since man began to tend to stability, in various forms and means.

Women have been treated throughout the long history and in many societies, up to the present time, sometimes as a commodity that is sold, stolen or kidnapped. The captivity of women was part of the spoils of war throughout different historical eras. The abduction of a woman by a man, whether with or without her consent, is one of the methods of marriage. Bride kidnapping is considered a sexual offense in most countries rather than a form of marriage (Shahinian, Gulnara (2012)), some of its types are seen as occurring in parallel with forced and arranged marriages and the phenomenon of kidnapping marriage has begun to increase in recent times despite social development and the individual's demand to live in luxury and guarantee his rights and the establishment of many civil society organizations and the declaration of human rights principles and the demand of international organizations for women's rights and equality with men because they constitute half of society.

Bride kidnapping differs from captivity, where kidnapping refers to the abduction of a single woman by one man (perhaps with his friends or relatives), a practice that is still widespread today, while captivity refers to the abduction of many women by a group of men, often in wartime.

### 8.1. The reasons of kidnapping:

Tribal and clan methods that some family members adhere to, especially the father or brother, and forcing the girl to marry her cousin or one of their relatives, or to demand and force the girl's cousin to marry him, which is what is called "Nahwa" in the clan or tribe.

1. The girl's relatives do not agree to marry her to the person she wants to marry, and they try to marry her off to a rich person in order to obtain a (higher dowry).
2. Forcing the girl by her family to marry (reciprocal marriage), which leads her to marry through kidnapping, by agreeing with another person to kidnap her.
3. Sometimes a girl is forced to marry someone as compensation for the murder or kidnapping of her brother or cousin from a strange family.
4. There are no provisions in the Personal Status Law detailing this phenomenon to reduce or prevent the kidnapping and punish the perpetrators (Kakah Yei, Mahdi (2021)).

## 8.2. The results of the kidnapping:

- 1 Sometimes it leads to killing between the two parties or one of the parties, and the consequences of that are severe penalties such as imprisonment and others.
- 2 Migration of the kidnapper's family and residence in an area far from their relatives.
- 3 Suicide: In some cases, the kidnapper's family forces one of the girls to marry the kidnaper's brother in order to make reconciliation between the two parties and as compensation. It is one of the types of forced marriage, which leads, after a long or short period, to the girl resorting to suicide.
- 4 Requesting a large sum of money by the girl's family and paying the required amount by the boy's family, which makes the boy's family in a very difficult living situation, especially if it is one of the poor families.
- 5 The psychological and moral condition that the boy and girl suffer later among the members of the society in which they live(Kakah Yei ,Mahdi (2021)).

These are the forms of forced marriage. Unfortunately, it did not provide for its details in the Personal Status Law. It would have been better to include the details of the forms of forced marriage in it in order to strengthen the legal protection against it, and to be clear to everyone so that the rule that there is no crime or punishment without a text is enforced, and that the rule that ignorance of the law is not excused is the prevailing rule that does not allow the perpetrators to adhere to the first rule due to the absence of the second rule.

## 9. Conclusion

Forced marriage in all its stages is often associated with violence, from idea to execution. This appears from the beginning clearly represented in the violence and abuses committed in order to subject and force the party who does not want to marry, and violence also appears in some cases, such as severely punishing the party who objected to the marriage as if she does not have the right to choose. This has very serious consequences that can sometimes lead to death. Violence is also used even after the consummation of the marriage in what is known as domestic violence cases, which confirms that the harm caused by this marriage is much more than the benefits.

In Islamic law, this type of marriage is not considered or allowed. On the authority of Abu Huraira that the Prophet, may God's prayers and peace be upon him, said: "Do not marry a female until you asks for advice, and do not marry a virgin until you asks permission". [Narrated by Al-Bukhari No. 5136]. It becomes clear to us from this hadith that the bride's permission is not only necessary, but also imperative. In order to complete the marriage contract, which must be concluded between the guardian of the bride (the representative of the bride, who must be a free Muslim) and the groom, and not directly between the groom and the bride, if the girl is still a virgin, but her permission is still necessary; This is in order to complete the marriage contract properly in application of Islamic law.

In order to achieve this crime in all its forms, it must be investigated from all aspects. The Personal Status Law No. 188 of 1959 imposed severe penalties against the offender who practices the act of coercion to marry, ranging in severity according to the degree of kinship of the victim, mitigating it if the offender's relative is of the first degree and aggravating it to the point of felony if the offender's relative is beyond this degree. We have criticized this approach from the legislator and considered that it is necessary to emphasize the closer the degree of kinship to the victim, as he is the most influential and the perpetrator of this crime.

## 10. Recommendations

- 1) The inclusion of detailed texts in the Personal Status Law that include all forms of forced marriage and from all material, moral and psychological aspects, all parties and persons in the forced marriage process or the reason for its occurrence and the various cases of its occurrence, as well as addressing legislative contradictions and mitigating or exempt excuses stipulated in the Penal Code that allow perpetrators to escape from punishment. And that the forms of the crime of forced marriage are included in their provisions in the Penal Code and not in the Personal Status Law, and that severe penalties are imposed on perpetrators. And that the degree of the offender's relationship with the victim is a reason to aggravate the punishment and not to reduce it, so that the closer the degree, the more severe the punishment. And that the victim be given the right to claim compensation for the material and moral damages incurred by him as a result of this

marriage. Punishing the husband with the penalty of the crime of rape if he is aware that the one who marries her is coerced into this marriage.

- 2) Abandoning the practice of forced and early marriage, emphasizing that this is the responsibility of everyone (governments, NGOs, society and individuals), and empowering girls and communities to change: awareness, mobilization, action and protection are all essential.
- 3) Emphasizing the urgent need to abandon this practice (forced and early marriage), especially in the context of the current crisis as child protection may be a related concern. We stress the importance of legislation, for example ensuring the free and full consent of both parties to marriage, and the registration of births in marriage For girls, raising the age of marriage.
- 4) Educating the members of society and members of each family to stay away from the social and clan customs and norms, which were one of the main reasons for the phenomenon of forced marriage. Following the civil and humane social method in the marriage process and creating a family based on social control.
- 5) Religious awareness, guidance and advice on religious and social occasions, and clarification of the effects and dangers of forced marriage on society.
- 6) Holding seminars by social researchers and specialists in psychology and sociology on a regular basis, especially for young people and of both sexes, to explain the dimensions and consequences of this dangerous social phenomenon.
- 7) Activating the role of the media by showing television and radio programs to reduce the number of victims in the future.
- 8) Punishing the perpetrators and defaulters of both parties legally, socially and financially, according to the state of the marriage, its forms and causes.
- 9) Providing advice on creating safe places where girls can meet, know and learn about their rights and create work documents with other girls and women. The government must establish a law and a framework for the work and activities of these safe places for victims of domestic violence.
- 10) We advise responding to the prevention of forced marriage and including it in the school curricula and all relevant professionals (health professionals, judges, lawyers, police, teachers, etc.).
- 11) Informing communities of the necessity of participating in drawing up the necessary measures to stop this wrong practice.
- 12) Encouraging non-governmental organizations to implement more projects to reduce this crime and prevent its spread.

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