

# The legal Confrontation of Domestic Violence: A Comparative Study Between Iraq and Italy

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## ABSTRACT

Domestic violence is an offence and is one of the significant causes of the increase in the crime index of a state. It is a social phenomenon that has recently caught the attention of all and sundry. This concept generally refers to the mistreatment of a person with whom they have a close relationship, such as the relationship between husband and wife, parents and children, and siblings. Violence within the family also occurs against older grandparents, and finally, children may direct violence to their families in the form of reprisals aimed at vandalism and victimisation. This article sought to evaluate and examine the problem of domestic violence in general. The study was divided into three main sections: The first part was devoted to clarifying the concept of domestic violence. This section dealt with the nature of domestic violence. In the second section, the size of domestic violence in some Western and Arab countries was provided. The third and final section of the study examined the response to domestic violence in Iraqi national law, comparing the Italian law system.

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## Introduction

According to monotheistic religions, the first case of human violence recorded by history dates to the beginnings of human existence on earth when Qabil killed his brother Habil. If violence is the expression of a situation or the means by which people can control and harness other people to obey and fulfil their interests, women, children, seniors, and the disabled remain the most vulnerable to domestic violence within the family.

On the one hand, the family is considered the first brick in the building of society. It is a group of individuals living under one roof with which they have kinship and affinity (Al-Rumaihi, 2012, p.17). As Zaki Badawi defines it, it is the first social unity to preserve humankind and is based on the requirements of the collective mind and the different rules and societies (Ghaith, 1967, p.6). It also plays a fundamental role in shaping humans' character and behaviour in various stages of their lives. It is a social institution that also performs educational and psychological functions. Through it, children gain the general societal standards and prevailing cultural patterns. Hence the importance of parents' role in forming children's personalities because they play the first and foremost role in the early socialisation process and leave unmistakable fingerprints on the children's personalities (Al-Rumaihi, 2012, p. 69). The family is more than just a means of birth control and the raising of children and their numbers to play their role in social life as a functional group that provides its members with

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many of the basic expectations and is of great importance to the emotional growth of the individual and provide him with a sense of economic security. These qualities that the family enjoys help them play their roles in the way society has set. Therefore, the family as a functional group needs factors and conditions to enable it to carry out its responsibilities without any disorder or disturbance (Halio, 2013, p. 2).

On the other hand, domestic violence is a negative phenomenon contrary to the principles of divine laws and human rights since the family is the basis of society to be protected from disintegration by taking legal measures and preventive means. This study will examine the issue of domestic violence in three sections: Firstly, the concept of domestic violence will be clarified. Secondly, the size of domestic violence in some Western and Arab countries will be evaluated. Finally, the response to domestic violence in Iraqi national law will be compared with the Italian law system.

## The Conceptualisation of Domestic Violence

Domestic violence is one of the most widespread forms of violence. This kind of violence has been given attention because the family is the cornerstone of society and its fundamental structure. Domestic violence is a pattern of aggressive behaviour in which the strongest show their authority and power over the weak through all means, whether physical, verbal or emotional.

To begin with, we will address the definition of violence in terms of language and terminology and the attitude of Iraqi legislation on violence. Linguistically violence is against compassion, and it is the breach and the lack of companionship (Ibn al-Mundawar, 2008, p. 257). Violence comes from the act of violence; therefore, the cruel one is blamed for being violent (Tahani & Azza, 2007, p. 17). Hence, the literal meaning of violence is excessive intensity, which is against compassion and softness (Antoine, 1979, p. 777). It is a term that defines the illegal use of force or the threat of inflicting harm or damage on others (Al-Rumaihi, 2012, p. 16).

There is also confusion between “legitimate” violence (violence exercised by the state is assumed to be legitimate) and “unlawful” violence, where the former is not considered “violent” in the legal and political sense, at least from the point of view of some. In contrast, the latter is violence punishable by law. In addition, violence has many degrees, which begin with the pressures of using physical force to the maximum extent and end with psychological pressure (Abdullah, 2004, p. 10).

In *Lisan al-Arab* dictionary, “violence means blame and intimidation.” In social sciences, “violence means harming others and seeking to break up social relations among family members,” including violence against wife, husband, seniors, and family members as a whole, in ways of neglect and physical and moral abuse (Rumaihi, 2012, p. 16).

The attitude of Iraqi legislation on violence is clarified in the 2005 Constitution. Article 29 (IV) prohibits all forms of violence and abuse in the family, school and society. The Iraqi legislation used the term violence more broadly, whether as the essence of the criminalisation itself or as an aggravating circumstance of punishment. The word “violence” is also mentioned in some legislations issued in the Kurdistan region of Iraq. Although the word “violence” was the most crucial term in the law against domestic violence in the Kurdistan region in 2011, it came without definition. It seems that the legislature wanted to eliminate the hardship of self-imposed with complicated order, which is difficult to define and determine. It can be said that violence is one of the concepts that have been taken in different interpretive directions, which makes it difficult to establish a specific definition. However, violence is a mistake in saying or acting that often leads to emotional or physical abuse of the self or others.

Violence is one of the harmful acts that cannot produce a positive impact. Hence, we find the error in the argument that rights are restored only by violence since violence leads only to violence. Moreover, there is no need to delve into the legitimacy of violence from its illegitimacy after its morals have been proven by the various systems, heavenly or earthly, especially after proving its negativity and inability to produce positive effects.

Not surprisingly, domestic violence is one of the concepts that are not agreed on theoretically and procedurally. It is difficult to define it in theory because it is related to the social, cultural and temporal context of the behaviour of violence. Domestic violence behaviours are related to the custom, consensus and social acceptance of a group within a social context and specific spatial and temporal boundaries. Thus, the frame of reference for judging these behaviours is variable and culturally governed, making it socially different. The concept itself has multiple meanings and is governed by the observer's awareness, the structure of the actor and the reference frame of the actor and observer. What parents commit to education differs from what is achieved by parents for satisfactory purposes or to satisfy sexual deviations and what is engaged in a culture which is not necessarily in another culture or another society or even within the same community between the subculture and the mother culture (Al-Rumaihi, 2012, p. 75).

It was also defined as taking aggressive patterns of behaviour resulting from the existence of solid and unequal relations within the framework of the division of labour between men and women within the family and the consequent definition of the roles and status of each member of the family as dictated by the prevailing economic and social order in society (Wahab, 2000, p. 17).

World Health Organization (WHO) also defined domestic violence in 2002 as "any behaviour that occurs in an intimate relationship and causes physical, psychological or sexual harm and pain to the parties to that relationship (WHO, 2002, p. 5). It is noted in previous definitions that it emphasises the prevalence of violence within the context of family relations to exclude the possibility that this type of violence will overlap with other types, such as violence against women, children or the elderly, which are outside the family. It can be said that domestic violence is the violent behaviour of a family member that would cause physical or moral harm or both to the other person of the same family.

Domestic violence is an act of violence perpetrated by a member of the family against another member. These acts take many forms and vary in severity, stability and the quantity and quality of the damage caused. Domestic violence occurs as a result of a situation or frustration that indicates a high degree of tension and develops into aggression that crosses many contemporary and diverse societies (Al-Tair, 1997, p. 40).

## **Prevalence of Domestic Violence**

Domestic violence is a widespread global problem in all societies. On the one hand, however, for example, the concept of honour, the symbolic dimension of violence against women, and honour killings, which are its direct form, tend to be identified with Eastern societies. Although the concept of honour includes broader meanings, it represents the set of values formed as male-oriented, which the man uses to control the woman, especially the sexuality of the woman. When the word honour is spoken, the first thing it evokes is the sexual purity of women. If a woman acts contrary to the rules of sexual abstinence determined by custom, her honour is deemed tarnished. In ultra-traditional segments of society, the penalty for this is death as a matter of tradition, which is how honour killings occur. In other words, honour killing is the murder of a woman on suspicion of deviating from the sexual norms imposed by society. Due to their visibility, honour killings are a boundary-marking

area between different segments of society in modern societies with ethnic and cultural diversity. Honour killings are seen as a direct form of violence against women specific to traditional social segments and are also seen in Western societies. However, in modern Western societies, honour killings have been “ethnicised” through minority communities with different cultural repertoires, and the “multiculturalism” paradigm based on respect for diversity and valuing cultural differences has led to non-intervention in the home, which is seen as a “private space” in cases of violence against women based on cultural and religious origins. Their overemphasis has led to women being invisible, ignored and not heard (Hamzaoglu & Konuralp, 2019a, p.52; 2018; 2019b; Özdil, 2021; 2022).

On the other hand, no accurate statistics show the actual size of domestic violence in all countries of the world, despite its prevalence. This is due to the propensity to cover up family problems and not reveal them. In this respect, the current statistics do not represent the actual size of domestic violence in society. Therefore, this section tries to show the extent of the prevalence of domestic violence in the contemporary world. Then it presents the most critical efforts to cope with it at the international and local levels, i.e., Western and Arab worlds, as well as the Kurdistan region in Iraq.

To begin with the United States of America, in 1994, national statistics indicated that about 429 children out of every 1000 were referred to competent authorities for alleged abuse and neglect. The Gallup survey in 1995 indicated that three million children out of 67 million were victims of physical abuse by their parents, accounting for 44 out of every 1000 children (Mohammad, 2006, p.22).

In terms of domestic violence against women, according to the United States Department of Justice statistics, one in four women is a victim of domestic violence at least once in their lives, and every day three women and one man are killed by their partner. About 85% of victims of domestic violence are women. Between 2000 and 2006, domestic violence caused 10600 deaths (Tjaden & Thoennes, 2000).

All national observatories, international bodies and prevention centres agree that the number of domestic violence in the world is underestimated because it is usually derived from spontaneous declarations or complaints, while victims’ difficulty in recognising and reporting abuse is one of the most complex and problematic aspects of the problem (Russo, 2013).

In France, about 2 million women are being beaten in this phenomenon, which police say includes about 10% of French families (El-Erian, 2002). According to the French national study, 164,000 women were subjected to physical violence, 33,000 to sexual violence, and 26,000 to types of abuse. 7 out of 10 women were repeatedly assaulted, while one out of four abused women filed a complaint with the police. One hundred forty-three thousand children are born in a home where their mothers were exposed to violence of various kinds. In 2014, 25 children were at home during the killing of a parent (El-Erian, 2002). Sixty-three thousand cases of rape occurred in 2014, and 10% of them went for psychological counselling (Abu Chakra, 2015).

In Britain, more than 50% of the victims are victims of the husband or partner. Domestic violence rose by 46% in one year to the end of March 1992, and their husbands or partners beat 25% of women. The British police receive 100,000 calls a year to complain of assault, and they do not notify the police until they are repeatedly attacked dozens of times (Abu Chakra, 2015).

A survey published in Britain showed increased violence against women. According to this survey involving 7000 women, 28% said their husbands attacked them. According to another British report, the husband hits his wife without a reason to justify beatings, which constitutes 77% of the beatings (El-Erian, 2002).

We find that violence against women exists in European countries as well as throughout the world. However, the development of laws and penal mechanisms reduces its rates compared to other countries still seeking to amend their laws to control violence against women.

Domestic violence against women in the Arab world has varied statistics that emphasise the existence and growth of this problem in Arab society. In contrast, some Arab countries have taken advanced steps to reduce this problem by issuing special laws to prevent domestic violence. Saudi Arabia, Jordan and Bahrain stand as examples. At the same time, the rest of the other Arab countries have set out specific provisions of the penal code.

The Kingdom of Bahrain has taken a positive step forward in the issue of combating domestic violence by issuing law No. (17) on "Protection from Domestic Violence" in 2015, which serves all members of the family, especially women. The law covered physical, sexual, psychological and economic violence within the family and addressed protection measures when family members were subjected to violence. It also includes sections relating to prevention, protection and confidentiality in dealing with related issues and mechanisms to trigger advocacy and reporting and raise complaints to the competent authorities. Today, the Kingdom of Bahrain has eight official and non-governmental bodies providing services to victims of domestic violence, especially women. The official bodies include the social services offices in the health centres, which are affiliated with the Ministry of Health, Dar Al Aman shelter and Batelco Centre for Family Violence cases which are affiliated with the Ministry of Labour and Social Development and the Women's Support Centre which is affiliated with the Supreme Council for Women. At the same time, non-governmental organisations include Aisha Yatim Centre for Family Guidance, affiliated with the Bahrain Women Union. According to the Legal Advisory and Research Department of the Legislative and Legal Advisory Council in the Kingdom of Bahrain, the official statistics recorded for cases of domestic violence to government institutions and centres of the ministries of the state in 2015 amounted to 1655 cases, 75% of which was against women. Cases are increasing as the number of cases recorded in the first half of 2016 amounted to 859, more than half of the cases that occurred last year, including 73% against women. The details of these statistics show that more than half of domestic violence cases fall on the wife by her husband (Al-Fardan, 2016, p. 22).

The family in today's Saudi society has become different from the family that prevailed in the past. Many households in Saudi Arabia have become economically and socially independent, dealing with the problems they face in modern ways. Their members resort to individual methods of solving them. They also use official institutions more than the family members or the tribe, as was previously in extended families.

Social change has also brought with it many new values, standards and goals, such as confirmation of material success, high aspirations, and expansion of the means that lead to goals. These factors raise the level of nervous tension in the individual, which is the source of many social problems. Therefore, in modern societies, the rates of some organic, psychological and social diseases have been raised, and tensions have also led to the emergence of crime, which has increased in number and diversity. Violent crimes may be one of the most important patterns that are growing in every direction, where domestic violence is a branch of violent crime that has been discussed in the past three decades.

Official statistics have shown that the rate of violence in Saudi Society has increased, as it ranks third in the list of registered crimes according to the Central Statistics of the Ministry of Interior, which represents 16% of the recorded crimes in 2003. The statistics of the Riyadh Region Police show us the steady increase in the phenomenon of violence and aggression in Saudi Society, where the number of violent and assault crimes registered in the police departments in 1997 amounted to 1005 incidents

of assault. In 1999, the number of cases of violence and abuse reached 1406 incidents, an increase of 40%. The number of incidents of self-abuse, including murder, death threats, shooting, assaults and speculation, according to the Statistical Yearbook of the Ministry of the Interior in 2003, amounted to 13838 incidents, representing 16% of the total reported criminal incidents in 2003. In the case of domestic violence against children in 2013, 112 out of 360 cases of domestic violence were violence against children were reported (Al-Saghir, 2012, p. 8-13). These statistics confirm the increase in violence in Saudi society in recent years until this phenomenon became one of the most critical issues that the institutions of society give their interest in the presentation and discussion through the media, in seminars and conferences.

For domestic violence in Jordanian society, statistics show that 47% of women are beaten permanently. Violence against women occurs more in poor areas and among uneducated groups. Although violence occurs in all regions and groups, the methods of violence among these groups may differ. While everyone in the family can know about beatings and watch them without moving a finger, violence in the most densely populated areas is hidden and difficult to know as a result of the housing spacing, and the shape of the relationship is also different so that it is calculated rather than automatically (Ali, 2014, pp. 3-4).

As for children, they are exposed in their homes to one or more forms of violence, such as punishment and emotional, physical and sexual abuse. Because the abuse suffered by the child is not all at one level of severity, he has classified each form of abuse into levels. Child abuse providers have identified the same housing as parents, family elders other than parents, siblings and/or relatives and/or other children. The results indicated that parents and guardians are a small and medium source, followed by siblings, relatives, and other children who share the same house with the child. More than half (52%) were subjected to minor punishment, and more than a third (34%) of the average punishment of parents and guardians. The male share of punishment was slightly higher than that of females (59% and 46%). The female share of the average punishment was higher than that of males (36% and 31%) (Elian, 2007). These statistics also show that violence of various kinds does not depend on a particular group but on various groups. Thus, this indicates the seriousness of this phenomenon and the severity of suffering because of its negative effects on the future of individuals and the development of societies.

Due to the widespread manifestations of violence against women and the family and the negative impact on society, family and public order and on the development of society, in order to reduce these manifestations and the search for remedial solutions, the states issue laws to protect individuals from domestic violence and on this approach, the Kurdistan legislature enacted a law against domestic violence in Iraq.

Statistics indicate the registration of seven thousand and 445 cases of violence against women during the nine months of 2017 in the Kurdistan region. In this period, there were 38 cases of killing, 166 burning, and 6987 cases of torture and complaint. As a result of the outbreak of violence, in 2017, the government took a step in this direction when a new Directorate of the Ministry of the Interior was established in the name of the Directorate for Monitoring Violence Against Women. Subsequently, efforts by the government, the parliament and women's rights organisations resulted in the enactment of a law in parliament in the name of the Domestic Violence Act. Despite attempts by the government and women's rights organisations, the Directorate's figures continue to indicate violence against women. Violence against women in all its forms rose by 28.9% in 9 months in 2017 compared to the same rate of violence in 2016, according to the General Directorate of Violence Against Women. The numbers of violence against women during the nine months of 2016 were as

follows: Killing 30, suicide 60 cases, burning 169, burning herself 72, torture and complaints 4814, and sexual harassment 77 cases. The numbers for violence against women during the nine months of 2017 were as follows: Killing 38, suicide 58 cases, burning 166, burning herself 95, torture and complaints 6987, and sexual harassment 101 cases (Jamkari, 2017).

From these examples, it is possible to say that through these studies and statistics, we have shown the extent of domestic violence against women and the spread of violence has become a global problem.

## **Confrontation of Domestic Violence in Italian and Iraqi National Laws**

Domestic violence is a global and internal problem that transcends local boundaries and has become a global problem that international organisations struggle to combat. Although no international instrument against domestic violence is directly and explicitly protected from violence by all individuals, violence prevention requires addressing the leading factors of violence and their scientific treatment. Preventive efforts must focus on the stages of childhood and adolescence because the behaviour of violence consists mainly of early childhood. A set of measures should be taken to eradicate evil from the human psyche, which leads to the awakening of moral feeling, which is the internal control of each individual to control his behaviour following established regulations and prevents aggression and violence, which is based on an attack on the rights of others. In this part, we will search for the means of combating domestic violence in the two countries, Italy and the Iraqi Kurdistan Region.

The Italian legal system does not provide specific measures to address domestic violence exclusively, but it provides strict details when women are victims of certain crimes. There are no official and complete statistics on the number of crimes committed against women (Senato Della Repubblica, Camera dei deputati, 2014, p. 8).

Although Italian law gives women their rights when a person, such as a husband, father, brother or any other person, physically assaults her with rape, theft, mutilation or harassment, the incidents of violence between the spouses have increased and multiplied, making it a severe phenomenon that threatens the entire Italian family which is somewhat consistent. The Italian National Statistical Center has revealed that at least 250,000 married and unmarried women are subjected to rape or sexual assault every year.

Many associations emphasise that the state is currently encouraging many sectors and social segments to find other transformations that undermine many of the gains achieved by Italian women and that through the media discourse, which has begun to focus on it recently in order to protect the family and maintenance of it and as well as returning to its origins (Al-Khnein, 2003).

Among the most relevant documents adopted by European Union institutions approved by the Council of the European Union on 6 December 2012 on combating violence and providing support services for victims of domestic violence, the document is required to improve, collect and disseminate administrative data and records and address complaints at the level of member states, judicial authorities, health and social authorities, and provide adequate training for workers who are concerned with victims of violence with strengthening national health services and social infrastructure against women. It should also be noted that the resolution "Combating violence against women" adopted by the European Parliament on 25 February 2014 and recommendations addressed to other European institutions and member states (Senato Della Repubblica, Camera dei deputati, 2014, p. 33).

In the Kurdistan region, a special law was issued to combat domestic violence and protect the family from it. This is the law against domestic violence No. (8) of 2011. The first paragraph of Article 2 defined a set of acts, for example, and considered it as family violence and that some of these acts were not constituted a crime under the Iraqi Penal Code No. (111) of 1969, the same law in force in the Kurdistan Region.

The law provided for the formation of a court competent in cases of domestic violence and the obligation of the Ministry of Labour and Social Affairs in the Kurdistan Region to provide shelters for victims of domestic violence and to obligate it to coordinate with the Ministry of Health to secure health care and rehabilitation of those affected by domestic violence.

The law also provides for many criminal proceedings that apply to crimes (Mahwash, 2006, p. 34). In order to solve and reduce the problem of domestic violence, the Directorate of Combating Violence against Women, in cooperation with the concerned authorities, has taken a general step and a new way through the Center of Family Counsel. The method of resolving disputes in the Family Counsel Center is as follows: Legal advisor: This advisor has been appointed by the Directorate and works on personal problems such as marriage, divorce, and all kinds of domestic violence. Appointment of a psychiatrist and a social researcher: They are appointed by a psychiatric centre, and a psychiatrist treats every person who needs a doctor. Providing legal counsel: Anyone who needs legal advice gets all the advice she/he needs—providing accommodation for children separated from their parents and people with no place or behaviour to violence (Sharmin, 2015).

## Conclusion

The study found that there is a high level of domestic violence against children and women in Iraq and Italy. Both Governments have made efforts to address the issue of violence against women, including through the adoption of laws and policies and the establishment and integration of government bodies responsible for promoting and strengthening women's rights. However, these achievements have not reduced the female murder rate or translated into tangible improvements in the lives of many women and girls.

Violence against women is punishable or criminalised by Italy and Iraq. Despite this, it changes according to the cases. For example, forcing an adult or child to enter a marriage is a criminal offence in Iraq, and also in Italy, the situation is the same. Also, in Italy, there are no dedicated statistical surveys capable of providing information on forced marriage; however, even if there is a phenomenon that is difficult to detect because of its complex characteristics.

Despite the current political and economic challenges, concerted and coordinated efforts to address violence against women through the practical and innovative use of limited resources must remain a priority. High levels of domestic violence, which contribute to high levels of female murder, require serious attention.

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## Author Contributions

The authors contributed equally to the article. The authors' contributions are as follows: Conceptualisation and writing of the original draft: Eahfen Mahmood Weli. Collection of the necessary data for country comparison and final editing: Sarkan Salman Abubaker.

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