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اللجنة الوطنية الأردنية
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The Jordanian National
Commission for Women

Evaluation of Alternatives and Solutions for Child Marriage in Jordan

INTRODUCTION

The phenomenon of underage marriage¹ has recently received national and media attention from different concerned parties, especially after issuing the Higher Population Council 2017 report entitled “Policies Summary: Underage Marriage in Jordan” that indicated that the analysis of the General Population and Housing Census data of 2015 revealed that in 2015 the percentage of women who had got married before the age of 18 years to the total married women nationwide reached 18.1%.²

As indicated by the annual statistical report issued by Chief Justice Department for 2017, there were 10,434 cases of underage marriage, i.e., 13.4% of the total marriages³.

At the global level, more than 41,000 girls get married before the age of 18 every year. Marriage of minor girls not only puts an end to the hopes and dreams of many girls, it also hinders all efforts exerted for poverty eradication and economic prosperity in any country. By 2030, underage marriage will cost developing countries trillions of dollars, because it affects the education level of girls and their children, which accordingly decreases the living standard and the family income in general. In addition, it negatively influences girls’ physical growth, increases the costs of health care and affects population growth⁴.

The Jordanian National Commission for Women is considered a reference body for all official agencies in setting woman- related policies and strategies, reviewing legislations to remove all forms of discrimination. It aims at creating a supporting national environment in order to improve the situation of Jordanian woman; realizing justice, equality, and partnership in sustainable development; contributing to increasing awareness of woman’s role and empowerment; building woman capacity; and protecting her from all forms of violence. Therefore, the Commission’s annual anti-violence campaign of 2017 focused on underage marriage. The campaign’s objective was to increase the awareness of community and students concerning this problem and its socio-economic, health and psychological effects and to promote the roles of men, young people, women and girls in facing up gender-based violence especially in remote areas of the governorates.

Moreover, the Commission takes part in all national efforts aiming at combating underage marriage, especially the National Committee for Early Marriage formed by the National Council for Family Affairs. The Commission also takes part in the working groups of the National Participatory Plan for Marriage of 15-18- year olds formed by the Higher Population Council. A strategic, multi-level plan of short, middle, and long-term goals is the most comprehensive means for dealing with this phenomenon.

We realize that legislative solutions are not enough. Notwithstanding, the Legal Committee of the 18th Parliament session has introduced for discussion the provisional Personal Status law no (36) for 2010. Article (10) of this law relates to the legal marriage age and its exception. This is a good chance to re-debate the said article to determine

1-The paper uses the term “under-age marriage” according to article (41) of the Civil Status Law and nomenclature of Chief Justice Department of Minors. However, there are many terms used for under- 18 marriage, such as child marriage, early marriage and early marrying.

2-Higher Population Council- Marriage of Minor Girls in Jordan, 2017, p.4.

3- Annual Statistical Report issued by Chief Justice Department for 2017.

4-According to the report of International Center for Women Research (ICRW 2017).

if the legislation, in its present wording, may increase child- marriages, and as a result needs to be reconsidered, or it has nothing to do with the phenomenon, and should remain unchanged for the public interest. In this context, the regulation no 1 for 2017- issued on 20/6/ 2017 concerning the right of the Chief Justice to give marriage permits for those who are over fifteen years old and under eighteen years old- should be reviewed and evaluated so as to ensure the optimal implementation of the exception contained in Article 10 of the Personal Status law or reconsidering it.

Needless to say that the Jordanian Constitution has played a major role in formulating and developing human rights in general and Jordanian woman's rights in particular. Article (6) of the Constitution states that "Jordanians are equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion ". The constitutional amendments for 2011 added the clause (4) to the above-mentioned article stipulating that "The family is the basis of society the core of which shall be religion, morals and patriotism; the law shall preserve its legitimate entity and strengthen its ties and values ". The clause (5) states that " The law shall protect motherhood, childhood and the old-aged; and shall avail care for the youngsters and those with disabilities and protect them against abuse and exploitation."

The Convention on the Elimination of All Forms of Discrimination against Woman (CEDAW), the major reference of woman's rights that was approved by Jordan and published in the Official Gazette on 1/8/2007, assured the principle of gender equality and non-discrimination against women. The Convention stipulated that all state parties to the two international covenants on human rights shall be committed to ensure equality between man and woman in economic, social, cultural, civil, and political rights. The Convention also stipulated that these rights are human rights that should not be violated. In response to its commitment to implement the convention and according to article (18) thereof, Jordan presented six reports to the Committee on the Elimination of Discrimination against Women. The sixth report was discussed on 16/2/2017. The report showed the recent developments related to woman progress according to quantitative and qualitative indicators, and the results achieved from the implementation of the Convention items in all aspects, including education, health, work and socio-economic development. The report pointed to underage marriage and the actions taken to prevent it, including holding awareness sessions with community leaders, parents and girls themselves, measuring the responsiveness to some indicators and recommendations mentioned in the final remarks of CEDAW when discussing the Fifth Report.⁵

Out of this perspective, it was necessary to listen to the concerned parties, including judges, NGOs and national institution to ascertain their opinion of the legislation and determine whether Article (10) of the provisional personal status law no (36) for 2010 should be reconsidered and amended or not. Therefore, a round table was held for concerned parties to discuss the proposed solutions and a workshop for Shariah judges and MPs was held to present the alternative solutions to them and know their views about them. Chief Justice Department 2017 regulations had to be reviewed to know if they are sufficient to limit the exception. Therefore, the paper may be a reference for decision-makers and law-makers when discussing article (10) of the provisional Personal Status law to reach a legislative solution that realizes the general interest and that of

5-5 The Sixth National Regular Report of Hashemite Kingdom of Jordan on CEDAW, wherein a question was asked in discussing the report about underage marriage in Jordan.

the concerned category as well as protects family as the core of society as mentioned in the Constitution. The paper is based on the debate among all the above-mentioned stakeholders, in addition to the concerned studies, literature, and statistics.

To reach the alternatives suggested by stakeholders, the policies paper had to be divided into 2 sections: the first section includes the general framework for underage marriage from different aspects. The first aspect deals with the defining framework of underage marriage in terms of its causes on one the hand, and the social and psychological effects on the other hand. The second aspect deals with the legal framework for Muslims and Christian sects, particularly the provisional Personal Status law and its regulations. The third aspect discusses the phenomenon statistically according to the Chief Justice Department, including solutions and alternatives suggested as well as the view-points of different parts.

First Section: General Framework of Underage Marriage

First Aspect: definition Framework of Underage Marriage

This will include the definition and causes for this sort of marriage and its psychological, social and health effects noting that the term of underage marriage is selected in this paper to express marriage for those under 18 years of age. Elsewhere, the terms child marriage, early marriage, or early marrying refer, according to UNICEF 2015, to “official marriage or customary sexual relations admitted as formal marriage that take place before the age of 18. Despite this, marriage may include males, girls affected by it outnumber boys.”

First: The Main Causes for Underage marriage

Qualitative studies conducted by the Higher Population Council have revealed that underage marriage takes place among Jordanians, Syrians and within Palestinian and Syrian refugees camps for the following causes:

- ❖ Poverty, getting rid of financial responsibility for a girl, school dropout as a result of frequent failure, getting rid of the so-called responsibility of protecting a girl's honor, customs and traditions, socialization, peers, media and fiction serials. Both the study results and 2001 UNICEF report concluded that poverty and social beliefs are the main reasons for underage marriage⁶.
- ❖ Protection against sexual violence, poverty, prevailing culture and tradition and social pressures, ⁷ according to the joint statement issued by international organizations including UNICEF, UN Woman Empowerment Organization, UNFPA, WHO, and Universal Alliance for 2013.
- ❖ Inability to provide basic school and university needs, such as fees, books, stationary, transportation; lack of nearby secondary and vocational schools, resulting in parents avoiding sending their daughters to remote areas especially if easy and safe means of transport are not available to reach the schools⁸.

This phenomenon increases after disasters and wars that become a fertile environment for underage marriage for reducing family costs or because of losing families⁹.

- ❖ Religious Reasons: They are considered significant reasons of the phenomenon in Islamic societies, because of spreading a wrong concept about marriage and the belief that it is, religiously, recommended, to get married as soon as possible¹⁰.

6- The Higher Population Council, 2017, Underage Marriage in Jordan, p.8.

7- WHO, 2014, New York Statement, Every Women Every Child- Girls Not Brides, Media Center: Child-Marriage: 39,000 marriages a day, www.who.int/mediacenter/news/.

8- Justice Center study on early marriage.

9- The concerned Jordanian authority stopped an underage marriage between a 14-year Syrian girl and an Arab person who is above 40 years who offered a sum of money to the girls' uncle. According to Jordanian Al-Ghad Newspaper, the executive director of the Women's Union, Mukram Odeh, said that: "the Union received a complaint about an attempt of the uncle of a young girl to marry her to an Arab person without registering the contract in the court because the Jordanian law incriminates child-marriage". The difficult economic situation and the death of the girl's father were the main reason for this marriage, she pointed out. According to available data, the girl is living with her uncle after her's death and she is out of school since she came to Jordan.

10-"Early Marriage between Legal rReality and Actual Practices", Ma'et for Peace and Human Rights, July, 2016, p. 2.

Second: Social, Psychological, and Health Effects of Underage Marriage on a Minor Girl

In terms of education: The results of the analytical paper issued by the General Department of Statistics in 2017 about “Marital Status in Jordan” revealed that there is a strong relation between underage marriage and school dropouts. The paper’s data based on the General Population and Housing Census of 2015 pointed out that 32.9% of Jordanian illiterate women and 5.5% of Jordanian illiterate men had got married under the age of 17. The same applies to 25.7% of literate (can read and write) Jordanian women, 35.8% who have primary education, 30.7% who have preparatory education and 31.4% having elementary education. Consequently, child- marriage has negative effects because it prevents girls from education and the opportunity of having decent work¹¹.

In terms of health: According to the State of World Population report 2013¹², there are 20,000 births for under-18 girls in developing girls. This number decreases significantly in developed countries. There are 70,000 mortalities among teenagers because of the complications of pregnancy and delivery; 3.2 million unsafe abortions among teenagers annually; 19% of girls in developing countries get pregnant below the age of 18 years. On the other hand, minor wives have no idea about using contraceptives and spacing between pregnancies. Some families insist on getting pregnant immediately after marriage. This can cause many health problems, such as, having polycystic ovaries, fertility medications or even IVF operations at the age of 17. Doctors indicate that girls may have anemia, frequent miscarriages and uterine adhesions either because of female hormonal dysfunctions or inability of the uterus to adapt with pregnancy. This may lead to vaginal bleeding, premature delivery and cesarean sections, high mortality rates, bone deformations in pelvis and vertebral column as a result of early pregnancy and lack of psychological and emotional preparation for a married girl to be a mother. The General Population and Housing Census for 2015 showed that out of 100 deaths of married females who died within 24 months before the census at the age of 13-54 years, there were 4 cases who died at 13-19 years, three of them during delivery.

Furthermore, this kind of marriage affects the fetus and may cause premature delivery, asphyxia because of failure of embryo trophic circulation, weight loss after delivery and its complications including respiratory inefficiency due to lung immaturity, digestive disorders or early death¹³.

In terms of physical and sexual violence: The Higher Population Council’s study showed that girls who had got married before 18 years were exposed to social and psychological pressures, because they were usually deprived from parental love and childhood. They were often beaten and scolded by their husbands, since there is acceptance by the society for many forms of violence where these girls reside. The percentage of 15 to 19- year married women who were beaten by their current and ex-husbands was the highest among other age categories, wherein 12.9% of them were sexually abused within the 12-month period before the survey. 7.9% of the same category were physically abused. The reason was that minor wives had no perception of the nature of the sexual relationship and as a result it was difficult and unsuccessful.

11-A reality paper entitled “Early Marriage in Jordan”, SIGI, Jordan.

12- UN Population Fund, Stat of Wold Population, 2013, Motherhood at Childhood, Confronting teenagers pregnancy.

13- WHO (2011) Early marriages, adolescent and young pregnancies. Executive Board, 130th Session, EB 130/12. Geneva.

In terms of labor: The Population and Family Health Survey of 2012 conducted by the Department of Statistics suggested that the percentage of 15 to 19 year-old married women who had been working within 7 days before the survey was only 0.1%. It was the lowest among the different age categories. The percentage of ownership of lands and houses was very low as compared to other categories: 0% owned land, and 0.4% owned houses¹⁴.

The qualitative study conducted by the Higher Population Council shows that most female participants agree that the percentage of divorce among minor girls is high¹⁵, owing to inability to adapt themselves to marital life, especially in extended households and the interference of relatives in the couple's life¹⁶.

As for the participation in decision-making in household, the survey designated¹⁷ it in three decisions related to: their own health, major family purchases, and visiting their families and relatives. Results also indicated that 15 to 19 year-old- married women were the worst among other age-categories. 9.6% of them take no decision about the above issues while 43.4% take all such decisions. The former case the percentage was the highest while the latter case was the lowest among other age categories.

Second Aspect: Legal Framework of Underage Marriage

In this framework, we will present both direct and indirectly related legislations, as well as the legal framework governing age of marriage among Muslims and Christian sects.

First: Constitutional Framework

The constitution does not explicitly provide for protecting minor woman from marriage, but it stipulates that the state is committed to taking care of children and protect them from all kinds of violence and abuse¹⁸. The 2011 constitutional amendments and clause 4 of article 6 added that "The family is the basis of society, it is grounded in religion, ethics and love of country; the law preserves its legal entity and strengthens its bonds and values". The clause (5) of the same article states that "Law protects motherhood, childhood and old age; takes care of the youth and the disabled and protects them from abuse and exploitation."

Second: International Agreements

Jordan is committed to international agreements concerning preventing or limiting underage marriage. Clause (2) of article (16) of the Convention on Elimination of All Forms of Discrimination against Woman, approved by Jordan and published in the Official Gazette on 1/8/2007 states that: *(The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an*

14- SIGI: Negative effects of minor marriages in health, social and economic aspects, based on Population and Family Health Survey, 2012, SIGI, 18/3/2018.

15- The report on marriage and divorce issued by Department of Statistics 2014 indicates that the divorce ratio among 15-18 years old category is 11.6%.

16- The Higher Population Council, 2017, Study on Child-marriage in Jordan, p. 9.

17- Population and Family Health Survey for 2012, issued by General Statistic Dept.

18- The Jordanian Constitution, Chapter 2: Rights and Duties of the Jordanians. Article (6), clause (5) states: "The Law protects motherhood, childhood, old ages and takes care of the youth and the disabled and protects them from abuse and exploitation."

official registry compulsory).

Moreover, article (1) of the Convention on the Rights of the Child states: *“For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.*

In addition, according to the introduction of World Declaration on Elimination of Violence, “the General Assembly is concerned that some women and children groups are especially vulnerable to violence.” Article (5) of UN General Assembly Resolution no. 52/ 106 urged member states to enact laws regarding the minimum age for marriage and raise that age.

Jordan also approved the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriage. Article (2) of the Convention states: *“States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses”*¹⁹.

Accordingly, Jordan is obliged to confront underage marriage under its international commitments.

Third: Legal Framework for Muslims

Even if early marriage is recommended by Islam, it is not obligatory as claimed by those who legitimize this marriage on the basis that Islam has not defined a certain age for getting married. Nevertheless, it should be taken into account that Islam has a general principle to the effect that the basis of actions is the purpose behind them and not words. In his hadith, the Prophet Mohammed, peace be upon him, said: “Oh young people, those who have the Baa’h should get married.” Baa’h here means the physical and financial ability, because soundness and physical maturity of the human being is necessary for life duties, especially motherhood and fatherhood. This precondition is mentioned so that parents can effectively bring up children.

Thus, marriage is correlated with puberty. A girl’s puberty is the period in which she is transform a girl to an adult. Within this period, many physiological and psychological changes take place. Therefore, puberty is not an accidental event, but a period that may take 2- 6 years²⁰.

Prevailing culture, norms and beliefs about the proper age for marriage have been developing, and as a result, there have been developments in the concerned legislations for Muslims. At the very beginning of the Jordanian state, there was a definite limit for marriage. Family Rights Law and its amendments no. 92 for 1951 were prevailing for a certain period of time. Then, Personal Status Law no. 61 for 1976 was issued, wherein its article (5) stipulates that “For being eligible for getting married, both the fiancé and fiancée should be rational and the fiancé should be 16 years or above and the fiancée should be 15 years of above.” Afterwards, the amended provisional Personal Status Law no. 82 for 2001 was issued, wherein its article (2) states that “Article (5) of the original law

19- Jordan joined this agreement on July 1, 1992.

20-Protection of Minor Girls from Early Marriage: the Reality and the Hope, National Agency for Lebanese Woman Affairs, Beirut, 2014, p.

11.

is cancelled and replaced with the following text: (For being eligible for getting married, both fiancé and fiancée should be rational and be 18 years or above; however, the judge can give permission for marriage for those who are under that age if they are 15 years and there is a certain interest determined by regulations issued by the Chief Justice for this purpose.”

On 30/1/2002, according to article (2), the Chief Justice regulations were issued concerning the judge’s right to permit marriage for those who are 15- 18 years old. Then, the provisional personal status law no (36) for 2010 was issued and became valid on 16/11/ 2010. Clause (1) of article (10) stipulates that: “For being eligible for getting married, both fiancé and fiancée should be rational and be 18 years or above”. Clause (2) of the same article states that: “In spite of Clause (A) of this article, Chief Justice can, in special cases, permit marriage for those who are 15 years or above, according to special regulations, if there is a certain interest; the one who has thus got married being sui juris in all matters related to marriage and divorce.” On 16/1/2011, regulations concerning giving permissions for those who are under 18 years were issued, and then cancelled under the regulations no. (1) for 2017 concerning giving permissions for those who are 15 years but under 18 years issued on 16/7/ 2017 and published in the Official Gazette, issue no. 5472 under clause (B) of article (10) of personal status law no (36) for 2010”. These regulations were valid as of 1/8/2017.

The above-mentioned regulations focused on the following²¹:

A- Authorizing a judge the authority to give minors a marriage permit

These regulations authorize the judge to permit this kind of marriage, wherein article (3) states: “A judge can permit those who are between 15 and 18 years of age to get married if there is a necessary interest according to the regulations.” However, the previous cancelled regulations provided for issuing such a permit by the Chief Justice. According to the first article, “a judge, with the approval of the Chief of Justice, can permit marriage for those who have completed 15 years of age.”

B- Conditions of marriage permit

Article (4) of the regulations indicated some matters that should be taken into consideration on giving the permit. It includes: “for for the purposes of giving a marriage permit, the court should take care of the following:

1. A fiancé should be suitable/ competent for his fiancée according to article (21) of the Law.
2. The judge should make sure of complete contest and freedom.
3. The court should be sure of the necessary interest of the parties in gaining benefit and staving off damage using suitable means to verify.
4. The age difference between the couples should not exceed 15 years.
5. The fiancé should not be married.

21- The regulations and permit application will be evaluated on discussing the alternatives and solutions in the second section of this paper.

- ✓ The marriage should not result in discontinuing education.
- ✓ The fiancé should prove his ability to sustain a family and pay dowry and create a family home.
- ✓ Submission of the approved medical examination.

C- Guardian consent and peer dowry

Article (5) of the regulations stipulates that “the court should make verify the approval of the legitimate guardian of the permit and the marriage contract”. Moreover, article (6) stipulates that “a fiancée’s dowry should not be less than a peer’s dowry and should be defined in the permit deed”.

Instructing the fiancée on her right to include any condition in the marriage contract as long as it is in compliance with the law.

Article (7) of the regulations states that: “the court should brief the fiancée about her right to make any condition for her interest according to the law and incorporate any conditions she wants when the permit deed is issued”.

Therefore, many women and girls do not know that it is their right to include conditions in the marriage contract and that this provision can protect minor girls who may not understand the conditions and their effects when they are included in the contract.

D- The precondition of attendance of a premarital course

According to article (8) of the regulations, both a fiancé and a fiancée should take a premarital course organized by Chief Justice Department. Clause (A) of the said article says: “Both fiancé and his fiancée should present a certificate for passing a premarital course organized by the Department or any other organization approved by the Supreme Chief Justice for this purpose”.

The condition of joining a premarital course which is of a reasonable period and meeting the needs of would-be couples, may increase the awareness of minor girls concerning marriage and family issues, keeping in mind the high percentage of early divorce.

E. The request for marriage permit may be forwarded to the Family Reconciliation Office

Article 9 (A) of the regulations provides that: “The court may refer any application for marriage by persons under 18 years of age to the Family Reconciliation Office established within its specialization.” Clause (B) stipulates that: “The Family Reconciliation Office shall examine the case referred to it and provide the court with its opinion on all aspects and that this requirement should be mandatory, not optional, and that the consent of the Minors’ Department must be obtained to grant permission for the marriage of the male suitor.

According to article (10) of the regulations:

a- For granting a male suitor who has not completed the age of 18 a marriage permit, he must present to the court the approval of the Department of Minors’ Affairs in addition to meeting the requirements contained in the preceding articles.

b. Applications for a marriage permit that do not meet the grounds set forth in these regulations shall be forwarded to the Directorate of Estates and Minors' Affairs of the Chief Justice Department for an opinion, including applications for marriage permit for the male suitor who has not completed the age of 18 years.»

The Chief Justice Department also issued the marriage permit application form, which reads as follows:

بسم الله الرحمن الرحيم

فضيلة قاضي محكمة الشرعي المكرم
المستدعيان :

الموضوع: طلب اذن زواج ما دون سن 18

سيدي, انني بنت بكر من مواليد وان عمري عاما شمسيا وانه قد تقدم لخطبتي
الرجل الكفو القادر على دفع المهر والنفقة وهو المدعو و ان مصلحتي
متحققة في زواجي منه اطلب اذن لي بالزواج من خاطبي المذكور بوالية الحاضر
معي والموافق على اجراء هذا الزواج ارجو التكرم بالموافقة على تسجيل حجة اذن بما ذكر اعلاه حسب الاصول .

وتفضلوا بقبول فائق الاحترام

المستدعي:

الوثائق الالزمة إلتمام المعاملة:
- هوية المستدعي او صور عن جوازات السفر لغير الاردنيين
- تقديم الطلب الخاص
- (3) صور اثبات الشخصية للشهود

Noting that the provisions of article (35), clause (C), of the Personal Status Law, which provides (C), and a case of dissolution of marriage shall not be brought to court due to the young age of the wife who has given birth or is pregnant or the parties at the time of the court proceedings possess eligibility requirements.

The fact that a marriage contract is performed for a girl who has not yet been fifteen years of age without permission does not preclude bringing a suit for the establishment of a marriage contract, as the contract is considered valid and the marriage is judged to be documented in the following cases:²²

1. If it is proved that the wife has given birth.
2. If the wife is proved to be pregnant.

22 - See decision No. 472/2017 of the Shariah Court of Appeal dated 15/2/2017 and decision No. 2994/2013 date 1/9/2013

3. If the spouses, at the date of the proceedings have completed the age of eligibility.

Thus, despite the stipulation in article (10) about the specification of age of marriage and the controls in place for the exceptions, this situation remains under threat by the cases of undocumented marriages, which may subsequently be proven as long as one of the above conditions is met. Therefore, it is not surprising that there are marriages for girls under 15 years old or for girls who are 15 years or more younger than their husbands.

Fourth: The Legal Framework of the Christian Sects

Where the Christian sects are concerned, we are talking about the sects recognized by the Government of the Hashemite Kingdom of Jordan in accordance with the provisions of the Christian Sects Act No. 28 of 2014. There are nine sects, each of which has its own ecclesiastical court for the consideration and adjudication of all matters of personal status arising among the people of that sect. This entails that each community has its own personal status law and a court of law, but the reality is otherwise.

As for the age at marriage for the Greek Orthodox community, although the provisions of the Byzantine Family law are in force and article 30, which, is mainly concerned with the terms of the marriage contract, it stipulates that (the woman should have completed the twelfth year of age and the man has completed 14 years of age). However, the Greek Orthodox community invokes the Jordanian laws concerning marriage and is committed to 18 years as a minimum age for marriage. The exception can only be applied by the bishop, who usually does not allow marriage for those below 18 years of age²³.

Regarding the Roman Catholic, Maronite Latin and Arminian Catholic sects, these sects apply the legislations of the Vatican Pope concerning personal status, in which the age at marriage is 16 years for men and 14 years for women. Notwithstanding, the marriage of those sects is performed only through the bishop's approval, who usually does not permit marriage for those under 18 years of age.

With regard to the Syriac Orthodox law, the Personal Status Act of the Syriac Orthodox, in article 4, stipulates that the age for betrothal and marriage contract must not be less than 18 years of age for the young man and the girl should be more than 16 years of age, subject to local laws. However, marriage in this sect takes place only through the spiritual head of the sect, who has the right to prevent marriage if it is found that there is a lack of awareness and consciousness.

As for the Arab Evangelical Episcopal community, it has a law called the Personal Status of the Diocese of Jerusalem of the Arab Episcopal Church and of the Middle East. Under article (21) of this law, the 18-year-old male and the 16-year-old female only are eligible for marriage, but marriage in this sect is only done through the spiritual head of the sect who has the right to prevent the marriage if it is found that there is a lack of awareness and consciousness among suitors²⁴.

23 - Father Ibrahim Dabbur noted that the exception has been used only in one case in the past five years

24 - Presentation of Professor Jacob Alfara at the roundtable on underage marriage organized by the Jordanian National Commission for Women's Affairs/Amman 23 April 2018.

Fifth: Legal framework in Civil Laws:

Article (43) of the Jordanian Civil Law no. 43 of 1976 stipulates that “the age of maturity is eighteen full calendar years”. According to the article (10/B) of the Personal Status Law, which allowed the exception to marry persons under the age of 18, “ the one who has thus got married being sui juris in all matters related to marriage and divorce and their effects”, according to which the spouses who are less than 18 years of age are fully qualified in all marriage and divorce issues and their effects. While in accordance with the provisions of the Civil Law, they do not have full capacity to exercise civil and political rights such as opening a bank account, borrowing and owning, obtaining a driving license or a family book, registering births, obtaining a passport, registering companies or practicing free professions or civil litigation except through the guardian or the trustee, and more so, those families cannot rent the matrimonial home or arrange for financial obligations, except with the presence of the guardian of one or both of the spouses. Spouses cannot apply for public employment or work in the private sector in a lawful manner²⁵.

The Education Act: Article (10) of the Education Act No. 3 of 1994 and its amendments stipulate that basic education is compulsory and free of charge in public schools. The second clause provides that a student is accepted in the first year of basic education if he completes his sixth year of life at the end of December of the school year in which he is admitted²⁶. This compulsory stage of education continues until the age of 16 years old.

Labor law: Article (73) of the Labor Law no. 8 of 1996 stipulates that “subject to the provisions relating to vocational training, a juvenile who has not reached the age of 16, may in no way be allowed to work “. Article (74) of the same law stipulates that juveniles who have not completed the age of 18 may not be able to work in hazardous, stressful or harmful jobs, and that such jobs shall be determined by decisions of the concerned Minister after consulting with the concerned authorities. Meanwhile, the Personal Status law authorizes marriage of those who reached 15 years of age.

The Third Aspect: The Situation of Underage Marriage in Jordan in Figures.

In the last three decades, the ratio of underage marriages all over the world, and in the Middle East and North Africa has fallen from 34% to 18%, and this has been the fastest decline among other global regions ²⁷.

As a whole, there is one out of seven girls who has been married before the age of 18, but the ratio varies among the Arab countries, whereas marriages under the age of 18 are the highest in southern Sudan by 54%, followed by Somalia 45%, Sudan 33%, Yemen 32% and Iraq 24%. In Libya, Algeria and Tunisia, the phenomenon is just 2%, Qatar 4%, Djibouti 5%, Lebanon 6%, while in Morocco it is 16%, Egypt is 17% and Palestine is 15%.

In Jordan, the Department of Statistics and the Chief Justice Department are the official bodies that provide statistical data on underage marriage in Jordan.

25 - SIGI 16/11/2017 why requests for permission to marry for the 15-18-year age group are requested by underage girls?

26 - Noting that the Penal Code does not contain any penalty in the event that parents do not enroll their children in school, nor is there a follow-up between the Civil Status and Passports Department and the Ministry of Education to ensure that all children who are supposed to attend school are already enrolled.

27 - UNICEF Global databases, 2016 based on DHS, MICS and other nationally representative surveys. 2014-2008.

First: Statistics of underage marriage according to the Department of Statistics:

According to the Statistical Yearbook 2016 published by the Department of Statistics, the number of marriages registered in Jordan was 81,343 during 2016, of which 10,907 were for women aged between 15-18 and 334 for males aged 15-18 years.

The analysis of the data of the General Population and Housing Census 2015 showed that the proportion of females who married in 2015 under 18 years of age of all married women in 2015 was at the national level of 18.1%, while the percentage of married Jordanians amounted to 11.6% and the percentage of married Syrians was 43.7% and married women of other nationalities was 13.5%.

As for the increase percentages, there was an acceleration in the proportion of females who had been married under the age of 18 years in Jordan over the past years, as follows:

%	Years
13.7	2010
14.3	2011
14.3	2012
15	2013
16.2	2014
18.1	2015

Thus, the increase in the percentage of underage marriage in Jordan was 32.1% during the period from 2010 to 2015, and the marriages of Syrian female minors played a significant role in increasing the rate of underage marriages at the national level.

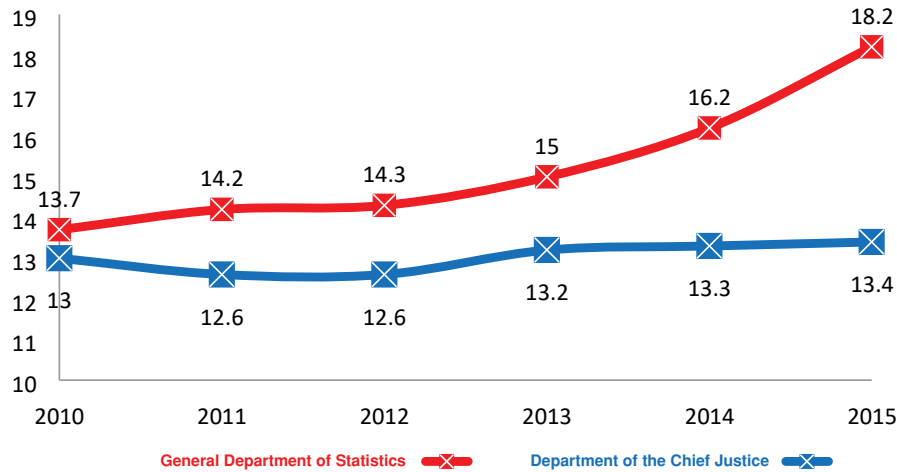
As for the educational level of the spouses of minors, the General Population and Housing Census, 2015, showed that 46.5% of these couples their educational level was below the general secondary school, with Jordanians it was 43.4% and for the Syrians 94.1% and other nationalities 79.6%.

The same census also showed that the husbands of underage married women were engaged in unstable jobs or were not working

Second: Statistics of underage marriage according to the Chief Justice Department

The rate of underage marriages according to the data issued by the Chief Justice Department was 13.4% in 2015, due to the unwillingness of Syrian people to document marriage, which will constitute a future impediment to the diagnosis of the problem of marriage of Syrian minors in Jordan, as well as its negative effects such as the loss of the rights of women and their children especially with regard to paternity, identity, nationality and care.

The following table represents the percentage of females aged 13 years and over who have been married under the age of 18, according to the Chief Justice Department, "the blue graph" and according to the Department of Statistics, "red graph" during the period 2011-2015.



According to the marriage reports issued by the Chief Justice Department, the number of underage marriages for 2016 was (10,907) cases, as compared to (16,019) cases in 2015, and 13.4% of the total marriages according to the annual report of the Chief Justice Department.

The annual statistical report of the Chief Justice Department for 2017 indicated that the number of underage marriages amounted to 10,434 and 13.4% for the total number of marriages, the highest number being in the capital Governorate, where the number of cases was 3,075 and the lowest in Tafilah Governorate, where it reached 49 cases. The report indicates that 192 marriage contracts were for couples both less than 18 years of age (husband and wife), which is described as a “minor family”²⁸.

Official statements issued by the Chief Justice Department in 2017 also showed that in Jordan, 213 marriage contracts are registered daily, including 29 cases of underage marriage (marriage in the 15-18-age group), as well as 71 cases of divorce (consensual and judicial), including 15 cases of early divorce (divorce in the same year as the marriage). It should be noted that there are no official figures or statistics showing the number of requests for marriage permits for couples between the ages of 15-18 years which are submitted annually to the Shariah courts and which have been rejected. However, the percentage of applications approved amounted to 13.4% of the total marriage contracts which were 10,434 applications.

28 -Annual statistical report of the Chief Justice Judge Department, 2017

Second Section: Proposed Legislative Solutions and Alternatives for Article (10) of Personal Status Law & the Regulations of Supreme Judge Department for Implementing Thereof.

Suggested Legislative Solutions and Alternatives

The Jordanian National Commission for Women insists on its position regarding underage marriage and states that priority should be given to the implementation of legislative origin mentioned in article (10) in the Personal Status Law which links the age of marriage with the completion of 18 years for engaged couples and the exception in clause (B) should be cancelled in line with the general origin which considers the marriage contract is one of the legal practices that should be linked with the legal age. However, following the Commission's participatory approach and its recognition that dealing with the phenomenon is a matter of changing societal beliefs which usually takes time and does not happen overnight, it was important to listen to the concerned parties and specialists, e.g., Sharia judges, NGOs, and national institutions concerning this matter so that their opinion in of the legal statement and specifically whether article (10) of Personal Status requires to be reconsidered and amended or not. Also whether the regulations issued by Chief Justice are sufficient to control the exception or should be changed as a gradual solution to reach the final cancellation of the clause. Thus, this paper can be a reference for decision- makers and legislators when discussing article (10) of the temporary Personal Status law and reaching the legislative solution that is based on the interest of the public and the concerned parties in this marriage. This alternatives paper is based upon discussions among different stakeholders and a review of the studies and references, figures and statistics in this regard.

These alternatives are as follows:

First Alternative: Leaving Article (10) of the Personal Status Law as Is.

This alternative is focused upon leaving article (10) including clause (B) of the Personal Status law as it is. The supporters of this alternative mentioned a group of opinions and evidence that justify leaving exception unchanged especially in this time period and in the light of the prevailing culture and beliefs. These opinions and evidence were as follows:

Firstly: In terms of competence, and according to their opinion, they point out that from the establishment of the Jordanian State; there was a designation of age at marriage. The laws have gradually raised this age because the Legislator realized the importance of controlling the age. In the past, the Personal Status laws stipulated that age at marriage was 15 years for a girl and 16 for a boy²⁹. This remained until the Provisional Personal Status Law was issued in 2001, and that was in effect on 31/21/ 2001. It designated the age of 18 years is the age of marriage for both fiancé and fiancée, and authorizing the judge to permit marriage for those who have completed 15years of age provided that this marriage include the interest defined by the regulations issued by the Chief Justice for this purpose. This was what emphasized by the Provisional Personal Status Law no. 36 for 2010 with strict control in issuing the permits.

29 -Cancelled Personal Status law no. 61 of1976 and its amendments.

This supporters of this suggestion state that it is unacceptable to compare the marriage contract in terms of competence with competence to carry out financial transactions, because the nature of this contract cannot be compared with selling, renting and investment contracts. Their evidence is that the legislator didn't not abide by the competence rule in several situations³⁰.

Therefore, according to clause (B) of article (10), a person who is 15 years of age is considered competent for all transactions which the law considers him/ her competent to carry out, including marriage. This marriage is not considered in violation of the general rules governing the age of competence and its gradation within the prevailing legal system and in accordance with the Civil Law.

Secondly: In terms of the prevailing culture and the influence of the Syrian refugees. The supporters of this alternative, insist that there are many members of society have a deep-rooted culture and belief that marriage under the age of 18 years may be a good chance for a girl, especially in refugee camps and villages where there is extreme poverty, need, and poor education, which forces such communities to protect girls by resorting to this marriage thinking that it can protect girls. Also, that the cancellation of the exception without changing such a culture may create many legal and realistic problems that could force some people to search for other countries that allow such marriages and to travel to them. Although this is a difficult matter to happen from a practical point of view given that fact that this marriage takes place because of poverty. The proponents of this alternative also believed that if the exception is cancelled, this will encourage unregistered marriages that we all do not deny will have many negative effects that will affect the woman who will bear them and their burdens alone, the worst of which is defaming her and her honor, and the doors of justice are closed to her when the denial occurs and this is usually the case. Her case is not heard and she does not gain her rights and loses her child who is denied his/her kinship, financial support and care for his/her affairs from the father's/ mother's relatives or tribe.

The proponents of this alternative argued that the refugees complain that the regulations are strictly applied and this makes them resort to undocumented marriage. Moreover, the integration of Syrians in the Jordanian society and that they are no longer confined to the camps has affected Jordanians by making undocumented marriages more acceptable to them, especially because it is related to religious legislations and beliefs among the parties. Cancelling the exception may force some individuals to seek fatwas (religious opinions) permitting undocumented marriage. This may lead to take marriage out of the controls that are imposed by the exception and losing the protection that it offers, given the fact that the law does not prevent documentation of the marriage later on and which makes the acceptance of such a marriage easier.

Thirdly: Protecting society and controlling crime. The supporters of this alternative think that if the exception mentioned in clause (B) of article (10) of the law is cancelled, will cause cases of forgery, impersonation and circumventing the law to increase. In addition, the designated penalties for those who conduct the marriage contrary to the provision of the law are, in many cases, not applied or are not deterrent³¹, despite there

30 - According to article (3) of Election Act no 6 of 2016 and article (38) of Civil Status Law.

31 - Article (279) of the Penal Law that punishes this crime with 6-month imprisonment.

are no statistics suggesting the number of crimes concerning this kind of marriage in order to judge whether there is a rapid increase in their numbers.

Fourthly: In terms of the effect of marriage on education. Those adopting this alternative argue that fighting underage marriage because it preventing a girl from education is inconceivable, because most of minor girls who got married were initially out of school³². Moreover, the education system does not take into consideration the individual abilities of the girls, and there are no other alternatives if they are unable to complete their academic education which forces the girl to leave school and stay at home waiting to get married. Additionally, the educational policy in the Kingdom does not deal with the problem of not initially registering girls in school and dealing with dropouts at early age

nor has any plans to overcome it. Further, the regulations permit under age marriage provided that it will not lead the girl to stop going to school; and the minor fiancée is usually instructed that it is her right to state completion of her education as a condition in the marriage contract, however, this does not actually happen.³³.

Fifthly: In terms of the effect of marriage on the economic aspect, those who adopt this alternative see that the vast majority of cases in which the girls are under 18 years old are marriage, the husbands are above that age and have complete legal competence and are able to work and able to carry out all legal actions; consequently, there is no harm to this family, especially because household sustenance is a man's responsibility and not the woman. This type of marriage may help in creating a generation who is capable of taking responsibility and contributing to the labor market. Given the fact that most the girls who marry at this age are not originally economically productive and are sitting at home waiting for marriage opportunities, therefore permitting them to marry will not affect the economic status of the state. In spite of the fact that Jordan is a country in which woman's contribution to the national economy is very low, and moreover, this marriage may put a girl in a lower economic status, unable to take decisions concerning her family, wherein her only role is confined to reproduction which makes them incapable of performing any productive or political roles and which reproduces and reaffirms the traditional roles and poverty³⁴.

Sixthly: in terms of girl's childbearing potential and health maintenance: Proponents of this alternative view that reproductive ability is related to puberty not legal age. Consequently, a girl's puberty makes her able to become pregnant and give birth. It is Allah's wisdom that relates puberty with this age but not the age of 18. In addition, to the wide spread of maternal and child health centers and the advancement of health care provided to mothers and children may protect girls from the dangers of pregnancy and delivery, so that, the health problems of such a marriage can be dealt with. Nevertheless, girls usually visit such centers only after getting pregnant or in case of delayed pregnancy. They do not visit the centers from the beginning to acquire the correct sexual information

32 -No figures or statistics available about under-18 married girls who left school before marriage.

33 -No statistics available about the number of marriage contracts including completing education as a condition in accordance to the exception or the number of girls who continued their education.

34 -According to 2017 Gap Indicator between Sexes, issued by World Economic Forum, Jordan is ranked. 135 leaving behind only 9 countries out of 144 countries, because of the poor economic participation of women.

because of their fear of society's view of them. Taking premarital course³⁵ may increase minor girls' awareness among minor girls and inform them of the nature of marriage prior to getting married before entering this experience which could reduce their fears from girls being not possessing the necessary sexual education. However, it is important to know who implements such courses, their qualifications, whether the course covers the required issues and whether both fiancé and fiancée are committed to attend.

Seventhly: Social circumstance of some girls. Supporters of this alternative also suggest that the social circumstance from which many minor girls suffer from require the keeping of the exception. Whereby, many families suffer from family disintegration, death of one or both parents, and absence of girl's sustainer or someone with whom she can live. This requires permitting her to get married, especially if we take into consideration that the

protection systems provided by the state are not effective and society does not accept girls that receive care from protection institutions. In addition, cancelling the exception may increase violence and abuses to which some girls may be exposed to.³⁶

Supporters of keeping the exception mentioned some evidence, such as:

{And do not give the weak-minded your property, which Allah has made a means of sustenance for you, but provide for them with it and clothe them and speak to them words of appropriate kindness}³⁷

That links marriage with puberty not legal age?

- Article (16) of the Universal Declaration of Human Rights stipulating that: "Men and women of full age have the right to marry and to form a family."
- The Convention on Marriage Consent, minimum age for marriage and marriage registration, to which Jordan is committed. Article (2) of the convention states: "*States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses*".
- The Chief Justice regulations controlling the exception and the permit mechanism, requires that the case for the exception should be reviewed by at least five judges³⁸; in addition to the committee present in Family Reconciliation offices that studies the cases from all aspects. In case there are no such offices in the governorates, the case is referred to the Chief Justice Department in Amman³⁹.

35 -Only one-day- course, according to the Chief Justice Department.

36 -No available figures about the girls given a permit because of their social or familial conditions out of about 10,000 cases. No data about if the most of them suffer from family conditions or are subjected to violence.

37 -AL-Nasa' Ayah 6.

38 -According to the presentation of Shriah Judges in the workshop held in Holiday Inn, the Dead Sea, on 24/4/2018.

39 -The question here is: "How hasve the Chief Justice Department dealt with more than 10 thousand marriage permits exceptions using this mechanism? And How long does a permit take?"

- We can benefit from the experiences of some countries, e.g., Morocco⁴⁰, that have raised the age of marriage but this has led to the spread of undocumented marriages.

- The Personal Status law for 1976 and the previous Ottoman Law continued to be applied for a long time in Kingdom since the era of the Emirate and until Jordan became a Kingdom, where it defined the age of marriage of a girl as 15 years, this raised no problems. However, it can be suggested that amending this text in 2010 and defining 18 years as the age of marriage is an evidence of legislative

development that and that accompanied the social and cultural development within the period from 1976 to 2010.

- Permitting marriage for someone who is has completed the age of 15 and is not 18 years of age makes him/ her eligible for marriage according to clause (B) of article (10) and in coincides with article (41/b) of the Civil Law that considered the minor, eligible to carry out actions and work that is mentioned by the law he is competent to assume if he reaches the age of 15.

- Article (6) of the regulations no (1) for private schools for 1980 stipulates that: "A married female student is allowed to study in private schools according to the official approved certifications she holds". The same is applied to public schools. The basic rule is that a girl should go to school until she finishes secondary education, regardless of her marital status which is supposed to be single, notwithstanding, it can be married or divorced.

The Second Alternative: Keeping the Exception in Clause (B) of Article (10) but Raising the Age Limit to 16 Years Old.

Supporters of this alternative realize that the cancellation of the exception needs changing the prevailing beliefs and culture of society concerning the age at marriage. This, in turn, needs a long time. Therefore, a temporary suggestion should be adopted to reach the final cancellation of the exception. Thus, this alternative focuses on keeping the exception of clause (B) of the law while increasing the age for giving a permit for marriage to 16 years old. This is supported by the following:

Firstly: in terms of competence, the proponents of this alternative presented a legal analysis for raising the exception age to 16 years instead of 15 years. Although the law has defined the legal age to be 18 calendar years⁴¹, some other legal texts approve some rights for someone who is 16 years of age. For example, article (38) of the Civil Status Law gives an individual the right to hold an ID if he/ she has completed 16 years. Furthermore, article (73) of Labor law no. (8) Of 1996 allows to employ a juvenile if he/ she is 16 years old and are prevented from employing any person under this age under any circumstances. In addition, according to article (7) of Education Law no. (3) For 1994, the period of elementary education is 10 years. Article (10) of the same law stated that elementary education is compulsory and free in public schools; clause (C) stipulated that

40 -An article in Al-Ethad Newspaper dated 24/12/2013.

41 -Article no. (43/ 2) of the Civil Law.

“A student should not be dismissed before the age of 16 years except if he/ she has a special health condition according to a report from the concerned medical committee.” Therefore, it can be suggested that correlating the exception permit with the age of 16 instead of 15 coincides with other laws applied in the Kingdom and provides legislative harmony among different legal texts.

Secondly: in terms of the prevailing societal culture and Syrian refugees. In this framework, the proponents argue that a certain category of the society has a deep-rooted culture that under-18 marriage may be a good chance for a girl in some cases, especially in refugee camps and villages where there are extreme poverty, neediness, absence of awareness and poor education or its absence. Which is forces such communities to

consider early marriage is a good opportunity. The cancellation of the exception without changing such a culture may create many legal and actual problems such as travelling to other countries that permit this marriage or resorting to undocumented marriage that has undoubtedly many disadvantages. The supporters of this alternative see that increasing the exception age to 16 years may bring about a gradual change in prevailing perceptions and culture until we reach to the final cancellation of the exception. This was the case when age of marriage for a girl was increased from 15 to 18 years old as rule with some exceptions. Therefore, such as increase will in turn prepare the society for the final cancellation eventually.

Thirdly: in terms of effects on education. Completing 16 years instead of 15 years as a precondition is consistent with the Education Law that considers elementary education as compulsory and defined its length as 10 years⁴² stipulating that a student should not - at any way- be dismissed before the age of 16 years. Thus, this increase will enable a girl to finish grade 10.

This opinion is supported by the following:

- Article (20) of the Jordanian Constitution assures that the elementary education is compulsory for all Jordanians; and it is free of charge in public schools. As long as compulsory education is for 10 years, any action that may prevent a girl from going to school until she finishes the 10th year, is not allowed. One of the most important actions that may lead to this is marriage.
- Article (38) of the Civil Status law gave the right of obtaining the identity card for those who are above 16 years. The Labor law prohibits the employment of under-16 juveniles. How can they be allowed to get married under this age? Furthermore, article (5) of the law of individuals serving in the Armed Forces and its amendments no. 2 for 1972 allowed the recruitment of those who are above 16 years.

42 -Article (10) of Education Act.

The Third Alternative: Cancelling the exception and correlating marriage age with reaching the age of 18 years.

This alternative coincides with what the Jordanian National Commission for Women has been calling for from the very beginning and supported by NGO's; that is, to gradually cancel the exception. The proponents who support cancelling the exception mentioned in clause (B) of article (10) of the Personal Status Law and leaving the general rule in clause (A) thereof that links the age of marriage with being above 18 years old. Those having this opinion provide the following evidence:

Firstly: in terms of competence. The supporters of this alternative are committed to the first clause of article (43) of the Jordanian Civil Code no. 43 of 1976 as it is the law concerned with determining the age of competence which stipulates that: "Every person who reaches the legal age, who enjoys discernment and has not been detained, is legally competent for practicing his/ her civil rights." According to the second clause of the

same article "the legal age is full eighteen calendar years". Article 46 of the same law stipulates that: "Incapacitated and incompetent individuals according to guardianship or curatorship are subjected to the conditions pursuant to the rules mentioned in the law."

The supporters of this law clarified that the adherence to the article (10/b) of the Personal Status Law, i.e., "competence is granted to those who are permitted to marry" indicates that competence here is limited to marriage, separation, divorce and their consequences. While, both parties are not competent to practice civil and political rights, such as, electing, opening a bank account, borrowing, ownership, obtaining a driving license or family book, registration of birth, holding a passport, company registration, practicing free professions, or taking a case to court. Minor families cannot rent a house or make financial arrangements unless one or both parents are present. The couples cannot legally apply for public or private jobs. Moreover, the basis of the law is that a reasonable designated acceptable age for marriage is set in the light of the public interest of the State not of the individuals. Thus, the presence of 2,000 cases of under-15-year marriage out of about 100,000 cases is not an excuse for keeping the exception.

Secondly: in terms of the prevailing culture and the Syrian crisis. The proponents of this alternative suggest that the justification for keeping the exception is it coincides with the societal culture and what arose from the phenomenon of Syrian refugees is an excuse, because the percentage of under-18 marriages have increased among Jordanian females too also. The matter should not be regarded only as a marriage for an under-18 girls because it is about forming a family whose two parties or one of them is under 18 years. This will be reflected on their children in the future, because such families mostly will accept the same principle (early marriage) for their own children. This makes the problem increase over time. Therefore, the presence of a legal text is the acceptable way to change the society's culture because people can do nothing but submit to the law. In addition, although underage marriage is spreading in rural areas of the southern Syria, its percentages were low, were occurring in different contexts and within the same family. This has changed after the influx of the refugees. Some reports and studies reported that there are some marriages that can be considered as a form of human trafficking

conducted by some parents or guardians of refugee girls.

Thirdly: Increasing ratios of divorce and marital problems. The proponents of this alternative also believe that underage marriage may increase the cases of divorce and family disintegration. This is due to the poor knowledge of both couples on how to deal with marital problems, and the interference of parents in most details of the household, which is a main reason for early divorce and mainly before the wedding. This is also a reason for family disintegration and problems that lead to its collapse. The 2016 report of the Chief Justice Department indicated that there were 499 “divorced” female minors who had got married for the second time between 15-18 years of age, compared to 27 “divorced” male minors who had got married for the second time between 15-18 years of age⁴³. The 2017 report of the Chief Justice Department reported that there were 344 “divorced” female minors with a percentage of 6.9%⁴⁴.

It is noteworthy that there is no study illustrating the percentage of divorce among those who married minor females and got divorced after 10 years and above. Socio-economic conditions, family dominance and psychological immaturity may prevent female minors from admitting marital violence of marriage failure that may take place later.

Fourthly: Deprivation from education. The supporters of this alternative that adhering to article (6) of the regulations no (1) for private schools for 1980 stipulates that: “A married female student is allowed to study in private schools according to the official approved certifications she holds”. The same is applied to public schools. They claim that the basic rule is that a girl should go to school until she finishes secondary education, regardless of her marital status which is supposed to be single, notwithstanding, it can be married or divorced. Although the regulations are clear that any married female student should not be deprived of her education, the actual practices indicate otherwise, especially when such practices are done by classmates, teachers and the school administration so that an existence of a married student is a fantasy. In addition, permitting girls to marry at an early age makes them realistically unacceptable in schools. The matter gets worse if they become pregnant and suffer from health complications – because they are still young- causing them to be absent frequently especially at delivery which causes them to leave school at the end.

It is worthy to note that Ministry of Education has no statistics about married girls at school, the number of married girls who completed their secondary education, or those who got a motherhood leave and returned to school. This information, if available, will prove that underage marriage in fact means that they are deprived from education⁴⁵.

Fifthly: Effects of underage marriage on health. The supporters of this alternative refer to the State of the World Population Report for 2013 that points out that daily there were 20,000 births for under-18 girls in developing countries. This number decreases significantly in developed countries. There are 70,000 deaths among teenagers because

43 -The Report on Marriage and Divorce issued by Department of Statistics for 2014 indicated that the divorce ratio for 15- 18-year category was 11.6%

44 -Chief Justice Department. Annual Statistical Report for 2017, p. 97

45 -SIGI Report dated 28/1/2018

of the complications of pregnancy and delivery; 3.2 million unsafe abortions among teenagers annually; 19% of girls in developing countries get pregnant before the age of 18. On the other hand, minor wives have no idea about using contraceptives and spacing between pregnancies. Some families insist on the girl getting pregnant immediately after getting married. This can cause health problems, such as, having polycystic ovaries, fertility drugs or even resorting to IVF at the age of 17. Studies indicate that girls may have anemia, frequent miscarriages and uterine adhesions either because of female hormonal dysfunctions or inability of the uterus to adapt with pregnancy. This may lead to vaginal bleeding, premature delivery and cesarean sections, high percentage of mortality, bone deformations in pelvis and backbone as a result of early pregnancy and lack of psychological and emotional preparation for married girls to be a mothers.

On the other hand, this kind of marriage affects the fetus and may cause premature births, asphyxia because of failure of embryonic circulation, pre-mature delivery and its complications including respiratory failure resulting from lung underdevelopment, digestive problems, physical and mental underdevelopment, cerebral palsy, blindness, and impaired hearing .

Sixthly: From the economic point of view. The advocates of this alternative that if defending the argument that underage marriage depends on the idea that a girl does not have to work because household sustenance is man's- not woman's- responsibility, and that the law and norms obligate the man to sustain her. Thus, marriage will not affect her contribution to the labor market. However, what has been stated by the report of the International Labor Organization's cannot be disregarded. It points out that the percentage of households supported by women is 34% worldwide; i.e., about half of the households. Both poor and rich counties are influenced by this phenomenon. The report also suggests that the average number of family members sustained by women is 5 persons. The existence of such households is due to losing a husband either because of death or divorce. Then, how can these women sustain their families if they are permitted to marry at an early age before they are qualified to do any work? The National Council for Family Affairs' report for 2015 revealed a high percentage of Jordanian households headed by women amounting to 12.6% compared to 8.8% in 1979. The report attributed this increase to widowhood, divorce, separation, and in some cases the work of husband abroad.

Seventhly: The influence of the exception cancellation on spreading unregistered marriage contracts. Claiming that cancelling the exception can increase unregistered marriage cases, and as a result, the wife and children's rights may be lost is not an acceptable excuse, since (unregistered) marriage is still socially unacceptable and is resorted to in a very limited contexts. Thus, there should be no fear of cancelling the exception, especially that what was referred to previously of the registration of 4,000 unregistered marriages in 2014 according to Chief Justice Department decision to exempt the refugees from paying violation fees there is no data or statistics of how many of these registrations were for underage cases from the total number of registered cases of such marriages.

The advocates of this alternative referred to some texts, studies and reports supporting their opinion, such as:

1. Jordan's ratification of the Convention of the Rights of the Child no. 260 for 1990 published in the Official Gazette no. 4787 on page 3993 dated 16/10/2006. The first article of the Convention states that: "... for the purposes of this agreement, a child means every human being under 18 years old, unless he/ she comes of age according to the applied law."
2. Article (294) of the Penal Law considered having sexual intercourse with a girl who is above 15 years but below 18 years old as a crime penalized by provisional hard labor. In case of nonconsensual sex (rape), the penalty is 20-year hard labor, according to article (292) of the same law.
3. Article (2) of the Election Law no. 6 for 2016 stipulating that "every Jordanian of 18 calendar years", the Laws Explanation Bureau issued decision no. 6, in which the item fourthly states that "For answering Question no.4, we find the Legislator used "has attained puberty" in defining the one who can elect MPs. On examining clause (B) of article (10) of the same law, we discover that the "has completed" for Parliament candidates. The word "attained" can be construed as completed, however, to mention it in clause (A) of article (3) of the said law indicates that the voter reaches 18 calendar year of age was to expand the voting base. In other words, a voter who has completed 17 years of age 90 days before the election can elect members of parliament. Moreover, article (18) of the Civil Law linked having an ID with the age of 16.
4. Clause (2) of article (16) of CEDAW ratified by Jordan and published in the Official Gazette on 1/8/2007 states: "A child betrothal or marriage has no legal effect. All necessary actions should be taken, including legal actions to define the minimum age for marriage and requiring the registration of the marriage in the official register a binding matter".
5. The Jordanian Charter for Combating Underage Marriage their commitment to combatting permission to marrying any girl or boy that did not complete 18 years of age and their opposition to announcements of the betrothal of any boy/ girl under the age of 18 years.
6. 2016 Chief Justice Department Report indicated that there were 499 "divorced" female minors who had got married for the second time between 15- 18 years of age, compared to 27 "divorced" male minors who had got married for the second time between 15- 18 years of age⁴⁶. The 2017 report stated that there were 334 "divorced" female minors with a percentage of 6.9%⁴⁷.
7. The Higher Population Council report (Policies Report: Underage Marriage in

46 -The Report on Marriage and Divorce issued by Department of Statistics for 2014 indicated that the divorce ratio for 15- 18-year category was 11.6%, p. 2

47 -Chief Justice Department Annual Statistical Report for 2017, p. 97

Jordan) stressed on page 15 the importance of cancelling the exception and the advantages thereof.

8. The State of the World Population Report for 2013 points out that there were 20,000 deliveries daily for under-18 girls in developing countries. This number decreases significantly in developed countries. There are 70,000 mortalities among teenagers because of the complications of pregnancy and delivery; 3.2 million unsafe abortions among teenagers annually; 19% of girls in developing countries got pregnant before 18.
9. The National Council for Family Affairs' report for 2015 revealed a high percentage of Jordanian woman- heading households amounting to 12.6% compared to 8.8% in 1979; and the study on "the Conditions of Women-headed Households" conducted by the Jordanian National Commission For Women.
10. The Jordanian Family Report issued by the National Council for Family Affairs for 2015 indicated on p.68 that the survey showed that the recommended average age for marriage for women is 25 years, while the recommended average age for men is 27 years.
11. Marriage & Divorce report of Department of Statistics in 2014 revealed that the percentage of divorce for 15- 18-year category was 11.6% out of the total of 20,911 registered divorce cases.

Reviewing the approval mechanisms until determining legislative alternatives

First; Reconsidering Supreme Judge Dep. Regulations for Marriage Permit

First and second alternatives regarding remaining the exception and permitting marriage for under 18 individuals are based on the prevailing culture and the Syrian crises and its effects on the Jordanian society and a girl's interests in some cases. However, this is conditional on a girl's interest and if such a marriage is the ideal and only solution. The Jordanian National Commission For Women suggests that it is necessary to keep the exception as it is for the time being, the age should preferably be raised to 16 years with reviewing the regulations and implementation mechanisms to limit using the exception as much as possible. As marriage at this age is an exception, it should not be expanded and a judge's permission should coincide with the regulations of the Chief Justice and include sufficient guarantees so as not to expand its implementation according to the rule: "An exception should not be standardized nor expanded".

On 16/7/ 2017, the Underage Marriage Regulations were issued and published in the Official Gazette no. 5472 entitled "The Regulations no (1) for 2017 Regarding Permitting Marriage for 15- 18 Years Old, according to Clause (B) of Article (10) of the Personal Status Law no (36) for 2010" these regulations are valid as of 1/8/2017, and the marriage permit regulations for 2011 were cancelled.

The said regulations included the following texts noting that they should be amended:

A- Authorizing a judge to award minors marriage permits

Article (3) of the regulations states: “A judge can permit those who are between 15 and 18 years of age to get married if there is a necessary interest according to the regulations.” However, the previous cancelled regulations stipulate that “a judge, with the approval of the chief Justice, can permit marriage for those who are 15 years old.”

Therefore, on examining the said article, we find that it authorized a judge to issue a permit without the Supreme Judge’s approval. Thus, it cancelled the supervision of the decisions of permits to make sure that the judge was bound by the condition. Although the regulations required that a file be established in the court for each case that includes data and confirmations (article 11 of the regulations), the validity of the marriage permit cannot be verified unless there is a complaint or a regular inspection for courts. This raises doubts that some marriage permits may have been granted while they may not meet all the conditions required by the regulations⁴⁸. Other than the fact that the regulations should not disagree with the Law, clause (10/B)... a judge can, with the approval of the Chief Justice permit ...” Here, clause (B) of article (10) should be considered, i.e. that the permit should be issued by a judge after having approval from the Chief Justice for providing permission for marriage for those who are above 15 but under 18 years old if there is an interest according to the regulations”.

B- Conditions of Marriage Permit

Article (4) of the regulations included the conditions for giving the permit. It includes: “ ... for giving a marriage permit, the court should take care of the following:

1. A fiancé should be suitable/ competent for his fiancée according to article (21) of the Law.
2. The judge should make sure of complete consent and choice.
3. The court should be sure of the necessary interest for gaining benefit and staving off damage as well as the suitable means.
4. The age difference between the couples should not exceed 15 years⁴⁹.
5. A fiancé should not be married.
6. Marriage should not result in discontinuing education.
7. The fiancé should prove his ability to sustain a family and pay dowry.
8. Submission of approved medical examination.

48 -Women Solidarity Inst. Assoc., Required Amendments of article (10) of Personal Status Law for cancelling the exception of male and female child-marriage, 18/1/2018.

49 -According to a study of “Tamkin” concerning minor-marriage conducted in 2017, there are 846 cases where age difference between the spouses was 15 years and above, 29 marriage contracts where age-difference was 33 years and 9 contracts where it was more than 50 years.

These regulations obligated the court to observe the preconditions of age difference, education and that the fiancé is not married, unlike the previous regulations stipulating that the “Court should observe these preconditions as much as possible”. However, the 15-year age difference is still big and should not exceed 10 years. Tamkeen (Empowerment) Center conducted a study that revealed that there was an obvious violation of the regulations concerning the age difference and of article (11) of the Personal Status Law prohibiting making a marriage contract with a woman if the age difference is more than 20 years unless the judge is sure of her consent and free choice. Moreover, the use of the term “should observe the pre-conditions” could lead to slackin with the verification thereof. The term “It is a precondition to give a marriage permit ...”, wherein if one or more of such preconditions were not met, the marriage permit would not be granted.

C- Guardian Consent and Peer dowry

Article (5) of the regulations stipulates that “Court should make sure of the legitimate guardian’s consent for the permit and the contract”. Moreover, article (6) stipulates that “a fiancée’s dowry should not be less than a peer’s dowry and should be defined in the permit deed”.

Previous regulations provided for the guardian’s approval according to the articles (17, 18, 20) of the Personal Status Law that give the judge the right of granting a marriage permit if the guardian prevents her from marrying. According to article (18) of the Personal Status Law 36 for 2010, “Subject to article (10) of this law- this text contradicts clause (A) of article (10) of the said law- a judge can permit a virgin girl if she completed 15 calendar years to marry a competent husband in case her guardian prevents her from marrying without a legal reason”.

The judge’s permissions for a girl to marry a competent husband in case her guardian prevents her from marrying should be restricted by her attainment of the age of 18 not 15 years, especially if her father/ guardian has prevented her from marrying because she is still minor. This should be considered a legal reason for refusing marriage.

D- Instructing a fiancée her right to make any condition.

Article (7) of the regulations states that: “the Court should brief a fiancée about her right to make any condition for her interest according to the law and incorporate any conditions she wants when issuing the permit deed”.

Despite that, many women and girls do not know that it is their right to stipulate conditions in the marriage contract and that this provision can protect minor girls who may not understand the conditions and their effects in case of proving it in the contract.

The Personal Status Law gave the wife the right to stipulate conditions in the marriage contract so that if the husband does not fulfill one or more condition, she can terminate the contract and take all conjugal (material) rights. Clause (A) of article (37) states that: “If there is condition in the contract that is beneficial for a spouse, not contradicting with marriage purposes, contains no illegal commitment, and is written down in the contract, it should be considered as follows: A- If a wife stipulates a certain condition that realizes a legal interest without prejudice to others, such as, she states as a condition that her

husband will not take her out of her country, will not marry another wife, will house her in a certain town, will not prevent her from working outside home, or giving her the right of dissolution of the marriage, the condition is valid; if the husband does not fulfill it, the contract can be cancelled upon a request by the wife who can claim all conjugal rights”.

Here, the Marriage Permit Application Form should include an explicit clause about the girl’s right to incorporate whatever conditions in the marriage contract to draw her attention to this right and attaching a written confirmation that the Judge has explained that for her to the permit file.

E- The Precondition of joining a premarital course

According to article (8) of the regulations, both a fiancé and a fiancée should take a premarital course organized by Chief Justice Department Clause (A) of the said article says: “Both fiancé and his fiancée should present a certificate for passing a premarital course organized by the Department or any other body approved by Chief Justice for this purpose”.

The condition of joining a premarital course may increase the awareness of minor girls concerning marriage and family issues, putting in mind the high ratio of early divorce.

However, it is worthy to note that the course subjects and instructors, e.g., doctors, social workers, psychologists, and guides, should be determined by regulations issued by the Chief Justice Department.

F. The request for marriage permit may be forwarded to the Family Reconciliation Office

Article 9 (A) of the regulations provides that: “The Court may refer any application for marriage by persons under 18 years of age to the Family Reconciliation Office established within its competence.” Clause (B) stipulates that: “The Family Reconciliation Office shall examine the case referred to it and provide the court with its opinion”.

Here, the text should include obligating the court to refer marriage request to one of the family reconciliation offices, as such offices include specialists in legal, social and familial fields. The office opinion should also be binding for the court to ensure the availability of the permit conditions.

G- The Approval of Department of Minors ‘ Affairs to Grant a Marriage Permit to Male Suitor

According to article (10) of regulations, “A- for granting a male suitor who has not completed the age of 18 a marriage permit, he must present to the court the approval of the Department of Minors’ Affairs in addition to meeting the requirements contained in the preceding articles. B- Applications for marriage permit that do not meet the grounds set forth in these regulations shall be forwarded to the Directorate of Estates and Minors Affairs of the Chief Justice Department for an opinion, including applications for marriage permit for the male suitor who has not completed the age of 18 years. »

Many bodies demanded that the regulations should include disapproval in case both a fiancé and fiancée are less than 18 years old so as not to create “underage” families lacking the ability to practice civil rights.

Clause (B) of the same article should be reconsidered so that no opinion is mentioned about non-compliance with the bases of the regulations as long as the approval is issued by the Chief Justice whose opinion is based – from scientific point of view- on the arguments of the Administration of Estates and Minors. Thus, all permit requests are referred to the Chief Justice Department accompanied by the study of Family Reconciliation Office examined by Estates Administrator then approved by the Chief Justice. The regulations were silent about the consequences of breaching thereof!

The new regulations did not explicitly mention the consequences, especially on marriage contract, in case the judge or the court breached them. If a minor marriage was approved without verification of guardian’s approval or the age difference was more than 15 years or any other violation of the regulations, what would be the results, especially on the marriage contract? This is a shortcoming in the Regulations even as a matter of referring to texts of the Personal Status Law⁵⁰.

Second; Remarks on Marriage Permit Form

It is worthy to note that the said form is submitted by the minor girl. Its wording indicates that only she should request the permit. It includes an attestation of the young girl that the man who has proposed to her is competent and can pay the dowry and the expenditures. How can a girl of that age verify and attest the ability of a man to pay the dowry and the expenditures? Moreover, a minor girl, in the same form, has to attest that her own interest is realized by this marriage and that her accompanying guardian approves the marriage, and to request the registration of her marriage deed.

Therefore, the above-mentioned form includes an obvious discrimination against minor girls as if they wish to get married before reaching the age of 18. It also includes their declaration of the ability of their would-be husbands to pay dowries and expenditures. Moreover, they have to admit that their interest is in this marriage and they speak on behalf of their parents by admitting that they are present and approve the marriage.

The Marriage Permit Application Form is for both males and females who are less than 18 years old and its wording should not be limited to females. Moreover, the Application should be submitted by an adult, e.g., the fiancé or the guardian, in which the proceedings and personal data are written down. Then, the concerned court should verify competence, ability, consent, and other conditions mentioned in the regulations.

Third; reviewing the form of case study used by members of family reconciliation members

The Jordanian National Commission for Women, in collaboration with the Chief Justice and Shariah Judiciary Institute organized workshops on the regulations of marrying under 18 individuals. Emphasis was upon legal frameworks and pinpointing the social, psychological and health effects of underage marriage. 200 members of family

50 -SIGI., Required Amendments of article (10) of Personal Status Law for cancelling the exception of male and female child-marriage,

reconciliation centers and concerned persons were targeted all over the kingdom. The workshops revealed the need to review the case study form available to the members of family reconciliation centers to fill the information gap and evaluating the aspects influencing the decision of permit granting as well as the standards of such a decision. All remarks and amendments on the application form were adopted by the participants and the Jordanian National Commission for Women. These remarks can be relied on by the judges in taking a decision about accepting/ rejecting a marriage based upon precise knowledge. This improves the importance of continuous revision of application process and the evaluation of efficiency to ensure restricting the exception.

Accordingly, after presenting the alternatives for dealing with the phenomenon of underage marriage, different viewpoints, and the evidences of each alternative, such viewpoints and evidence can be summarized as follows:

Conclusion

Undoubtedly, the phenomenon of underage marriage raises much worry on both the national and international levels, especially with the availability of some factors nurturing it, such as wars and their consequences (poverty, displacement, ...etc). Underage marriage is still a shocking example for gender-based violence. It has become the only option for girls to get rid of poverty and disintegration from which they suffer. The presence of Syrian refugees and their spreading throughout Jordanian communities has certainly influenced the community culture, putting into account that these refugees live in poor and low-educated communities.

Whatever the alternatives or suggestions proposed by the concerned parties for dealing with the phenomenon may be, everybody believes that this marriage does not realizes girl's interest and that keeping the situation is only a provisional solution until changing the culture and believes. The following recommendations were made:

- ✓ The prevailing culture and beliefs should be changed so that poor and illiterate people stop thinking that there is no future for a girl outside marriage and that marriage is a good chance that should be taken regardless the girl's age. This is to be done by making an integrated national plan shared by the Ministries of Education, Social Development and Health, as well as NGOs and other bodies to take practical steps to overcome the phenomenon.
- ✓ The exception age should be raised to 16 years in order to bring about a gradual change in the society's prevailing culture and conceptions until reaching the final cancellation, as was the case of changing the marriage age of a girl from 15 years, as a rule, to 18 years, with some exceptions. Thus, this step may prepare the society for the final cancellation later on.
- ✓ The regulations governing the exception under article (10) of the Personal Status Law need to be reconsidered to limit the exception and make it as restricted as possible, so that it becomes really an exception that is neither expanded nor standardized.

- ✓ The human element undoubtedly plays an important role in controlling the exception. Thus, concerned judges should be trained to standardize dealing mechanism as much as possible.
- ✓ Family guidance and reconciliation offices play an important role in drawing up the social study that enables judge to take a decision about granting a permit and the interest of a girl in this marriage. Therefore, staff of these offices should be trained and qualified to deal with permit applicants.
- ✓ Dealing with the phenomenon of underage marriage needs precise figures and documented statistics showing the actual underage marriage ratios, the cases approved and the cases rejected so that the reasons for approval and rejection are known and can be dealt with without relying on guessing.
- ✓ There should be a comprehensive database including the cases approved and those rejected, the two parties' socio- economic conditions, and the reasons for approval or rejection to analyze this information and use it for setting and implementing awareness programs and the policies concerning combating the underage marriage in Jordan.

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