

Article No. 308 of Jordanian Penal Law Validity Expired

Article No. 308 represents the conclusion of the first section of the seventh chapter of the Jordanian Penal Law; dealing with crimes; delinquency in honor and public moral, especially articles 292-208 thereof which handle rape and disgrace crimes of all types and surrounding circumstances thereof.

Article No. 308 of Penal Law:

(If due marriage is concluded between the aggressor, under this section, and the abused, pursuing of the case shall stop. If a verdict is issued for such case, sanctioned execution imposed on the defendant shall be suspended).

(The public prosecution shall recover its right to pursue the public case and implement a sanction before three years elapse since the offense date, and 5 years elapse since the crime date if the marriage is broken by divorcing the woman without justified cause).

Preamble:

In spite of such provision which concludes the legal provisions that tackle rape and disgrace crimes, such crimes may take place in a reverse manner whereby the woman is the aggressor and the man is the victim. However, it is clear that the legislator set out the previous text to encourage the aggressor to marry its female victim whereby giving the power to the lawbreaker and does not take the female into consideration.

It is also clear that it is not only intended to encourage the man, but also to push and bind him, through granting him the choice to either marry her or be sentenced for long term.

The question that arises herein is; why the legislator set out a text to exempt the aggressor from being subject to sanctions? In order to find an answer to the foregoing we have to conduct a real and subjective search and identify the reasons which prompted the Jordanian legislator to set out such text.

The legislator was then subject to the prevailing social thought which states the sexual aggressor must rectify his fault through marrying the victim based on traditions, customs and social heritage which make victims, who are subject to sexual aggression, marriage otherwise impossible. We believe that we will never find a case of equal and normal marriage between a man and a raped woman. We mention equal marriage because the abused victim may find opportunity to marry after being raped but such opportunity shall, undoubtedly, be incomplete. Either the husband is old, sick, or incapable which forces him to be engaged to a female which the community's males refuse to marry.

Herein we would like to refer to the idea, which was prevailing until recently, influenced by women's status in the Jordanian community, whereas women were not participating actively in the work force as we see today. Further, women were not able to depend on themselves and thus needing male protection, whether her father, husband, brother or alike, in all aspects of life. The community then set out severe restrictions that made women existing in public life impossible, through the honor crime concept which was imposed to keep women from engaging in illegal relationships with any person, but it exceeded such concept by targeting women who go against customary uniforms, movements and personal relationships and also targeting anyone who helps her live this way.

The foregoing directed the legislator at that time to consider the woman a person who needs special protection, and assumed she cannot deal with abuse that she could be subject to, therefore decided to offer the sexual aggression victim a solution which forces the aggressor to marry the victim through such text.

Why we do not agree to this article?

We do not agree with this article and this applies to almost all of those who are interested in this case, but the major issue that directs us against such a case is represented by the following causes:

- The justifications which the legislator used to set out text of article No. 308, have changed and even ended. Today we even notice women's independence away from men in terms of care, alimony and psychological status, especially after educating women and contributing to increase women's capabilities of dealing with violence (verbal, physical emotional etc) by themselves via empowerment.
- The marriage to the aggressor looks like an award offered to the criminal for his crime, as we have offered him easy marriage free from any ceremonies which otherwise create a heavy burden on other young men intending to marry.
- It breaches the most important principle in the marriage contract: mutual consent. Such marriage forces the woman due to threats and pressure by her family who care to cover the scandal, negative outlook and faulty concept resulting from such cases. Such view equalizes the accusation of the aggressor and the abused woman, whereby putting the victim on the same level as the aggressor in the eyes of the law, which increases the pressure on the woman and forces her to agree to such marriage. If she found psychological, social and family support, she would not agree to such marriage. On the other hand, the aggressor's aim of such marriage is to relieve himself of sanctions rather than admitting guilt which is in violation of the lofty goal which marriage is legislated for. The text may set out a solution for such problems. The victim's opportunity to marry neglects the idea of a normal and healthy marriage, which makes the initial marriage solution, between aggressor and victim, a problem by itself in most cases. Within this concept of marriage, it is nearly

impossible for the abused woman to live in psychological peace or emotional stability with the aggressor. The victim is in need of health and psychological care to survive from the long lasting effects of the committed rape crime, which are not available so long as they are married and the aggressor is living with her.

- This encourages committing such crimes, as sexual aggressors know the community will work to cover the scandal through marriage and discharge the aggressor from all sanctions.
- The aggressor may pressure and threaten the victim to seek a divorce thereby forcing her to create unreasonable causes and justifications to achieve the divorce. Given the law stipulates divorce must be backed by reasonable claims, he shall not be subject to being pursued in court regardless of the 3 or 5 year grace period. Stopping the pursuing issue is in breach of the legal marriage stipulation and there is no guarantee to maintain the marriage between the couple. Here the victim shall face another social problem, unavailability of a sustainer or caretaker, and thus she has to find other means to fulfill her living costs.
- This is considered a flagrant violation to human rights and women's rights in particular, which is recognized under all international covenants.

The problem is not over by this

Challenges that increase the problem complexity which many ignore as to referring thereto

Despite the fact that this issue is not in need of more complexity as it is already complex in nature, the reality states otherwise. This problem increases in weight and size and may explode in our faces if acts of sexual abuse lead to a new born child. No further words need to be said to describe the horrid situation as we all know the circumstances affecting every human coming to our community via illegal relationships.

Here we want to summarize discussions about financial and legal hindrances, which in our opinion add a new dimension to the problem thus rendering the scheduled solutions useless and inactive:

- 1** Abortion: denied in terms of religion (even though arguments refer to the possibility of abortion within certain period of time), and forbidden legally (sanctions may impose six months sentence after adopting the mitigating excuse). The foregoing increase difficulties that face the victim as it minimizes the available options even though pregnancy came from abuse, against her wish, resulting in denying her coming child. 321-325 of Penal Law.
The sole case which sanction is exempted, in terms of abortion crime, is attributed to the sole provision stipulated for in the Health law; represented by pregnancy danger exposing the pregnant to death under certain conditions. Article 12 of Public Health Law.

- 2 New born child kinship cannot be confirmed to the father except in four cases (*marriage bed**, ratification, evidence or scientific evidence of marital status). The new born kinship to his mother is confirmed by birth; i.e. infant kinship to his mother is easy while to his father is impossible. 157.a and 157.b of Personal Affairs Law.
- 3 The illegitimate child registration under Civil Status Law does not consider sexual abuse and thus does not offer the victim any privilege in defining her relation to the child (born through abuse), and gives the aggressor/father all responsibility of decision making regarding the infant. This leaves the aggressor with the same rights as the mother (in a normal marriage) as though the child came by choice and mutual consent. It does not distinguish between this type of birth resulted from rape and any other illegal births that may fall under article 20-21 of Civil Status Law.
- 4 Legal complexities arise for married women subject to abuse and pregnancy, along with divorced women under the waiting period (after divorced is issued) in advanced stages of the trial because it is possible for the aggressor to marry the victim, whom is either already married or waiting for her divorce to finalize. This means in the eyes of the law both are still married, therefore complicating kinship. The law is therefore contradicting because polygamy is not legal for women. Legally we cannot register the illegal infant in his parents' names except if pregnancy takes place, within the marriage term, between the abused woman and another man based on article 22 of Civil Status Law.

**Specific legal term in Sharia Law referring to legitimacy of marriage*

What do we need?

We all agree that article 308 in the Penal Law needs amendment and further review; in addition we completely disagree with this article. We also see the necessity to demand legal and legislative alternatives that handle problems related to sexual abuse victims. This can be achieved in accordance with our community vision, along with cultural, social, legal customs which impact the victims' life and reinforce the modern definition of Human Rights. We must offer the victim a pool of suitable options in agreement with the cultural and social traditions of our country, especially regarding pregnancy as a result of sexual abuse and to allow abortion under available religious ideas; (*Abortion rule before "blowing the soul"**, which defines the fetus as having a soul by the fourth month, thus permitting abortion prior to this stage in the pregnancy. This idea is found in many religious ideas, and some even allow absolute permissibility. For example, the Hanafieh sect allows fetus abortion without permission from the husband prior to the fourth month of pregnancy).

**According to religious Sharia opinion*

Also we have to set out legal articles that bind the criminal to hold consequences and damages caused to the victim; i.e. real and substantial financial obligations imposed on the criminal or governmental procedures that offer psychological and

financial support to the victim to compensate her suffering even in a relative manner.

In all cases any amendment or change suggested to take place on article 308 must be better, fair and substantial, if not cancelling the article entirely and ignoring the reasons that resulted in its creation. Therefore, we can find solutions including claims and invitations to cancel the whole text and apply it to crimes committed in mutual consent such as adultery (non married woman) and marriage promise crime coupled with defloration. Article 308 text may be fairer, more effective, and fulfill its goal by considering adultery, and social complications if the matter is not resolved by marriage of the lawbreakers.

Also, it is obvious we have to exert more time, effort and thoughts to increase community awareness, and remove faulty cultural practices. Even though the judiciary is just and fair and may offer justice to the abused by condemning the criminal via judicial verdict as right title, it still looks at the abused as a criminal and the criminal as if he did nothing, where as it should be the opposite i.e. raping the abused woman was against her wish, whereas if it was her will, to engage in sexual relations, then it would not be considered a rape crime and if there was no pressure from society she would not feel obliged to marry the aggressor. The most important part of marriage is mutual consent. It is our duty to promote community awareness in these complex and sensitive cases because such crimes jeopardize the safety of the victim and the community. Also, this matter must not be dealt with in such a manner where the criminal is able to marry the victim in order to avoid punishment. We have to intensify efforts by conducting awareness workshops and programs on such crimes, its impact on the community and its negative effects on our current and future well-being.

Moreover, there should be legal amendments to the group of laws connected directly and indirectly with article 308 sanctions and its sequences. It is worth mentioning herein that this issue shall not be ended by amending article 308 rather, all laws that have relationship with this issue, directly or indirectly, must work together to achieve the targeted aims. These amendments must ensure the absence of any contradiction between texts and avoid solving the problem from one side while complicating it from another side.

In conclusion, it is worth mentioning that the Penal Law Amendment Project has recently launched and is still so far from amending the existing Penal Law, but in spite of the exerted efforts, the draft was published, according to the Office of Opinion and Legislation, shall have its 186 articles including 308. On the other hand, the amendment did not cancel the text but it added male in addition to female victims. In other words, the Amendment Project added to the article did not cancel the previous verdict which exempts the criminal from sanctions if he marries the victim; rather it equalized both genders giving a female who rapes a male the right to benefit from the article by marrying the victim. However, it is still projected to amend the existing Penal Law but has not yet been endorsed. We shall wait until it is presented before the House of Representatives, in its ordinary and exceptional session, to complete discussions according to constitution rules. So we have to

intensify our efforts, with the support of civil community organizations, to work hard and seek to review the amendment of Penal Law.