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Chapter Six

Sex-Discrimination within Kuwaiti Laws

6.1. Introduction

Discrimination against women in Kuwait is found in different laws and practices; some have their origin in religion while others are based in culture. What is important is that Kuwaiti society is so accustomed to discriminatory practices that the discrimination is, by-and-large, no longer noticed. For example, all school books use the male pronoun.[1] There is no effort to provide specialized books, even for girls' schools. Discrimination begins at home when children are raised differently, depending on whether they are girls or boys. Discrimination then becomes part of public life where there are greater rights for men, just because of their gender. Needless to say, Kuwait is the last country in the world women gained suffrage rights. Although it was planned that women would not have the right to vote for the first time until 2007, they experienced their political rights a year earlier when the Amir of Kuwait, Sheikh Sabah Al-Ahmad, dissolved the 2003 Parliament prematurely in May 2006 and announced that the next election would be held on 29 June 2006. On this occasion women had the chance to vote for the first time.

[1] In Arabic language, the pronoun for the male is different from that for the female.

Since sex discrimination within the Family Law was discussed in the previous chapter, this chapter will discuss discriminatory laws and practices against women in Kuwait. The problem here is finding those discriminatory practices. First it is necessary to determine what constitutes a discriminatory practice by law and what is considered discriminatory by culture. For example, for a woman to be a judge, although the law does not support this kind of practice — there is no reference to it in any of the statutes — in reality such discrimination exists. Further cultural discriminations will be examined below.

The other part of the questionnaire has discuss other discriminatory laws and practices against women that it is in concern with the issues that will be discuss in this chapter.

The charts of the questionnaire can give an indication of discriminatory laws and practices in Kuwaiti society with only slight objections against it. However, in reality, as discrimination exists between married women and married men especially for Kuwaiti women married to non-Kuwaiti, demands have been raised lately to improve their situation who called themselves 'the forgotten women'.[2] Other than that, there are, no serious objections have been raised towards other discriminatory practices. Even during the 2006 election campaigns, seminars for women were set up for the first time to discuss discrimination against 'married women', but not any other discriminatory laws such as family law, education, and criminal law.

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[2] Laila Al-Sarraf. *The Worries of Forgotten Kuwaiti Women in Sulaybeya Tent.*[online] [5th March 2006] available from:
http://www.kwomen.com/newsindetail.asp?2463=1773
[Accessed 25thJuly 2006]

6.2. Education

6.2.1. Islam v. Culture in Women's Education

In general, religion and tradition are contradictory in education issues. This is particularly true in the case of women's education. In the past it was thought that educating girls was shameful. Religion, on the other hand, helped into minimise a great deal of the resistance to the education of women.[3] In many places, both the Qur'an and the Hadiths motivate Muslims to become educated. Furthermore, the fact that Mohammad and his followers became educated was motivated by the first word in the Qur'an, 'read', has affected many people to accept schools for girls.

And so amongst men and crawling creatures and cattle, are they of various colours. Those truly fear Allah, among His Servants, who have knowledge: for Allah is Exalted in Might, Oft-Forgiving.(35:28)

Say: "Are those equal, those who know and those who do not know? It is those who are endued with understanding that receive admonition.(39:9)

Allah will raise up, to (suitable) ranks (and degrees), those of you who believe and who have been granted Knowledge. And Allah is well-acquainted with all ye do.(58:11)

When Islam was introduced, seventeen men and five women in Quraish society became skilled in reading and writing. With the many motivations and awards that Islam gave to education and educated people, people were always encouraged to learn. Although education mainly started with religious education, there was no difference between men

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[3] Ursula King. World Religions, Women and Education. *Comparative Education.* 1987, 23 (1), pp 35-49.

and women at that stage. Both men and women were famous in specific fields like literature, medicine, or politics.[4]

Many of the Qur'anic verses and Hadiths have discussed education, but they all suggest that education is highly appreciated. Many of the Hadiths give an indication of the importance of education. Two of them provide a good example: First, 'The prophets leave knowledge as their inheritance. The learned ones inherit this great fortune'. Second, is based on the quote 'Search for knowledge though it be in China'. It is been argued that those verses did not discriminate in education, instead it urged both sexes to search for knowledge. It is true that education in the region started with Qura'nic teaching and the teaching of the Prophet's conduct. However, Haifaa Jawad argued that Islam has encouraged women to be educated weather in religion or in any other field of the socio-economic sphere.[5]

However, there are differing opinions as to how women were educated in the early years of Islam. While some like Asma Fahmi and Khalil Totah stated that girls went to *Alkottab*[6] along with boys, others like Ahmad Shalabi denied that girls studied with boys at the alkottab, and argued that instead women got their education at home. Zainab Fareed concluded that throughout the ages of Islam, girls went to the same kottab as the

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[4] Zainab Fareed. *Ta'eleem Al-Mara' Al-Arabia- fe Al-Turath wa fe Al-Mujtama't Al-Arabia Al-Mua'sera* (Education of Arabic Women – in Tradition and in Modern Society). (Cairo: Egyptian Anglo Library) pp 7-10.

[5] Haifaa A. Jawad. *The Rights of Women in Islam.*(London: Macmillan Press Ltd., 1998) pp 17-20.

[6] It is the same kind of education as Motawa'a' in Kuwait, and it is also mostly religious studies usually were given in mosques.

boys since education concentrated on Islam only, and getting an education at home was costly so only the rich could afford it.[7]

However, new principles in Muslim societies questioned codes of behaviour. Good behaviour meant that women should be excluded from men. During the tenth century (the fourth century in Hejri calendar), Sheikh Al-Qabsi AL-Qairawani was the first to prevent teaching girls from writing. His view was that girls should only learn about the Qur'an and nothing else. From then on, many sheiks banned girls from learning how to write: they likened a woman who knows how to write to a poisonous snake. They soon forgot how the prophet of Islam motivated people of both sexes to become skilled in writing and reading and to get an education.[8] Khaleel Ahmad argued that the Abbasid Dynasty (750-1258) was the beginning of Arab women degradation which is contrary to the previous Dynasty, the Umayyad Dynasty (661-750). This Dynasty used to value women highly and appreciated their participation and opinions in war and politics. He concluded that the *harem* was created during the Abbasid, which resulted in imprisoning women in their houses and preventing them from getting any education, even a basic education.[9]

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[7] Zainab, F. pp 29-32.~
[8] Zainab, F. pp 34-36~
[9] Khaleel Ahmad. Al-Mara' Al-Arabeya wa Ghadaya Al-Tagyeer (Arab Women and Reform). (Beirut: Dar Al-Talea', 1972) pp 60-68.~

6.2.2. History of Education in Kuwait

6.2.2.1. The Religious Education (*Motawa'*) in Kuwait

Public schools were only established in Kuwait after the discovery of oil. Before that, boys and girls used to go to Qur'anic schools. These were not like usual schools. Instead, classes were taken in the teacher's house. The teacher would prepare a room in which to give the Qur'an lessons. This kind of teaching used to be called *'Mottawa'*. There were a separate mottawa' for boys and for girls. The boys' teacher would be a man, and a woman would teach the young girls. The Qur'an provided the essential curriculum at these schools. Boys would learn some other skills, like maths and handwriting. Girls would only be taught the holy Qur'an, because people believed that girls did not need to learn how to read and write.[10] Moreover, not all girls had the privilege to go to the motawa'a due to early marriage and the tradition that viewed leaving the house as unnecessary and shameful. Some girls were taught the Qur'an and how to write by their father; others remained illiterate.[11] Girls attending the mottawa' started at the end of the nineteenth century and the beginning of the twentieth century. Despite the fact that many people were religious and that they realised the important of learning the Qur'an for both genders, the gap in years between boys and girls in receiving a mottawa' education is great since boys start long before girls.[12]

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[10] Dr.Amal, Al-Sabbah, *Educating Kuwaiti Woman 1957-1985(Ta'leem Al-Mara' Al-Kuwaitiya 1957-1985)* (Kuwait: KIAS, 1989) pp 5-6.

[11] Royal Court of Kuwait, *Education in Kuwait During Pre-Oil Era.*[online][undated] Available from: http://www.kuwait.kw/diwan/emain/Story_Of_Kuwait/Kuwait_before_Oil/Social_Life/education.html#6 [Accessed 30th July.2005]

[12] Education Ministry, *Tarekh Al-Ta'lem fe Al-Kuwait- The Education History in Kuwait* (Kuwait: Kuwaiti Study and Research Centre, 2002)

6.2.2.2. The Organized Schools in Kuwait

The first boys' school in Kuwait was called 'Al-Mubarakeya'. It was established in 1911 by a group of intellectuals who gave donations to build the school. When Sheikh Yousif Al-Qunae' adopted the idea of building a school, no one at that time thought of building another one for girls. Another school called 'Al-Ahmadeya' was built several years later in 1921[13]. The history behind these two schools shows how enthusiastic people were to have schools to educate their sons and shows how schools for girls were not discussed or even suggested. This was to be expected since even in Egypt there were no such schools yet.[14]

The first school for girls in Kuwait was established in 1925 by Aisha Al-Azmeri.[15] At that time, all schools were private: public schools did not exist in Kuwait until 1938. Merriam AlSaleh argued in her book *Glimpse of the Historic Development for Girls' Education in Kuwait* that the Aisha Al-Azmeri facility was not even a school; instead, it was something called a *'molaya'* which was only an advanced step of the mottawa. Students would be taught Arabic language, mathematics, songs and needlework. Al-Azmeri was from Turkey, and came to Kuwait with her husband who was a teacher before becoming the principle of Al-Mubarakeya in 1913. Al-Azmeri used to teach girls at her house which was small and old. When the group of students became too large,

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[13] Al-Sabbah, A. (1989) pp 6.

[14] Royal Court of Kuwait, *Education in Kuwait During Pre-Oil Era.*[online][undated] Available from: http://www.kuwait.kw/diwan/emain/Story_Of_Kuwait/Kuwait_before_Oil/Social_Life/education.html#6 [Accessed 30th July.2005]

[15] Dalal Al-Zeben. *Mofhum Al-Amal enda Al-Mara' Al-Kuwaitiya* (The Concept of Work to Kuwaiti Woman). (Kuwait: That Al-Salasel, 1989) pp 118.

Aisha asked the first lady- the Amir's wife- to give her a more adequate place so she could accept a larger number of students. However, the lady refused, believing that society would not accept the idea of teaching girls the skills to read and write. When her house started to fall down, Aisha's husband Omar asked some rich people to give him donations so he could replace the house. He collected 6,000 Rupees and bought a new house. Aisha continue to teach the girls at her new house until 1933, when she returned to her home town. When she got back two years later, she found that many of the girls she had taught, including her daughter, had already opened a molaya.[16]

The government took the responsibility of education in 1939. By 1945 there were seventeen schools.[17] In 1938, before public schools, Sheikh Abdullah Al-Jabber – the ruler of Kuwait– formed a committee of twelve members to draw up a strategy for education. Since the committee was comprised of some of enlightened people, it suggested having public schools for girls, in spite of facing objection from some families. In 1938, a girls' school was opened with hundred students. By 1945, there were four schools for girls. The chart below shows the numbers of the schools, the students, and the teachers in the year 1946-1947.[18]

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[16] Mariam Al-Saleh. *Lamahat mn Al-Tatawer Al-Tareekhi le Ta'leem Al-Fatayat* (Glimpse of the Historical Development in Girls Education). (Kuwait: Ministry of Information ,2002) pp 49-55.

[17] Kuwait Information Office-USA. *Culture-Education*.[online][undated] Available from: http://www.kuwait-info.org [Accessed 30th July 2005]

[18] Royal Court of Kuwait, *Education in Kuwait During Pre-Oil Era*.[online][undated] Available from: http://www.kuwait.kw/diwan/emain/Story_Of_Kuwait/Kuwait_before_Oil/Social_Life/education.html#6 [Accessed 30th July 2005]

Table (6.1) The number of schools, students and teachers in Kuwait (1946-1947).[19]

M-Student	F-Student	M-Schools	F-Schools	M-Teacher	F-Teacher
3027	**935**	**14**	**4**	**126**	**37**

The history of education reflects society's point of view regarding the differences between boys and the girls. While many famous Kuwaiti men were so enthusiastic as to build a school for boys in 1911, and another one in 1921, the girls were still getting the old fashioned education of learning the Qur'an at the mottawa. Furthermore, even when Molaya education started, it was under each molaya expense[20] and at her own house. On the other hand, boys were getting an education at Mubarakeya and Ahmadia schools that had a curriculum similar to modern schools. Also, the boys' schools were purpose built; the girls' schools were initially in rented houses.

As the chart shows, there is a great difference in the student number between girls and boys. A lot of families prevented their daughters from joining the school, believing that education is for boys only, and girls should not go out of the house as mentioned earlier in chapter two.[21]

The differences in education between boys and girls is clear, both in the mottawa' education and in the modern education (or close to modern). The mottawa' started in

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[19] Royal Court of Kuwait, *Education in Kuwait During Pre-Oil Era.*[online][undated] Available from: http://www.kuwait.kw/diwan/emain/Story_Of_Kuwait/Kuwait_before_Oil/Social_Life/education.html#6 [Accessed 30th July 2005] Also:
Afaf Ibrahim Meleis, Nagat El-Sanabary, Diane Beeson. Women, Modernization, and Education in Kuwait. *Comparative Education Review*. Feb. 1997, 23 (1), pp 115-124.

[20] She used to get a little payment from the girls who can afford it."

[21] See pp 41.

Kuwait for boys in 1887. It did not start for girls until 1917; moreover, they were not on the same level. While boys were learning skills beside the Qur'an, girls were only taught to memorise the Qur'an. Girls did not have the same education as boys until 1937 when the first public school for girls was opened. Regardless of the fact that the boys' education started earlier than the girls', for primary education, in the academic year of 1977-78, the female has reached to the full participation rate,[22] which indicates that society was more concerned about girls education.

The problem of girls' education was not unique to Kuwait; it was widespread in the Gulf countries. In each country boys' schools were started before girls' schools.[23] In fact, Nagat Al-Sanabary argued that in all of the Arab States, it is not only that education was not introduced until later compared to developed countries, but that women's education was subordinate to the education of men. Men's education had always come first.[24]

Once the first school for girls was established in 1938 in Kuwait, the number of female students was increased each year. Furthermore, in 1956 seven girls were offered scholarships to get their graduate education in Cairo. This was a major step in girls' education and an important indication of how society accepted the idea of girls getting an education not only in Kuwait but abroad like the boys. The numbers of schools were

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[22] Nagat Al-Sanabary. Continuity and Change in Women's Education in the Arab States in: Elizabeth W. Fernea. *Women and the Family in the Middle East.* (USA: University of Texas Press, 1985) pp 96.

[23] Al-Sabbah, A. (1989) pp 6,7.

[24] Al-Sanabary, N. (1985) pp 93.

increasing rapidly for both sexes. Also, from 1964 until 1984, the number of girls attending public schools increased to reach %256. 2.[25]

Although the girls' education has been rated better in the last few decades, as Shirin Shukri argued, the opportunities, though, for boys and girls to attend schools are still varies. According to the 1995 statistics for every 100 boys that attend primary school, there are: 81 girls in Iraq, 90 in Jordan, and for Kuwait 93 girls. This is a high number compared to the other poor Arab countries where the number would not exceed 47.[26]

6.2.2.3. Discrimination within the Higher Education Institutions

Kuwait University (KU) was established in 1966 with 358 students; 209 were male and 149 female. There was a dramatic increase in the number of girls joining the university to the extent that from 1969 the number of women accepted exceeded the number of men until 1984.[27]

Culturally, it is accepted that boys do not study as hard as girls. If girls work harder on their studies it is because they are expected to stay at home and do their homework, unlike the boys. While people and officials realize this fact, the problem is not analysed. Obligations are not placed on boys to study and do their homework; instead, a different evaluation system is created for the sexes. Unofficially, it is known that female students have more obligations and homework than boys, and yet they are evaluated more strictly.

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[25] Al-Sabbah, A. (1989) pp 9,49.
[26] Umayma Abu Bakr and Shirin Shukri. *Women and Gender.* (Damascus: Dar Al-Fikr, 2002) pp 115,116.
[27] Al-Sabbah, A.(1989) pp 51-53.

Consequently, because the number of female students exceeded the males, the two main governmental higher education institutions -- Kuwait University and the Public Authority for Applied and Training Education (PAATE) -- adopted a discriminatory law to resolve the problem. The policy depended on the percentage for admitting students. When students graduate from high school, they are required to have a specific Grade Point Average(GPA). Boys can be acccpted with a lower GPA than girls.

On the other hand, the PAATE is issued every year. There are two schedules: one for the boys and another for the girls with different requirements and different GPAs[28] in some majors. For example the Schedule for the year 2003/2004 was issued in this form:

Table (6.2) The Required GPA from high school graduates to be accepted in PAAET.

College	Male		Female	
	Art	Science	Art	Science
1.College OF Basic Education				
Physical Education and Sport	%70	%65	%75	%70
Librarianship and Educational	%75	%75	%79	%79
Education	%75	%75	%77	%77

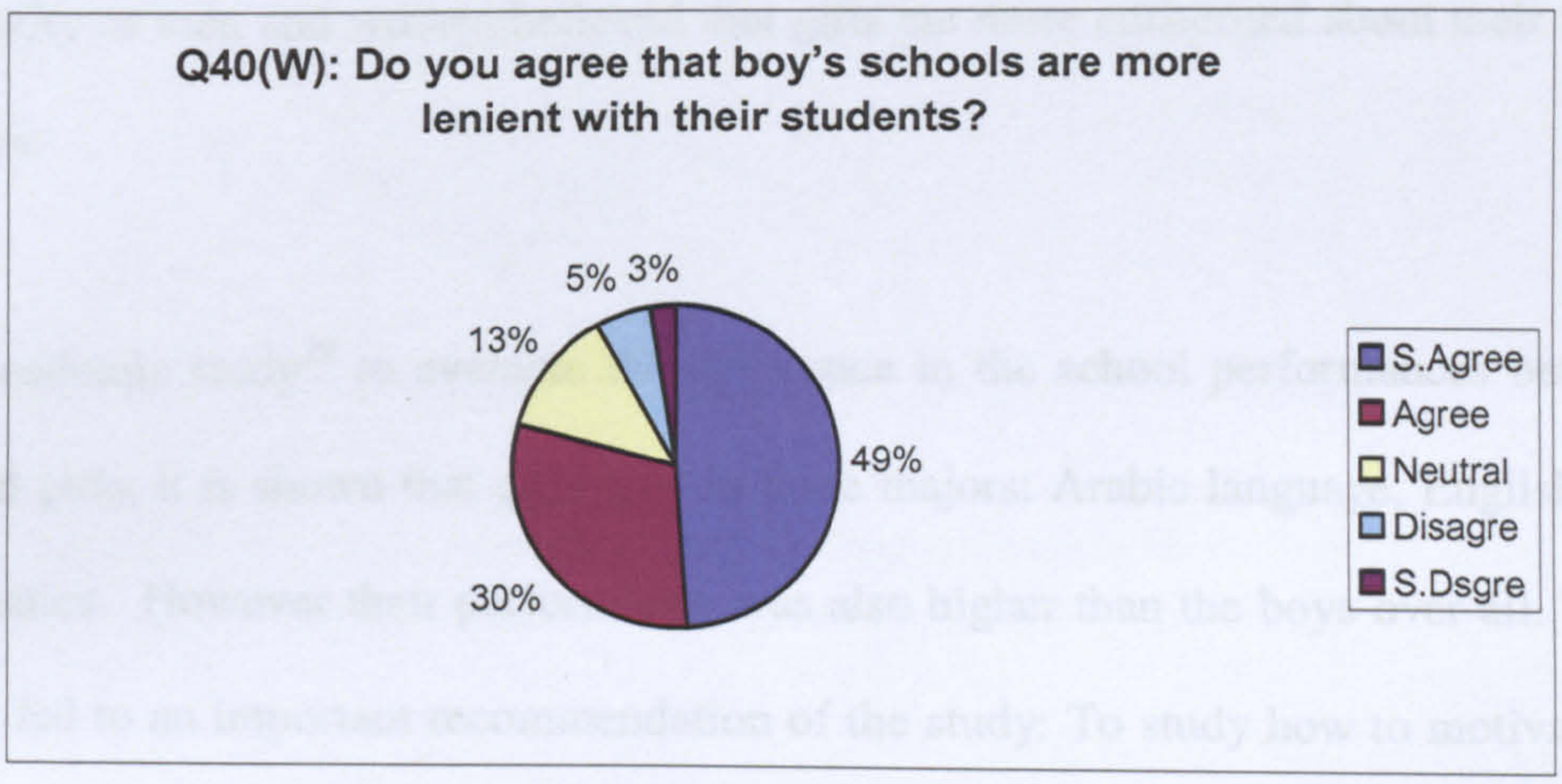
[28] High school graduates get their GPA in scale of hundred.

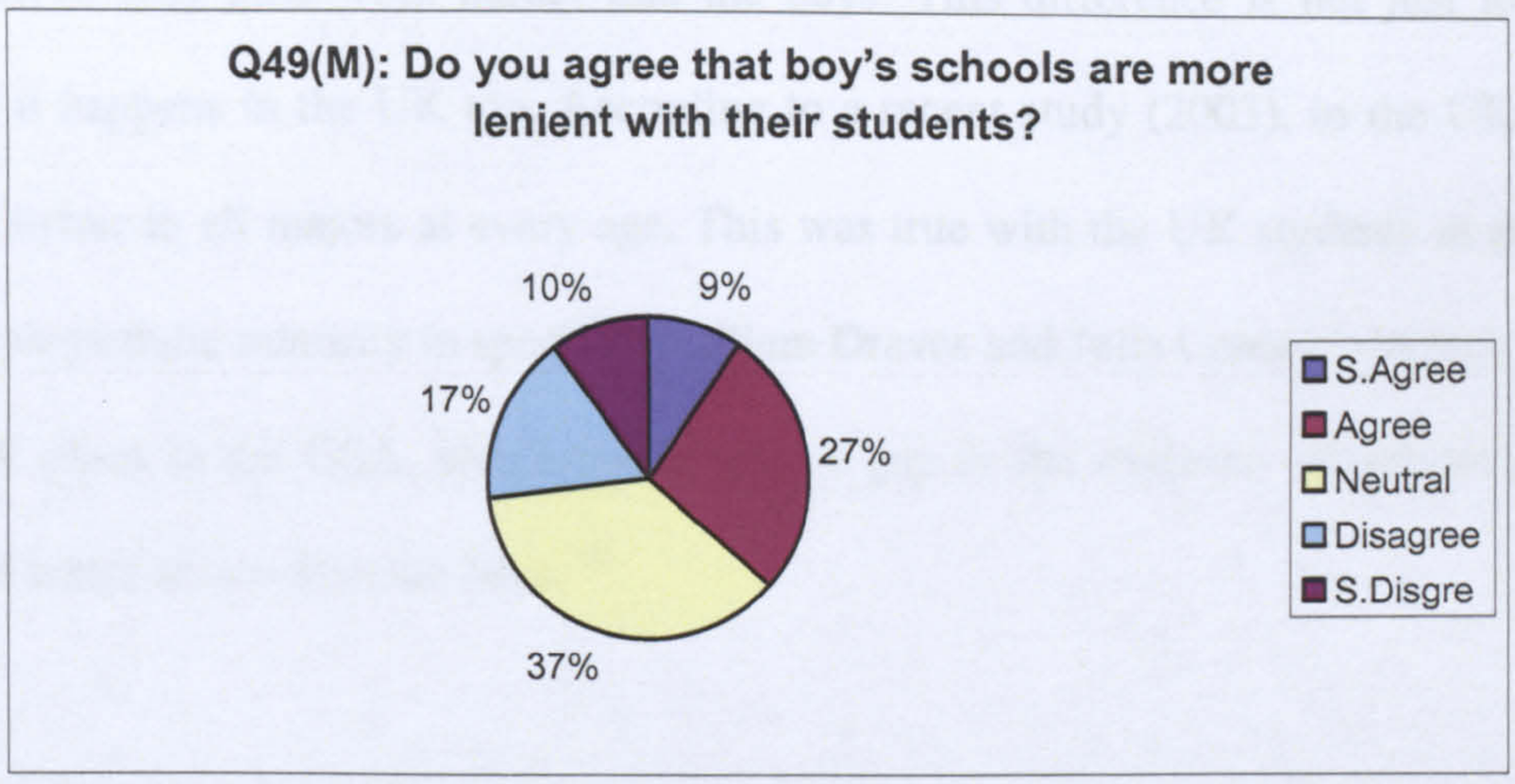
Technology				
2.Business College				
Calculus	55	55	65	65
Materials Management	55	55	65	65
Insurance	55	55	65	65
Banking	55	55	65	65
Computing	-	55	-	65
Administration	55	55	65	65
3.College of Technological Studies				
Materials and their properties lab		55		60
Communication Electronics		59		64

The questionnaire also examined whether girls do better and are harder workers than boys and whether or not they got different treatment at school. Most women believed that boys' schools are more lenient towards their students than girls' schools. In the questionnaire, being lenient here means, for example, in the exam questions, are the girls' exams harder? If the exams are the same, are teachers more merciful with grading the boys' papers than the girls'? As the charts show, most women believed this to be so, but

the men were more careful in agreeing with the matter: at least 36% of men agreed, 37% were not sure, and only 27% did not agree. This tends to lead to the conclusion that boys' schools are more lenient with their students.

Figure 6.1 School's Attitude Towards Both Sexes.





If respondents did not agree on the different treatment in schools between boys and girls, the majority agreed that girls are harder workers than boys in school. Even men admitted to that fact. However, when asked the following question that "if you agreed, why did you?" they were given three options: do you think that girls are more intelligent?; are

girls more ambitious and care more about their future?; or is it because girls think that they have less opportunity in getting jobs than boys? The fourth option was given as 'other' in which most of the respondents added that girls are hard workers because they spend more of their time at home, unlike boys who are out most of the time. However, the majority of men and women believed that girls are more concerned about their future than boys.

In an Academic study[29] to evaluate the difference in the school performances between boys and girls, it is shown that girls lead in three majors: Arabic language, English, and Mathematics. However their performance was also higher than the boys over all. These findings led to an important recommendation of the study: To study how to motivate the boys and increase their performance in school.[30] Such a study could give a clear indication of why girls work harder that the boys. This difference is not just local to Kuwait, it happens in the UK too. According to a recent study (2003), in the UK, girls perform better in all majors at every age. This was true with the UK students in general and in every ethnic minority in specific. William Draves and Julie Coates[31], in their study that took place in the USA, also found a gender gap in the students' performance and girls had better scores than the boys.[32]

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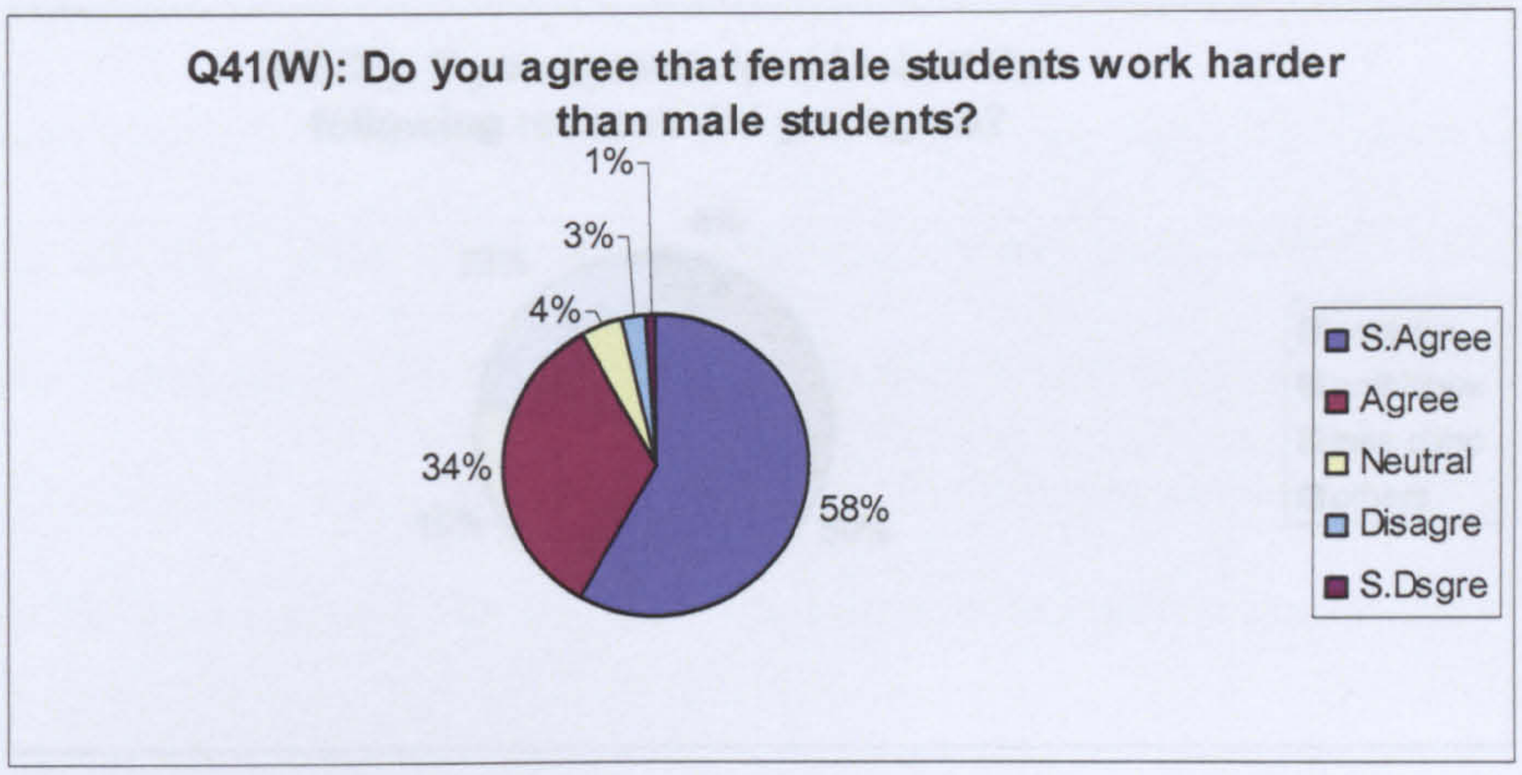
[29] The study was made in 1997 and led by Furah Al-Enezi.~

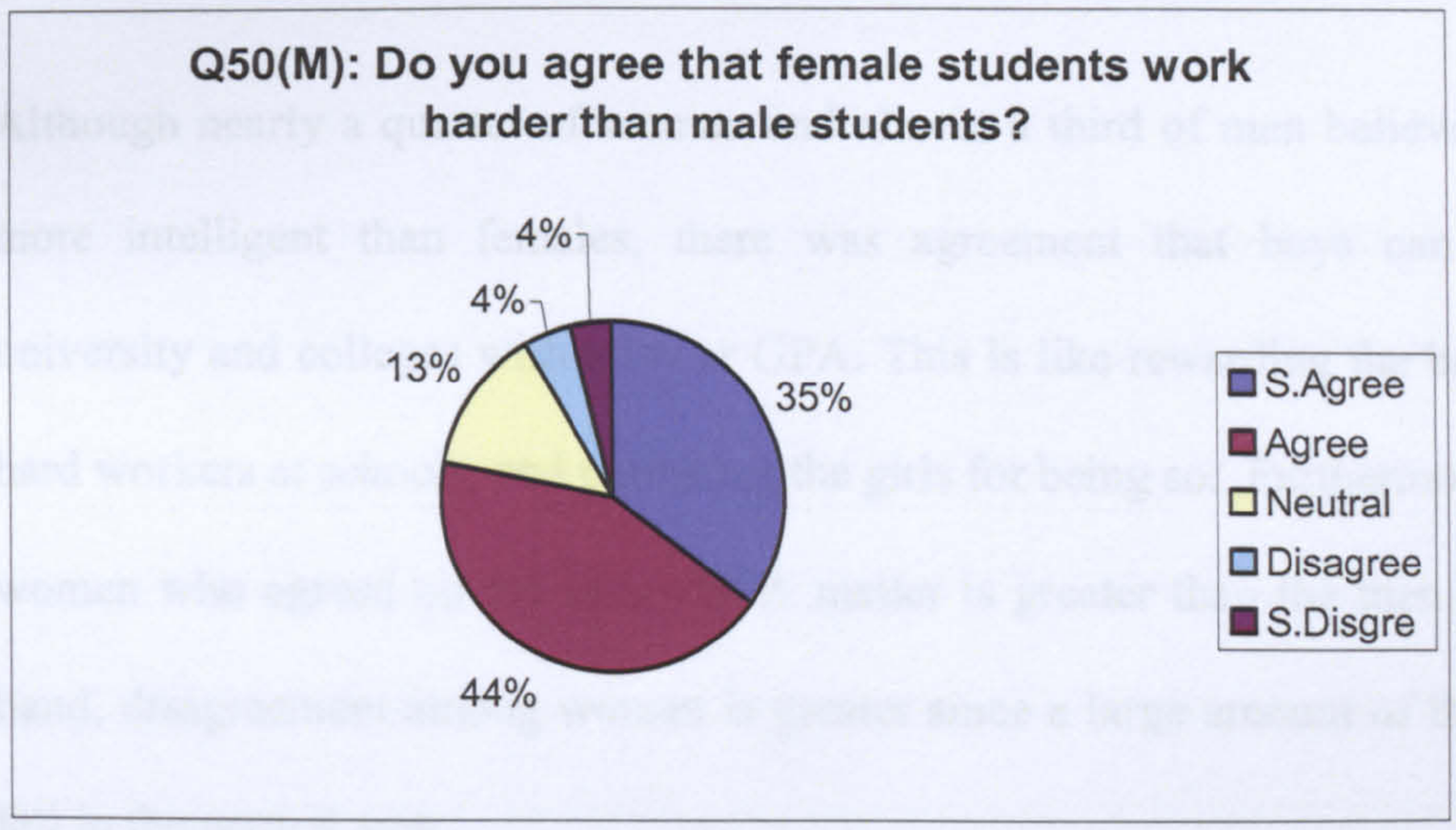
[30] The National Assembly Publication. *Comparative Study for the High Schools Education System.*[online] [8th Dec.1999] Available from:
http://www.majlesalommah.net/run.asp?id=825
[Accessed 21st Nov. 2006]

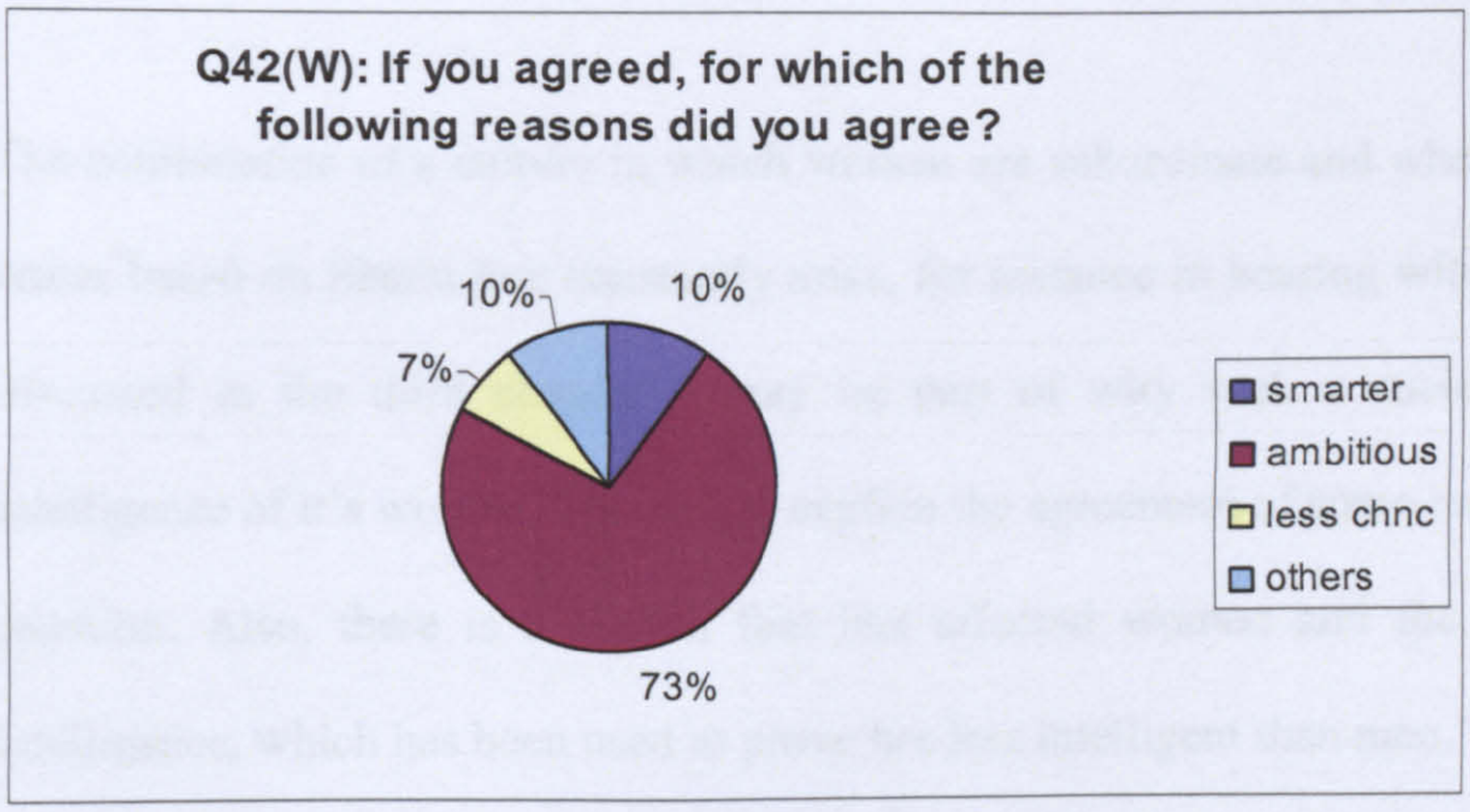
[31] William Draves and Julie Coats have a theory about why boys score less in schools. It is explained in their book: Nine Shift: Work, life and Education in the 21st Century.~

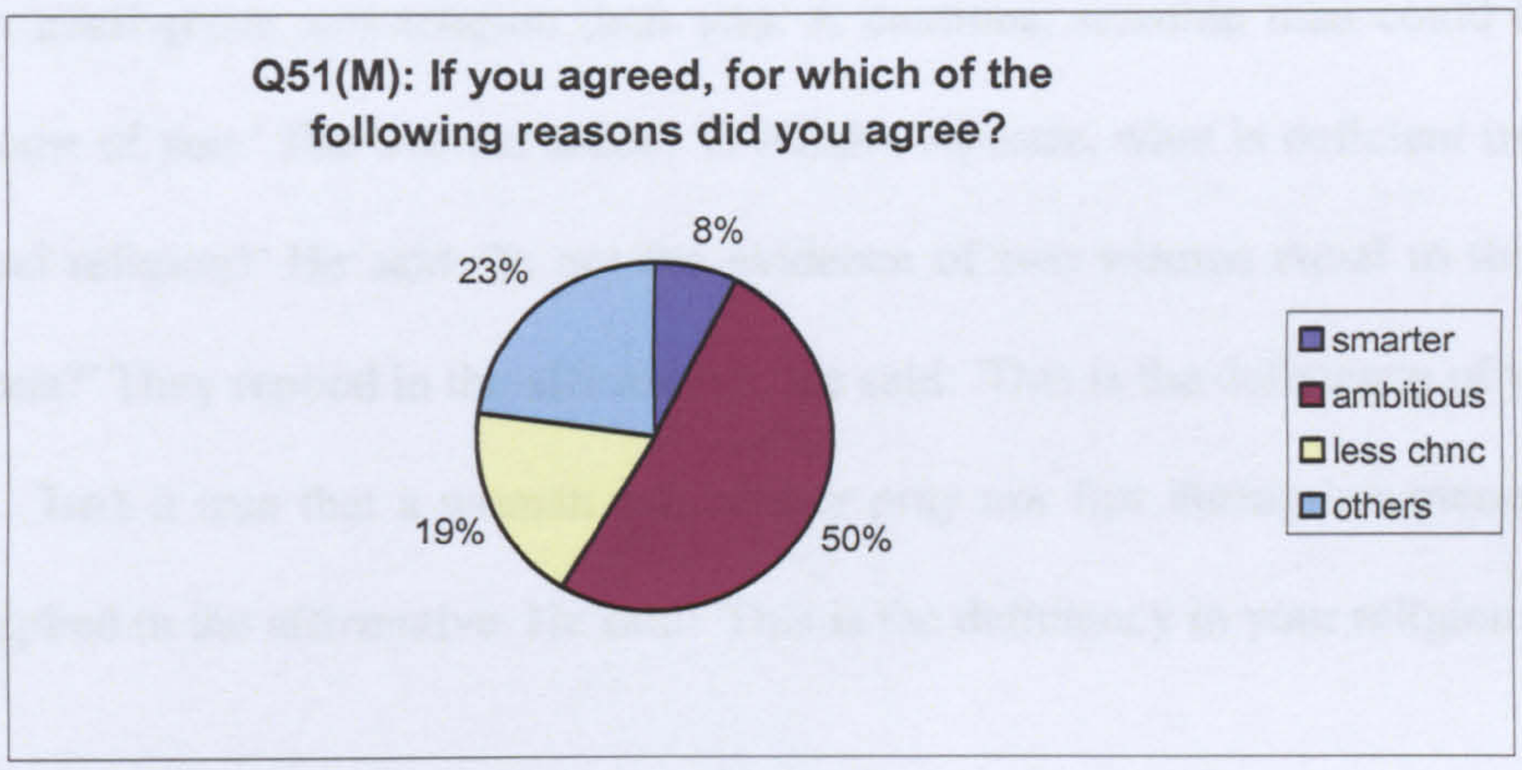
[32] Mike Baker [BBC].*Boys Will be Boys.* [online] [28th Feb. 2004] Available from:
http://news.bbc.co.uk/1/hi/education/3494490.stm
[Accessed 21st Nov. 2006]~

Figure 6.2 Sexes Performance in School.









Although nearly a quarter of women and almost a third of men believed that males are more intelligent than females, there was agreement that boys can be accepted at university and colleges with a lower GPA. This is like rewarding the boys for not being hard workers at schools, and punishing the girls for being so. Furthermore, the number of women who agreed on the lower GPA matter is greater than the men but, on the other hand, disagreement among women is greater since a large amount of the men's answers fall in the neutral area.

The combination of a culture in which women are subordinate and where discriminatory issues based on Sharia law constantly arise, for instance in bearing witness – which was discussed in the third chapter – may be part of why such a society questions the intelligence of it's women. This might explain the agreement of some respondents on that question. Also, there is a Hadith that has affected women and the opinion of their intelligence, which has been used to prove her less intelligent than men. The Hadith is:

Allah's Apostle which said to a group of women: 'I have not seen any one more deficient in intelligence and religion than you. A cautious, sensible man could be led astray by some of you.' The women asked: 'O Allah's Apostle, what is deficient in our intelligence and religion?' He said: 'Is not the evidence of two women equal to the witness of one man?' They replied in the affirmative. He said: 'This is the deficiency of your intelligence' ... 'Isn't it true that a woman can neither pray nor fast during her menses?' The women replied in the affirmative. He said: 'This is the deficiency in your religion.'[33]

Traditionalists' scholars have two different opinions on this matter. Mohammad Al-Haji argued that men and women are equal in their intelligence; he actually specified a chapter to prove that women are not – as some may think - less intelligent than men.[34] While Mohammad Sanqure, on the other hand, believes that there is a difference in intelligence, however, it is not in a large gap between men and women. He explained that intelligence and rationality must be distinguished. Rationality is a characteristic of men who have a greater deal more of it than women because they are more 'emotional' and base their decisions on that. However, in terms of intelligence, men and women are closer but the difference cannot be denied.[35]

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[33] Rafiqul-Haqq and P. Newton. *The Place of Women in Pure Islam.*[online] [1996] Available from: http://debate.domini.org/newton/womeng.html#def
[Accessed 21st Nov. 2006]

[34] Mohammad O. Al-Haji. *Al-Nesa' Shaghae'gh Al-Rejal.* (Damascus: Dar Al-Maktabi: 2002) pp 256-264.

[35] Mohammad Sanqure. *Maghalat Hawl Al-Mar'a (Article About Women's Rights).* (Lebanon: Dar Al-Esma) pp 76.

Figure 6.3 Sexes Intelligence.

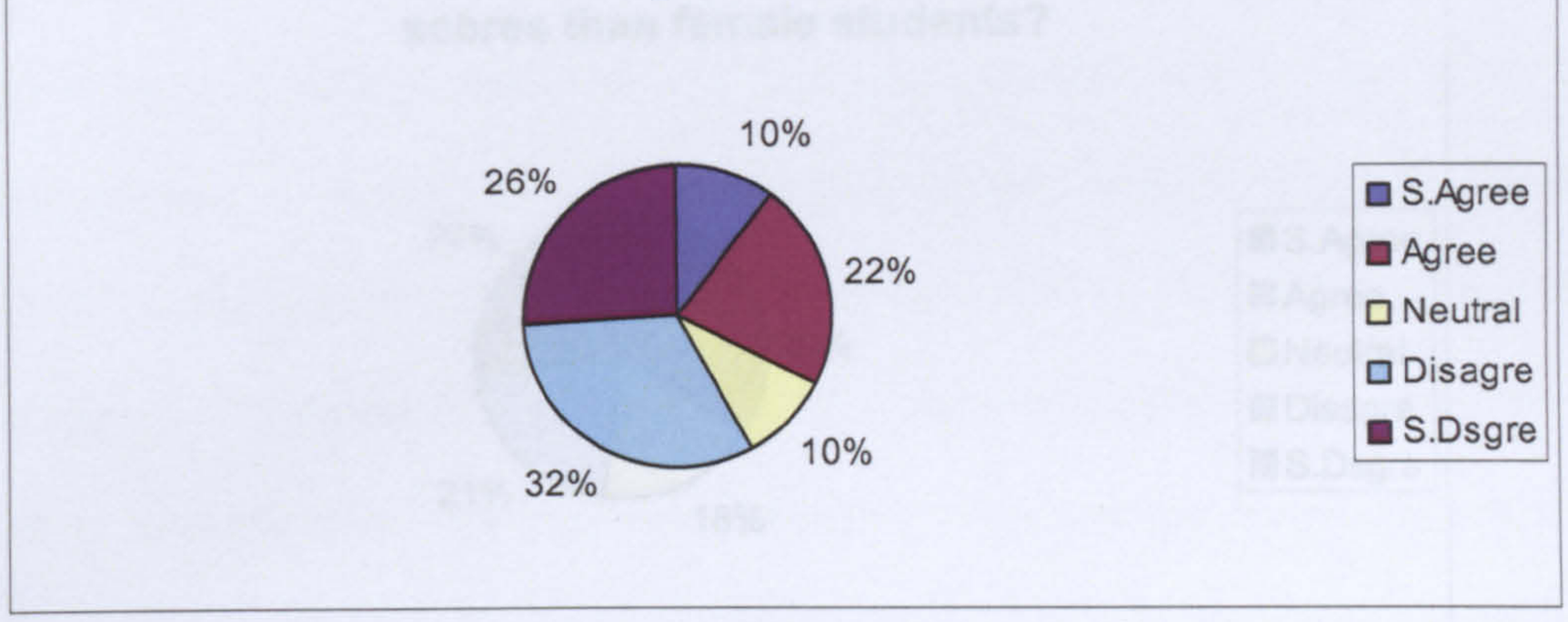
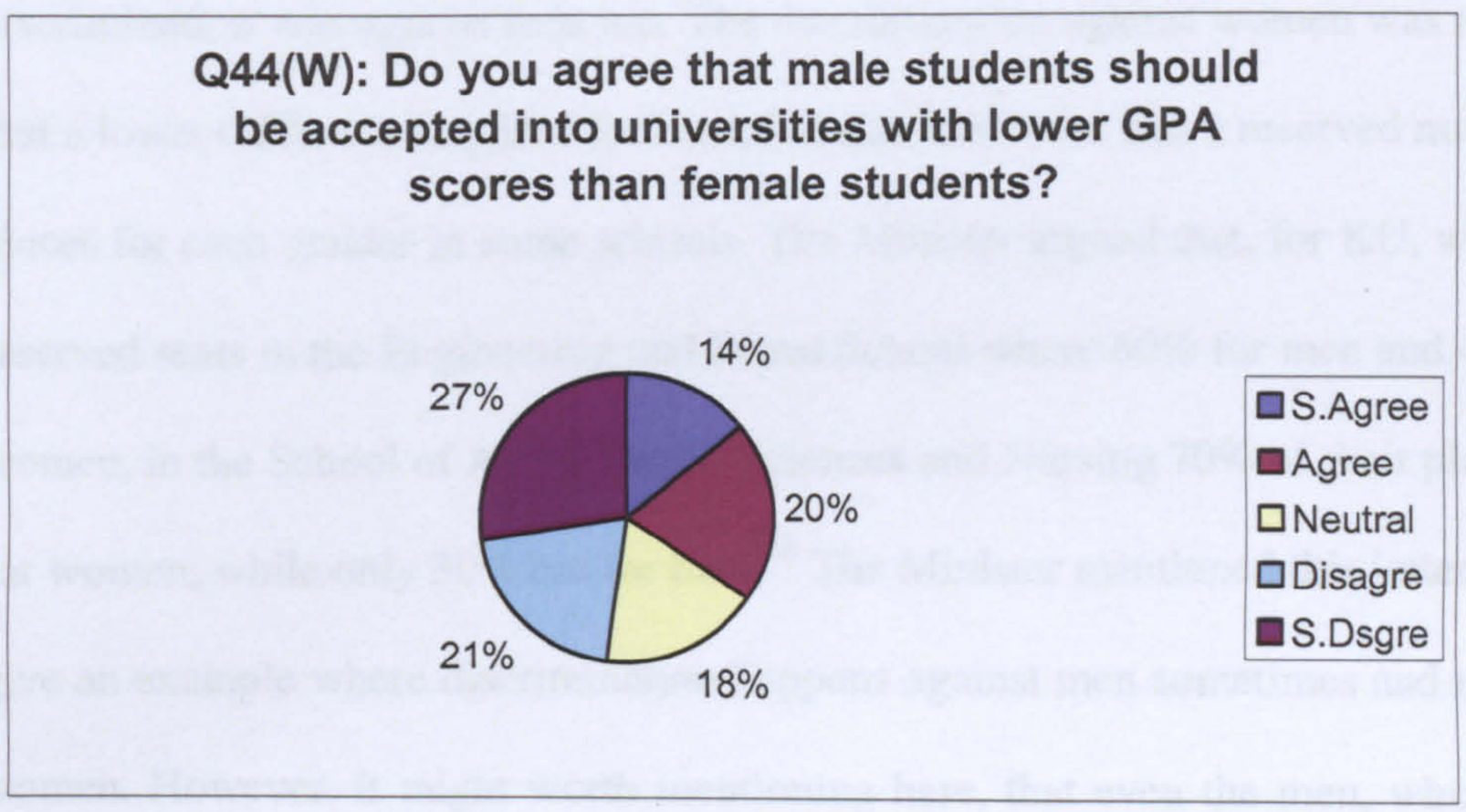
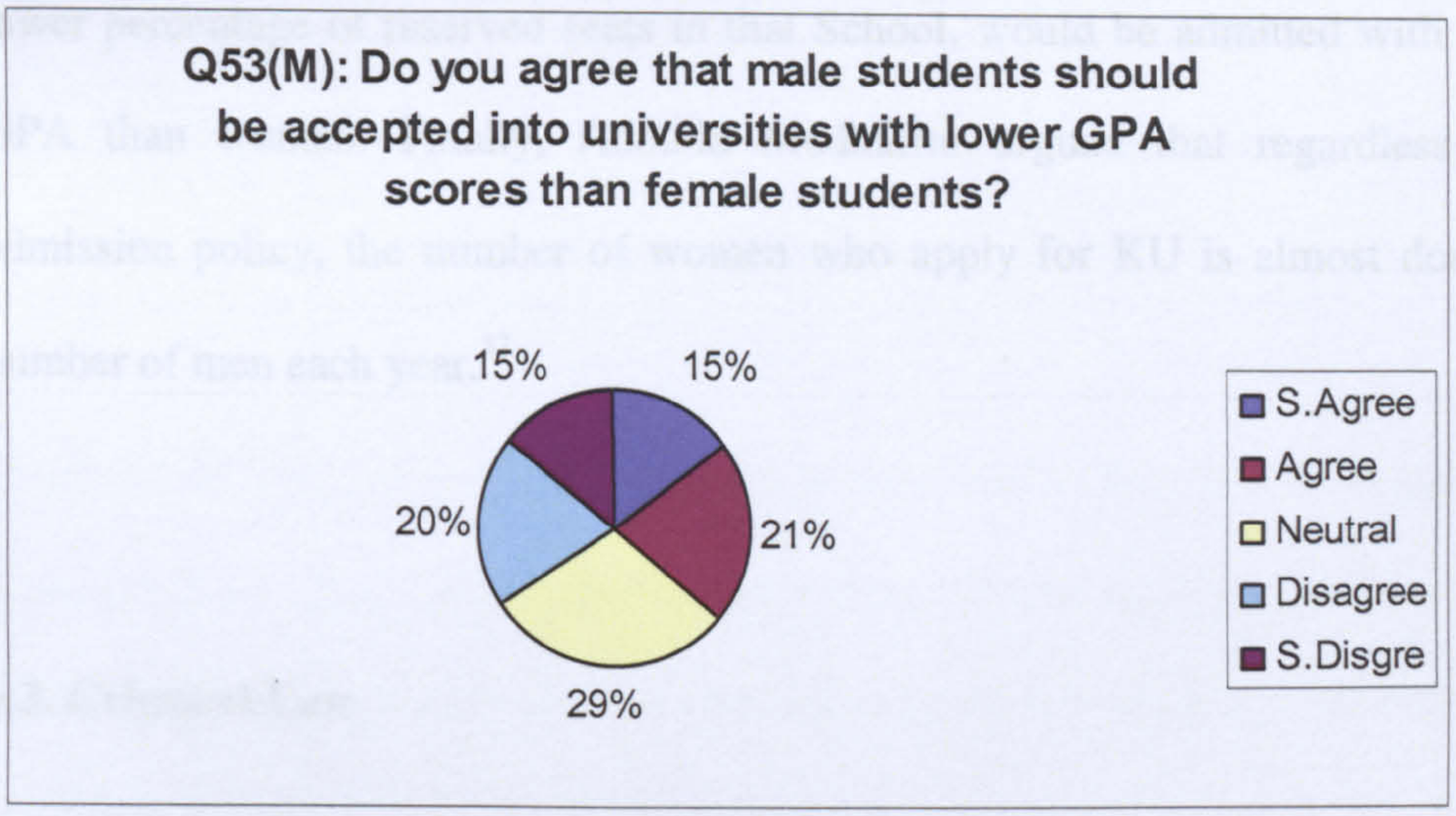


Figure 6.4 The Required GPA for Both Sexes.





In October 2006, the MP, Sa'don Al-Otaibi, presented a question to the Minister of Education, Dr. Adel Al-Tabtabae,' asking about discrimination when accepting men and women in to higher education institutions, mainly the KU and PAATE. It was the first time the subject had been discussed in the NA. The Minister admitted that the admission policy does discriminate against women, which is against the

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Kuwait ratified in 1994, but he also claimed that the discrimination was against men too. The discrimination against women was not only that a lower GPA was required for men, but also that there was a reserved number of places for each gender in some schools. The Minister argued that, for KU, while the reserved seats in the Engineering and Petrol School where 60% for men and 40% for women, in the School of Allied Health Sciences and Nursing 70% of their places are for women, while only 30% are for men.[36] The Minister mentioned this latter case to give an example where discrimination happens against men sometimes and not only women. However, it might worth mentioning here, that even the men, who have a lower percentage of reserved seats in that School, would be admitted with a lower GPA than women. Finally, Addulla Modhaffar argued that regardless of the admission policy, the number of women who apply for KU is almost double the number of men each year.[37]

6.3. Criminal Law

With regard to sex discrimination, criminal law includes articles that discriminate against women. In some cases it is not only the law that discriminates, but also administrative

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[36] Abdulla Modhaffar. *The Breach of CEDAW.* [online] [1st Nov.2006] Available from: http://www.taleea.com/newsdetails.php?id=8956&ISSUENO=1748 [Accessed 17th Nov.2006]~

[37] Modhaffar, A. (2006)~

procedures. Some of these discriminatory articles and procedures are justified as based on religion or traditions.

6.3.1. Honour Killing

Honour killing has been defined by Human Rights Watch as:

> acts of violence, usually murder, committed by male family members against female family members who are perceived to have brought dishonor upon the family. A woman can be targeted by her family for a variety of reasons including, refusing to enter into an arranged marriage, being the victim of a sexual assault seeking a divorce—even from an abusive husband—or committing adultery . The mere perception that a woman has acted in a manner to bring "dishonor" to the family is sufficient to trigger an attack.[38]

This kind of crime exists throughout the Middle East. While it is a serious problem in some countries, it is less important in others, depending on culture and education. Masoud Ako argues that such crimes are higher in the suburbs and poorer areas.[39] In most ME countries, the killer would get a reduced sentence according to the laws. A killer would be jailed for only a very few years or would even have to pay just a fine as in

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[38]Wikipedia. *Honour Killing.*[online] [undated] Available from:
http://en.wikipedia.org/wiki/Honor_killing#Definitions
[Accessed 12th March.2006]

[39] Masoud Akko. ,*honour Killing: Legally Protected, Socially Accepted.*[online] [29th Sep.2005]Available from:
http://www.rezgar.com/debat/show.art.asp?aid=46579
[Accessed 12th March 2006]

Kuwait or would not be punished at all under Syrian law. Lately, Turkey was obligated to change the law and now punishes honour crimes as any other crime.[40]

A problem with honour killing is that the victim can be innocent and a crime occurs based on a suspicious act or a rumour. Moreover, if a girl was in a relationship with someone, she would be the one killed while the male partner goes free.

This crime is only based on tradition and not Islam. According to Islam, adultery is a crime that has to have at least four eye witnesses to the act itself. Moreover, if there is a crime and four witnesses then the authorities should handle it.

Originally, Article 153 of the criminal law stated that: 'if a husband caught his wife having intercourse, and killed her immediately, or killed her partner, or both of them, would be sentenced for three years as maximum, and three thousands Rupee, or one of them'. However, the Article was amended to: ' if a husband caught his wife, daughter, mother or daughter having intercourse, and killed her immediately, or killed her partner, or both of them, he would be sentenced for three years as maximum, and three thousands Rupee, or one of them'.

The Article has four main conditions: first, the killer should be the husband, father, brother, or the son. Thus, if the killer was the cousin, then he will not receive a reduced

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[40] Shawqi Rafe'e. *From Honor Killing to circumcision,Honour is not a Personal Matter.*[online] [1st Aug. 2005] Available from: http://www.albayan.co.ae/albayan/seyase/2003/issue637/stories/1.htm [Accessed 12th March 2006]

sentence. Second, the killer has to be surprised by what he saw. That means that if he knew that she was having an affair, then he should not benefit from having a reduced sentence. Third, the killer has to find the couple together and witness them having intercourse. Fourth, the killing has to take place immediately after he saw his wife (or daughter, etc). If he waits until later, then he will not receive a reduced sentence.[41]

As this excuses murder, the Article reflects on different aspects of the culture. First, a man is considered as guardian for these four female relatives, which means that he is responsible for them in different ways, including their integrity. Second, if a woman is caught, socially it is considered a disgrace for the whole family. In ME culture, killing under these circumstances is considered to be the only way to eliminate that disgrace. Unfortunately, most of these countries' laws allow for a reduced sentence. In some countries the law allows the killer to be released without punishment, such as in Jordan (Article 340), Syria (Article 548), Lebanon (Article 562) and Egypt (Article 337).[42]

In Arabic culture in general, the female's behaviour is more watched and controlled than the male's. Murder would not only happen if she was caught, but also in many cases a rumour that she has had a relationship with a man would get her killed. In many cases, the victim is proved to be a virgin after she was murdered. On the other hand, sometimes a female can be killed for any other reason, for example to rob her of her money, but the male killer claims an honour killing to benefit from the reduced sentence.[43]

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[41] Akko, M.(2005).
[42] Ibid.
[43] Akko, M.(2005).

A study on honour killing in Egypt concluded that 79% of honour killings occurred because of mere suspicion concerning the victim's behaviour.[44] Also, in Palestine, according to Amnesty International, between May 2004 and March 2005 20 women were killed and there were fifteen attempted murders. In one case, a father killed his daughter when he saw a man's picture on her mobile, before finding out that it was a picture of a singer.[45]

6.3.1.1. Honour Killing and Islam

Since these Articles exist in most of the ME countries, someone might think that there is a connection between honour killing and Islam. However, the articles that discuss honour killings are originally adopted from Article 324 of the French Panel Code 1810.[46]Moreover, Lama Abu-Odeh stated that there is another legal historical background beside the French code, which is the Ottoman code; she argued that Article 188 of Ottoman Panel Code 1858 is very similarly worded to most of the honour killing articles in the region.[47] ME countries adopted this article in their laws mainly because it is in agreement with their culture. However, this is contrary to Islam; if a husband accused his wife of committing adultery, he has to have four witnesses, if he does not, then the

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[44] Mostafa Rezq. *Honor Killing Between Media and Law.*[online] [17th Feb.2006] Available from: http://www.aljesr.nl/society/172200610.htm
[Accessed 12thMarch]~

[45]Ala' Attalla. *Falasteen: Al-Daheya Barea' wa Al-Mutaham Yadae' Al-Sharaf* (Palestine: Innocent Victim, and Honor is the Accused).[online][18th Sep 2005] Available from: http://www.islamonline.net/arabic/adam/2005/09/Article07.shtml
[Accessed 12thMarch 2006]~

[46] Rahada Abdoush. *Jarae'm Al-Sharaf, Ayna Heya Al-Adala* (Honour Killing, Where is Justice).[online] [Amman,Feb.2005] Available from: http://www.amanjordan.org/arabic_news/wmview.php?ArtID=17429
[Accessed 12th March 2006]~

[47] Lama Abu-Odeh. Crimes of Honour and The Construction of Gender in Arab Societies. In: *Feminism and Isla.*(NY: New York University Press, 1996) pp 143,144.~

marriage will be ended by *'lea'n'*. This means that he has to swear to God four times that he is honest in his accusation , and on the fifth oath he accepts that he would be damned if he was lying. On the wife's part, she has to swear four times that her husband is a liar, and on the fifth oath acknowledges that she would be damned if he is telling the truth. Accusing a wife of adultery without four witnesses and choosing the lea'n is a reason for the marriage to be revoked, and the wife cannot get married (to him) again since it is a greater revocation of the marriage than a regular divorce.[48] In the Qur'an it mentions that:

And for those who launch a charge against their spouses, and have (in support) no evidence but their own, - their solitary evidence (can be received) if - they bear witness four times (with an oath) by Allah that they are solemnly telling the Truth. [24:6]

And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie. [24:7]

But it would avert the punishment from the wife, if she bears witness four times (with an oath) by Allah, that (her husband) is telling a lie;

And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her accuser) is telling the Truth.[24:8,9]

The Sunna has also stated that a husband has to have four witnesses to accuse his wife of committing adultery even if he saw her, in the Hadith it stated that:

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[48] Al-Sayed Mohammad Taghi Al-Mudaresy. *Al-Lea'n.* [online] [undated] Available from: http://www.almodarresi.com/books/683/yk12y8sc.htm
[Accessed 12th March 2006] Also
Abdul-Muhsen Al-Zamel. *Bab Al-Lea'n.* [online] [undated] Available from: http://taimiah.com/Display.asp?f=blwgh00088.htm
[Accessed 12th March 2006]

' Book 12, Number 2247a:

1. Narrated Abdullah Ibn Abbas:

Hilal ibn Umayyah was one of three people whose repentance was accepted by Allah. One night he returned from his land and found a man with his wife. He witnessed with his eyes and heard with his ears. He did not threaten him till the morning.

Next day he went to the Apostle of Allah (peace_be_upon_him) in the morning, and said: Apostle of Allah! I came to my wife at night and found a man with her. I saw with my own eyes and heard with my own ears. The Apostle of Allah (peace_be_upon_him) disliked what he described and he took it seriously.

There upon the following Qur'anic verse came down: "And those who make charges against their spouses but have no witnesses except themselves, let the testimony of one of them...."

When the Apostle of Allah (peace_be_upon_him) came to himself (after the revelation ended), he said: Glad tidings for you, Hilal. Allah, the Exalted, has made it easy and, a way out for you.

Hilal said: I expected that from my Lord. The Apostle of Allah (peace_be_upon_him) said: Send for her. She then came. The Apostle of Allah (peace_be_upon_him) recited (the verses) to them that the punishment in the next world was more severe than that in this world.

Hilal said: I swear by Allah, I spoke the truth against her. She said: He told a lie.

The Apostle of Allah (peace_be_upon_him) said: Apply the method of invoking curses on each other. Hilal was told: Bear witness. So he bore witness before Allah four times that he spoke the truth.

When he was about to utter a fifth time, he was told: Hilal, fear Allah, for the punishment in this world is easier than that in the next world; and this is the deciding one that will surely cause punishment to you.

He said: I swear by Allah. Allah will not punish me for this (act), as He did not cause me to be flogged for this (act). So he bore witness a fifth time invoking the curse of Allah on him if he was one of those who told lies.

Then the people said to her: Testify. So she gave testimony before Allah that he was a liar.

When she was going to testify a fifth time, she was told: Fear Allah, for the punishment in this world is easier than that in the next world. This is the deciding one that will surely cause punishment to you.

She hesitated for a moment, and then said: By Allah, I shall not disgrace my people. So she testified a fifth time invoking the curse of Allah on her if he spoke the truth.

The Apostle of Allah (peace_be_upon_him) separated them from each other, and decided that the child would not be attributed to its father. Neither she nor her child would be accused of adultery. He who accused her or her child would be liable to punishment. He

also decided that there would be no dwelling and maintenance for her (from the husband), as they were separated without divorce.

He then said: If she gives birth to a child with reddish hair, light buttocks, wide belly and light shins, he will be the child of Hilal. If she bears a dusky child with curly hair, fat limbs, fat shins and fat buttock he will be the child of the one who was accused of adultery. She gave birth to a dusky child with curly hair, fat limbs, fat shins and fat buttocks.

The Apostle of Allah (peace_be_upon_him) said: Had there been no oaths I should have dealt with her severely.

Ikrimah said: Later on he became the chief of the tribe of Mudar. He was not attributed to his father.[49]

2. Also: *Volume 1, Book 8, Number 415:* Narrated Sahl bin Sa'd:

A man said, "O Allah's Apostle! If a man finds another man with his wife,

(committing adultery) should the husband kill him?" Later on I saw them (the man

and his wife) doing Lian in the mosque. [50]

More over, Islam dealt with adultery as crime by stating that:

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[49] USC-MSA. *Translation of Sunan Abu-Dawud,Book 12:Divorce.*[online] [undated] Available from: http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/012.sat.html#012.2247a [Accessed 5th Nov.2005]

[50] USA-MSA. *Translation of Sahih Bukhari,Book 8:Prayers.*[online] [undated]Available from: http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/008.sbt.html#001.008.415 [Accessed on 5th Nov.2005]

The woman and the man guilty of adultery or fornication flog each of them with a hundred stripes: let not compassion move you in their case, in a matter prescribed by Allah, if ye believe in Allah and the Last Day: and let a party of the Believers witness their punishment.[24:2]

According to this verse, if adultery occurred, the partners should be punished by public authority, not by individuals. If there were special circumstances, it would still be a crime and the killer has to be punished. Legalising honour crimes makes it easy for some to take advantage of it, for example to inherit the victim's wealth or to steal her inheritance. In some cases a girl might be a victim of rape but she may still be murdered.

Also according to Islam, when someone has accused a female of committing adultery, he must have four witnesses. If not, then he should be punished under a crime called *'Al-Quathf'* or slander. The punishment is 80 lashes, and he cannot be a witness before a court in other cases because he has lost his credibility.[51] Qur'an states that:

And those who launch a charge against chaste women, and produce not four witnesses, (to support their allegations), flog them with eighty stripes; and reject their evidence ever after: for such men are wicked transgressors;[24:4]

The only excuse for killing in Islam is self-defence; therefore honour killing cannot be justified by Islam. Some might argue that a woman should not be given a reduced

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[51] Abdul-Kader Ouda. *Al-Tashre' Al-Jenae' Al-Islami* (Islamic Criminal Justice). (Lebanon: Al-Resala Publishers, 1998) 14th pp 645-648.

punishment because honour killing is about defending a male's honour and is not a woman's concern. Besides, if a woman killed her husband when she caught him committing adultery, the other woman could be his wife (if he married a second wife without telling his first wife). In this case he is not committing adultery as it is a legal relationship. However, this argument misses two points: first, a husband should tell his wife if he intends to marry another woman since marrying again is sufficient humiliation. Beside, the first wife should be aware of the situation in order to have the choice to get a divorce. Second, all ME laws give the honour killing an excuse, not only to the husband, but also to other male relatives. So, if the same argument is applied, the daughter, sister, or the mother could be having sexual intercourse with their husbands that the murderer does not know about.[52]

In conclusion, from an Islamic view, there is a differentiation between fornication and adultery. However, it is agreed that both crimes are to be punished by the competent authority only and that both parties would be punished, not only the woman. If such a crime happens, then there have to be four witnesses to the scene. If there are only three witnesses, then the slanderers will be punished of slander. Also, if there were four and one retracts his testimony, then the slanderers will also be punished with slander, as according to the previous Qur'anic verse. If the husband was the only witness, then the *lea'n* is the only way to be separated, not killing her. An argument published by the Arabian Observer website states that even if a woman becomes pregnant it need not be dealt with as a result of fornication. The pregnancy could happen as a result of rape or

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[52] As mentioned before, any of these women could get married in a country where it does required a permission from the guardian, or one of her guardians could got her married secretly.~

under the effect of anaesthesia and, according to the Sunna, no one can be punished for fornication or adultery unless s/he admits to it. The judge has to ask the fornicator or adulterer four times to make sure that he is aware of the crime and its punishment. Otherwise, s/he should not be punished. Today, doubting a girl's behaviour seems to be enough reason to kill her, thus ignoring the Sharia and Sunna requirements for four witnesses. It is because culture dictates that the male owns his female relatives' bodies and can do whatever he decides. At the same time, culture justifies that a male can do whatever he wants since he has no hymen and can never get pregnant. Patriarchal culture establishes the concepts of honour and dignity which ignore the Hadith that says: "Fend off the *hudod* [53]by shubuhat [any state of affairs that would cause uncertainty in First, the punishment should be carried out only by a competent authority.][54] Second, the suspect should be freed if there is reasonable doubt. This works for all crimes, but for crimes such as fornication and adultery, it should be dealt with in a very secretive way as Sharia does not encourage punishing it as much as finding excuses not to punish it. However, the law protects honour killing if the male immediately killed a woman upon finding her having intercourse. The law considers anger as uncontrollable emotion and culture protects the male who kills his female relative for doubting her behaviour. However, honour killing should not be protected by law. It is difficult to change culture, but it is easy to change or

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[53] Hudod is (as Wikipedia defines it) the word often used in Islamic social and legal literature for the bounds of acceptable behavior and the punishments for serious crimes.˜ [online] [undated] Available from: http://en.wikipedia.org/wiki/Hudud
[Accessed 5th May. 2006]

[54] The Library of Congress, World Law Bulletin. [Aug.2005][online] Available from: http://72.14.207.104/search?q=cache:jb0pOamvMmwJ:www.fas.org/sgp/othergov/wlb/200508.pdf
[Accessed 5thMay. 2006]˜

eliminate laws that protect the killers, and does not punish them when finding out that the victim was innocent when subsequently testing her virginity.[55]

Loma Ajlouni, in her study about honour killing, states eight reasons why honour killing exists:

1. The lack of knowledge for most people of the Islamic teachings about fornication and adultery in terms of how to prove it, and how to punish for it.

2. The social pressure on the family of how to act (or kill) in such circumstances which leads the family to kill the daughter out of this pressure which comes from wrongful traditions.

3. Problems among the family, especially when parents fail to know or listen to their children, which might lead them getting into difficulties or to run away.

4. Raising the children by discriminating between males and females and making the female suffer from a very young age.

5. The complete ignorance of sexual life which results in children growing up without being able to distinguish right from wrong.

6. Lack of trust and honesty between children and parents.

7. Lack of shelters to protect vulnerable females.

8. The existence of a law that encourages such killings by reducing the sentence.[56]

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[55] Akko, M. (2005)~

[56] Loma Ajlouni. *Jareemat Al-Ghat'l ala Khalfeyat Al-Sharaf* (Murder for Hounor).[online] [8th Jan 2002] Available from:
http://www.phrmg.org/arabic/omar-edited-honor-murder.htm
[Accessed on 10th March 2006]~

These points might explain the motive behind honour killings. Dr. Ahmad Mansour sees honour killing as a result of slavery culture in which a man can prove his manhood and is able to defend his honour that, according to misinterpreted traditions, is about women only and their chastity. Instead, a man is proud of his affairs and the number of women with whom he has had relationships.[57]

Moreover, in some ME countries honour killings are recorded. For example, in Jordan at least nineteen women were killed in 2004.[58] Also, in Egypt, 47% of murders where the victims were women were killed for reasons of honour.[59] However, in Kuwait it is difficult to detain numbers as this crime is dealt with in a very special and secretive way since it can affect a family's reputation. According to the Criminal Procedural Kuwaiti Law Article 104, the General Prosecutor has the authority to drop the case even if a crime had been committed and there was sufficient evidence. Of course, honour killing can also be a reason to drop a case.

Dr. Shahrour argued that in the word 'honour' and all its synonyms in the Arabic language was not mentioned in the Qur'an mainly because the word is related only to the Bedouin culture. If it was included then Islam cannot be international since it would suit Arab culture only. Secondly, 'honour' as a principle is misunderstood by the Arabs

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[57] Ahmad Monsour. *Taghafat Al-Abeed* (Slavery Culture). [online] [3rd June 2005]
Available from:
http://www.metransparent.com/texts/ahmad_sobhi_mansour_text/ahmed_sobhi_mansour_culture_of_slavery.htm
[Accessed 14th March 2006]

[58] Al-Reyadh Newspaper. [online] [26th April 2005]Available from:
http://www.alriyadh.com/2005/04/26/article59641.html

[59] United Nations Development Program. [online] [undated] Available from:
http://gender.pogar.org/arabic/countries/gender.asp?cid=18
[Accessed 9th May. 2005]

because it builds on the idea that only the male has honour and not the female. This explains why if the female misbehaved, then it would negatively affect her male relatives' reputation, but if vice versa, the females' reputation would not be affected, and honour cannot be understood in such way.[60]

6.3.1.2. *Honour Killing in Kuwait*

Mr. Emad Al-Habib[61] – Deputy Chief of the Prosecution Department in Kuwait City – stated that this type of crime – honour killing – is very rare. Such a crime would be reported once a year or once in two years, and this is regarding the Kuwait City. Most of the cases happen when the husband finds his wife with someone - the daughter, sister and mother situations are very rare. If that is the case for Kuwait City, the other provinces[62] are not very different than the City, and such crime – he argued – is also at its minimum. He also argued that once a crime is reported, their department would investigate. If it was proved to be an honour killing crime, the case would be transferred to another department that specialised in the offence since it is considered as one, and their Department specialises in felonies. He added that the killer in such crime – usually – would never be jailed; he would usually get the 'stay of execution' sentence. He concluded that such

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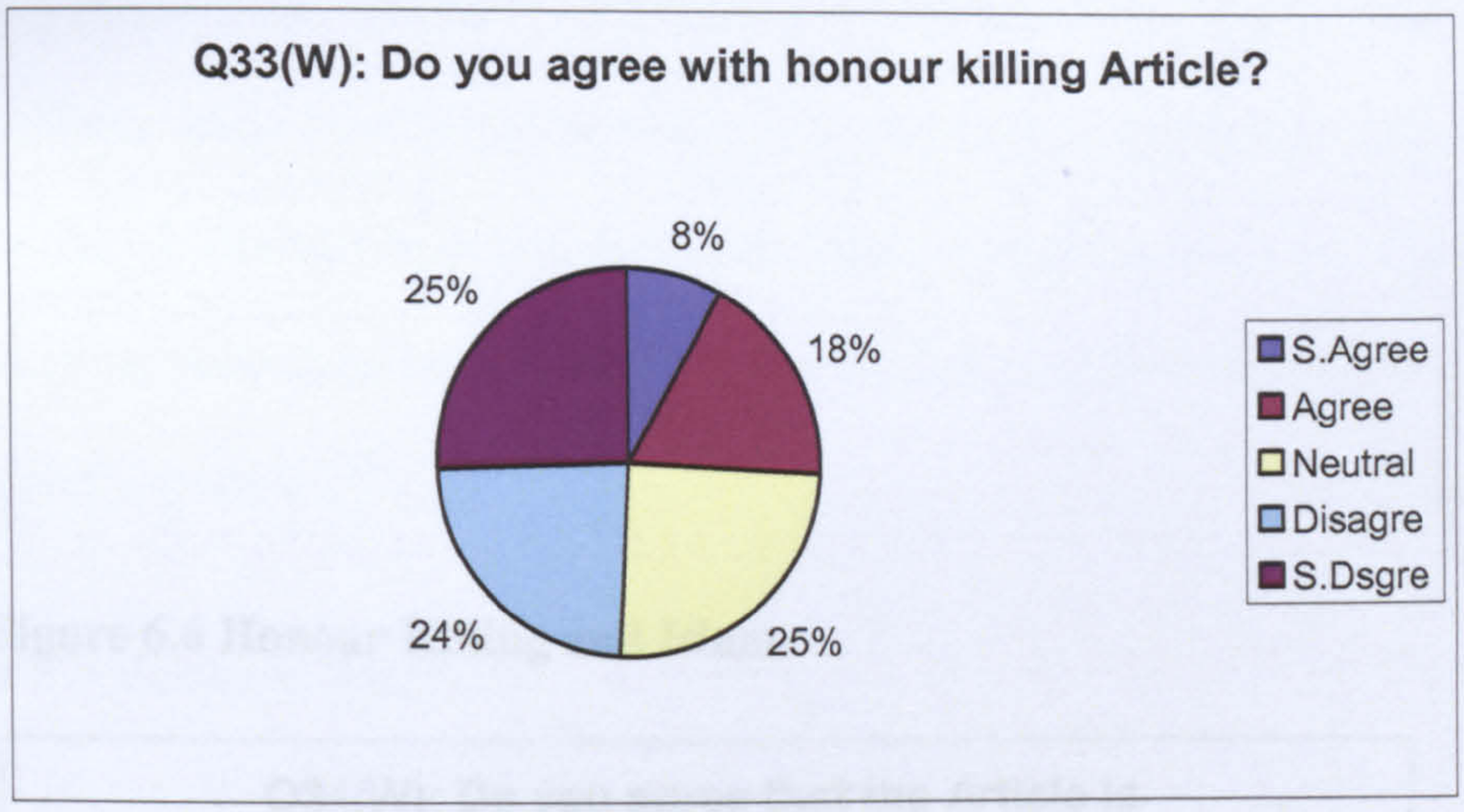
[60] Dr. Mohammad Shahrour. [14th Dec.2003] [Online] Available from: http://www.shahrour.org/Q&A.php?page=8~
[Accessed 9th May 2006]
[61] Interview at his office in 4th Feb.2005.~
[62] Kuwait has six provinces: Kuwait City, Al-Farwanyia, Al-Ahmadi, Al-Jahra,Mubarak Al-Kabeer and Hawali.~

crime would never get 'set processes' as long as there is a body, the case has to be investigated and then transferred to the court.[63]

When asked about honour killing and whether the murderer should be released without a punishment or with a very minor sentence, 55% of men have agreed even though they were not sure if such an Article is compatible with Islam or not. However, as a large amount answered 'neutral' or 'I don't know', it seems that the subject is still vague to many.

Figure 6.5 Honour killing.



[63] He also stated that in the recent years, if a husband found his wife in such situation, in most cases, he would not kill her. Instead, he would look her in and call the police to report adultery crime.

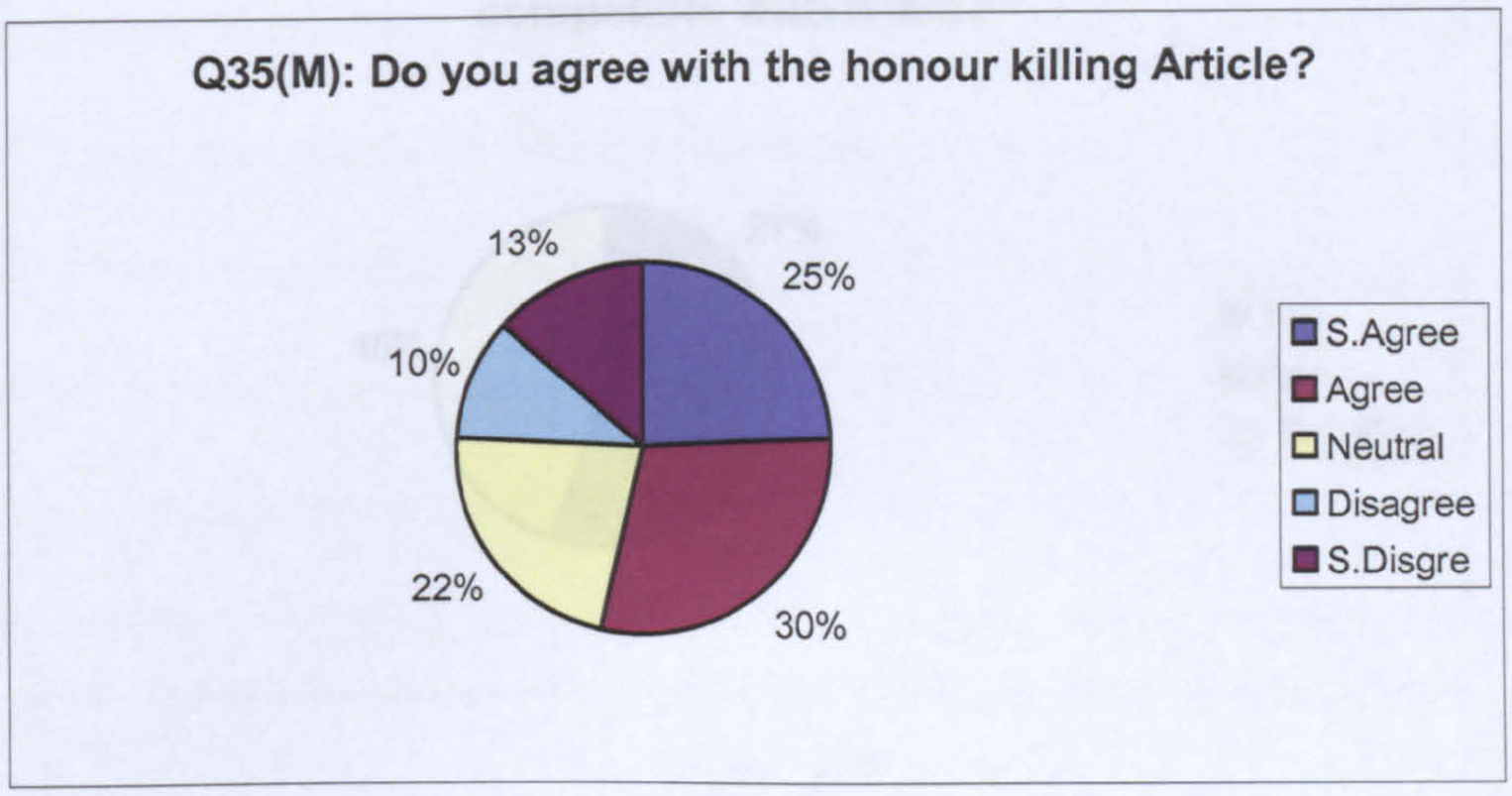
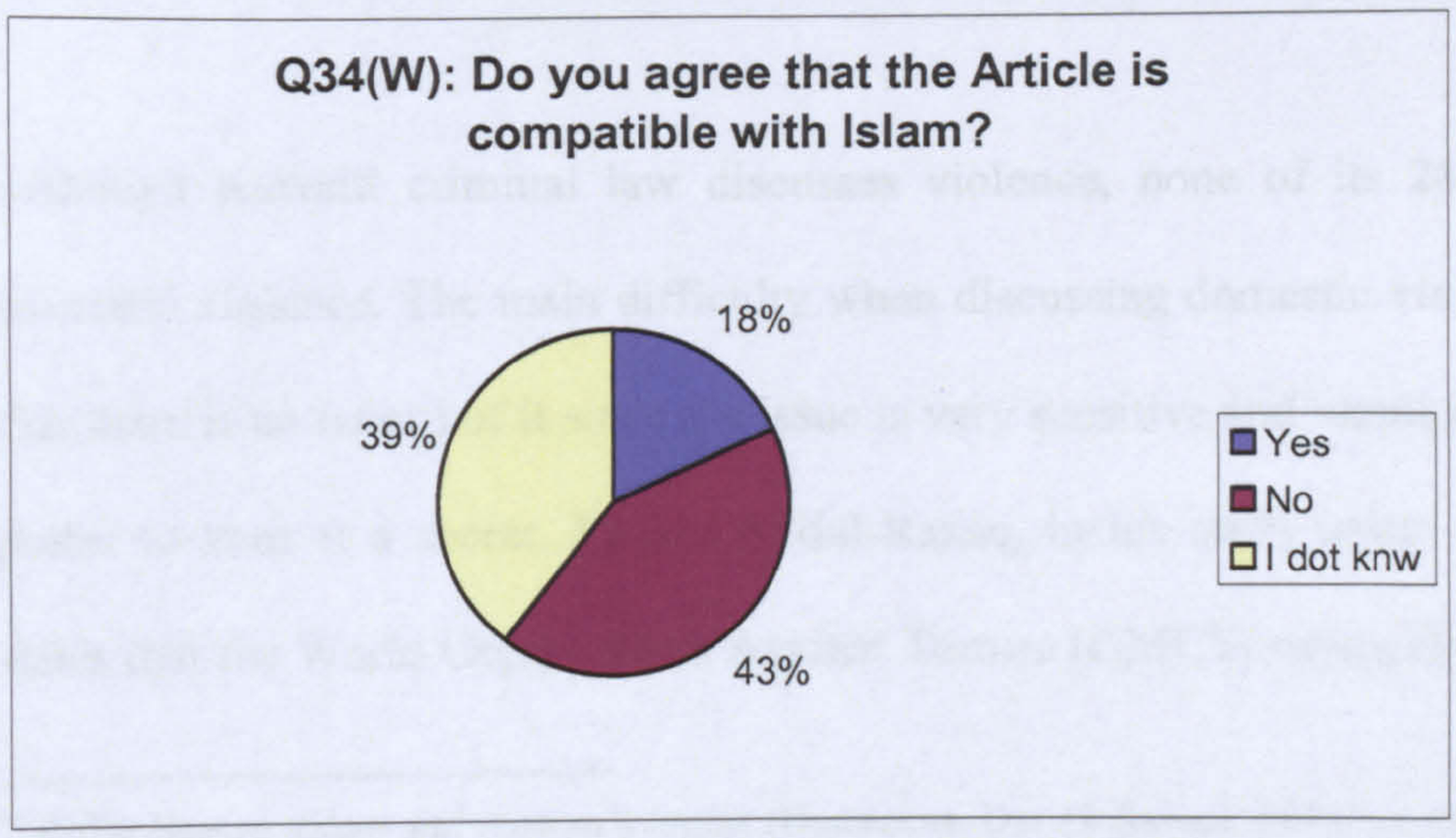
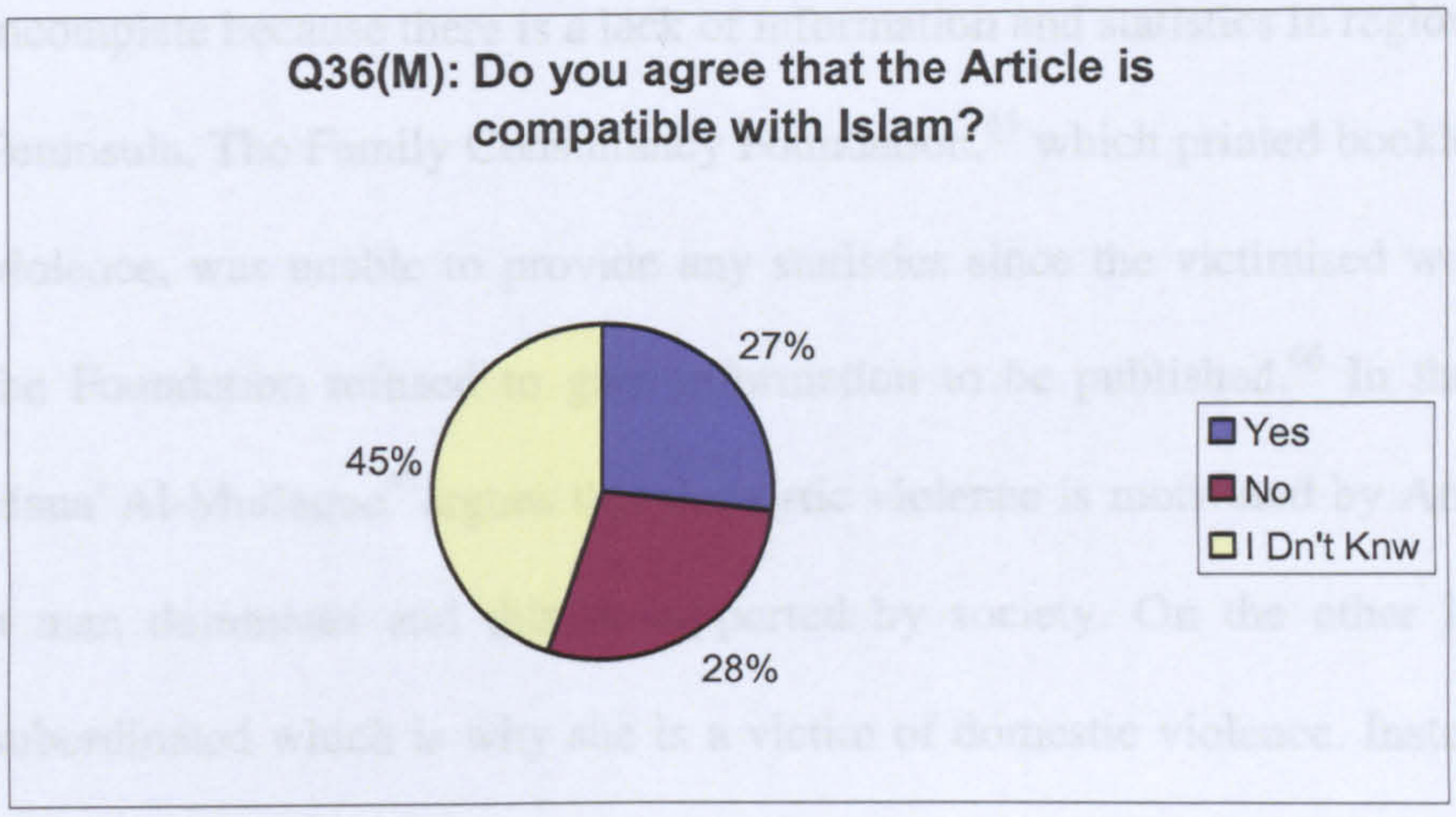


Figure 6.6 Honour Killing and Islam.





Riffat Hassan argues that regardless of the fact that Islam has proudly abolished female infanticide, honour killing has replaced it to become common in many Islamic countries. She believes that the history of women's subordination was widely practiced in the name of Islam, while Islam – and especially – Qur'an meant to liberate women from being subjected. Hassan also added that, in the Muslims patriarchy system female chastity and virginity became an important matter over which to control women, while never caring about their rights.[64]

6.3.2. Domestic Violence

Although Kuwaiti criminal law discusses violence, none of its 282 articles mention domestic violence. The main difficulty when discussing domestic violence in Kuwait is that there is no record of it since the issue is very sensitive and victimised women usually prefer to keep it a secret. Rashid Abdul-Razaq, in his study about domestic violence, states that the World Organization Against Torture (OMCT) writes that its 2000 report is

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[64] Riffat Hassan. *Islam and Women's Rights.*(Damascus: Dar El-Hassad, 1998) pp 55, 56.

incomplete because there is a lack of information and statistics in regions like the Arabian Peninsula. The Family Consultancy Foundation,[65] which printed booklets about domestic violence, was unable to provide any statistics since the victimised women that came to the Foundation refused to give information to be published.[66] In the same study, Dr. Hana' Al-Mutlaque[67]argues that domestic violence is motivated by Arabic culture where a man dominates and this is supported by society. On the other hand, a woman is subordinated which is why she is a victim of domestic violence. Instead of condemning such acts by a man, the woman is accused of a wrongful act, so she deserves to be physically abused. Consequently, domestic violence is excused. In such cultures a man grows up bearing in mind that his sister, wife, and daughter are his own properties which explains why some men control their female relatives' lives by for example, preventing them from going out of the house or quitting their studies. When a husband is violent and behaves in a controlling manner, he knows that his wife cannot say a word about it, either because she knows that she would never get any support from her family or because she does not want to end up divorced.[68] Dr. Ahmad Shawqui[69] states that violence against females starts as soon as they are born. She receives less favourable treatment than her brother who receives better care and education[70] and that would be the start of the

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[65] This is my own translation for the foundation.˜
[66] Rashid Abdul-Razaq. *Al-Ounf Al-A'e'ly* (Domistic Violence). [online] [undated] Available from: http://www.freearabi.com/FamilyTerrorism.htm
[Accessed 10thMarch 2006]˜
[67] Psychological Lecturer in King Suad University –Saudi Arabia. ˜
[68] Abdul-Razaq, R.˜
[69] psychology lecturer in Al-Azhar University- Egypt.˜
[70] In some poor environment, if the family cannot afford education for all of their children, males (or some of them) only would get education not the female. In Kuwait too, some families who prefere the private schools than the public, if they cannot afford the tuition, they would bring the males only to the private schools and females to the public schools.˜

domestic violence[71]. That could explain why many women in Arabic culture wish that they had been born men according to Nae'ma Marhoon.[72]Amnesty International's (2005) report urges the Gulf States to protect victimised women from domestic violence, highlighting that the police are not helpful because society sees violence against women as a family matter.[73] In 2002 the Human Rights Committee in the Kuwaiti Parliament issued a report describing domestic violence as:

a new phenomenon in Kuwaiti society that the legislation failed to give it the right legal description when it considered it as a regular beating and not 'domestic violence', all what it – legislation - is to give a woman the right to file a divorce on that ground if she could approve it with a medical report.[74]

In Kuwait, if a domestic violence case reaches the police station, they deal with it as any other violent cases, there are no special procedures for such cases. It is not only that, but also that the sentence given to the husband, if the beating resulted in serious injuries, would probably be less than any other regular violence case. Mr. Al-Habib confirms that this would happen if the husband has a 'legitimate' reason for the violence, such as 'if the wife did not obey him.' Moreover, *Moghadam* Adel Al-Hashash, the head of the BR

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[71] Abdul-Razaq,R.~

[72] Nae'ma Marhoon. *Ash'kal Al-Ounf Dhedda Al-Mara'a* (Forms of Violence Against Woman). [online] [3rd June 2005] Available from:
http://www.womengateway.com/arwg/Qadhya+Almaraa/violence/ashkaal.htm
[Access on 15th March 2006]~

[73] Women's Gate. *Al-Ounf Dhedda Al-Nesa' Khaleejeyan* (Domestic Violence in the Gulf, ignorance of Police). [online] [undated] Available from:
http://www.womengateway.com/arwg/Qadhya+Almaraa/violence/Khaliji23.htm
[accessed on 15th March 2006] ~

[74] The writer commented on this report as 'the disappeared report' saying that there are some doubts for this report to be discussed or seen ever again.
Abdulla, Mothaffa, *Kuwaiti Woman in The Kuwaiti UN Speeches*.[online][25thOct.2003] Available from:
http://local.taleea.com/archive/newsdetails.php?id=6587&ISSUENO=1600
[Accessed 27th March 2006]~

Department in the Ministry of Interiors, stated that domestic violence cases do not exist in the official crimes statistics of the Ministry; he argued that it is because most of them end with the charges being dropped by the women.[75]

6.3.3. Kidnapping and rape

The crimes of kidnap and rape are punishable according to Kuwaiti Criminal Law. However, Article 182 has a strange regulation which states that: "if the kidnapper (after the kidnapping) married the kidnapped female with her guardian's consent, and he (the guardian) asked for the charges to be dropped, then the kidnapper should not to be punished.[76]

This Article reflects clearly how social culture regards women in general and raped women in particular. When this Article was legislated, it reflects how society considers a raped woman as the priority rather than punishing the criminal. Evaluating Article 182 can be complicated and it does discriminate against victimised women in more than one sense: first, when stating that the marriage must be with the guardian's consent, the woman is not mentioned at all. Second, it does not consider how a victim of a kidnapping would marry the kidnapper. Third, it rewarded the criminal not only by setting him free without punishment, but also by allowing him to marry the victim. In particular, this Article is more culturally rooted than other articles. The legislator understands that a kidnapped girl is a disgrace to the family and to the girl herself, and that afterwards the girl – in most cases - will never get married because of the incident, especially if she got

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[75] In an interviewed on 9th July 2006."
[76] Kuwaiti Criminal Law."

pregnant. Therefore, the legislator believes that allowing the girl to marry her rapist will prevent scandal, especially if the guardian will not agree to the marriage unless he is forced too. In normal situations he would never agree to allow the girl to marry a criminal. Kuwait is not the only ME country to have such a law; for example Lebanese Criminal Law states the same legislation in Article 522 Law[77] and Article 302 of the Jordanian Criminal. However, Egypt cancelled it in 1998 as a result of the demands of the women's movement. Fozeya Abdul-Sattar argued that this Article has several damaging affects on women. First, it urges the criminal to commit such crime instead of avoiding it. Second, it exempts the criminal from a major felony, and in fact it is two felonies, kidnapping, and raping. Also, if the women agreed to the marriage, she would be forced to, to avoid the shame.[78]

Mr. Al-Habib argued that 90% of kidnap cases would end up by marriage. However, in those kidnap cases the woman would be in a relationship with the man or the kidnapper.[79] The issues that arise from the Criminal Law, present another kind of women's subordination in society. It is might be true that the importance of the honour killing is becoming less, but the fact that the law gives full protection to it, only insures the discrimination against women. Also, domestic violence can be justified. As Al-Habib

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[77] Beirut Lawyers Association, *Discrimination Against Women in Lebanese Criminal Law.* [online] (Lebanon: Human Rights College,2001) Available from:
www.humanrightslebanon.org/qadaya/Qadaya5.doc
[Accessed: 15th March, 2006]

[78] Dr. Fozeya Abdul-Satter.*Hughogh Al-Mara' fe Al-Tashrea't Al-Masreya.*[online] [undated] Available from:
http://www.rezgar.com/news/s.news.asp?t=3&nid=78654
[Accessed 5th May 2005]

[79] Sometimes if the father refuse to marry his daughter to a man while they are in love, their only way to force him to agree on their marriage is to do 'arrange kidnap' because the father knows that his daughter has no chances of getting married if she was kidnapped. However, that ensures the unjust system of the guardianship.

stated in interview, as long as the husband gives 'reasonable' causes for his act he will be excused. It is not only that, but the fact that when interviewed the officials agreed that most domestic violence cases would end with relinquishment of the charge. In a brief conclusion, the Criminal Justice system gives a full protection to a man as a killer – in the case of honour killing, when he is violent – in domestic violence, and as a criminal - in the kidnapping crime. It is a complicated argument when it comes to women's position in the Criminal Justice system. Even though, most of the criminal laws in the ME – in general – are adopted from the West, the legislators made their point to emphasis the cultural discriminatory issues against women. As Abdullahi An-Na'im concluded the major debate in the ME regarding the criminal law is that on one side those that wish to leave the law as it is avoiding the hudod or the punishment stated by the Sharia, while on the other side the fundamentalists demand adopting the Islamic standards of the criminal justice.[80] In either case, women continue to be the victim of both measures.

6.4. Political Rights

The political rights movement's history was discussed in chapter two. However, this section will discuss in more detail political developments from 1999, when the Amir issued the decree giving women their rights, to 2005 when such a right was approved by parliament. It is true that the sex-discrimination was abolished in the regards of women's rights when the Electoral Law was amended giving women their rights, however, the process of passing the law can show the discriminatory characteristics of the Kuwaiti society against women.

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[80] Abdullahi A. AN-Na'eim. *Toward an Islamic Reformation.* (NY: Syracuse University, 1990) pp 134.

6.4.1 The 1999 Decree

According to the electoral legislation issued in 1962, the first Article states: 'For each Kuwaiti male who reached the age of 21 year old has the right to vote.' Accordingly, by law the election rights were exclusively for men. On 16 May 1999, the former Amir of Kuwait, Sheikh Jabber Al-Sabah, issued a decree when parliament was not in session which gave women political rights by amending the first Article of the electoral legislation to ' every Kuwaiti who has reached the age of 21 year old has the right to vote'. The importance of this decree was because for the first time the government suggested the amendment. All previous efforts were proposed by MPs. On 23 November of the same year, when the parliament was in session, the decree was not passed: 21 MPs supported the motion while 41 disagreed.[81] Some liberals also voted against the decree because of procedural reasons as it was published between sessions.[82]

Also, on 30 November 1999, an amendment to the electoral legislation Bill presented by five liberal MPs failed by two votes. The MPs can be divided into five major groups; liberals, Islamists (Sunni), Shia, Bedouins, and MPs who support the government. Islamists and Bedouins were the two major groups against the proposal and women's right in general. Most of the women who supported such rights were unveiled (liberals),

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[81] Adnan Al-Failakawi. *History of Women's Political Rights Movement.*[online][16th May 2005] Available from:
http://www.kuwaitinfo.net/accusedefend-otherskw165.htm
[Accessed 28th Feb.2006]

[82] Decrees that would been issued in-between parliament sessions called 'necessities decrees' so that a lot of MPs did not see that women's right could be classified as 'necessities'.

and those who were against it were veiled. However, the Shia supported women's rights whether they were liberal or religious. Khadeja Al-Mahmed was one of the religious leaders of the Shia's women's society which supported women's rights. She held interviews with different TV channels expressing her view[83] in support of such rights.[84] However, one Shia Islamist MP, Hussain Al-Qalaf abstained from voting on the proposal.[85] Jasim Al-Kharafi, Head of Parliament, opposed the vote and Jasim Al-Sa'doun abstained, although all three were supposed to support the proposal. As Al-Qalaf is from the Shia sect which supports this issue, and the other two are not Islamic members, Dr Hassan Abd Rabu argues that they acted to protect their self-interest in case they needed the opposition groups –Islamists and Bedouins – to support them in the future.[86]

When the government and liberals failed to pass the women's right proposal, some activist women thought that the court might be their only way to assign them their rights. The legal case was started in May 2000 by Kuwaiti activists[87] who went to different voting centres to register their names for the election. They knew that they would not be

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[83] Al-Arabiyanet:Noqtat Netham:*Kuwaiti Woman Activist: Khadeja Al-Mahmeed.*[online][30th May 2005] Available from:
http://www.alarabiya.net/Articles/2005/05/30/13505.htm
[Accessed 5th Jan. 2006]

[84] It might be argued that the reason why Islamists Shia support women's right while Islamist Sunni are opposed to it, is that the first sect look to Iran as an example where women enjoy having such rights, while Sunni Islamists look to Saudi Arabia as an example, where women are deprived from most rights not only political, ignoring the fact that every other Moslem country does recognize political rights for women.

[85] Heba Ezzat. *Kuwait Women Between Religion and Politics.*[online][undated] Available from:
http://www.islam-online.net/iol-arabic/dowalia/adam-10/ahlan-1.asp
[Accessed 5th Jan. 2006]

[86] Dr. Abd-Rabu, Hassan. *The Failure of the Women Suffrage Right Proposal, Who Wins, and Who Loses?.*[online] [undated] Available from:
http://www.azzaman.com/azzaman/articles/2002/02/02-08/379.htm
[Accessed 1stApril 2006]

[87] Those activist were: Rolla Dashti, Farida Dashti, Badreya Al-Awadi, Najat Ali Ahmad, Hala Al-Abdullmohsen, and one man named Adnan Al-Essa.

allowed to do so, but it was the only way to reach the administrative court which would pass such a case on to the constitutional court. Thus, when they were refused to register their names in different electoral districts, they went to the police station to report the situation and file a complaint against the Minister of the Interior. There were six cases, but only three made it to the constitutional court which combined them into one case. On 4 July the case was dismissed for procedural reasons.[88] Also, in January 2001 the constitutional court dismissed another trial for the same reason, and a further two on 17 March 2002[89].

6.4.2. The Final Process Towards Amending the Electoral Law

In May 2003, the Council of Ministers amended the Local Council law giving women the right to stand and vote which was a major step towards their political rights. Of course, such an amendment by the government has to be presented to parliament to vote on it.

On 30 May 2004, the government sent a further proposal to parliament to suggest amending the first Article of the electoral legislation. As the government was more serious about the issue it arranged with the Minister of Justice, Ahmad Baqer (who used to be the Minister of Islamic Affairs and one of the greatest opponents to the women's rights) to produce a new *fatwa* legalising women's rights. The *fatwa* said it was not *haram*, cancelled the old one issued by the Ministry of Islamic Affairs which said that according to the Sharia law, women cannot participate in parliament or vote. The *fatwa*

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[88] Al-Qabas Newspaper. [online] [5th July 2000] Available from: http://www.alqabas.com.kw [Accessed 27th Feb. 2006]

[89] Al-Failakawi, A.

was needed to get the support from Islamist MPs or for MPs that they cannot support such rights because they could lose votes support in the next election. However, the *fatwa* could not contradict the previous one. It could not give women their rights immediately, but it should be more careful and wise in order for people to believe in it. This is why it was handled by Baqer who was expert in the Islamic groups.[90]

In February 2005, ten MPs filed a request to change the first Article of the electoral legislation to the Constitutional Court, which was the only way to guarantee that the procedures are correct. As a result, if the court examined the case, it would amend the Article since it obviously contradicted Article 29 of the Constitution. MPs who opposed this issue started to form a lobby to vote against the request. Later on in same month, the government presented a proposal to parliament to vote on the first Article of the electoral legislation again and criticised the request of the ten MPs. The MPs defended their request by saying that the government was never serious about women's rights. Since the government was more serious about the issue than at any other time, especially as there were international pressures on Kuwait to give women their political rights. Thus, the government sent a letter on 22 February 2005 to the Head of Parliament to pressure the Defence and Interior Committee[91] to give its report about the government's proposal on the women's issue in order to put it for vote as soon as possible. When the ten MPs felt

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[90] Al-Watan. *A New Fatwa is being 'Designed' for Women's Rights.* [online] [4th Oct.2003] Available from:
http://newsweek.com.kw/default.aspx?isu=031004&page=1&topic=199982
[Accessed 28th Feb.2006]~

[91] The Parliament has a number of committees, each one specialize in certain subject, such as: health, education, economy, human rights, etc. when either the government or one – or more- of MP present a proposal, it will first go to one of those committees depending on the subject of the proposal. The committee will write a report whether to agree or not and suggest a day to vote on and turn it to the Head of the Parliament.~

that the government was serious about the issue this time, they agreed to set aside their request until the vote. During that period, all the news was about the development of women's rights The Islamic Affairs Ministry issued a *fatwa* saying: "regarding women's political rights in Islam, there are three main different opinions: first, there are no political rights for women, it is forbidden. Second, a woman cannot be an MP, though she can participate in the voting process. Third, women are allowed the full package of political rights; voting and electing. Since there is more than one opinion, then the ruler has to decide which one to adapt".[92]

The two major religious Sunni groups, Brotherhood and Salafi,[93] announced that they did not support the proposal for women's right, but they might allow women half of the rights – voting only.

The government then worked hard on negotiating with the MPs to support the proposal. During this period, women's rights were the main issue. Some MPs worked in the opposite direction .There were daily lectures all over Kuwait, some to back it, others to oppose it. Each MP tried to get as much support as he could from the electorate, while the government issued a daily statement directed at the MPs. For example, in one it tried to use diplomacy and in another it threatened to dissolve parliament when some MPs tried to bargain by presenting another proposal with demands asking the government to pass

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[92] Sadeq Bader. *Women's Rights is Settled.* [30th April 2005][online] Available from: http://www.alwatan.com.kw/default.aspx?pageid=40&mgdid=328064
[Accessed 5th May 2006]

[93]Muslim Brotherhood main believe is that:" Islam was not only a religion, but a fundamental force in society and politics. It was founded in 1928 by Hassan Al-Banna. Salafi is usually referred to as the fundamentalist Islamic thought. For more about both movements see:
http://www.globalsecurity.org
[Accessed 22ndMarch 2006]

an increase in salaries, exemption from paying electricity bills, and to include the army people in the voting process.[94]

This tension between the government and its MPs supporters for the proposal and the MPs who opposed it had one advantage: it clarified how society looks at women in general. In one of the seminars MP Mohammad Al-Busairi mentioned that it was not the right time for women to have political rights since they are not mature enough socially or politically. The host of the seminar said that was a lot of corruption in politics and in Parliament that women could not tolerate.[95] MP Dr. Adel Al-Tabtabae', who represented the salafi, said that according to the Sharia woman can vote, but she cannot be a MP. Of course this guaranteed him more votes with women in the following elections, but with no further competition from women if they became candidates. Also, another MP, Dr.Faisal Al-Mussalam (an Islamist) was surprised that the government insisted on the women's issue in particular while there were many subjects of priority that had to be discussed. According to him, the women's issue had no priority and could have waited until later on.[96] Furthermore, one of the opposing MP said that the government pressured the MPs to pass the proposal only to satisfy the international community, but it claimed that it did what was possible to be done. But, as it did not work, this was what the majority of the electorate wanted and that is what democracy is about. Another MP stated

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[94] Al-Watan. *The Government is Angry.* 27.[online][27th April 2005]Available from: http://www.alwatan.com.kw/Default.aspx?MgDid=343858&pageId=26 [Accessed 02nd March 2006]

[95] Al-Watan. *Women's Rights in April.* [online][9th March. 2005]Available from: http://www.alwatan.com.kw/Default.aspx?MgDid=328108&pageId=26 [Accessed 02nd March 2006]

[96] Al-Watan. *The Women's Rights 'Will' Pass.* [online] [12th March. 20005] Available from: http://www.alwatan.com.kw/Default.aspx?MgDid=329125&pageId=26 [Accessed 02nd March 2006]

that because woman has a very special, higher position in Islam she should not lower herself by becoming involved in elections and politics as they might damage her reputation.[97] Some Islamic leaders began to be more lenient on the issue of women's rights and tried to convince their MPs to support the proposal as it might widen the number of their supporters if women were able to vote in the next election.[98] A columnist said that Kuwaiti women were not politically mature and therefore it was a wrong move to give them any political rights since it would result in strange, immature outcomes.[99]

Opposition to women's rights is on two main bases. First, according to the Sharia, it is claimed that women cannot be part of politics (electing and voting). Second, both socially and traditionally, politics is a man's job and it is shameful for women have a part. Though, for those who opposed women's rights because of traditions, they found it difficult to express their opinion freely. This is why they refer to Sharia since, even if there are other proofs and examples that women's rights do not contradict Sharia, they will still insist that Sharia forbids such rights because it is their only way to oppose it.

Meanwhile, the General Secretary of the Islamic Affairs Ministry announced that a woman can be a minister, diplomat, or member of parliament.[100] At that time Kuwait was full of discussion: every position holder was giving a view. The government meant to

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[97] Al-Watan. *Women's Rights is a Decision and it is Taken.* [online][14th March. 20005] Available from: http://www.alwatan.com.kw/Default.aspx?MgDid=329640&pageId=26 [Accessed 02ndMarch 2006]

[98] Al-Watan. *Women's Rights is a Decision and it is Taken.* [online][14th March. 20005] Available from: http://www.alwatan.com.kw/Default.aspx?MgDid=329640&pageId=26 [Accessed 02ndMarch 2006]

[99] Marzouq Al-Harbi, *politics maturity before political rights*.[online][25th March 2005] available from: http://www.alwatan.com.kw/Default.aspx?MgDid=333587&pageId=40 [Accessed 02nd March 2006]

[100] Al-Watan. *A Wpman Can be a MP and a Judge.* [online] [13thMarch 2005] available from: http://www.alwatan.com.kw/Default.aspx?MgDid=329308&pageId=26 [Accessed 2nd March 2006]

delay the vote on both the political rights' proposal and the women's participation in the local council in order to have more time to convince MPs, and to pass the two proposals. On 2 May 2005, the local council proposal was voted on. The result, with the government efforts to pass it, was that twenty nine voted 'yes', only two voted 'no', but complexity occurred when twenty nine abstained. That created a legal difficulty of whether the proposal passed or not. According to the law consular in the parliament there were two different opinions. First, the proposal did not pass because it did not obtain agreement from the majority. Second, the proposal passed and it should be the new law as MPs who abstained were considered as not to have attended. The parliament chose the first opinion but decided to re-vote on the proposal on 16 May. In order for the government to have more MPs on its side, it agreed to add an 'Islamic restriction'[101] on the political rights proposal. Accordingly, Islamists MPs started to have different opinions: some insisted on voting against it because they believe that women should not be part of the parliament or the local council; others said that it was still possible to agree on the local council participation as long as there were 'Islamic restrictions'.[102]

Ten days before the designated day for women's rights voting, the government agreed on the concept of raising salaries which some MPs tried to bargain with in order to support women's rights proposal. This was voted on 16 May — the same day women's rights were voted on.[103]

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[101] Some MPs suggested such clause to get more support from Islamists MPs. It means that if women were given their suffrage rights, then they have to do that in the Sharia boundaries regarding their looks, wear, and behaviors in general.

[102] Al-Watan. *The Price For Passing Women's Rights Law.* [online][8th May 2005] Available from: http://www.alwatan.com.kw/Default.aspx?MgDid=347501&pageId=26 [Accessed 2ndMarch 2006]

[103] Al-Watan. *Increasing the Salaries for Employees.* [online] [5th May 2005] Available from:

6.4.3. May 16th

On 16 May[104] there was much tension between the MPs and the government. There was a full audience made up of the two groups of supporters and opposition, and the media. It was noticed that a minister lobbied the MPs before the vote in order to guarantee their votes. The votes were a shock when compared with the last votes for the local council. The result was: 35 yes, 23 no, and only one (the Head of Parliament) abstention. The result kept the opposition MPs quiet for a while, before MP Dr. Abo-Ramya said that the proposal would only help to westernise the Kuwaiti women, and everyone who voted for it will carry the burden of this sin for the rest of their lives. Another MP, Faisal Al-Mosallam, said that women cannot be decisive, and can never handle the pressure of being an MP, or a minister. Not only that, but one the Islamists, Fahad Al-khanna, read the following Qur'anic verse:

But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you. But Allah knoweth, and ye know not.[2:216]

Then he said that he believed that in the next election Islamists MPs, especially those who opposed the proposal, were going to win because women would support them.[105] Such a statement should not come from someone who believes that women political participation is haram or prohibited because, by believing so, he should not accept votes

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http://www.alwatan.com.kw/Default.aspx?MgDid=346050&pageId=26
[Accessed 2nd March 2006]

[104] When the Amir issued the women's rights decree in 1999, was also on the 16th of May.

[105] Al-Watan. *A Dream Came True.* [online] [17th May 2005]Available from:
http://www.alwatan.com.kw/Default.aspx?MgDid=349445&pageId=26
[Accessed 2nd Mar.2006]

from women or be a member in a parliament in which women voted. However, not a single MP from the twenty three who voted against the proposal, took a stand such as a boycott the next election. Whether this will be a major factor for their electorate, it is too soon to decide.

In fact, opposition to the proposal has also gained from the statement of "Islamic restrictions".

6.4.4. The Islamic View fro the Political Rights for Women

Opposition to women's political rights has some religious roots: some Islamists believe that women cannot be part of what is called *'WELAYA AMMA'*[106] (general authority) which means that there certain jobs that are forbidden to women by Islam. These jobs include: president, member of parliament, judge and minister. The main source for this prohibition is the Hadith where Prophet Mohammad said:

Narrated Abu Bakra:

During the days (of the battle) of Al-Jamal, Allah benefited me with a word I had heard from Allah's Apostle after I had been about to join the Companions of Al-Jamal (i.e. the camel) and fight along with them. When Allah's Apostle was informed that

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[106] In language '*welaya*' means power, when some holds it means he has authority over something or some one, and '*Amma*' means general in language. If the two words were used jointly it means: legal power that gives a chosen person – by electing him – the power to enforce his commands for the benefit of ruled people. Nathem Al-Mesbah. *Definition of Al-Welaya.* [online] [17th April 2005] available from: http://www.almanhaj.com/article268.htm
[Accessed 23rdMarch 2006] ~

the Persians had crowned the daughter of Khosrau as their ruler, he said, "Such people as ruled by a lady will never be successful."[107] And the Qur'anic verse: **Men are the protectors and maintainers of women.[4:34]**

It is mainly from these two verses that a fatwa was issued that certain jobs are forbidden to women. The main point here is that woman cannot interfere in taking decisions that can affect Muslims' welaya amma. It is important to mention how the political system has changed significantly from the early years of Islam until now. First, there was not a president, Amir or king; instead there was an *Imam*.[108] The difference is that the Imam would be the leader for the entire Muslim nation since in those days there were no borders or countries, so the Islam region used to be dealt with as one state. Then, the Imam would usually appoint a caliph in a different region of the Islamic world. Both the Imam and caliph can be the Imam at the prayer meaning to lead Muslim in their prayers, and give the Friday sermon. So the Imam is not only political, but he is a religious man too. When that was the situation, Prophet Mohammad said 'never be successful' while he could say 'it is forbidden' for example. Some argue that this Hadith was related to a very special event: when a woman was appointed to be the Khosrau in Persia (Iran) she tore up the Prophet's message.[109]

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[107]Translation of Sahih Bukhari,Book 59.*Volume 5, Book 59, Number 709.*[online][undated]Available from:
http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/bukhari/059.sbt.html#005.059.709."
[108]Imam could be defined as:" The word imam as used in the Quran means a source of guidance. The meaning is not limited only to prayer. Thus, the leader should guide the people along the path of Islam. In other words, the role of the leader is to follow the teachings of Islam and to act as a role model."
Moslem Women League. *Women in Society: Political Participation.*[online] [Sep.1995]Available from:
http://www.mwlusa.org/publications/essays/polirights.html
[Accessed 10th Mar.2006] "
[109]Jomanah Farhat, *women's Political Rights in the Islamic World.*[online][undated]Available from:
http://www.amanjordan.org/aman_studies/wmview.php?ArtID=884

The Hadith would be relevant only to that situation; otherwise it would contradict the Qur'an which mentioned the Queen of Sheba saying:

"I found (there) a woman ruling over them and provided with every requisite; and she has a magnificent throne.[27:23]

In this verse, it is mentioned that not only has the Queen of Sheba a great kingdom, but she followed the *shura*[110]system when it says in the same Sura:

She said: "Ye chiefs! advise me in (this) my affair: no affair have I decided except in your presence."[27:32]

The Queen came up with a democratic system that some Islamic countries still lack. So the Qur'an does mention the issue of women being leaders without condemnation; instead, it compliments her leadership.

In the Qur'anic verse, there is a strong attitude that the quamma works among the family only. Husbands are quammon upon their wives, but a husband is not *quamm* upon all women. So this particular Qur'anic verse cannot be evidence for women not to vote or elect. Beside, the whole political process has changed since then: a president (Amir or king) would rule a certain country only, and not the whole Muslim nation. In addition, although the president has power and authority, is not a dictator as parliament also has

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[Accessed 9thMar.2006]¯

[110] Shura in language means to ask someone to give an opinion. In practice defined as: ' to surveying people's opinion'
The Palestine Information Center. *Al-Shura.*[online][undated] Available from :
http://www.palestine-info.info/arabic/books/2006/musheer/mush7.htm
[Accessed 21st March 2006]¯

authority. Also, parliament includes a number of members depending on different factors, so that all of its decisions are taken by voting, and no one can take decisions independently. Consequently, even for the Hadith to be generalised, it cannot be applied to political rights (voting and electoral system).

There are different angles to take with the two main Islamic sources. What usually happens is that when trying to interpret these verses, they will be affected by the surrounding environment, social and political. Women's political rights present a good example of how the Ministry of Islamic Affairs' fatwa has changed from the one in 1985 which said that it was a forbidden right to women.[111] There are different opinions about this issue and the president should decide which opinion to adopt. The fatwa was more lenient in 2005 mainly because of political reasons. Also, the MPs became more lenient about the issue, which is why the 'yes' voters were higher. Even Islamic MPs who were against the proposal until the end did not give a statement about boycotting the next election. Instead, they announced that they were going to win the next elections because of their rejection of women's rights. When Dr. Masouma Mubarak who was appointed on 13 June 2005 as the first woman minister, started take the oath in the parliament, three Islamist MPs started shouting on order to stop her from saying the oath and prevent her from becoming a minister.[112]

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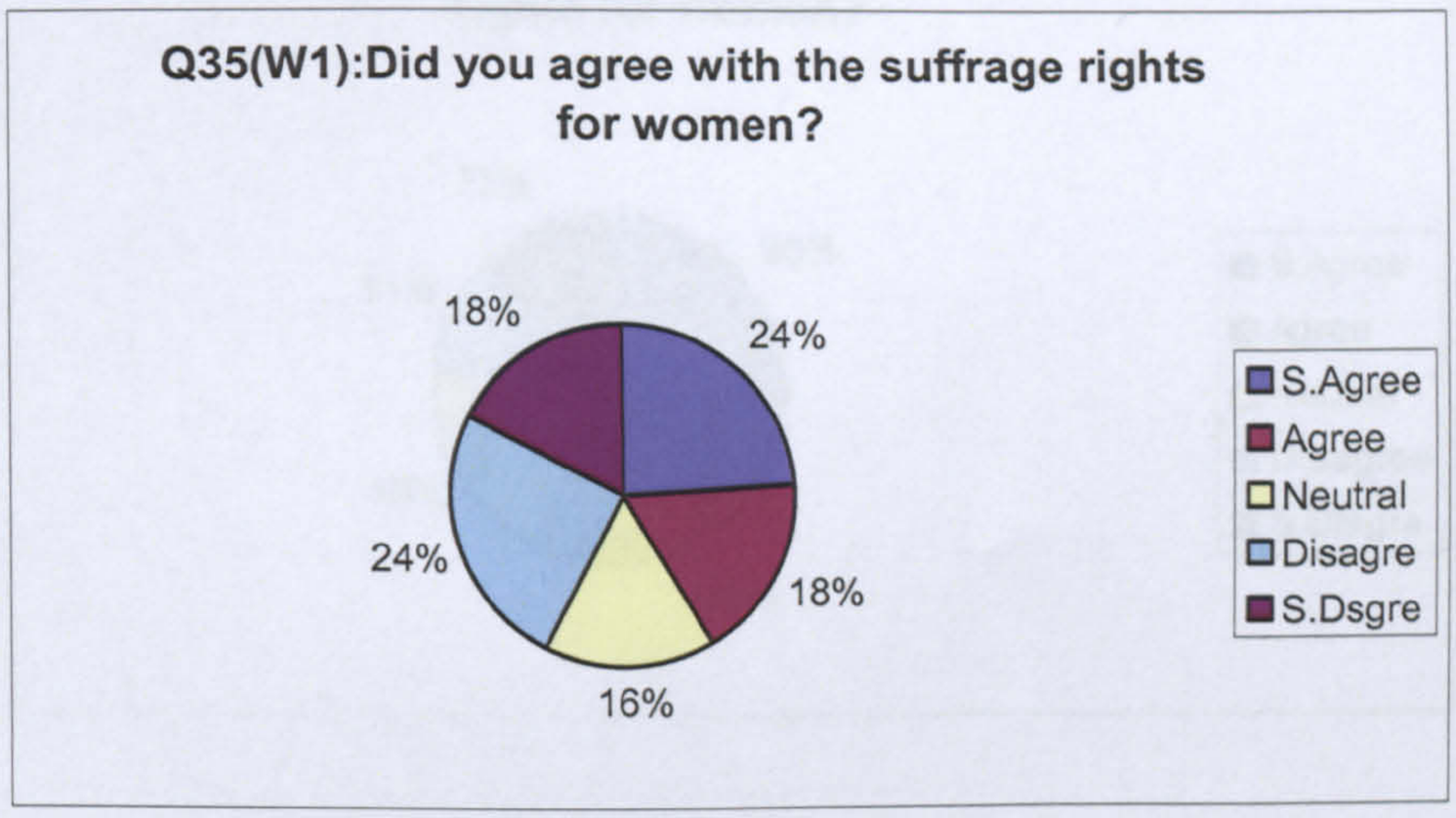
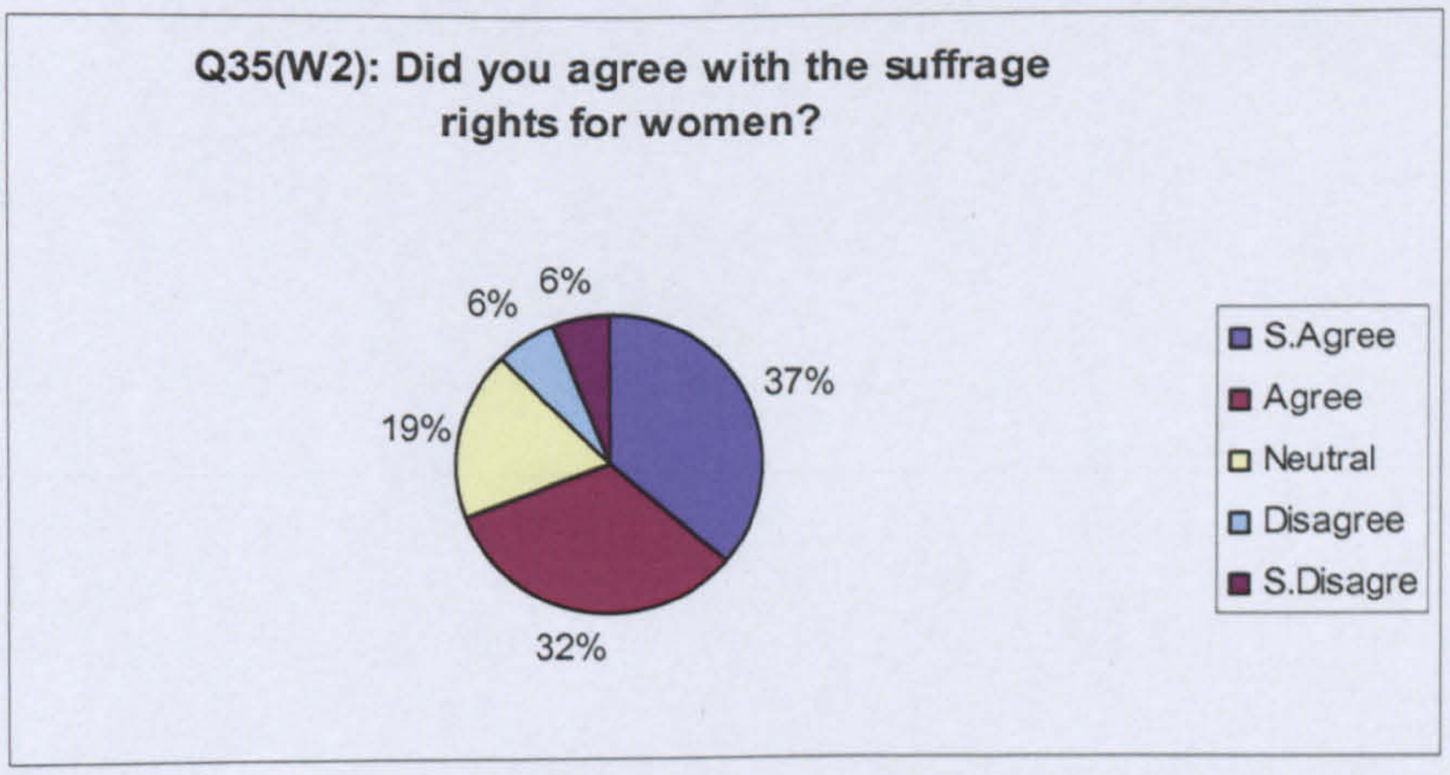
[111] Kuwait Research Center, *Politician Woman* – Detailed Study.[online][undated] Available from: http://www.kuwait25.com/ab7ath/view.php?tales_id=281
[Accessed 5thJan.2006]~

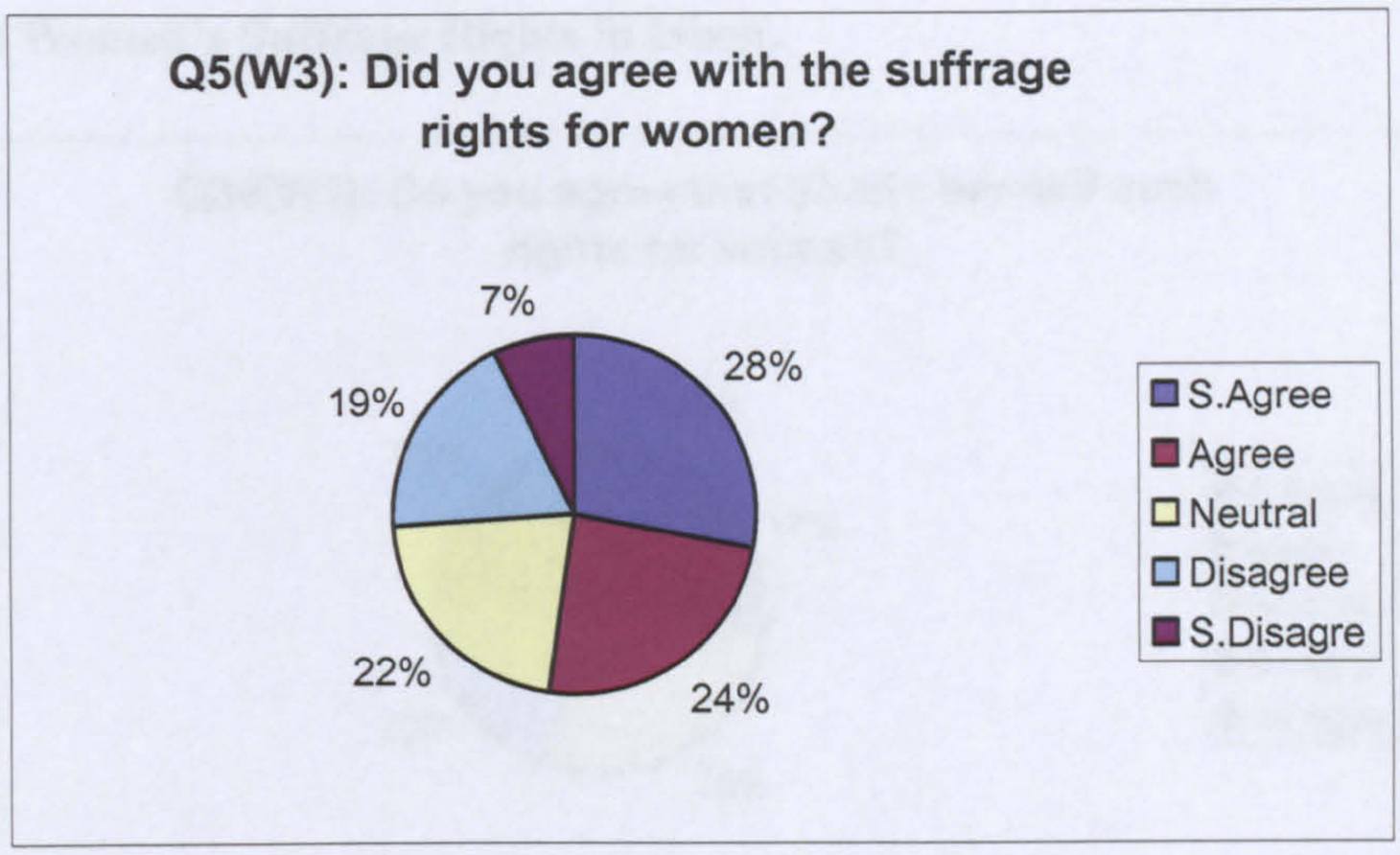
[112] Al-Watan. *The First Oath for A Woman.* [online] [21st June 2005] Available from: http://www.alwatan.com.kw/Default.aspx?MgDid=356424&pageId=26
[Accessed 1stApril 2006]~

57% of men in the questionnaire supported suffrage for women which is a larger percentage than among the housewives. The difference between the workers and housewives is noticeable, and this might be because of a matter of priority since some did not think that it is an important matter or that it can change anything. This is especially true since only 27% of the housewives think the Sharia banned women from voting and from being elected and 42% of them had opposed such a right, meaning that they have reasons for opposing other than religious ones.

Figure 6.7 Supporting the Women's Suffrage Rights.






Q5(W3): Did you agree with the suffrage rights for women?
7%
28%
19%
22%
24%
S.Agree
Agree
Neutral
Disagree
S.Disagre

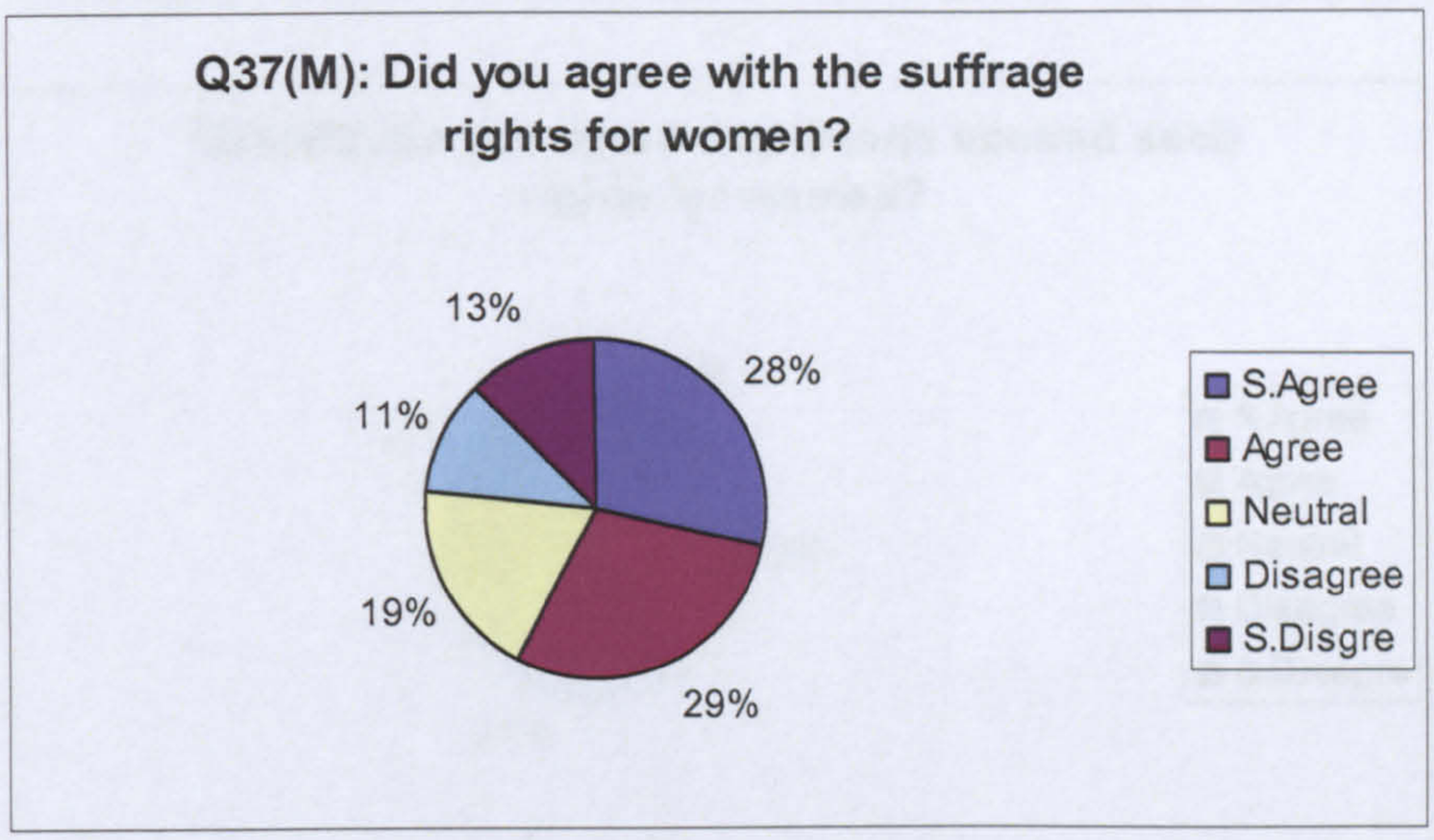
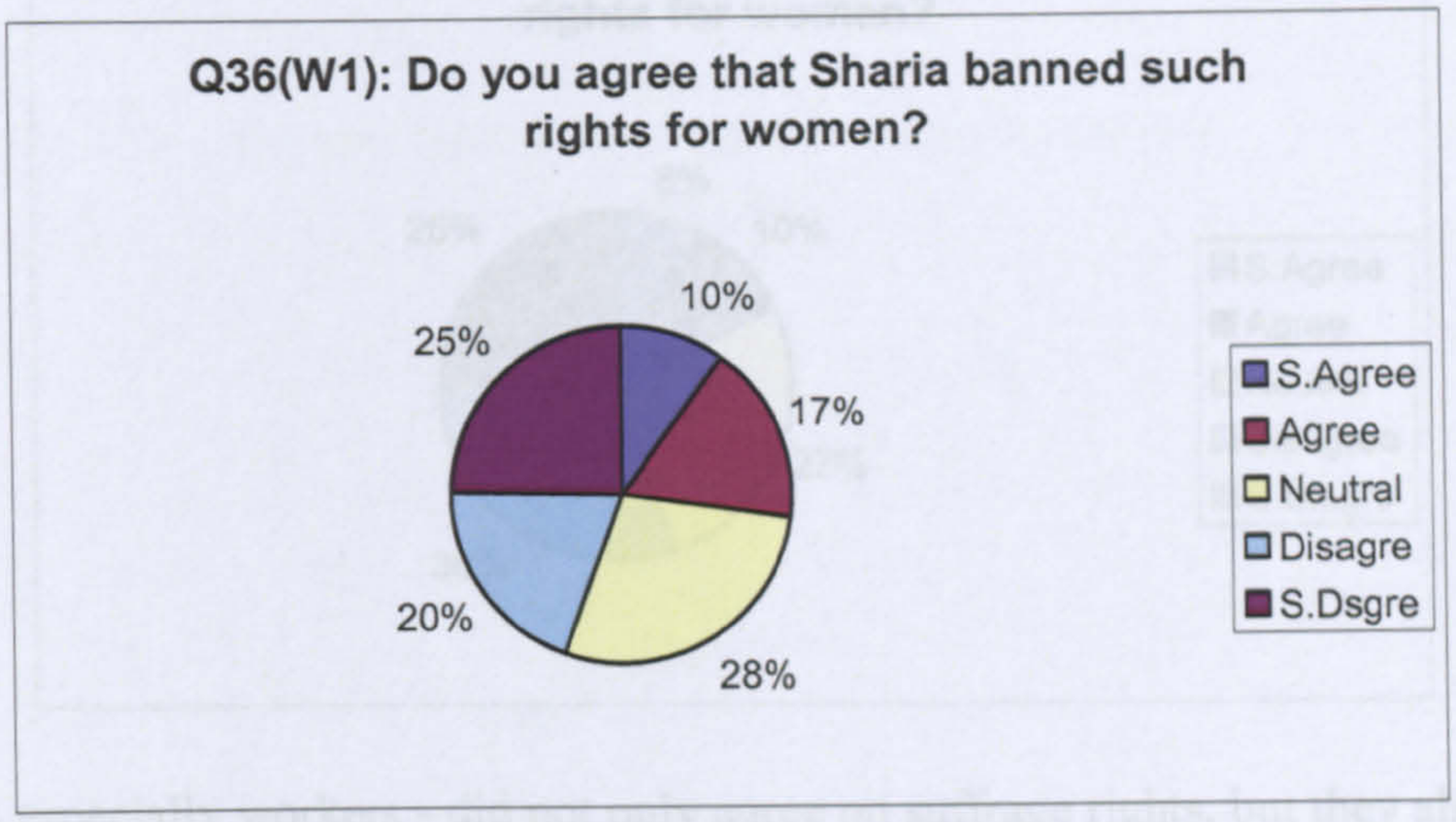
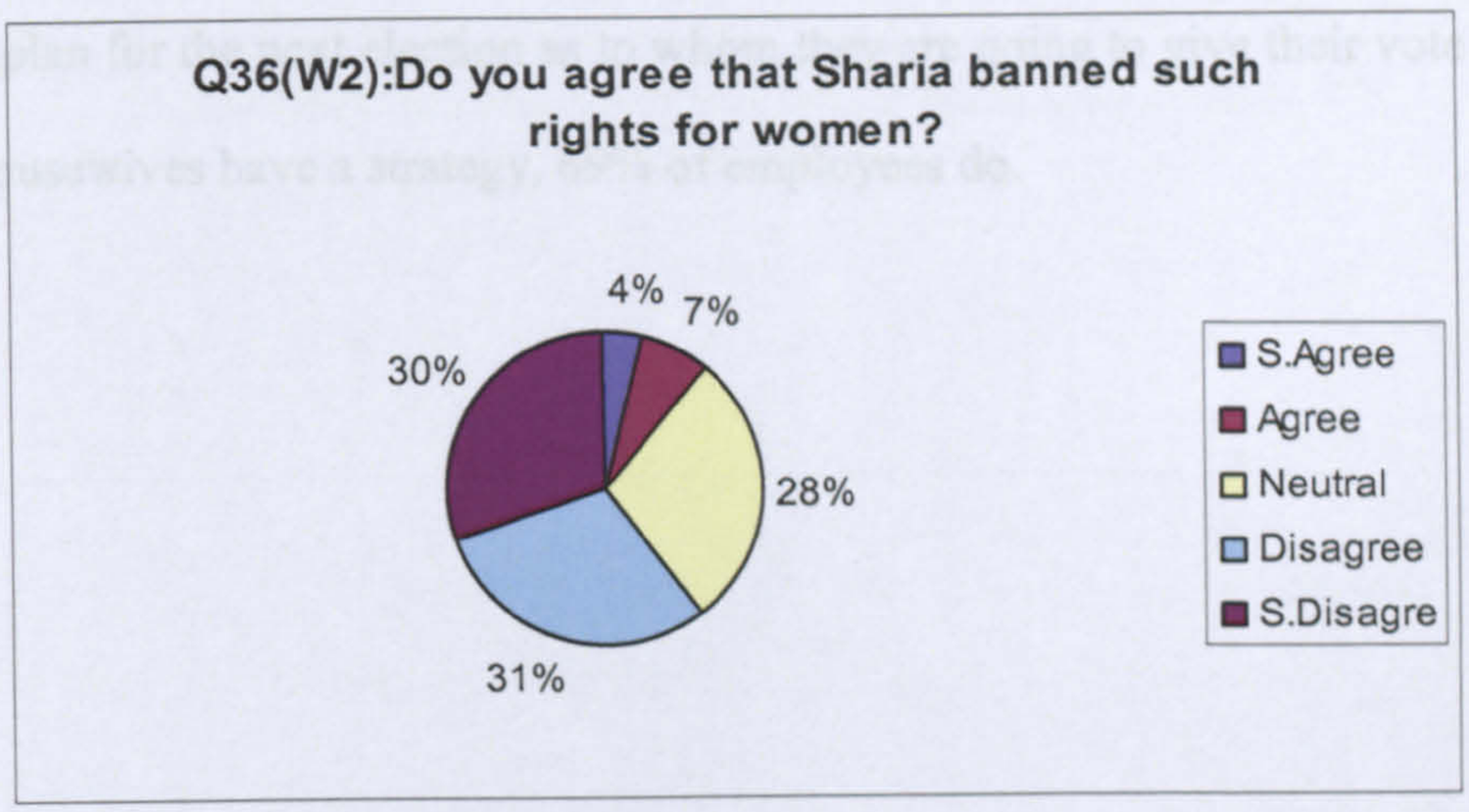
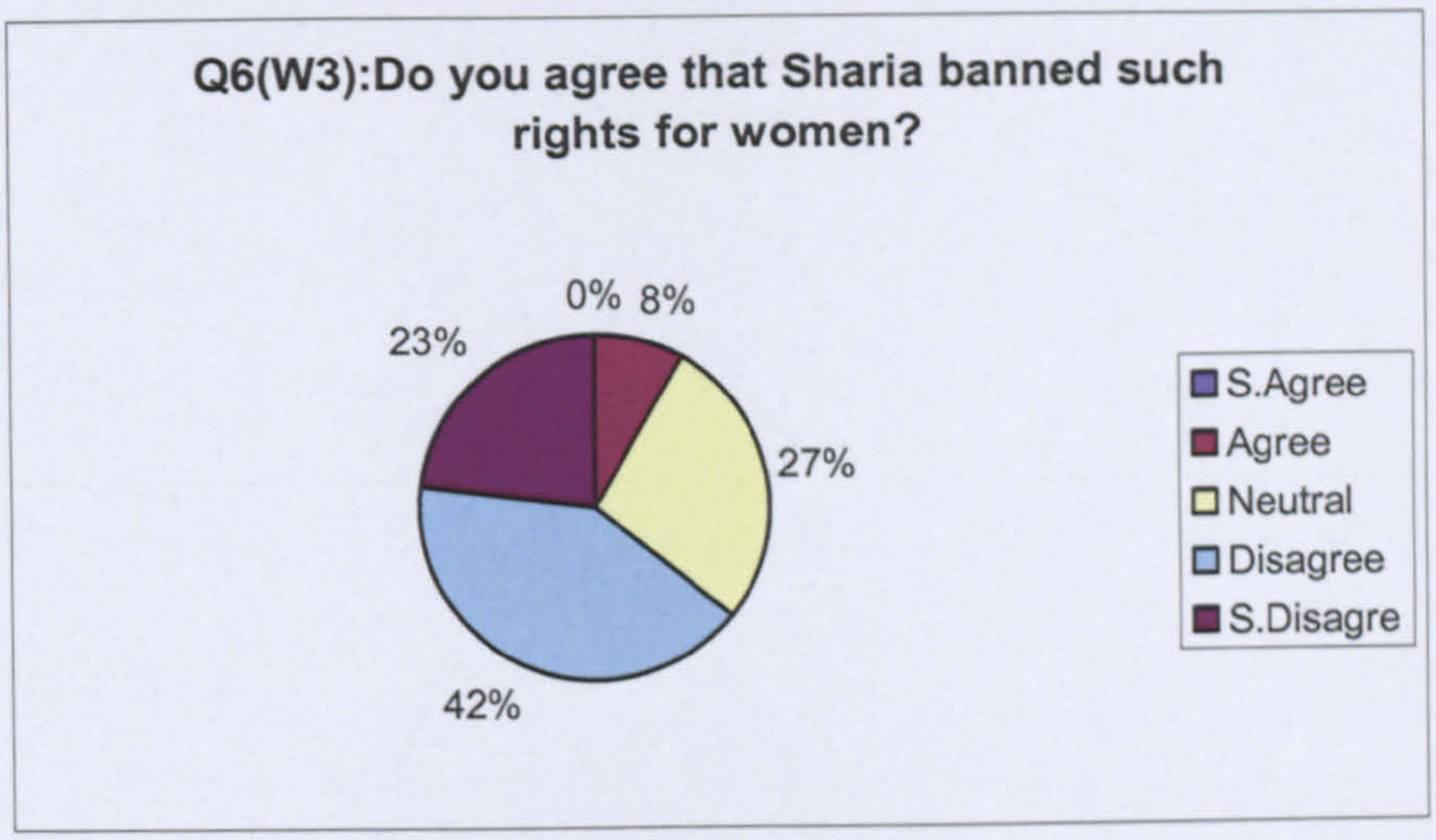
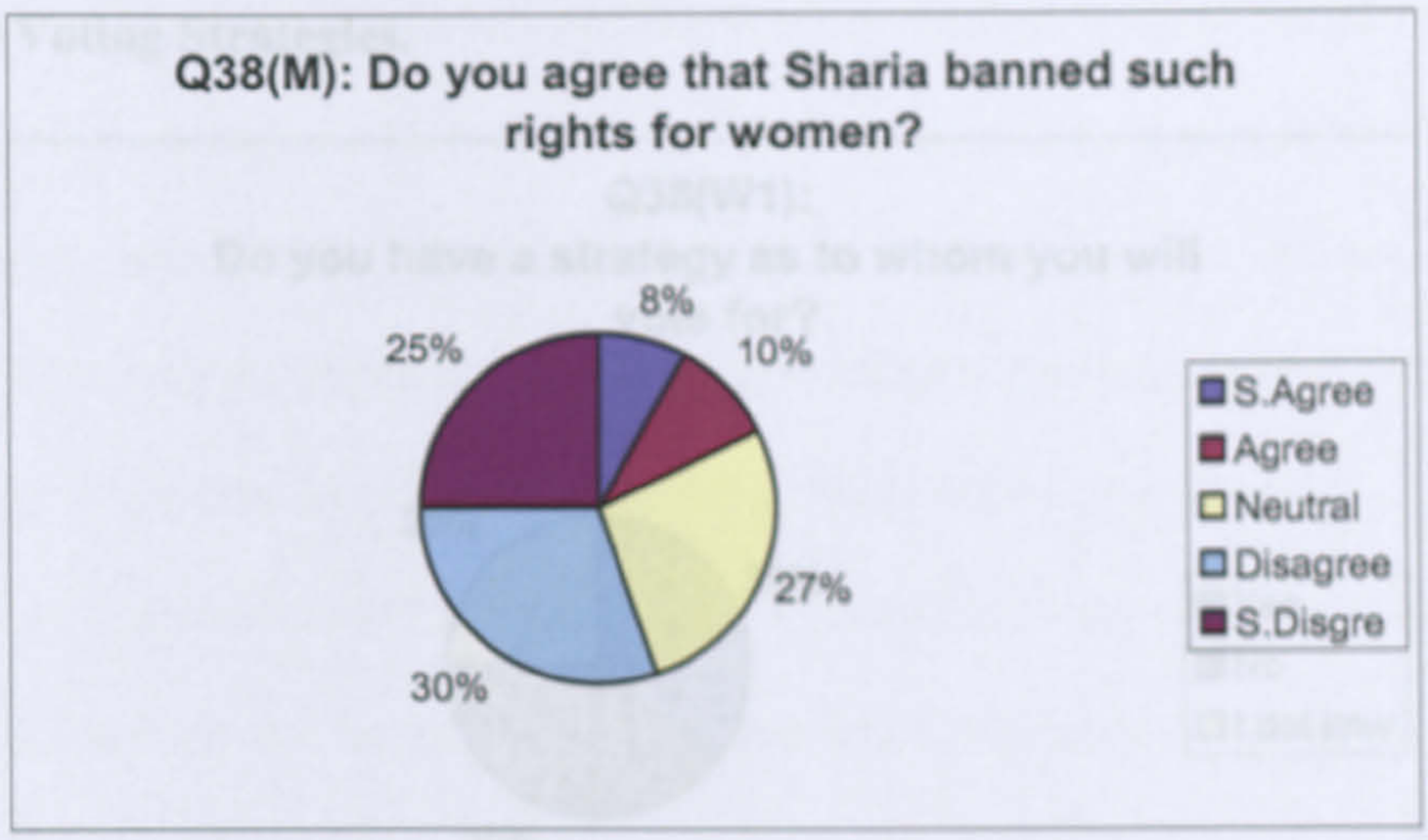

Q37(M): Did you agree with the suffrage rights for women?
13%
28%
11%
19%
29%
S.Agree
Agree
Neutral
Disagree
S.Disgre

Figure 6.8 Women's Suffrage Rights in Islam.



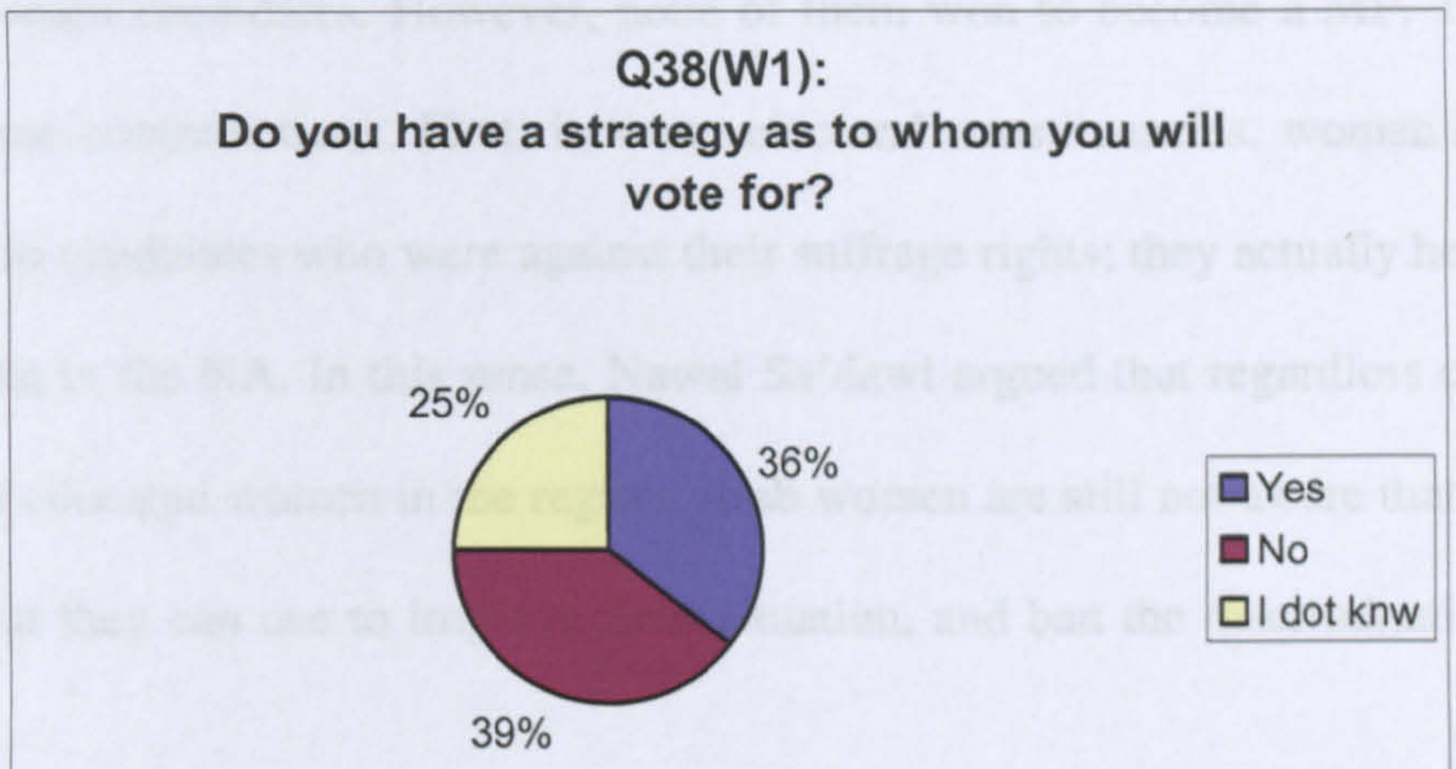


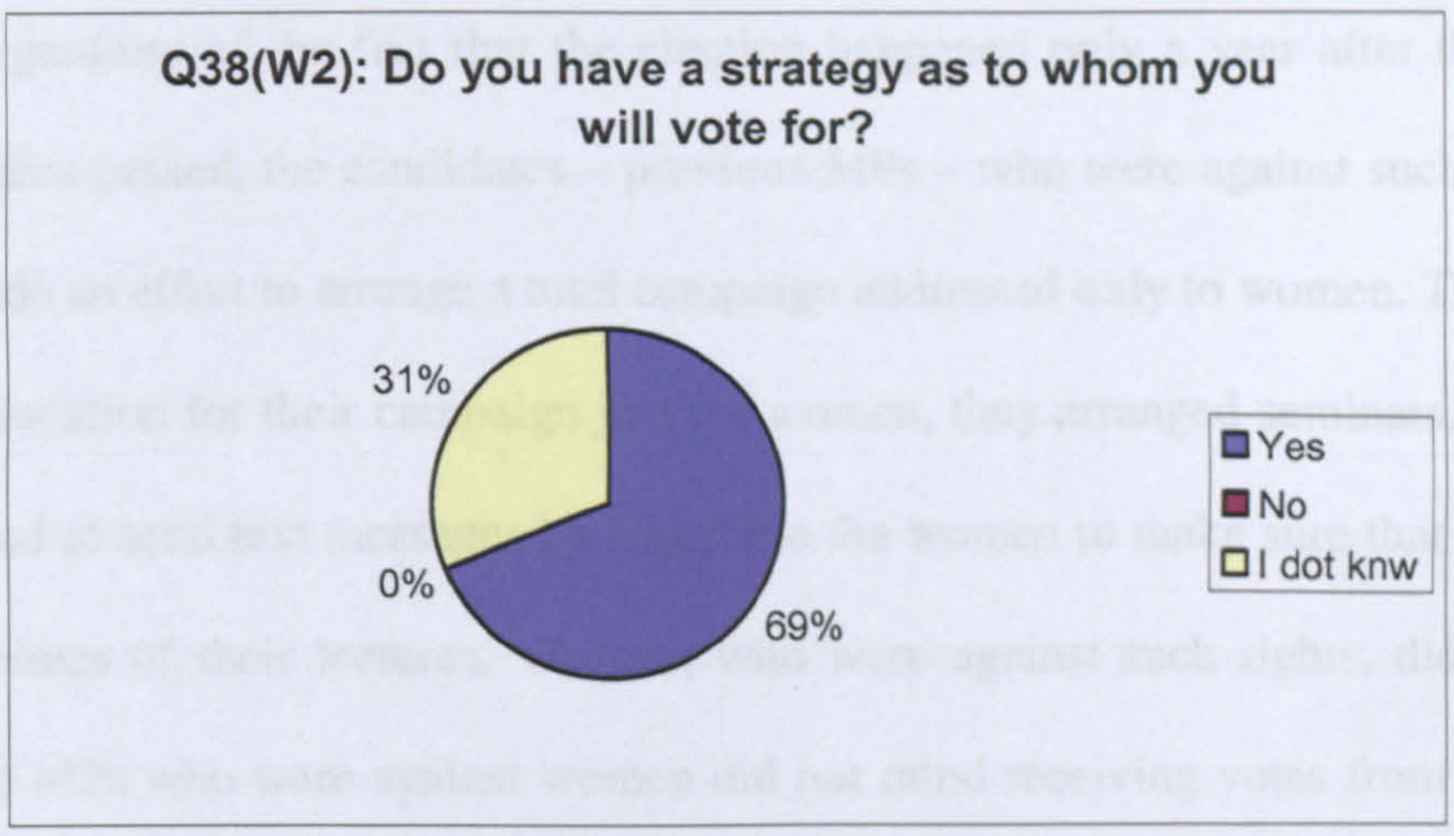


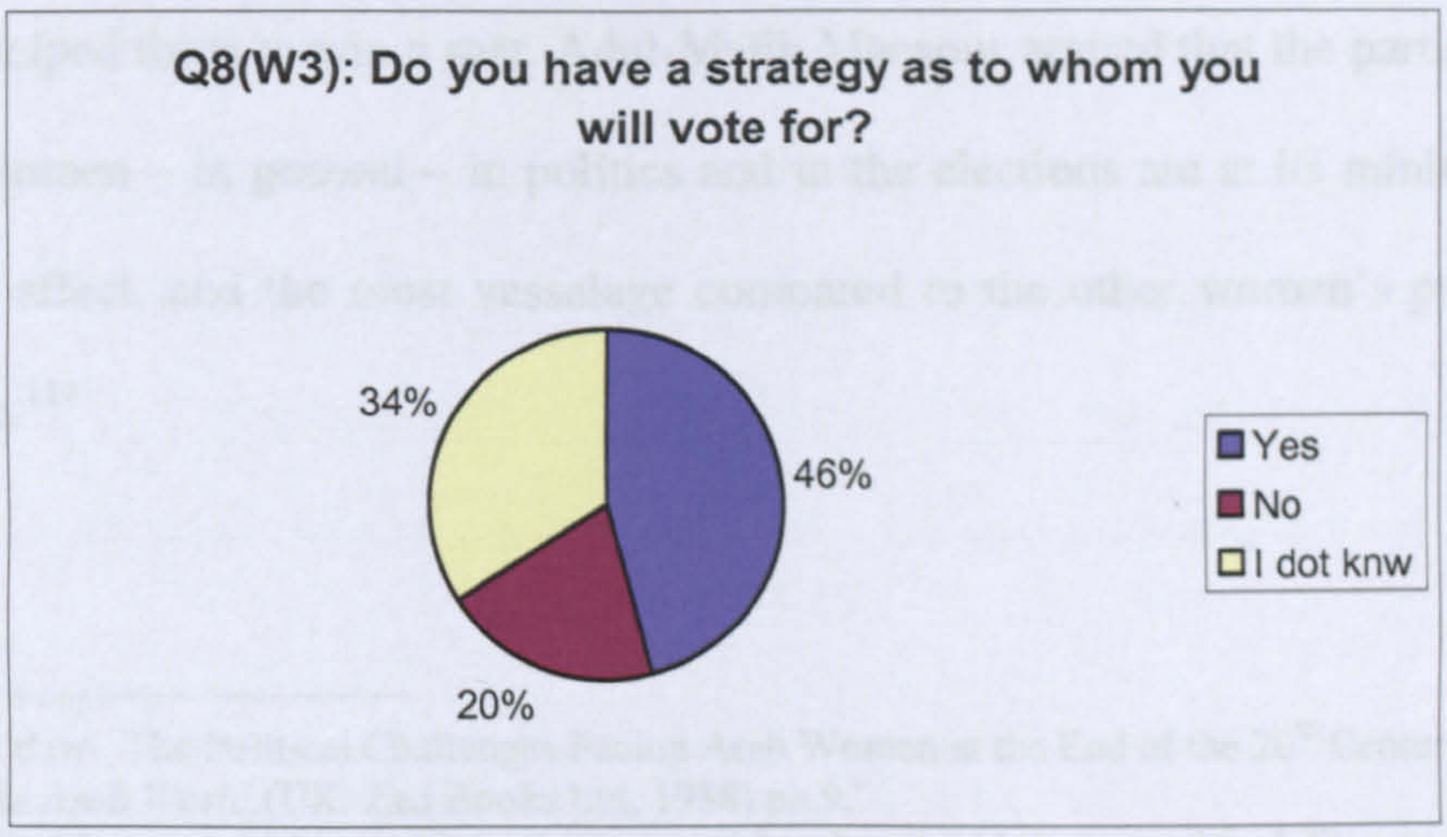


Women - especially workers - did not only agree on suffrage rights, but they also seemed to have a plan for the next election as to whom they are going to give their vote to. While 36% of housewives have a strategy, 69% of employees do.

Figure 6.9 Voting Strategies.







On 29th June 2006 Kuwaiti women participated for the first time in the election, there were 27 women candidates. However, none of them won to become a MP. The results showed some contradictions. First, in some electoral constituencies, women had given their votes to candidates who were against their suffrage rights; they actually helped them to win a seat in the NA. In this sense, Nawal Sa'dawi argued that regardless of the high numbers of educated women in the region, Arab women are still not aware that politics is a power that they can use to improve their situation, and ban the discrimination against them.[113]

Second, regardless of the fact that the election happened only a year after the women suffrage rights passed, the candidates – previous MPs – who were against such rights for women made an effort to arrange a total campaign addressed only to women. They put on a separate location for their campaign just for women, they arranged seminars, and some of them used to send text messages by mobile to the women to make sure that they knew about the times of their lectures. Women, who were against such rights, did not mind voting, and MPs who were against women did not mind receiving votes from women as long as it helped them to win a seat. Adul-Malik Mansour argued that the participation of the Arab women – in general – in politics and in the elections are at its minimum, have the lowest affect, and the most vassalage compared to the other women's participation world wide.[114]

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[113] Nawal Sa'dawi. The Political Challenges Facing Arab Women at the End of the 20th Century. In: *Women of The Arab World.*(UK: Zed Books Ltd, 1988) pp 9.˜

[114] Abdl-Malik Mansour. *Al-Mara' Al-Arabeyia wa Al-Musharaka Al-Seyaseya (Arab Women and Political Participation).* In: *Women and the Changes of A New Age.*(Damascus: Dar Al-Fikr, 2002) pp 169.˜

6.5 Public Sectors Occupations

There are a certain jobs that Kuwaiti women cannot hold; minister (which has changed with the 2005 election law), prosecutor, judge, and police or army officers. According to many *sheikhs*, women cannot have access to these jobs or be president.[115] The Sheikhs put forward a lot of reasons why a woman should not be in such positions.

6.5.1.Judges

6.5.1.1. The Different Opinions for Appointing Women as Judges

There are three different opinions about appointing a woman as a judge:

1. Women cannot be judges or be in any position that is related to general authority, since it is forbidden.

2. Women can be judges only in certain circumstances since there are times when a woman's testimony is not accepted. She can be a judge in family disputes for example.

3. Women can be judges like men.[116]

The first view is supported by numerous evidences. First is the Hadith: 'Such people as ruled by a lady will never be successful'. As Mohammad Sa'ad argues, this Hadith is not directed to a certain incident since it says 'woman' who can be any woman of any nationality, and says 'people' also includes any 'people'. Second, is that neither the

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[115] Being a president in Kuwait in an issue cannot be discussed since it is an inherent position, few people have the authority to choose, it is mostly the Royal Family –Al-Sabbah decision.

[116] Mustafa A. Obaid. *Tawleyat Al-Mara' Al-Ghada'* (Appointing Women as Judges). (Egypt: Dar Fateeh, 2000) pp 53,54.

prophet nor his followers appointed a woman as a judge. Third, the Qur'anic story about Balqis, the Queen of Sheba cannot be an example since she was a non-believer. Fourth, claiming that the second Khalifa after the prophet, Omar Ibn Al-Khatab, appointed a woman to be responsible for the market (equivalent to Minister of Trade) was forged and never happened.[117] Also, Al-Mahry, the Shia spokesman in Kuwait, stated: 'a woman cannot be judge, such a position would need a clear evidence to allow it, and the different opinions about it is enough to prevent it, beside that since the prophet Mohammad and the fellow periods and centuries, there was no woman appointed as a judge, which means that it was something condemner'.[118]

Salman Al-Ouda, a Saudi sheikh, argued that beside the Hadith, the general authority with all jobs (presidency, judge, minister, and a parliamentary member) are heavy duty jobs that required great skills that a woman can only handle with great difficulties because of her biological, psychological, and emotional nature with all the special conditions that a woman goes through (child bearing and child rearing, for example).[119] Others, like Dr. Sami Al-Dallal, also agreed with this view but are more extreme in claiming that women cannot be appointed in those designated jobs. Al-Dallal also tried to limit a woman from going out of her house to five reasons:

1. to worship

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[117] Mohammad Sa'ad, *Women and Presidency*.[online][11th Feb.2006] Available from: http://www.almoslim.net/rokn_elmy/show_article_main.cfm?id=1286 [Accessed 7th March 2006]

[118] Al-Watan. *Women Being Judges*. [online][1st Jan.2006] Available from: http://www.almohri.com/pages/4-tsarihat/p41.html [Accessed 7th March 2006]

[119] Salman Al-Ouda, *Discussing Mohammad Al-Gazali in appointing women as a president and a judge*.[online][8thOct.2001] Available from: http://www.tawhed.ws [Accessed 7th March 2006]

2. to aid and help the warriors

3. to pay homage to the leader, as happened during the early days of Islam when women paid homage to the Prophet alongside men. However, this particular incident can show that women participated in politics in those days and their decision that the Prophet should be their leader was as important as the men's. The writer denied this interpretation as it does not mean that women can participate in parliament or politics in general; she can only participate in such events if it happens again.

4. If there were a need for her to go out. Al-Dallal gave examples such as: studying or visiting her husband during his *'e'etekaf'* when a person would seclude himself in mosque for worship only.

5. To go to a wedding.[120]

This last view might represent an extreme way of saying that women should not go out of their houses unless there is an emergency or unavoidable need. This view was more widely accepted a few decades ago; today it is very limited since it is not supported by evidence from Qur'an, Hadith or Sunna on one hand and, on the other, there is much evidence from those three sources that oppose this view.

Nehad Abo-Qumsan concluded that women are not only restricted to these jobs, but also to other jobs. These thoughts are the result of the Wahabi movement that spread from SA

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[120]Dr. Sami M. Al-Dallal, *Moslem Women and Political Participation*.[online][Dec.2004] Available from: http:www.islammemo.cc/KASHAF/one_news.asp?IDnews=746
[Accessed 7th March 2006]

to the rest of the Middle East with immigrant workers during the 1970s.[121] Besides, citing certain reasons for women to go out does not only show the strict vision of the Al-Dallal, but it also shows how some thinkers – mainly religious – regard women in general.

On the other hand, there are the views that believe there is no evidence that the Sharia prevents women from being appointed to these jobs and even of being a president if qualified. In the Hadith, they would either say that referred to a specific occasion or denied that it was a true Hadith. There is some evidence of women being appointed not only as a judge but also as a leader both historically and in recently. In Pakistan, Indonesia, and Iran the constitution does not forbid women as presidents. It is only in Arabic countries and Gulf States in particular where the 'Bedouin' culture dominates, as Sae'd Al-Kehl argues.[122]

Furthermore, regardless of whether women worked as judges in the past, there are many historical incidents of women involved in politics, There is an incident that is an important example of how interpretations of the Qur'an or Hadith might be altered according to changing circumstances. Lamya Al-Faruqi argued that Aisha,[123] one of the Prophet's wives, was very active in politics especially during the period when the third

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[121] Nehad Abo-Qumsan, *Arabic Women Between Ebb and Flow.*[online][paper presented in a Conference :Women and Tradition 13-15th Nov. 2005 Syria]Available from:
http://www.thara-sy.org
[Accessed 5th Jan.2006]

[122] Sae'd Al-Kehl, *Islam does Not Forbid the Women Guardianship.*[online][20th April 2005]Available from:
http://www.rezgar.com/debat/show.art.asp?t=1&aid=35826
[Accessed 7th March 2006]

[123] Aisha used to be the prophet's favorite wife, who also helped in interpreting Qur'an and narritated about 2000 Hadith. She is highly respected among all Muslims that one of the prophets companions said: "If we companions of the Messenger of God had any difficulty on a matter, we asked Aisha about it."
Denise Halel, *A Woman For All Seasons: Aisha bint Abu Bakr.*[online][2002]Available from:
http://www.crescentlife.com/thisthat/feminist%20muslims/aisha_bint_abu_bakr.htm
[Accessed 21st March 2006]

Caliph, Othman Ibn Affan was murdered. It is not only this, but also the Al-Jamal[124] Battle can be an example for her active political participation. On 4 January 646, she led a battle against Ali Ibn Abi-Talib, the Prophet's cousin and his son-in-law at the same time. The battle was led by Aisha mainly because she did not accept Ali to be the new Imam and the Fourth Khalifa after the Prophet.[125] She led her army from Al-Medina in SA to Iraq to fight Ali.[126] There was a very clear Qur'anic verse directed to the Prophet's wives, and most of the religious schools agree that this verse is directed only to the Prophet's wives and cannot be generalised to all women:

And stay quietly in your houses, and make not a dazzling display, like that of the former Times of Ignorance[33:33]

The battle was between the two people that the Prophet loved the most. Aisha was his favourite wife and Ali had supported him since he married his beloved daughter to him. Aisha not only left her house but also led an army with thirty thousand warriors. In those days, the Imam was the leader of the battle. It is true that Aisha did not became a leader but that might have been because she was defeated in battle.[127]

Hence, the history is full of examples of women's participation in politics, especially when knowing that the first believer of Islam as a religion was a woman, Khadija, who

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[124] Al-jamal means camel; it was called because the battle leader, Aisha was riding a camel in that battle."

[125] Lamya' Al-Faruqi. *Women Muslim Society and Islam.* (Indiana: American Trust Publication 3rd, 1994) pp 8,9."

[126] It might be worthmentioning that this period was very critical for the Moslems which led – later on – the nation to be divided into two major sects Sunni and Shia, and each sect has a different version of the story and how did it start. However, Asma' Zeyada presents a more details of the story arguing that – in fact – Aisha did not mean, and was not actullay fighting against Ali, instead they both were entrapped for a fight. Asma' M. Zeyada. *Dawr Al-Mara' Al-Seyasy* (The Political Role of Woman). (Cairo: Dar Al-Salam, 2001) pp 436-442.

[127] The problem with this battle, is that it cannot be historiography well because it was the beginning of Muslim to divide into it two main different groups, Sunni and Shai. "

supported the Prophet from the first moment he got the prophecy until she died, risking her life and her trade by taking her husband's side. The Prophet said about her: "It is true that God has not given me a woman to marry better than Khadijah. She has faith in you when others deny you, she corrects people when they denounce me and she helps obtaining wealth when other people do not want to give, and it is from her womb that God bestows your children, not from any other women"[128]

Moreover, the first martyr was also a woman. Summaya sacrificed her life for the reason of Islam. The Prophet himself depended on women in several ways and they even helped to build the Prophet's mission of Islam from the outset.[129]

Freeda Hussain argued that women in the early Islamic period enjoyed a better position and in a time when gender equality was valued. They used to participate in different aspects, politically, economically, religiously, and socially. She is reasoning that women subordination in the Arab world is due to several reasons. First, the compulsory veiling, second, which is related to the first reason, isolating women, not only from the public sphere, but also inside their houses, the harem system. The last reason Hussain argues is the foreign colonist of the Arab countries, explaining that the mix characters of Muslim before and after, helped to degrade women even more.[130]

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[128]Faqihudddin Abdul Kodir. *Women and Politics at the time of the Prophet.*[online][undated] Available from:
http://www.rahima.or.id/English/hadits_10.htm
[Accessed 8th March]
[129] Abdul Kodir, F
[130] Freeda Hussain. *Muslim Women.* (Sydney: Croom Helm, 1984) pp 73, 74.

To summarise the argument, there are two main views regarding appointing women in certain positions. These positions are: Imam, judge, minister, and a member of parliament. These jobs are forbidden because they involve the general authority jurisdiction which means giving women the authority to take decisions that affect Muslims' lives, and it gives them authority over men. Both situations are totally unacceptable to the first view which was adapted basically because of what was concluded from the Qur'an and Hadith. From the Qur'an they depend on the verse that states: **Men are the protectors and maintainers of women[4:34]**

Thus, if a woman was appointed in any of these jobs, she would have the 'quama' instead which is unacceptable. Second is the Hadith 'Such people as ruled by a lady will never be successful'.

The second view depends on the story of the Queen of Sheba. From one of the oldest schools of allowing women to be a judge with no restrictions is Ibn Hazm, an Islamic scholar, who was supported by Al-Tabari. The Qur'anic verse which supports this view is:

Behold, God bids you to deliver all that you have been entrusted with unto those who are entitled thereto, and whenever you judge between people, to judge with justice. Verily, most excellent is what God exhorts you to do: verily, God is all-hearing, all-seeing!" (4:58)

He argued that since the verse talked about judging without raising the gender issue, then both men and women can be judges without discrimination.[131] Beside, the general

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[131]Muslim Women League. *Women in Society: Political Participation.*[online][Sep.1995] Available from: http://www.mwlusa.org/publications/essays/polirights.html

authority can be raised if a woman became a judge in the old days where there was one judge who decided for both parties and the judge's decision was final. The judicial system has developed, and is on three levels for the case to be studied by at least nine judges altogether.[132]

6.5.1.2. The Situation in Kuwait

In Kuwait, there is a common agreement among the religious authorities and judges that a woman cannot be a judge, for the previously stated reasons. However, a religious *sheikh,* Abdul-Azez Al-Hadda, claimed that a woman cannot be a judge not only for the stated reasons but also because science – according to him- proved that men are more mature, rational and more intelligent than women; that men are more capable of performing these kinds of jobs than women, especially since women are emotional and therefore cannot be judges. The Dean of the Islamic College (Kuwait), Mohammad Al-Tabtabae, has also stated that women cannot be judges for those reasons.[133]

Some of those who opposed women from being judges gave all of the stated reasons, or raised the issue of quamma, but in fact, they believe in what Al-Hadda believe in. However, the belief why women cannot be judges among common people is that women

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[Accessed 7th March 2006]"

[132]Amal Ibrahim. *A Modern Islamic View of Appointing Women as Judges.*[online][undated] Available from:
http://www.womengateway.com/NR/exeres/6C523297-E5F0-4D91-BD53-8288ADA412E2.htm
[Accessed 7th March 2006]

[133] Nafel Al-Humaidan. *Religious and Judges: Women Cannot be A Judge.* [online][1st March 2003] Available from:
http://newsweek.com.kw/default.aspx?isu=030301&page=2&topic=156890
[Accessed 7th March 2006]"

are emotional, and might base their judgment according to their feelings rather than facts. Then she would go through events, pregnancy and, menstruation for example, that would prevent her from being a judge. The law has stated five conditions for appointing a judge and being a 'male' is not one of them which is not like the former election legislation. However, in the written language of the law, it always refers to the judge as ' judicial men' which implies that all judges must be men. Women cannot be appointed in prosecuting jobs as eventually a prosecutor will become a judge.

The issue of whether a woman can be a judge or not according to the Sharia can be an endless debate. However, when using the Qur'an or the Hadith to prove a point, it should be used from a subjective view in order to liberate minds from the strong heritage that acts against women. Also, the debate can be focused on whether she should get education or not and, if she receives an education, should she go to work or not? Or, can she be part of the voting and electing process or not? Is it halal or haram? These two debates existed at different times in history and took place over many years. Is it necessary to go through the same debates for each issue related to women? Should it not be established by now that women are equal to men, should have the same opportunities and access to jobs as men, and that the qualifications of each individual should be the criteria, not the gender?

6.5.2. Police and Army Officers:

Just as in the legal profession, police and army schools do not overtly demand that its students should be male. However, as in the previous electorate legislation, this is assumed to be the case. Bringing together the two sexes in the workplace is not questioned in Kuwait, regardless of the fact that in some Gulf States such as UAE and Bahrain there are women officers.[134] However, there have always been women who investigate crimes only and, as has been the case lately, women work as immigration officers at airports.

While the questionnaire contained some questions regarding employment, it did not discuss whether a woman should be appointed in certain jobs – police or judges for example, but it discussed the treatment of employees in general, for example whether there is discrimination or not. The first question in this regard was: are women are under-represented in the leading jobs or not? 21% of women strongly agreed and 27% agreed that they are under-represented in the leading jobs, which might be due to personal experiences. 31% of men agreed on this issue, which might indicate that women truly do not have a chance to get leading positions in their jobs.

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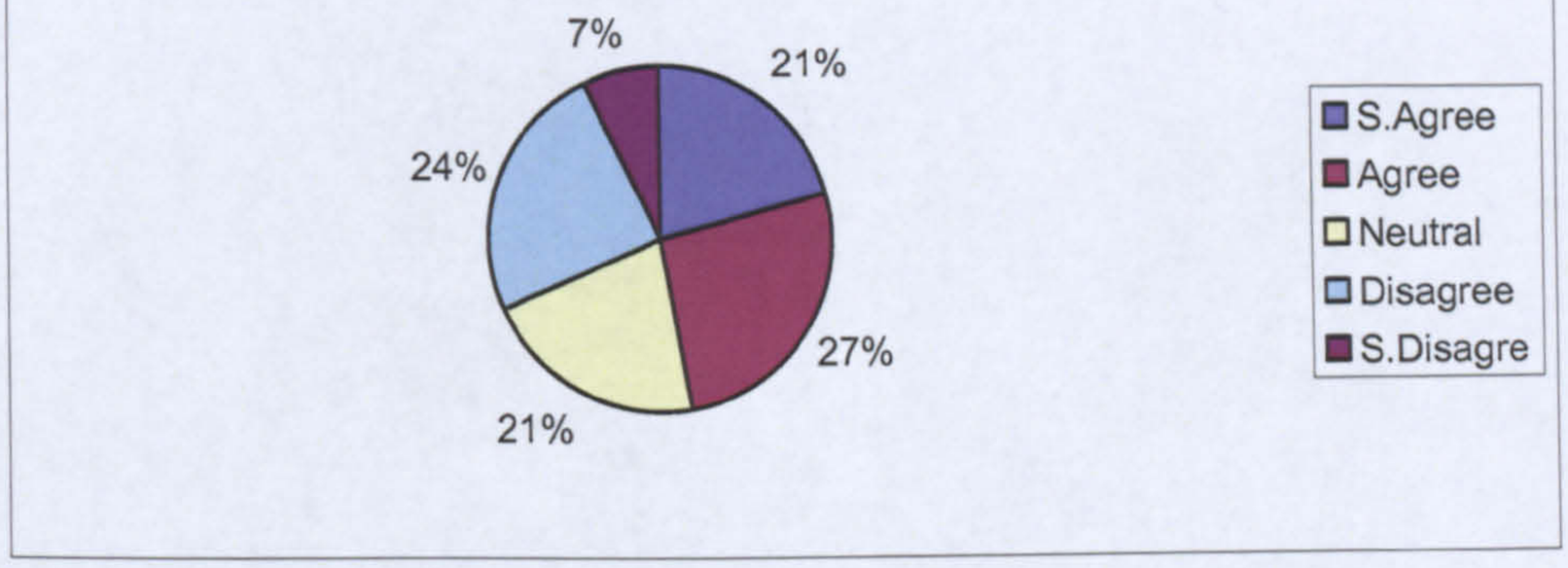
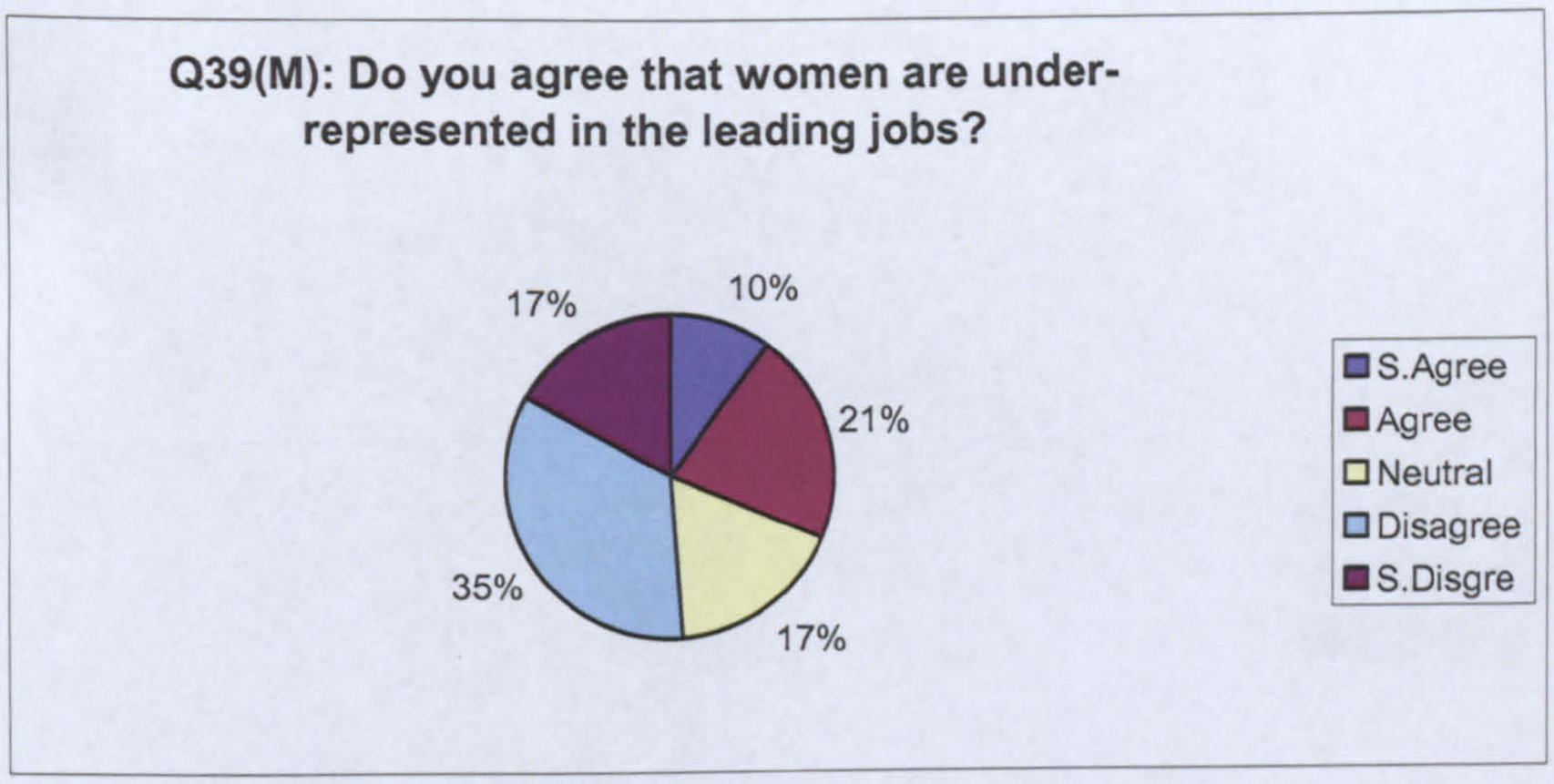
[134] Arab Woman Organization.[online] [undated] Available from: http://www.awfarab.org/page/br/2005/new10.htm [Accessed 1st April 2006]

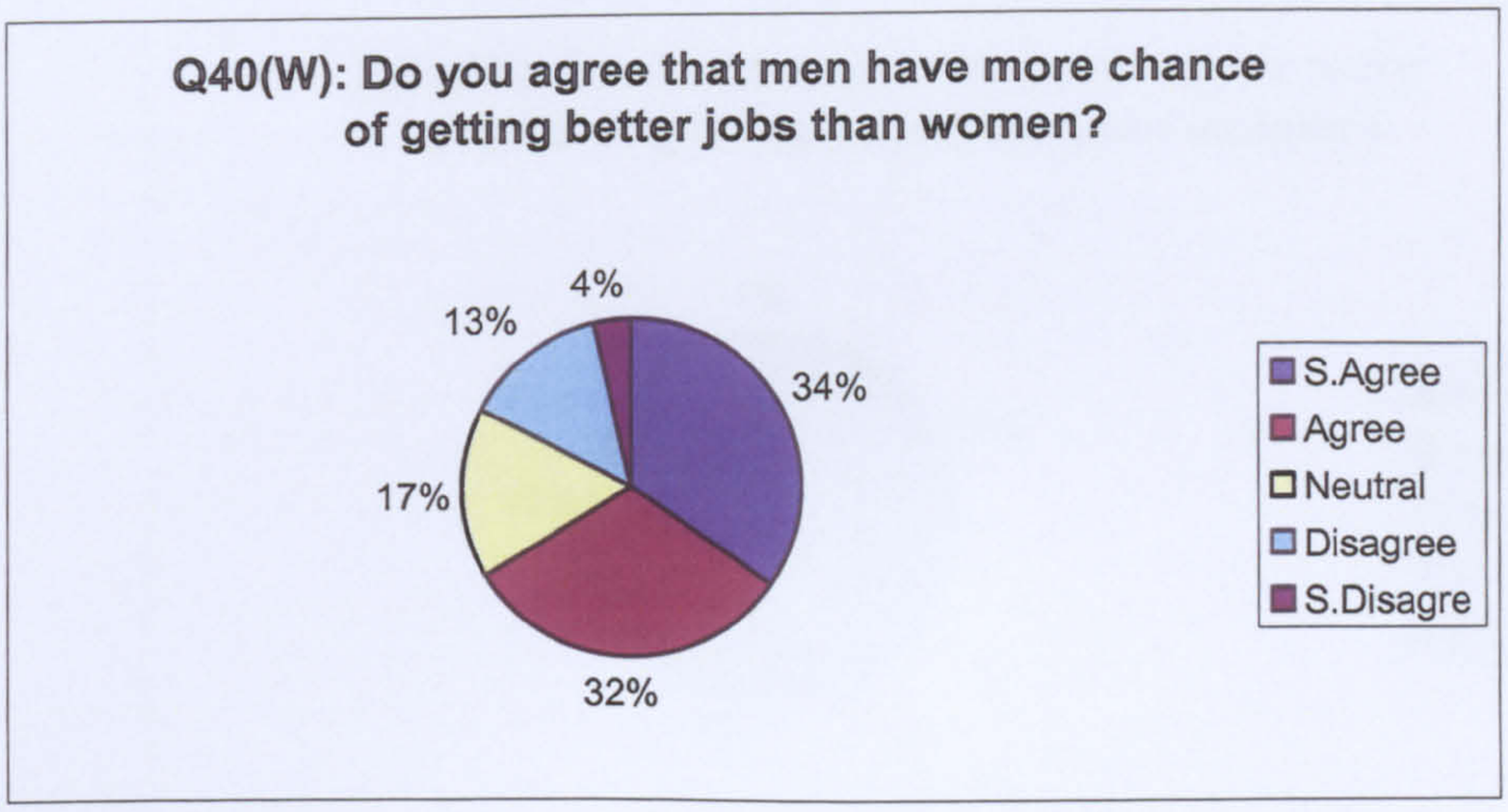
Figure 6.10 Women in Leading Jobs.





Not only do women not have the same chances as men to get a leading job – according to the respondents' answers – but also most of them, both men and women, agreed that men have better chances to get a job in the first place. Moreover, they believed that men have better chances to get promotions or the job's privileges (training courses, scholarships, etc).

Figure 6.11 Job opportunities.



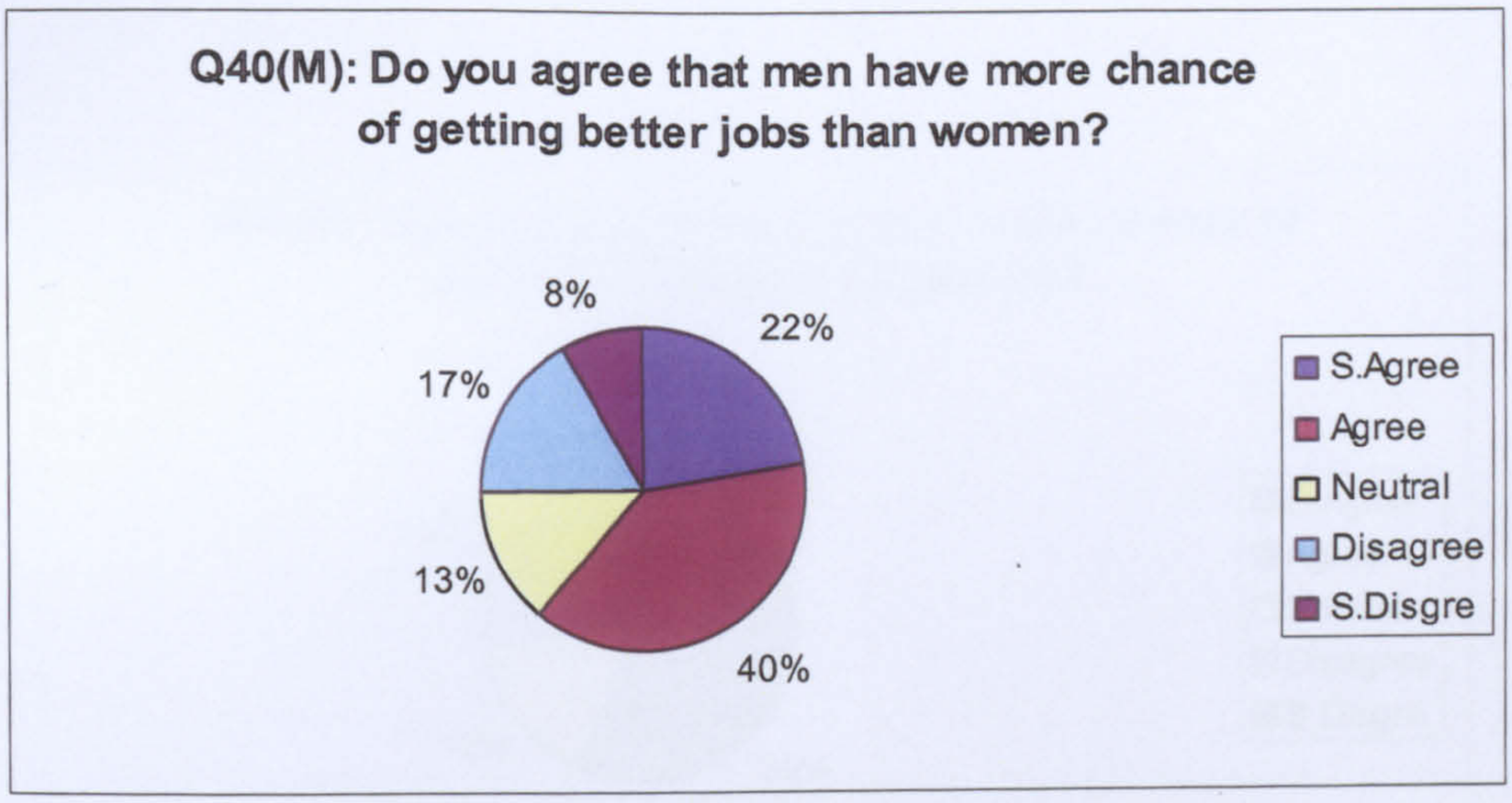
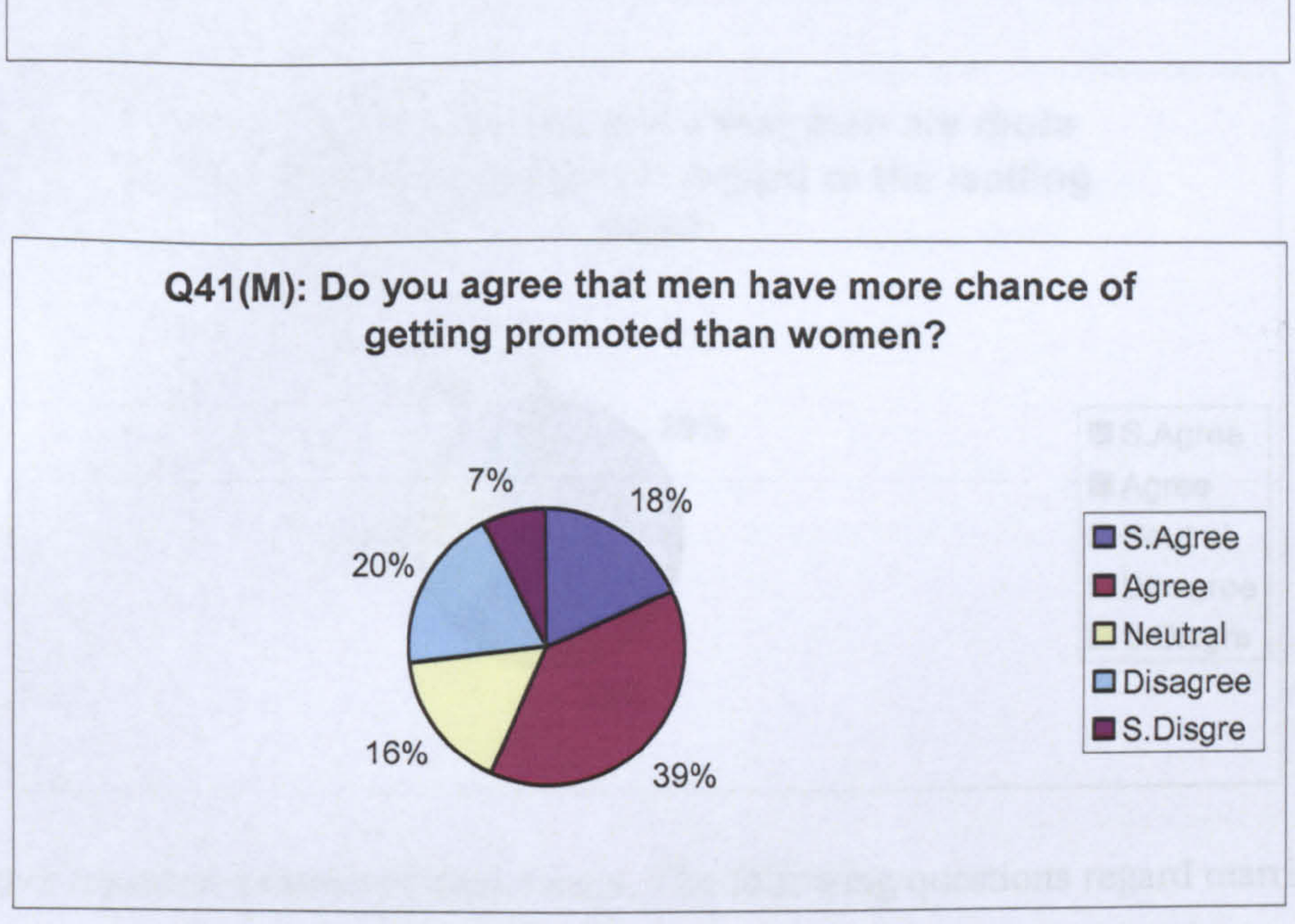
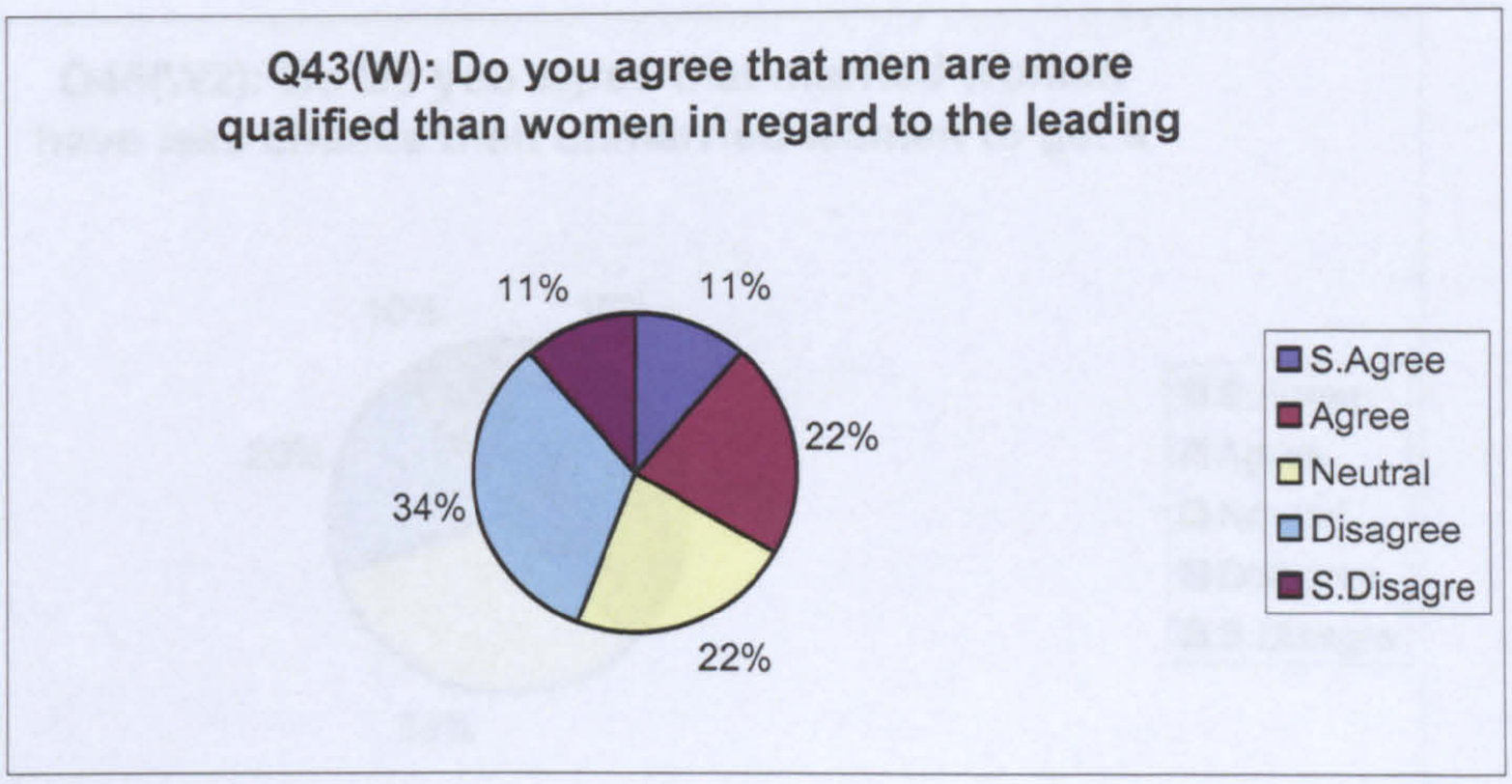


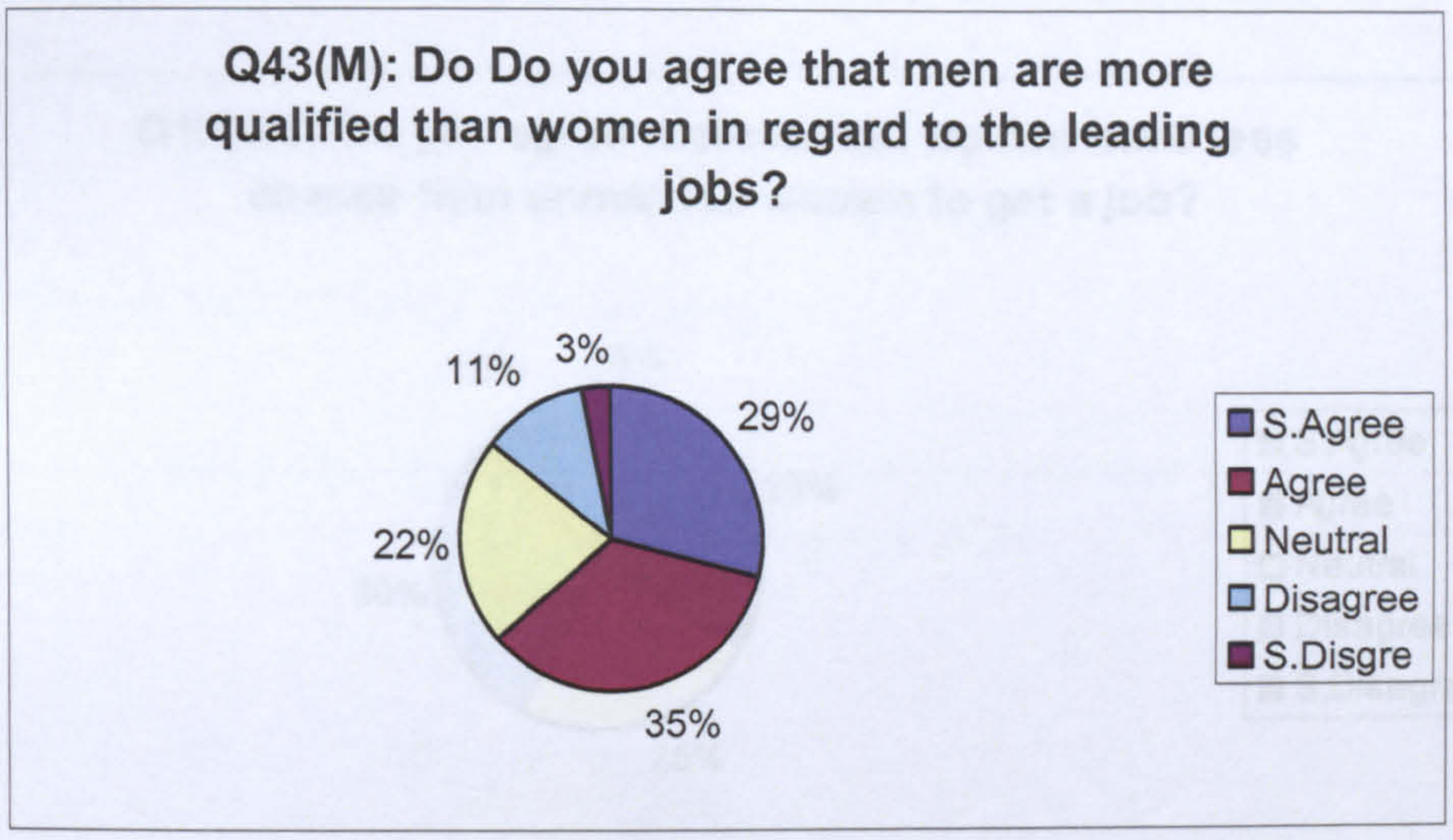
Figure 6.12 Promotions Opportunities for Both Sexes.



This situation might be self-explanatory when knowing that 33% of women and 64% of men thought that men are more qualified in a leading job. Some people think that a man naturally has the talent to be a leader unlike a woman who, even if she was good in a leading position, would be considered as an exception. Moreover, some truly believed that a woman should not be a leader because simply she lacks the qualification of being one.

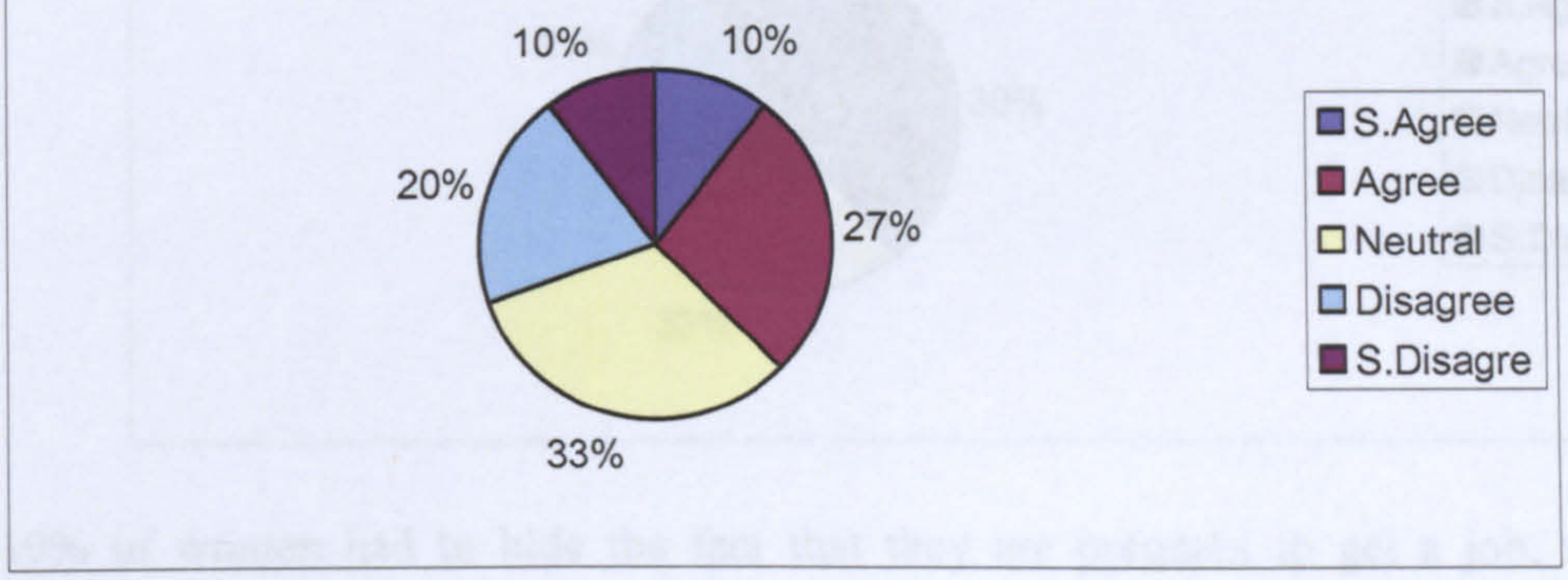
Figure 6.13 Illegibility for Leading Job.

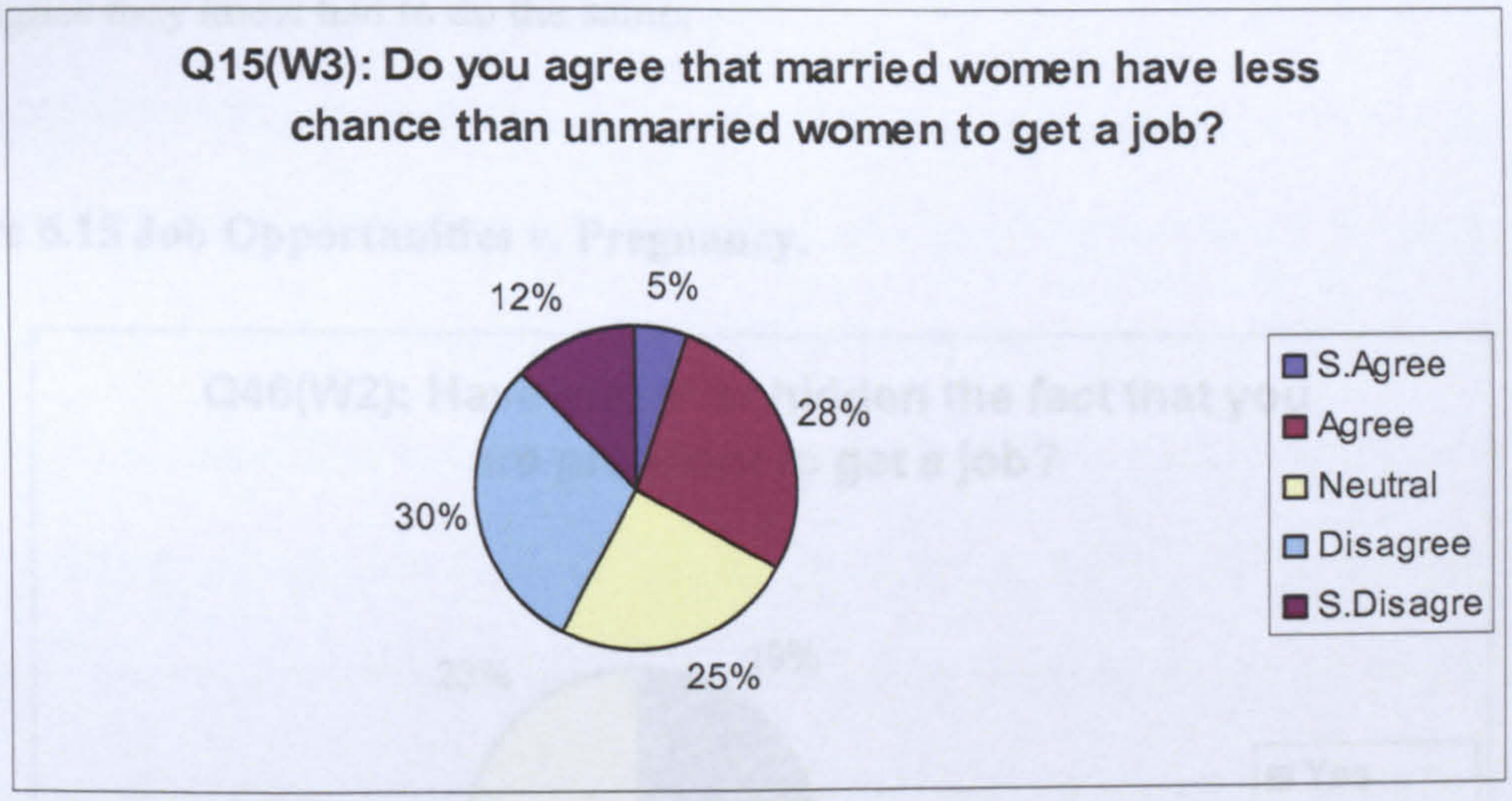


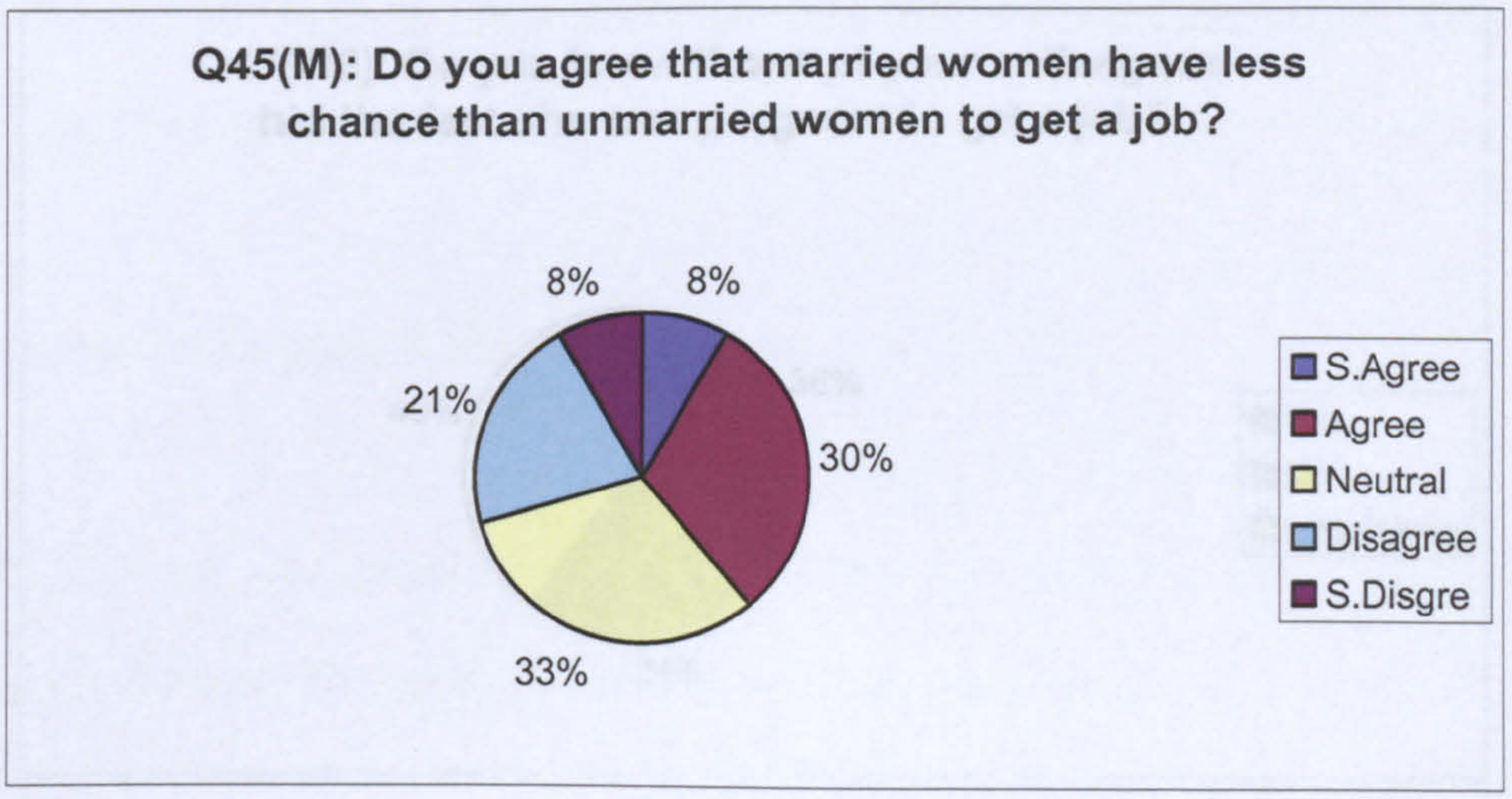


The above regarded treatment based on sex. The following questions regard marriage and pregnancy. Married women agreed more on the issue that they have less chances of getting a job than unmarried women. However, men who agreed on this matter are greater than both the unmarried married and married women. The total married women who strongly agreed and agreed is 37%; for unmarried women it is 33%; and the total of men who agreed is 38%.

Figure 6.14 Job Opportunities for Married Women.

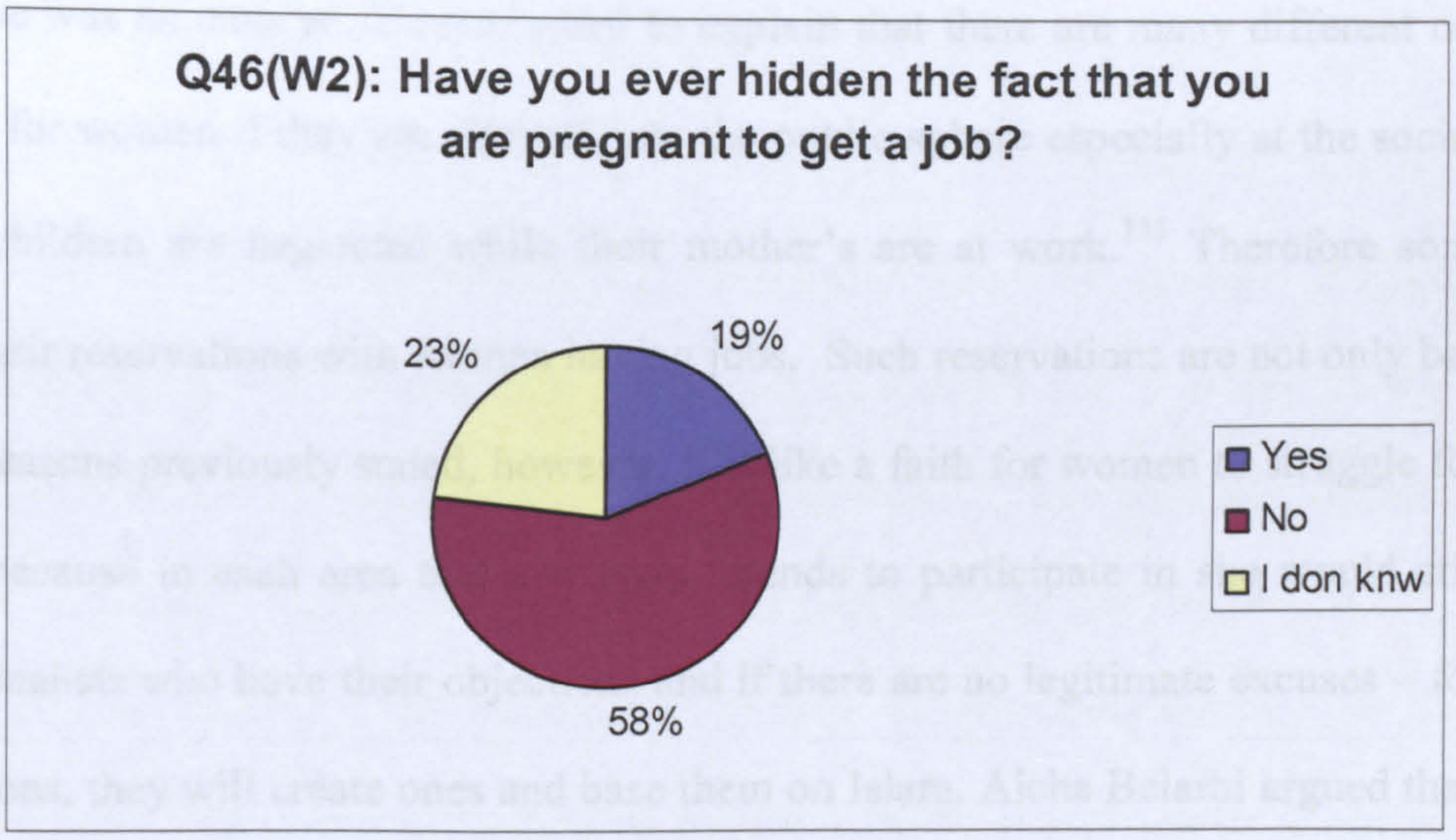


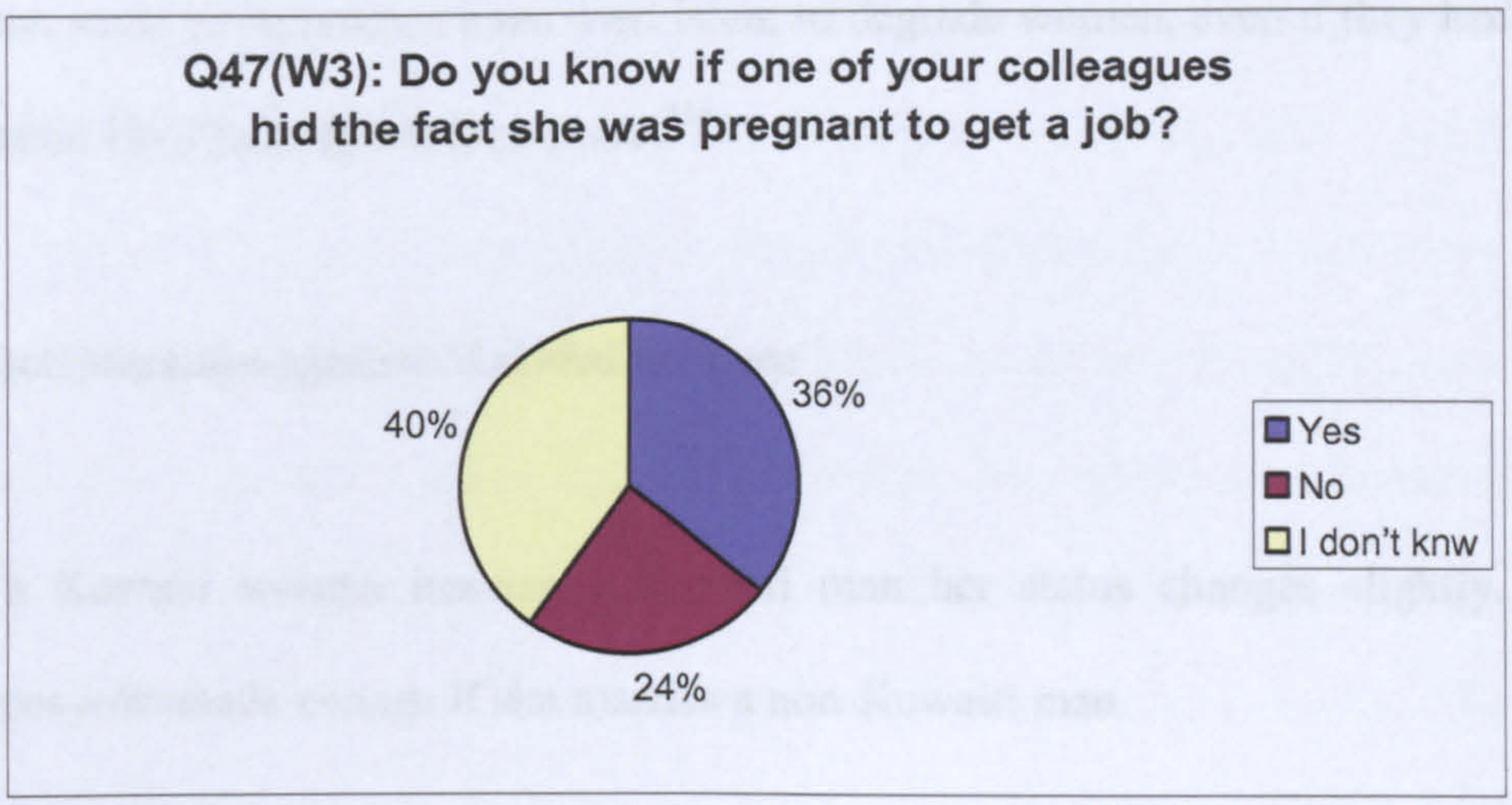




19% of women had to hide the fact that they are pregnant to get a job, and 36% of colleagues they knew had to do the same.

Figure 6.15 Job Opportunities v. Pregnancy.





The participation of women in the public sector – in general – is still questioned by some who still believe that women should stay at home as it is her natural environment. Nour Ed-Deen Eter argued that the instinct of bearing children is formed in the female from the time she was an embryo. He continued to explain that there are many different negative affects for women if they are allowed into the public sphere especially at the social level when children are neglected while their mother's are at work.[135] Therefore some still have their reservations with women having jobs. Such reservations are not only based on those reasons previously stated, however, it is like a faith for women to struggle for each right, because in each area that a woman intends to participate in she would still face traditionalists who have their objections and if there are no legitimate excuses – for their objections, they will create ones and base them on Islam. Aicha Belarbi argued that since Islam was based on justice, it did not discriminate against women; on the contrary, it gave women the same rights as men regarding the participation in the public sphere.

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[135] Nour Ed-Deen Eter. *Matha an Al-Mara' (What about Woman)*. (Bairut: Al-Yamama, 2003) pp 147-152.

However, some jurisprudents have used Islam to degrade women, even if they had to use unauthentic Hadiths to prove their point.[136]

6.6. Discrimination against Married women:

When a Kuwaiti woman marries a Kuwaiti man her status changes slightly, but it undergoes a dramatic change if she marries a non-Kuwaiti man.

6.6.1 Obtaining a Passport:

Each Kuwaiti citizen can get a passport. Age and sex is irrelevant in this issue unless the passport is for a married woman. If she wants a passport for her own, she cannot do this by herself. Either her husband must get her the passport or must authorise a written document which will allow her to receive the passport instead of him. In such a case, her presence or her brother's or father's is of no significance; if her husband is absent from the procedure she will not receive a passport. This discriminatory procedure was stated by the Passport Law 11/1962 Article 15, which states that: 'The wife may not be granted a separate passport without the consent of the husband'. In fact the rest of the Article states the same thing for the incompetent people, which means that the law values a women – some how – as an incompetent person. Article 14 of the same law, also, states that a husband can include his wife and children if they are younger than 18 years old on his passport. The husband cannot add the children if they are older than 18, but he can for

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[136] Aicha Belarbi. Islam, Women and Politics. In: *Islam and Equality.* (Canada: Lawyers Committee for Human Rights, 1999) pp 191,192.

the wife regardless of her age because she should always follow his lead. If such a system exists within the Egyptian law, it is only logical to find it in Kuwait, since – as discussed earlier – most of Kuwaiti legislations are adopted from Egypt. According to the regulation 3937 of the 97/1959 Egyptian Law, the husband has such authority, which is as Abdul-Sattar argued has been misused by husbands. Some times they would not agree just to humiliate her, or some times he would blackmail her. Regardless of the fact, that such regulations were cancelled by the Egyptian Constitutional Court in 2000 (case 243/21), the Ministry of Interior still require the husband's agreement.[137]

6.6.2. Social Pay

Every employee, both in the public and private sector, gains an increase in social status when they get married. For a Kuwaiti man, this rise is regardless of whom he marries. However, if a Kuwaiti woman marries a non-Kuwaiti man, then her salary remains the same. A Kuwaiti man would receive an immediate increase in his salary but the amount would depend both on whether he worked in the public or private sector and his qualifications. All Kuwaitis receive K.D.50 for each child they have.

[137] Abdul-Sattar, F.~

6.6.3. Accommodation and Mortgages

6.6.3.1. General Background

The government offers either housing for married couples or a mortgage which includes land and a non-interest loan of K.D.70 000. Again, this benefits only the married Kuwaiti man, regardless of the fact whether he is married to a Kuwaiti woman or not.[138] That is to say, a Kuwaiti woman only receives this benefit if she is married to a Kuwaiti man. Accommodation for Kuwaiti women married to non-Kuwaiti men has gone through different phases. In the 1960s and 1970s, such a woman was able to get a governmental house just like a Kuwaiti man, except that she would have to struggle to get the title deeds.[139] The Kuwaiti male would get the deeds as soon as he finished paying the instalments. Later on, the government stopped supplying houses and instead offered them the option of either having an apartment or a loan equal to K.D.25 000. The loan for the Kuwaiti man could be as high as K.D. 70 000 in order to build a house. After Kuwait was liberated in 1990, the government stopped giving such a benefit to Kuwaiti women.[140]

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[138] The mortgage or the house should be given to two Kuwaiti citizens, but for the Kuwaiti man case even if he was married to a non-Kuwaiti woman, she will eventually get the Kuwaiti nationality and then can have access to such privilege.˜

[139] She might never get it, and the installments she paid would be considered as rent.˜

[140] The difficulty with this issue is that the government acts towards this issue was not based on any laws, instead it was based on exception a minister –or some one in high position- would give, that is why it is difficult to provide any law or references in such matter.˜

6.6.3.2. The 2000 Proposal

The issue was reopened in early 2000 when four MPs presented a proposal to the government which asked that the title deeds should be given to 1 090 Kuwaiti women who had been living in government houses for fifteen years or more and who had paid every instalment. The MPs reminded the government that it used to give Kuwaiti women houses in the past. The proposal suggested that these women should have the benefit of owning the houses not only to guarantee them security, but also because the government had meant to give the houses to them as owners who had paid the instalments. The title deeds would therefore have been given in return, just as they were to Kuwaiti men. In the meantime, the government had changed its mind and decided to view the instalments paid for the house as rent instead. The residents threatened that if they would not receive the title deeds then any repairs they had made to the house would be torn up.[141] Article 32 of the Housing Law states ' if a Kuwaiti woman died, and if the government had given her a house, then her children can keep the house until the daughters got married or the until the sons reached the age of 26.'[142] This Article obviously discriminates against women when it states that a woman, who enjoyed the benefit of having but not owning a house, can have it only while she is alive. It ignores the fact that she had paid instalments just like a man whose children will inherit the house. Kuwaiti women never has such a benefit.

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[141] Al-Talea. *A Proposal to Give Women the Title Deed.* [online] [25th Jan. 2000] Available from: http://local.taleea.com/archive/newsdetails.php?id=11208&ISSUENO=1411 [Accessed 29th March 2006]

[142] Mohamoom Al-Kuwait (Kuwaiti Lawyers). *The Housing Law.*[online][undated] Available from: http://www.mohamoon-kw.com/Categories/LadyAfairs/LadyAfair.asp?TreeID=70&TableTreeID=15&TableID=14&Type=8&ParentID=70&LadyAfairID=383 [Accessed 29th March 2006]

The MPs' proposal did not suggest giving Kuwaiti women houses on the same basis as men, but that certain conditions should be made for those who had been given these houses in the past to own them. These conditions are:

1. A Kuwaiti woman has to be married to a non-Kuwaiti.
2. She is to be given the house which she will own later.[143]
3. A period of fifteen years must elapse before owning the house.
4. The instalments must be paid.
5. She has not been given any other house in the past.[144]

However, the proposal was not passed.

6.6.3.3. The Situation in 2003 and Afterwards

The case was reopened in 2003 when another MP, Saleh Aashour, suggested another proposal concerning the issue of Kuwaiti women who did not have a house to be given one without any conditions.[145] This proposal also failed. In 2004, The Women's Cultural Social Society organised a seminar on the issue after arming itself on the complex nature and human side of it since a lot of Kuwaiti women did not have a proper place to live in. The seminar included MPs and Ministers. The Minister for Public Work, Bader Al-Hmeidi, stated that although that he sympathised with the women, he was unable to solve the problem since it needed the backing of a law. The MP Saleh Aashour explained that

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[143] As stated before, the government gave women houses to own, but never gave them the title deeds.

[144] Al-Talea. *A Proposal to Give Women the Title Deed.* [online] [25th Jan. 2000] Available from: http://local.taleea.com/archive/newsdetails.php?id=11208&ISSUENO=1411 [Accessed 29th March 2006]

[145] Al-Watan. *A Proposal to Provide Married Women A Governmental Accommodation.*[online] [30th Oct.2003] Available from: http://www.mohamoon-kw.com/text/Categories/Malafs/Malaf.asp?MalafID=705&ParentID=45&Type=5 [Accessed 28th March 2006]

the problem was getting worse, and that women in this position are going backwards. In fact, they were in better situation in the 1970s when the government used to provide houses for them. The situation worsened in the 1980s when women were provided with either apartments or KD35 000, and worsened further in the 1990s when they were deprived from any housing privileges.[146] A few months later, the Minister announced that the Public Authority for Housing Welfare (PAHW) had made a thorough study in an attempt to solve this problem and that it only needed the government's approval. However, he said that the government policy still prevented women from obtaining the title deeds for the houses they had provided. This reason given for this is that there were some fears that non-Kuwaiti husbands may sell the house and leave with the money.[147] The government insisted upon not giving title deeds to those whom had been provided with houses and, of course, on not providing houses to all Kuwaiti women married to non-Kuwaitis. However, the statement reflected the view towards women: that they can be easily manipulated by their husbands. This, of course, neglects the point that men can also be victims of the same issue and therefore it can be due to personality, not gender. A year later, the government denied the PAHW's suggestion that Kuwaiti women should be given houses under certain conditions. It also decided not to make an exception of giving disabled Kuwaiti women, including those who are married to non-Kuwaitis, a house. The PAHW explained that the government made this latter decision for three main reasons:

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[146] Al-Taleea. *Seminar on Married Women Accomodation's Problem.* [online] [21st Feb. 2004] Available from:
http://local.taleea.com/archive/newsdetails.php?id=7129&ISSUENO=1615
[Accessed 29th March 2006]

[147] Al-Rai Al-Aam. [online] [18th April 2004] Available from:
http://www.mohamoon-kuwait.com/Categories/Malafs/Malaf.asp?MalafID=2055&ParentID=45&Type=5
[Accessed 28th March 2006]

1. The husband is the one who is usually responsible for providing the house, not the woman.

2. The possibilities of being deceived and taken advantage of. It is not clear whether this means that the disabled woman can give misleading information about her disability or that the non-Kuwaiti husband could deceive his Kuwaiti wife.

3. The proposal does not specify what kind of disability allows entitlement to a house.[148]

It is true that in Kuwaiti culture the husband is the one who is responsible to provide the house for his family. However, the Kuwaiti government has taken over this responsibility and has taken this burden off the husband's shoulders. Therefore, what is the reason behind not giving woman the same thing when she is married to a foreigner when it is harder for him to provide a house since that can cost a large sum of money? In April 2005, Parliament amended Article 14 of 47/1993 housing law,[149] allowing a disabled Kuwaiti wife to be given a house but not to own it. Instead, she must pay the instalments as rent. Also, she will not enjoy such a privilege unless she has children with her non-Kuwaiti husband[150].

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[148] Al-Qabas. *The Government's Reservations on the Housing Act.* [online] [31st March 2005] Available from: http://www.mohamoon-kw.com/text/Categories/Malafs/Malaf.asp?MalafID=3994&ParentID=45&Type=5 [Accessed 28th March 2006]

[149] Abdulla Al-Shamarri. *The Possibilities of Giving Married Women A House as Rent.* [online] [14th May 2005] Available from: http://www.mohamoon-kuwait.com/Categories/Malafs/Malaf.asp?TableTreeID=13&TableID=7&Type=5&TreeID=45&ParentID=45&Type=5&MalafID=4348 [Accessed 28th March 2006]

[150] AlOmmah.org organization. *The Approval of the Amendments on the Housing Act.* [online] [18th April 2005] Available from: http://www.alommah.org/home/index.php?option=com_content&task=view&id=586&Itemid=1 [Accessed 31st March 2006]

6.6.3.4. Interview with the PAHW Official

Since the situation of Kuwaiti women married to non-Kuwaitis is not clear enough, and no law can be found to see on what basis the government dealt with the issue, an interview was made with the Manager of the House Distribution Department in the PAHW, Mr.Abdul-Azez Al-Qunae'.[151] He stated that the government used to supply mortgages for such women until 1986. Although it had been decided in 1982 by the Council of Ministers to stop giving the Kuwaiti women mortgages, it continued until 1986 to people who had made an application before 1982. All the houses were not for ownership but given in exchange for rent. Mr Al-Qunae' also stated that women can still have such a house which is called "*Sha'beyat*".[152] When he was asked whether if the government still gives apartment (which are better than the Sha'beyat), he said yes, but that it depends on their availability. This means that if a woman applied for housing she would be given either Sha'beyat or an apartment, depending on what the PAHW has to offer. However, he also stated that the priority for these two kinds of housing is not for the Kuwaiti women who are married to non-Kuwaitis, but for divorced women who have Kuwaiti children. Whenever these houses are available, the priority is not based on the date of the applications but on whether it is for a Kuwaiti family headed by a woman divorced from a Kuwaiti husband rather than women are married to non-Kuwaitis. Answering the question whether such women used to be given the choice of having either

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[151] In an interview with him done in his office at the PAHW, Kuwait in 03-o7-2006.˜

[152] which is know to be a very low standard houses built in the worst areas in Kuwait.˜

Sha'beyat or a loan of K.D.35 000,[153] he said yes but that it was for a short period of time only before the Iraqi invasion in 1990 and stopped about three or four years after it. He added that 47/93 and 27/95 decisions of the PAHW used take the house/apartment back as soon as the Kuwaiti women passed away, but otherwise the house was kept for her family until the youngest of her children either reached the age of 26 or gets married (for daughter), depending on which one came first, and then they would take the house back.

In conclusion, according to Al-Qunae', the government is still debating whether a Kuwaiti woman can own the house that was already were given to her. He concludes that the general opinion is to allow the woman the title deeds but this needs to be approved by Council of Ministers. Today, the government gives the lowest standard of houses to women rather to provide rented accommodations. Such houses are not only poorly built but are situated in bad areas. Moreover, the women can never own them; they pay rent in instalment but will never be handed the title deeds.

6.6.4. Nationality

Kuwaiti law on nationality states that Kuwaiti nationality is according to blood relationships, meaning that the nationality is given by the father only. A Kuwaiti father passes his nationality to his wife, if she was not a Kuwaiti, and to his children If the husband was not a Kuwaiti, his Kuwaiti wife cannot pass her nationality to him or to her children. That is, when the law refers to the blood relationship (Jus Songuinis), it means

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[153] Mr. Al-Qunae' refused to give such information about the amount of the loan, because Kuwait Savings and Credit Bank is the one who is responsible for the loans and not the PAHW, but he said that the information can be taken from him as a citizen not as an official employee in the PAHW.

the father's only. Article 2 of the Nationality Law issued in 1959 states: 'Everyone who was born inside or outside Kuwait to a Kuwaiti father, becomes a Kuwaiti'. The Article guarantees the Kuwaiti father to pass his nationality to his children. For a Kuwaiti mother, Article 3 states: 'If a person was born inside or outside Kuwait to a Kuwaiti mother and unknown father and if its parentage to its father could not been established, or if the father was stateless, then this person becomes a Kuwait'. As strange as it may sound, the Article gives Kuwaiti nationality to illegitimate children, but denies it to legitimate ones. However, since there are a lot of stateless people in Kuwait, the country is facing a major political problem. For those who are married to Kuwaitis, the Article was amended in 1980 which revoked the privilege of giving Kuwaiti nationality to legitimate children from stateless fathers but remaining the same towards illegitimate children. Instead of giving the right of nationality to the Kuwaiti mother just as to the Kuwaiti father, it narrowed the circle. Not only that, but in 1987 another amendment was added to put more restrictions on the matter by making the issue of passing nationality to an illegitimate child from a Kuwaiti mother an exception. The decision of nationality must be made by the Interior Minister and is not issued until the child reaches the age of 21. From being a right at birth, it has became an exception and may or may not be given after a certain age has been reached.[154] Another way of passing nationality from the Kuwaiti mother to her children is as according to Article five: 'If a person was born in Kuwait from a Kuwaiti mother, he was a residence in the country until – at least – the age of 21. If the father, who is a foreigner, divorced the mother, deserted her, or died, can be

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[154] The Kuwaiti Parliament, *The Second Article of Kuwaiti Nationality Law, between Reality and Law.*[online][undated] Available from:
http://www.majlesalommah.net/run.asp?id=652
[Accessed 4th Jan.2006]

given the nationality by a decree'. This statement, which was not added to the law until 1966 and was amended in 1980, cancelled the condition of desertion and limited the issue of nationality to two conditions: either for the mother to be divorced or to be widowed in order to pass the nationality to her children.[155] The nationality in Kuwait cannot be acquired as a right. As it is always considered as a supreme right, the government always has the right to preserve it even if someone has met all the required conditions to achieve the nationality according to the law. In such cases, no law suites can therefore be raised since it is not a right.

The non-Kuwaiti husband of a Kuwaiti wife and their children will remain foreigners all their lives. The nationality issue is a problem that exists in most ME countries. The Lebanese Nationality Law 1960, stated the same discriminatory law.[156] The Jordanian Law stated that the Jordanian husband can pass his nationality to his wife after three years if she was a citizen of an Arab States, or five years if she was not.[157] Also, Article 2 of the Nationality Law of Egypt, stated the right to pass the nationality is exclusive for the Egyptian father.[158]Article 9[159] of The Convention on the Elimination of All Forms of Discrimination Against Women ensures the equal right for both men and women to pass their nationality to their children. However, some of the countries – whose majority of

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[155] The Kuwaiti Parliament, *The Second Article of Kuwaiti Nationality Law, between Reality and Law.*[online][undated] Available from:
http://www.majlesalommah.net/run.asp?id=652
[Accessed 4thJan 2006]~
[156] Souad Mokbel-Wensley. Statutory Discrimination in Lebenon. In: Feminism and Islam. (NY: New York University Press, 1996) pp 322.~
[157] Lori A. Brand. Women and the State in Jordan. In: Islam, Gender and Social Change. (Amman: Al-Ahleya, 2003) pp 217.~
[158] Abudl-Sattar, F.~
[159] Article 9, section 2 states that: States parties shall grant women equal rights with men with respect to the nationality of their children.~

population is Muslim, Kuwait is one of these countries – had a reservation on this Article.[160] Egypt explained that the reservation was based on the belief that a child should fellow his father's nationality, which does not interfere with the principle of equality. Also when a mother marries an alien, it means she agrees for her children to have the father's nationality.[161] On the other hand, Tunis used to be the only ME country that viewed men and women in equal terms as far as nationality was concerned: both of them can pass their nationality to their children. The law was amended in 1963 to give Tunisian women such a right only after six years from the issue of the Nationality law. Morocco is also amending its Nationality Law in order to give Moroccan women such a right.[162]Also, in 1998, the Sudanese Constitution was amended giving woman the right to pass her nationality to her children as well as the Sudanese man.[163]

As Dr.Badreya Al-Awadhi, a Kuwaiti women's activist, argues, the main reason for this problem is that the government is always afraid of outsiders (such as the foreign husband): it does not want him to gain financially and socially by marrying a citizen.[164]

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[160] Jessica Neuwirth. Inequality before the Law. *Harvard Human Rights Journal.* 2005, 18, pp 19-54.~
[161] Jane Connors. The Women's Convention in The Muslem World. In: *Feminism and Islam.* (NY: New York University, 1996) pp 357.~
[162] Dr. Munera Fakhrou, *The Dilemma of Woman from Gulf States Married to Non-Citizens.*[online] [Al-Bayan Newspaper 19th May,2005]
Available from:
http://el-eman.com/muslamat/details.asp?ID=6124
[Accessed on 5th Jan.2006]~
[163] Umaymah Abu Bakr and Shirin Shukri. *Women and Gender.*(Demascus: Dar Al-Fikr, 2002) pp 153.~
[164] Dr.Badreya Al-Awadhi, *The Marrige of Gulf States Women from Outside the Gulf.*(TV interview,1st March 2004,Al-Jazeera Channel) Available from:
http://www.amanjordan.org/aman_studies/wmview.php?ArtID=800
[Accessed 5thJan.2006]~

6.6.5. Parenting

If a Kuwaiti mother is married to a non-Kuwaiti, accordingly their children would have their father's nationality and would be treated as foreigners in Kuwait. However, the government has decided that their children, regardless of the fact that they are non-Kuwaiti, would be treated as citizens until the age of 21. After that age they would be treated like any other foreigner with regard to residency and immigration.[165] Also, they have to pay for medical care which is free for citizens. Regardless of the fact that the citizens of the GCC do not have to pay for the medical treatment, the children of Kuwaiti mothers have to pay if they were not GCC citizens.[166] The problem is more complicated if the Kuwaiti mother is married to a stateless man[167] when her children would be treated like any other stateless people. They cannot get medical treatment, an education, a passport, a driver's license, and even their marriages would not be authorized.[168] The government would rather treated them as stateless people, ignoring the fact that their mothers are Kuwaitis. The irony is that if a Kuwaiti man married a stateless woman, she will gain Kuwaiti nationality just as if he had married any other foreigner. The government does not treated children from a Kuwaiti mother married to a stateless man

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[165] Ministry of Interior, Passport and Nationality Department.[online] [undated] Available from: http://www.moi.gov.kw/portal/vArabic/showPage.asp?objectID=%7B25946161-841F-4EAE-A471-57075CC5E693%7D ~
[Accessed 22nd March 2006]

[166] The Kuwaiti Liberal Net.[online] [18-08-2005] Available from: http://www.secularkuwait.org/vb/printthread.php?t=3677
[Accessed 31st March 2006]~

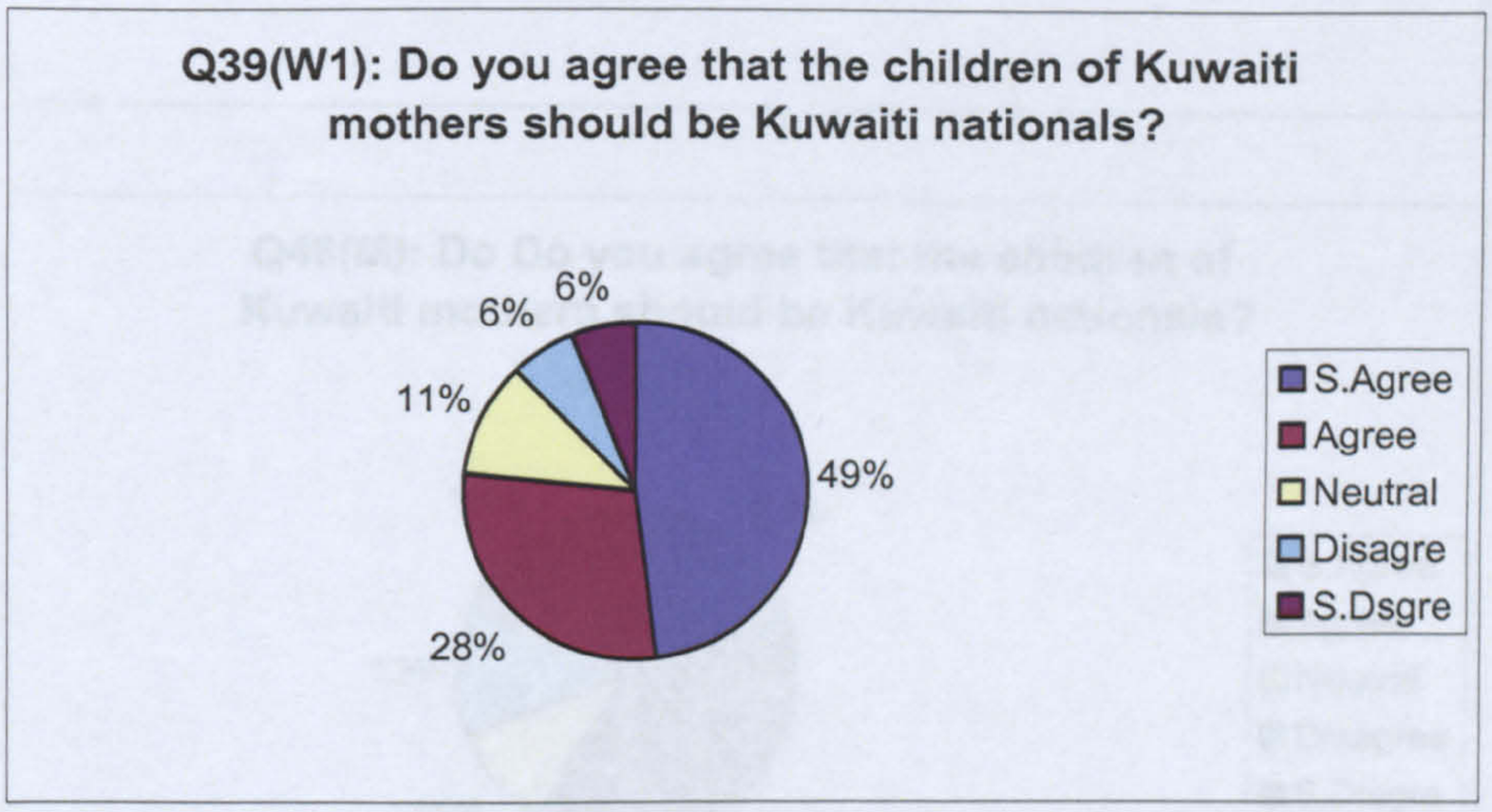
[167] stateless people is a major problem in Kuwait, since they exist in a massive number, the government since mid-eighties started to take a very restricted procedures against them when they do not have access to free service of education and medication as it used to be. They cannot get a driver license and marriages would never be authorized by the government.~

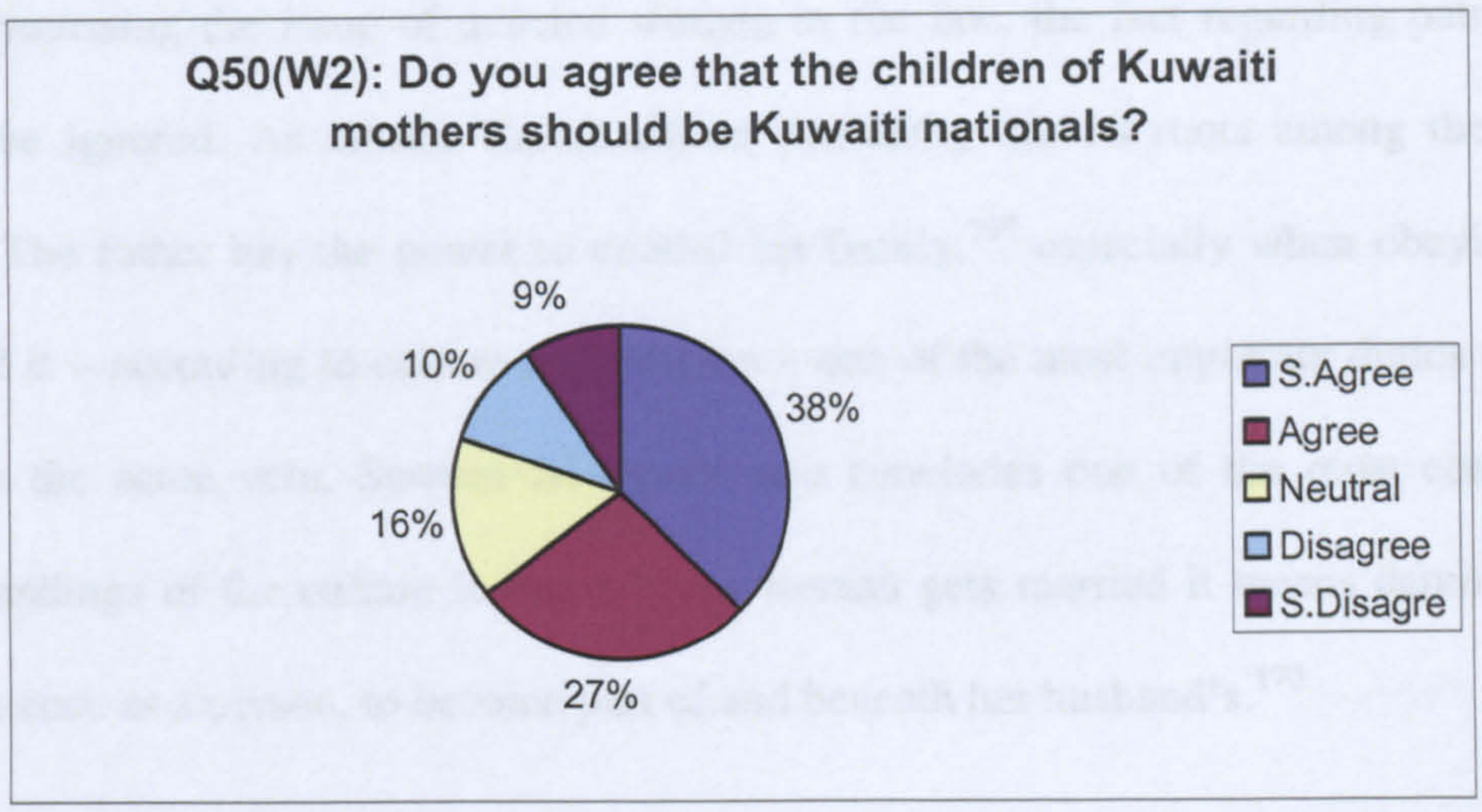
[168] Al-Sarraf, L.

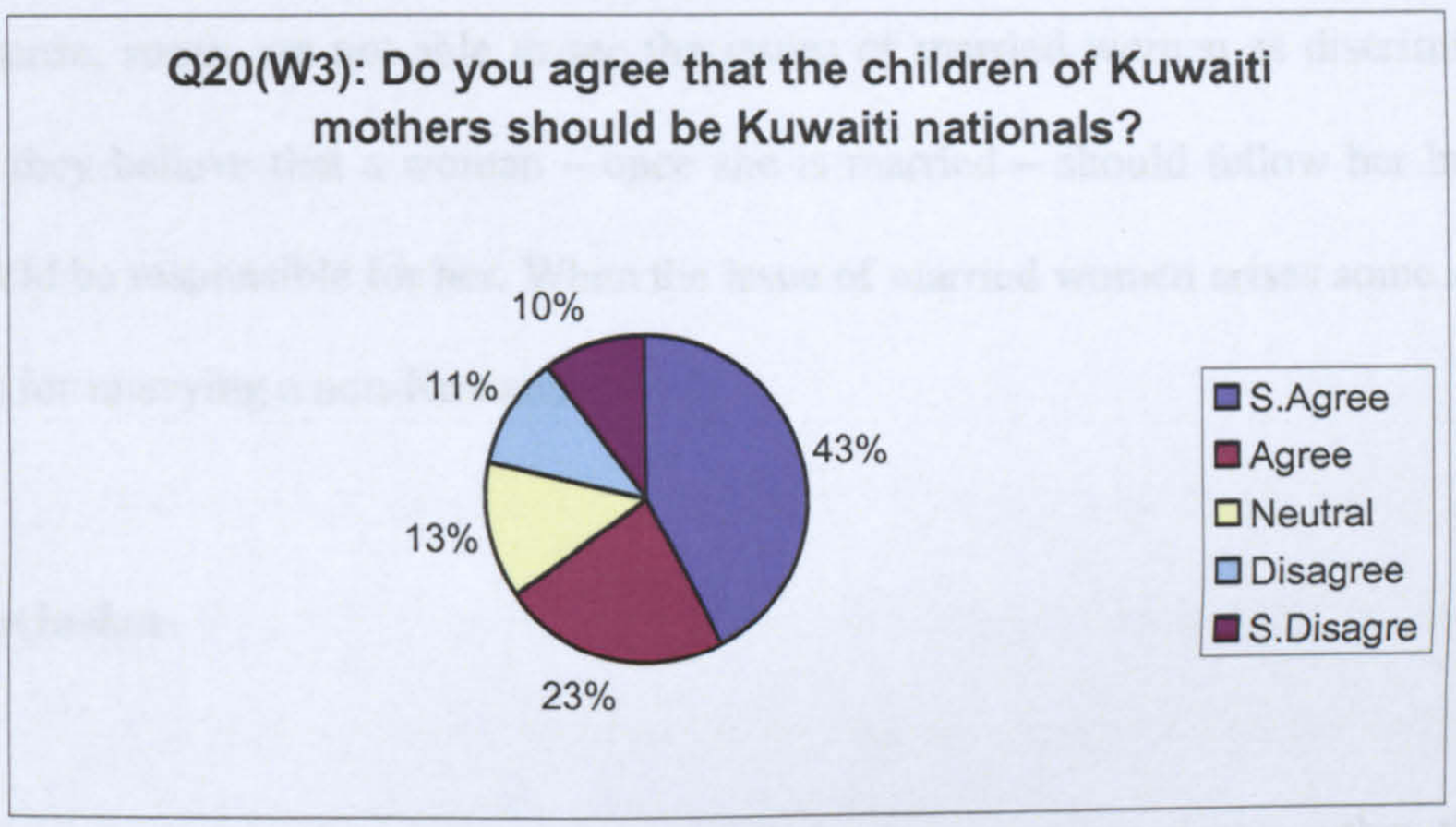
like foreigners. It does not only deprive them of being treated as citizens but it also deprives them of their basic human rights.

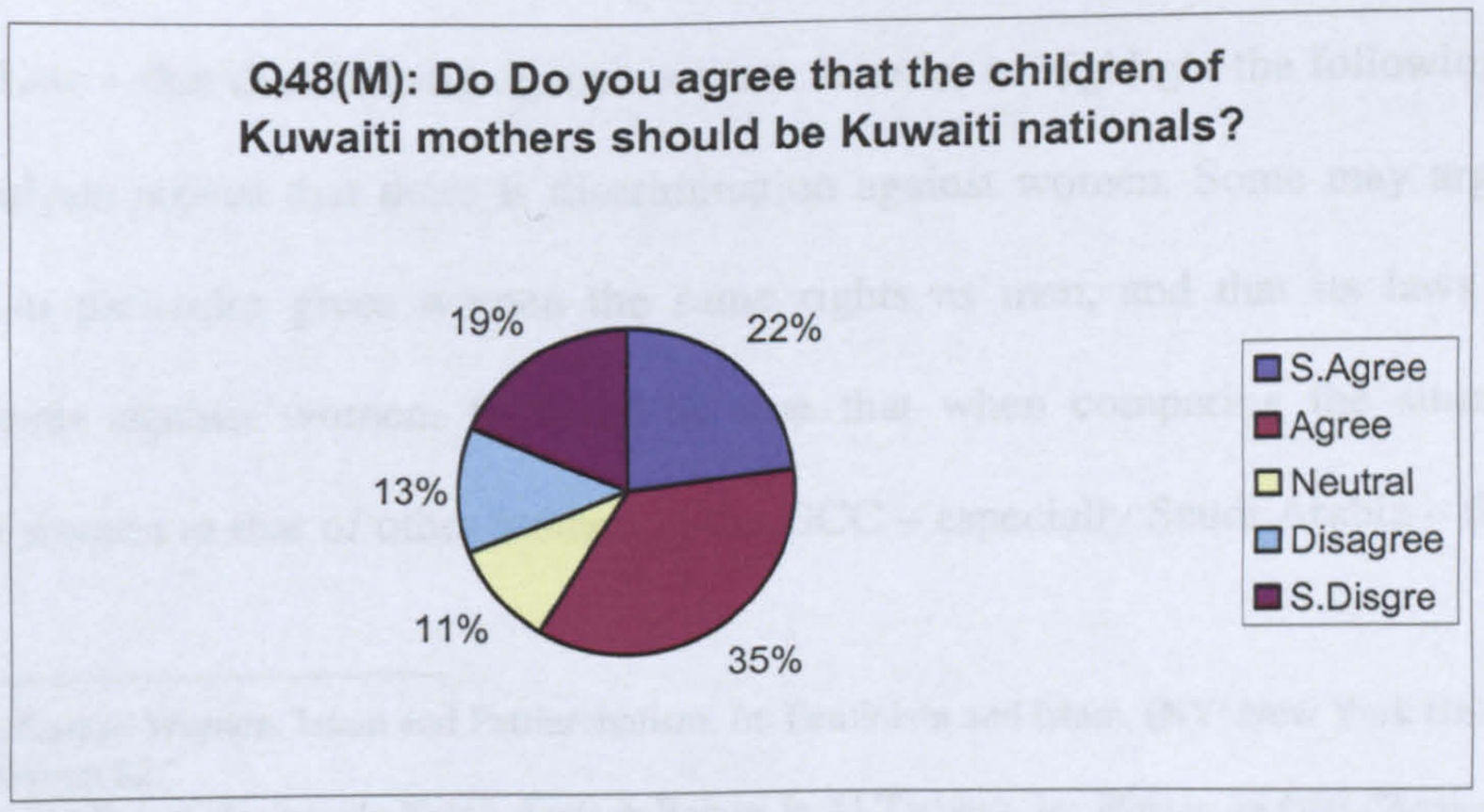
Gaining nationality and a house for the Kuwaiti mother are the most important things. As these are being discussed a lot by the media lately, respondents were well informed about the matter. However, it was worthwhile knowing what people think these issues, and if they have different opinions or not. While married employees and single employees are very close in their responses, as shown in the charts, housewives were more enthusiastic about the matter and had the minimum disagreement among all respondents. However, the percentage of men agreeing on this is positive progress on this issue in particular. It might be a normal result for that amount of women to agree on such matter, but for men to agree is a step forward not only in this, but also in the previously discussed issues.

Figure 6.16 Passing the Kuwaiti Nationality Through the Mother.




Q50(W2): Do you agree that the children of Kuwaiti mothers should be Kuwaiti nationals?
9%
10%
38%
16%
27%
S.Agree
Agree
Neutral
Disagree
S.Disagre


Q20(W3): Do you agree that the children of Kuwaiti mothers should be Kuwaiti nationals?
10%
11%
43%
13%
23%
S.Agree
Agree
Neutral
Disagree
S.Disagre


Q48(M): Do Do you agree that the children of Kuwaiti mothers should be Kuwaiti nationals?
19%
22%
13%
11%
35%
S.Agree
Agree
Neutral
Disagree
S.Disgre

When discussing the issue of married women in the law, the fact regarding patriarchy cannot be ignored. As Ghada Karmi argues patriarchy has its roots among the Arab family. The father has the power to control his family,[169] especially when obeying the husband is – according to culture and religion – one of the most important duties for the wife. In the same vein, Sawsan Al-Emadi also concludes one of the most enshrined understandings of the culture is that when a woman gets married it means demolishing her existence as a person, to become part of and beneath her husband's.[170]

In that sense, some, are not able to see the issues of married women as discrimination, because they believe that a woman – once she is married – should fellow her husband, who would be responsible for her. When the issue of married women arises some see it as her fault for marrying a non-Kuwaiti.

6.7. Conclusion

The main aim of this chapter is to discuss all the laws and practices – other than the Family Law – that discriminate against women in order to highlight the following. First, such analysis proves that there is discrimination against women. Some may argue that Kuwait in particular gives women the same rights as men, and that its laws do not discriminate against women. It might be true that when comparing the situation of Kuwaiti women to that of other women in the GCC – especially Saudi Arabia – that they

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[169] Ghada Karmi. Women, Islam and Patriarchalism. In: Feminism and Islam. (NY: New York University Press, 1996) pp 82.˜

[170] Sawsan Al-Emadi. Da'wa ela Nabth Asaleeb Baleya fe Al-Tarbeya. In: *Women and the Changes of a New Age*. (Demascus: Dar Al-Fikr, 2002) pp 305.˜

may be in a better position. If this is true, then it can be argued that Kuwaiti women gained some of their rights before other women in the Gulf in terms of education as the family law is more advanced than other GCC. However, this is not a valid argument with regard to women in Bahrain who gained educational rights before Kuwaiti women when, in 1928, the Bahraini government started a school for girls. This was about ten years ahead of Kuwait with regard to the public school education.[171] Moreover, Bahraini women gained suffrage rights in 2002 and participated in the election during that year; Article 13 of the Passport Law was amended to allow married woman to get her passport without the need of her husband's permission in May 2004;[172] and a woman was appointed as a judge in June 2006.[173] In Qatar a woman was appointed as a Minister for the first time in 2003, two years ahead of Kuwait. Also in Qatar, women gained their rights to vote and become members of the Local Council in 1999. This paved the way for the suffrage right which was given in Qatar's 2005 constitution by a national survey held in 2003 influenced by the government.[174] Moreover, Omani women were the first in the Gulf to gain their suffrage rights in 1996. Therefore, the argument that Kuwaiti women won their rights before other women in the GCC can be seen to be not valid.

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[171] Bahrain Brief. *Marhala Jadeda fe Maserat Al-Mara' Al-Bahraineia (A New Phase in Bahraini Woman's Era).*[online] [July 2006] Available from:
http://www.bahrainbrief.com.bh/arabic/issue8-2001.htm
[Accessed 26th July 2006] ~

[172] Programme in the Governance of the Arab Region, Bahrain. [online] [2004] Available from:
http://www.pogar.org/arabic/govnews/2004/gender/bahrain.html#c1
[Accessed 26th July 2006]~

[173] Bahrain Brief. *Al-Hamla Al-Entekhabeya Al-Amma fe Al-Bahrain (The National Campaign in Bahrain).*[online] [Oct.2002] Available from:
http://www.bahrainbrief.com.bh/arabic/oct-2002.htm
[Accessed 26th July 2006] also:
Bahrain Breif. Poineer *Bahraini Women.*[online] [July 2006] Available from:
http://www.bahrainbrief.com.bh/english/july%202006/current-july.htm
[Accessed 26th July 2006]

[174] Arab Women Organization. *Qatar.*[online] [undated] Available from:
http://www.awfarab.org/page/qt/2006/new2.htm
[Accessed 26th July 2006] ~

Second, the argument should not be based on which country appointed a woman to a certain position first because this would be seen as a positive move for a certain movement or a country's reputation on the international stage, rather a belief in women's ability. If the wish to improve women's situation in society is genuine, then it can only be achieved by amending all of discriminatory laws discussed here and by eliminating others that degrade women simply because they are women. This includes the honour killing Article, and the kidnap crime where the kidnapper is rewarded by marrying the victim instead of being sentenced to jail for example. After doing so, an anti-discrimination law should be adopted to prevent any further discrimination whether by a law, regulation, or practice. As referred to previously, the UK's equality laws should be tested in order to see how it could be applied in Kuwait. This will form the basis of the next two chapters. After a discussion on eliminating and amending discriminatory laws and practices in chapter seven, chapter eight will debate whether it is possible to adopt an equivalent to the SDA together with other measures similar to Article 14 of the ECHR as the Equal Pay Act. The real challenge in applying such laws is to reach extreme equality between the two sexes. As previously discussed in the Equality Theory chapter, there are some discriminatory issues that are stated by the Sharia. If the cultural discrimination can be banned, it will be more difficult to ban it if it is sourced from the Sharia. Also, if the Kuwaiti laws are adopted from the West, as happened originally in the 1960s, it might be more complicated to adopt a Western law nowadays. The Islamic movement is growing stronger among Kuwaiti society as in many of the countries in the ME; the elected MPs give such an indication. As Windy Christiansen argues that since 1999 the Islamist became the majority in the NA since they form 18 seats out of 50,[175] while in the 2006

[175] Windy Christiansen. *Al-Islameyon Al-Kwaitiyon wa Ingesamatehem.* [Online] [2001] Available from:

election, the Islamist got 21 seats while the liberal lost some of their seats.[176] Thus since their adoption of the equality laws will be challenged in two senses. First, the idea of adopting a Western law is – by it self – a sensitive matter, since the Islamists demand are more of Islamisation the existing laws.[177]Second, the women issue can be irritating to many for two main reasons. First, they associate any demands for women with the women's liberation movements which originate from the West and who ever believes in it is not religious enough and such demands would only alienate the society. Second, the demands of equality is – simply – against the Sharia since the differences are stated in the Holy Book. So the adoption of UK equality measures not only faces legal challenges, but also political, social, and cultural difficulties.

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http://www.kwtanweer.com/articles/readarticle.php?articleID=213
[Accessed 16th Nov. 2006]

[176] Al-Watan. [online] [1st July 2006] Available from:
http://www.al-watan.com/data/20060701/index.asp?content=outstate#4
[Accessed 16th Nov.2006]

[177] For example, the main demand is to amend Article 2 of the Kuwaiti Constitution which states that: 'The religion of the State is Islam, and the Islamic Sharia shall be a main source of legislation'. The suggested amendment is to make it 'Islamic Sharia shall be the only source of legislation'.

Chapter Seven

Amending discriminatory laws in Kuwait

7.1 Introduction

In the previous two chapters the discriminatory laws and practices that exist in Kuwait were discussed, and the government's historical control of the women's movement was analysed. How some MPs used women's issues to gain benefits, especially with respect to suffrage rights, and general issues regarding how women are viewed by society, which were raised in the questionnaire, were also discussed in the previous two chapters.

This chapter will consider whether there are elements of Kuwaiti law that are discriminatory towards women that could be amended by the use of the existing constitution or by constitutional reform based on the Human Rights Act model in the UK. It will argue that this is a possibility and then offer proposals as to how they may be suitably amended, taking account of the formal equality model discussed previously, and of the Constitutional arrangements and cultural constraints in Kuwait. Section 7.2 will show the status of legislation in Kuwait in terms of its existence, enforcement, and how it can be amended according to the idea of adopting constitutional rights into a separate law. In Section 7.3 three options will be considered as to how the existing legal arrangements in Kuwait could be changed in favour of equality and anti-discrimination.

These are: (i) Method 1 – the Kuwait Parliament amends the various discriminatory laws. This would be the simplest and most straightforward method of achieving change. However, despite some international pressure, the National Assembly (NA) has shown little receptivity to the need to achieve equality via legislative change. The religious and cultural factors working against legislative change were discussed in Chapters three and six,[1] and will also be discussed below. Some members of NA were prepared to pass the suffrage law, but the fact that Kuwait was the last country in the world to grant women the suffrage is indicative of the difficulties that would be faced by pressure groups seeking to persuade members of NA that legislative change is required in order to achieve gender equality. Below, reform of the various discriminatory laws that were discussed in Chapter five and six is considered. The possibility of amending them in the Parliament is mentioned (it will be referred to as "Method 1") but it is acknowledged that change by this method is likely to be extremely slow. If a law was not based on Sharia law it would be slightly more likely that members of NA might be persuaded of the need for change, and this point is considered further below.

(ii) *Method two: on a case by case basis incompatibility with Article 29 (the equality* Article) of the Kuwaiti Constitution (KC) could be claimed in relation to various laws. That would mean that the issue would be referred from the hearing court (whether a Family court or a criminal court etc) to the Constitutional Court (CC). The Court would have to be persuaded that there was a serious issue regarding incompatibility. The CC has the power (which is not available in the UK due to the doctrine of Parliamentary

[1] See pp 150-155 and different parts of chapter six in regards to the culture in education, honour killing and suffrage rights.

sovereignty) to strike down laws for incompatibility with the Constitutional Articles. However, as it will discussed below, this power is very rarely exercised,[2] mainly because of the complicated procedures that are required to reach this court, as will be discussed shortly.[3] So again change by this method would be very slow. It is a serious deficiency in the constitutional arrangements that there must be a serious plea of compatibility before the Constitutional Court (CC) will consider the matter. This method is referred to in the following discussion in this Chapter of the possibility of amending the discriminatory laws to achieve gender equality; it is referred to as method 2. It has the advantage that it would not involve changing the constitutional arrangements in Kuwait, but has the very severe disadvantage that change would be very slow.

(iii) Method 3: this method would rely on Article 29 but would be intended to speed up the process of change. It would involve passing an Act (it is suggested that it could be known as the Public Rights Act), modelled on the UK's Human Rights Act. The HRA has enforced the ECHR by giving the Convention's Articles superiority over the UK domestic laws due to the provision of s3 of the HRA (see e.g. *Ghaidan v Mendoza*).[4] S3 requires the primary and subordinate legislations to be compatible with the Convention's Articles. Some Sections of the HRA, like s4, which discuss the declaration of incompatibility, s6 which oblige the public authorities to act in a compatible way with the ECHR Articles, (see e.g. *R. v. Leonard Cheshire Foundation*),[5] and s7 which arrange the

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[2] See Appendix 3.
[3] The several times that women have tried to reach the CC in order to examine the discriminatory previous Electoral law, and failed in each time mainly because of the procedural causes, can set a good example of how difficult it is to reach this court.
[4] [2004] UKHL 30, it will be discussed in more details shortly.
[5] [2002] 2 All ER 936; [2002] EWCA Civ 366.

proceeding of claims in case of breaching the Convention, will be discussed in more detail and will be compared to the Kuwaiti legal system. How some of those Sections would be beneficial for Kuwait to adopt will also be explored, along with a discussion of how they will require a different mechanism of application in Kuwait due to differences between the legal systems in the two countries. Therefore, as a matter of constitutional reality it is probable that the Public Rights Act (PRA) could not adopt the HRA model in full. Under the KC, Parliament can in theory pass laws that change the constitutional arrangements. So the PRA could as a matter of constitutional theory contain ss3 and 6 of the HRA unmodified, which would allow any court to seek to ensure compatibility between any law and Article 29, and would also allow the court as a public authority under s6 to apply Article 29 (the PRA would also give effect to all the other Articles of Part III of the KC). However, that would be contrary to constitutional practice in Kuwait, although clearly it would be the most effective method of achieving gender quality through legal change. However, it would be unlikely that the Parliament would accept such a radical change. Therefore it is proposed that s3, since it is compatible with Article 1 of the CC Law, should be applied only on a reference to the CC, while s6 will be applied to both the PRA court and of course the CC. S4 would not be included in the PRA since that CC has the power to strike down laws. So the CC would seek to render the discriminatory laws compatible with Art 29, using s3 PRA, possibly by reading words into them as in *Ghaidan* in the UK (as will be discussed later). If the CC could not render the laws compatible by that method, it should strike down the discriminatory provision.

The Court would also be bound by s6 PRA to ensure that Article 29 was observed in the application of the law. In other words, if the law did not need to be reinterpreted using s3, it would still be necessary to apply it in a way that ensured gender equality, under Art 29. This method will be referred to below as method 3. It is viewed as the preferred method because it is more likely to bring about change. Below, specific examples are given of reading words into legislation to render them compatible with Art 29. Examples are also given of laws that cannot be rendered compatible by interpretation and so would have to be struck down. It will be argued that while all three options have their merits, they are not without problems, and section 7.4. will suggest that option (iii) may be the most beneficial route to take, and discuss why that is the case.

Another method that can ensure the enforcement of the equality principle is to have a sex-discrimination law. However, this method will be examined in greater details within the next chapter considering the SDA 1975 as a model for Kuwaiti legal system to apply.

7.2. Enforcement of the Laws

Legislation in Kuwait is conducted on three levels. Each upper level has supremacy and thus supplants the ruling of the contradictory lower level legislation. It also has the power of amending and changing the lower level legislation. Adopting the human rights that are stated in the KC into a separate law would have to take place in the second level of this traditional hierarchy of laws. The levels of legislation[6] are:

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[6] According to the Kuwaiti legal system, the law has four sources. First there is legislation, which has three different levels as will be explained shortly. Second there is custom. Third there is legal jurisprudence, and finally there is judgmental or case law. The first two sources are considered the most important. It is optional whether or not a judge applies the last two sources. For more details, see

1. The Constitution.
2. The regular laws (public and private law), issued by the Legislative Authority (the National Assembly and the Amir).
3. The regulations which are usually issued by a governmental body to regulate the application of a certain law (which usually contains the code of practice of a law), to organise a certain matter related to the public, or to organise the administrative work within the governmental body.[7]

Article 29 of the Constitution states that: "All people are equal in human dignity, and in public rights and duties before the law, without distinction as to race,[8] origin, language or religion."[9]

Accordingly, all of the discussed discriminatory articles of the family law, criminal law and other different laws are incompatible with the supreme law of the Country, the Constitution.[10] In fact, Article 29 is not the only Article that discusses the equality principle, there are other Articles in the Constitution that also mention equality. Article 7 states that: "Justice, Liberty and Equality are the pillars of Society; co-operation and mutual help are the firmest bonds between citizens." Moreover, the principle was given an additional guarantee in Article 175, which states that: "The provisions relating to the

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Addel Al-Tabtabae'. *Al-Netham Al-Destori fe Al-Kuwait: Derasa Mugharana.* (The Constitutional System of Kuwait: Comparative Study). (Kuwait: King's P Press. 2001) pp 38-81.

[7] Mohammad Mansour. *Al-Madkhal ela Al-Ghanoun* (Introduction to the Law). (Lebanon: Dar Al-Nahda Al-Arabeyia, 1995) pp 105-117.

[8] The original Arabic text mentions 'sex', but it has been mistranslated as 'race'.

[9] In the explanatory note of the Constitution, it is mentioned that only four grounds for discrimination are stated in the Constitution, and the reason that other grounds (like colour and property) were not mentioned, as the Universal Declaration of the Human Rights did, is because such grounds for discrimination do not exist in Kuwait.

[10] In 1976, the experience of democracy in Kuwait went through a crisis when the National Assembly was dissolved, and the Constitution was suspended due to different political reasons.
Abdo Baaklini. Legislators in the Gulf Area: The Experience of Kuwait, 1961-1976. *International Journal of Middle East Studies.* Aug. 1982, 14 (3), pp 359-379.

Amiri System in Kuwait and the principles of liberty and equality, provided for in this Constitution, may not be proposed for revision except in relation to the title of the Emirate or to increase the guarantees of liberty and equality."[11] From these Articles, it can be understood that, not only did the Constitution affirm the equality principle, it was also careful to claim that if there were any amendments then they should only be made to give more guarantees to the principle.[12]

The legislative authority includes two main parties, which have the authority to propose legislation: the Amir and the National Assembly members. When the Amir or the MPs present a bill, it goes through different stages of administration. This means that the bill is not only written as a legal document and valid as a law, but also checked to make sure that it is compatible with the Constitution.[13]

7.2.1. The Compatibility of public and private laws with the Constitution

In 1973, Law No. 14/1973 establishing the constitutional court was issued.[14] The Court's missions are stated in the first Article of the Law; the main missions are that only the CC

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[11] Mona Al-Adsani. *Al-Hughagh wa Al-Hureyat Al-Amman fe Al-Destour* (The Public Rights and Freedom in the Constitution). [online] [Jan. 1997] Available from:
http://www.majlesalommah.net/run.asp?id=371
[Accessed 20th Jan. 2007]

[12] The Constitution was careful to be compatible with the laws that already existed before it, for example, Article 180 states that: "All provisions of laws, regulations, decrees, orders and decisions, in effect upon the coming of this Constitution into force, shall continue to be applicable unless amended or repealed in accordance with the procedure prescribed in this Constitution, provided that they are not contrary to any of its provisions."

[13] Both the National Assembly and the Amiri Diwan have legal advisors and constitutional consultants who revise bills before presenting them to NA to vote on, to make sure that they are legally valid and to see whether they are compatible with the KC.

[14] It might be worth mentioning that before 1973, there was an argument as to whether or not the ordinarily court – since there was not a constitutional court – had the authority to examine the compatibility of the laws with the KC. However, when the matter reached the Highest Court of Appeal – the highest level of

is eligible to interpret the KC, and it is the only court that can hear any case that is related to the compatibility of the KC. When such a case is heard, all bodies, authorities and courts must present a verdict according to Article 1 of the Law.[15]

Judge Abdullah Al-Essa[16] stated that during the ordinary trial, any one of the parties, or the trial court itself, can claim that an article (or articles related to the law suit) is not compatible with the Constitution. In which case the trial court has the authority to suspend the case and transfer the matter to the CC, to examine whether the article is compatible or not. However, the trial court has the authority to ignore such claims and it is under its jurisdiction whether to accept or reject such pleas. If the plea is accepted, and if the CC decides that the Article is not compatible with the Constitution, then it will contact the government to change the article and make it compatible with the Constitution according to Article 6 of the CC Law.[17] This is considered the main way to effect change in the laws that do not harmonise with the Constitution.[18]

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judicial degree then – a plea of incompatibility was presented. The decision was that neither this Court nor any other court has such authority. So until 1973, no court had the authority to examine the constitutionality of the law.
Addel Al-Tabtabae'. *Al-Netham Al-Destori fe Al-Kuwait: Derasa Mugharana.* (The Constitutional System of Kuwait: Comparative Study). (Kuwait: King's P Press. 2001) pp 1050-1056.

[15] The Article states that: "A constitutional court shall be established to be given – exclusively – the right to interpret the constitutional provisions and decide on disputes relating to the constitutionality of laws, decrees, and regulations; also to decide on the appeals pertaining to the election of the National Assembly or the validity of the members election, and the ruling of the Constitutional Court are binding on all the other courts."

[16] The former President of the Supreme Court in Kuwait. Interviewed in 21-12-2006 at his house.

[17] The Article states that: "If the Constitutional Court decided on the incompatibility of a law, decree law, or a regulation, or decided on illegality of an administrative regulations for violation of the a valid law, then the competent authorities have to take the necessary measures to correct such violations and the implications for the settlement of the past."

[18] AL-Essa stated that some unconstitutional articles were not replaced as they should. When that happened the articles were not considered as law. For example, Article 6 of the Custom Law was declared to be incompatible with the Constitution by the Constitutional Court, however, it was not replaced, and the courts just had to ignore its existence.

There are serious effects to the Court's deciding that a law is incompatible. Most importantly, the law would be considered as if it had never existed, since the ruling would have a retroactive effect.[19] This rule is stated in Article 173 of the KC.[20] However, as Basheer Bazz and Al-Essa argue, the retroactive effect would occur with respect to the criminal provisions only, meaning that if the CC decided that one of the criminal law articles was incompatible with the KC, then anyone whose imprisonment was based on that article would be freed. On the other hand, the unconstitutionality of the other laws would not have retroactive force, since it would be difficult to apply.[21] Most Kuwaiti legislations were passed back in the early 1960s, while the CC was established in 1973. That means that if any incompatible law was struck down, such ruling will affect rights that were gained at least thirteen years ago. This may be confusing to many people.

Moreover, recently, Al-Essa[22] – as one of the judges in the case – explained how in a historical judicial precedent in May 2006, the CC struck down 15 of the 22 Articles of the 65/1979 Decree-Law, because they were not compatible with the KC.[23] Such an incident

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[19] Essam A.Saleem. *Mawghe' Al-Ghadha' Al-Destory mn Masader Al-Ghanoun* (The Status of Constitutional Judiciary from the Law Sources). (Egypt: Munsha't Al-Ma'ref, 2000) pp 69-70.

[20] Esssam Saleem concluded that the law can be incompatible with the constitution for two reasons: first, if the subject of the law is in conflict with the constitution; second, if the procedures that created the law are unconstitutional.
Saleem, E. (2000) pp 42-54.
Article 173 states that: "Law shall specify the judicial body competent to decide upon disputes relating to the constitutionality of laws and regulations and shall determine its jurisdiction and procedure.
Law shall ensure the right of both the Government and the interested parties to challenge the constitutionality of laws and regulations before the said body.
If the said body decides that a law or a regulation is unconstitutional it shall be considered null and void."

[21] Basheer Baz. *Athar Al-Hukom Al-Sader be Adam Al-Destoreya* (The Effects of Incompatibility with the Constitution Judgment). (Egypt: Dar Al-Jamea' Al-Jadeda, 2005) pp 51-55.

[22] The former President of the Supreme Court in Kuwait. Interviewed in 21-12-2006 at his house.

[23] The Decree-Law, called 'the congregation law', restricts the number of people that can meet at a 'gathering' It also adds certain other restrictions to such 'gatherings.' However, the authority used to accuse people of conducting 'gatherings' does so in a very secretive manner. In 2004, two men named Al-Humaidi Al-subaie' and Mubarak Al-Mutairi were accused of having congregation without permission. During the hearing of the case 223/2004, the lawyers presented a plea of incompatibility with the KC, which the trial court sensed was serious. In case 1/2005, the Constitutional Court cancelled Articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 16, 17, 18, 19 and 20, because they were incompatible with Articles 30,34, 36 and 44 of the KC.

opens the door for there to be more incompatibility claims, especially with regard to the Articles discussed in this – and the previous two – chapters.[24]

On the other hand, as has been argued, it is a fact that although the KC states in Article 29 that there should be no discrimination based on gender, several different laws still preserve discrimination. However, it is not only the KC which contains the principle of equality as to gender, most of the Arab countries' constitutions include an article similar to Article 29.[25]

Article 40 of the Egyptian Constitution (1971) states that: "All citizens are equal before the law. They have equal public rights and duties without discrimination due to sex, ethnic origin, language, religion or creed", something very similar is stated in Kuwait's Article 29. However, the Egyptian Constitution also states in Article 11 that: "The State shall guarantee coordination between woman's duties towards her family and her work in the society, considering her equal to man in the political, social, cultural and economic spheres without detriment to the rules of Islamic jurisprudence (Sharia)."[26] Nawal Sa'dawi has argued that while equality is included in the Egyptian Constitution as well as in that of most other Arab countries, these constitutions only protect rights in the public sphere and not in the private sphere where certain laws continue to support women's subordination. For instance, family laws negatively affect women's rights and their

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[24] For example, it is possible for a woman to plead incompatibility during the ta'a cases and before reaching the nushoz verdict, especially since – as discussed in chapter five – the nushoz issue is not related to Sharia, this makes it more possible to cancel the Article in the Family Law.
[25] Abdulla A. AN-Na'im. *Toward an Islamic Reformation.* (NY: Syracuse University, 1990) pp.89.
[26] Egypt's Government (official website). [online] [undated] Available from:
http://www.egypt.gov.eg/english/
[Accessed 28th Nov. 2006]

participation in the public sphere indirectly.[27] They also contradict the constitution a great deal.

It is true that most constitutions include the equality principle within their main text. However, only some of them implement such provisions and amend contradictory laws that are considered discriminatory.[28] For example, as Shahata Abu-Zaid argues, when Germany's Constitution included the law of 'equality', it cancelled all of the discriminatory laws.[29] Also, as Dieter Giesen has argued, since 1949, when the German Constitution was passed providing for the equality principle in Article 3,[30] the discriminatory laws have been gradually demolished. In 1953, the highest court held that any German law that contradicts the equality rule should come to an end.[31]

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[27] Nawal Sa'dawi. The Political Challenges Facing Arab Women at the End of the 20th Century. In: *Women of The Arab World.*(UK: Zed Books Ltd, 1988) pp 9-11.

[28] It might be worth mentioning that besides the equality principle in Article 19, the Iranian Constitution has also directed the following two Articles to protect women, Article 20 states that: "All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria." Moreover, Article 21 states that: "The government must ensure the rights of women in all respects, in conformity with Islamic criteria, and accomplish the following goals:

1. create a favourable environment for the growth of woman's personality and the restoration of her rights, both the material and intellectual;
2. the protection of mothers, particularly during pregnancy and childbearing, and the protection of children without guardians;
3. establishing competent courts to protect and preserve the family;
4. the provision of special insurance for widows, and aged women and women without support;
5. the awarding of guardianship of children to worthy mothers, in order to protect the interests of the children, in the absence of a legal guardian."

[29] Shahata Abu-Zaid. *Mabda' Al-Musawaa fe Al-Dasateer Al-Arabiya* (The Equality Principle in the Arab Countries Constitutions). (Egypt: Press, 2001) pp 424.

[30] The Article (of the Basic Law) states that:
"1. All human beings are equal before the Law.
2. Men and women have equal legal rights.
3. No person shall suffer prejudice or gain preferment by reason of sex, decent, race, language, home and social origins, beliefs or religious or political convictions."

[31] Dieter Giesen. Sex Discrimination in Germany. *The Modern Law Review.*1978, 41 (5), pp 526,543.

In Kuwait, the incompatibility of its laws with its constitution creates two problems. The discrimination that exists in the discussed laws are considered to be derived from Sharia, which is also considered a main source of legislation according to the KC.[32] Further, only the CC has the authority to declare incompatibility, and thus is the only guarantee that the existing laws are compatible. However, this Court would only attempt to decide whether a law is compatible with the KC in one of two situations. First, if the matter is transferred by the NA or the Cabinet. Second, if the court or one of the parties present a plea during the hearing that the law that should be applied to the case is incompatible with the Constitution.[33] This means that ordinary people do not have direct access to the CC, and even with a plea, the court that is hearing the case has to be convinced that it is a 'serious' plea, otherwise it will be ignored.[34] Further, as Addel Al-Tabtabae' argues, giving the authority to examine whether the plea is serious to the hearing court, is actually giving the hearing court some of the constitutional court's authority.[35] This is because an examination of whether or not the plea is serious would be based on how the law is related to incompatibility with the Constitution.[36] It can be concluded that the problem

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[32] It has been argued that many of these laws are not related to Sharia, and even the issues that are, bearing witness and inheritance for example, can be changed. This will be discussed later on in this chapter.

[33] According to Article 4 of the Constitutional Court Law 14/1973, the Court can be reached by one of two methods:

1. If a request is made by either the NA or the Cabinet.
2. Or if during a hearing either party presents a plea that the Law, or some of its Article(s) are incompatible with the Constitution the trial court can stop proceedings if it believes that the plea is serious until the Constitutional Court makes a judgment as to whether the law in question is compatible or not with the Constitution.

[34] It is worth adding the point that according to Article 4 of the CC Law, if the hearing court decided that the plea to be presented to the CC is not serious, the applicant can challenge the decision before the Examination of the Pleas Committee, supplementary to the CC.

[35] Also, as Othman Abdul-Malik argues, limiting the access to the CC in Kuwait cannot be justified and is in fact against the KC principle (especially Article 173). At the same time, there are several countries that not only give people a direct access to such a court, but also try to ease the procedures. For example, in Switzerland such claims are exempted from the judicial fees, while in Spain one is not required to have a personal interest in the claim in order to raise it, anyone can present the claim.
Othman AbdulMalik. *Al-Raghaba Al-Ghadae'ya Amama Al-Mahkama Al-Destoreya fe Al-Kuwait* (The Judicial Control before the CC in Kuwait). (Kuwait: Kuwait University, 1986) pp 78.

here is with the process for dealing with the 'incompatibility' issue.[37] However, Kuwait could adopt a mechanism similar to the UK mechanism of the Human Rights Act 1998, and call it 'the public rights act.'[38]

7.2.2. Empowering the KC

As discussed in chapter four, Article 14 of the ECHR provides the anti-discrimination principle by stating that: "The enjoyment of the rights and freedom set forth in this convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin association with a national minority, property, birth or other status."

This clause is similar to the clause that can be found in Arabic constitutions in general, and Article 29 of the Kuwaiti Constitution in particular. So that the latter should have an advantage over Article 14 of the ECHR, besides its supremacy over any law in Kuwait. While Article 14 guarantees the non-discrimination treatment *only* to the rights that are stated in the Convention, Article 29 of the KC is supposedly related to *all* laws and practices. However, the Strasbourg system has successfully been able to legally enforce this Article – as well as other Articles in the Convention – by establishing the European Human Rights Commission and European Court of Human Rights. This is explained in Article 19 of the Convention. Meanwhile the CC of Kuwait is not open to the public.

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[36] Addel Al-Tabtabae'. *Al-Netham Al-Destori fe Al-Kuwait: Derasa Mugharana.* (The Constitutional System of Kuwait: Comparative Study). (Kuwait: King's P Press. 2001) pp 1062.
[37] The Ministry of Justice statistics show the limited numbers of the cases that the CC has examined from 2002-2004, see appendix 3.
[38] Part 111 of the KC translated as public rights and duties which contains the basic human rights.

If ordinarily people cannot bring a case before the CC, then Kuwait can do what the UK did in the Human Rights Act 1998. The UK was one of the Parties to the ECHR, and it eventually adopted the Convention's Articles through the domestic Human Rights Act 1998, providing domestic remedies for unjustified violations. Similarly, the public rights that are stated in the KC could be adopted into regular law, giving individuals the chance to bring a case before a court when any of those rights have been unjustly violated.

If amending the Constitution is considered too complicated and needs further procedures than amending the regular laws,[39] Kuwait can – as the UK did – adapt the rights stated in Part III of the KC called 'Public Rights Act' in a separate law. By doing so it would guarantee that those rights would not be violated. People would then have direct access to the courts in case of violation.

The Human Rights Act 1998 has received the Convention Articles into domestic law in the sense that they affect legislation and bind public authorities. Section 3 of the HRA 1998 states that "primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights."[40]

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[39] Article 174 of KC states that: "Either the Amir or one-third of the members of the National Assembly shall have the right to propose the revision of this Constitution by amending or deleting one or more of its provisions or by adding new provisions.
If the Amir and the majority of the members constituting the National Assembly approve the principle of revision and its subject matter, the Assembly shall debate the bill article by article. Approval by a two-thirds majority vote of the members constituting the Assembly shall be required for the bill to be passed. The revision shall come into force only after being sanctioned and promulgated by the Amir regardless of the provisions of Articles 65 and 66 of this Constitution.
If the principle of revision or its subject matter is rejected, it shall not be presented again before the lapse of one year from the rejection.
No amendment to this Constitution may be proposed before the lapse of five years from its coming into force."

[40] Crown Copyright. Human Rights Act 1998. [online] [13th Nov. 1998] Available from: http://www.opsi.gov.uk/ACTS/acts1998/80042--a.htm#3

This Section guarantees that the law in both primary and delegated legislation has to be rendered compatible with the Convention's Articles. This concept is supported by the courts, and in particular the House of Lords, in order to minimise the conflict between the domestic laws and the Convention.[41] In *Ghaiden v. Godin-Mendoza* where the defendant was the tenant's homosexual partner for over 30 years, and was faced with the verdict that he cannot benefit as the 'tenant surviving spouse' from the tenancy agreement according to the Rent Act 1977, because of his homosexuality. The court decided the Act infringed Articles 8 and 14 of the ECHR, since the defendant was treated less favourably than a heterosexual partner would have been, and according to s3 of the HRA the Rent Act must '*if possible*' be read in a compatible way with the ECHR and that 'spouse' can include both types of relationships.[42] However, s3 of the HRA has been criticised on the grounds that it can be ambiguous. S3 states that 'so far as it is possible', a phrase that is open to different interpretations, one of them is that 'it is not possible' for a law to be compatible.[43] So that it would be important for Kuwait, when adopting this Section into the PRA, not to include the phrase 'so far as it is possible' especially when knowing that the Sharia can always be used as an excuse for the discriminatory laws. Since the rights

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[Accessed 30th Nov.2006]

[41] K.D. Ewing. The Human Rights Act and Parliamentary Democracy. *The Modern Law Review.* 1999, 62 (1), pp 79-99.
Also, Section (3) amended the House of Lords role in *R. v Brown* [1994] 3 S.C.R. 749 when it was not required for the court to act consistently when interpreting the Offences Against the Person Act 1861 under the Convention.
Maureen Spencer and John Spencer. *Human Rights.* (London: Sweet and Maxwell Limited, 2004) pp 40, 41.

[42] Maureen Spencer and John Spencer. *Human Rights.* . (London: Sweet and Maxwell Limited, 2005)2nd pp 18-19.

[43] House of Lords. *Judgments – Ghaiden (Appellant) V. Godin-Mendoza (FC) (Respondant).* [online] [2003-2004] Available from:
http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd040621/gha-1.htm
[Accessed 10th May 2007]

that will be stated in the PRA are constitutional rights, and that the CC is the only body that has the authority to interpret the KC, then it would be more practical to give it the right to interpret it.

Section 4 of the Act, on the other hand, discusses the 'declaration of incompatibility' and in 4 (5) it explains what 'court' means.[44] As has already been mentioned, however, in Kuwait the CC is the only body that has such authority according to Article 1 of Law No. 14/1973. Also, according to Al-Essa, if there was a conflict between two laws, then the trial court would judge according to the law in question, which would be applied to the case, unlike what would happen if the conflict was between a law and the Constitution. For example, if the constitutional rights were adopted in a separate law, a divorce case was being heard, and one of the parties claimed that the divorce articles was incompatible with the PRA, then the trial court would still apply the family law to the case, since it has the priority to be applied. However, if it was claimed that it was incompatible with the Constitution, then there would be a chance to amend the family law if the CC found that it was truly incompatible with the Constitution.[45] For example, if a husband sued his wife for *ta'a* - as explained in chapter five - and the wife raised a plea of incompatibility of the *ta'a* or the *nushoz* with the PRA before the family court, then the judge would ignore the plea and continue with the case. This means that incompatibility would only be heard as long as the Constitution is involved; it does not exist between the laws. However,

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[44] Spencer, M. and Spencer J. (2004) pp 43.

[45] The laws in Kuwait are divided into two categories, the private laws, which ordinary people are involved in such as the commercial law, family law, civil law, and the public laws which the government is party to such as the criminal law, procedural law, civil service law, constitutional law, etc. According to Mr. Al-Essa, the private laws always have priority when applied in a case of conflict law or incompatibility, unless the Constitution is involved, then it has the priority since it is the superior law.

adopting such a law can still be beneficial to Kuwait, even though it cannot have the supremacy that the Constitution has. Unlike Section 4 of the HRA, the Kuwaiti law could still preserve the right of incompatibility declaration to the CC by adding more guarantees to it. For example, the law could add a statement saying: "taking into account Article (4) of the CC Law, due to the fact that these rights are adopted directly from the supreme law of the State of Kuwait, its Constitution, if during the hearing of a case the applicant presented a plea of incompatibility, then such a plea has to be examined by the CC." Using the above example, if a wife was faced with the ta'a judgment, she could bring a case under the PRA – in a different court – to claim that the nushoz and the ta'a is a breach of the equality principle and is thereby a violation of both KC and the PRA. Due to the special feature of the PRA, i.e. being adopted from the KC, it would transfer the matter to the CC to examine the incompatibility. In this case, the plaintiff would have two options, either to present a plea of incompatibility with the KC before the hearing court (the family court in the above example) which is method 2, or, failing that, bring a case – before a different court – against the judgment if it violates one of the public rights (equality in the above example) which is method 3. That court would either take into account that the nushoz matter conflicts with the equality principle and nullify the judgment, or it could transfer the matter to the CC by itself, or by a plea that can be presented by the plaintiff.

Section 7 of the Act, on the other hand, gives detailed procedures to assure that the victim can claim against a public authority for breaches of the rights given in the Convention.[46]

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[46] Nigel Johnson. The Human Rights Act 1998: A Bridge Between Citizenship and Justice. *Cambridge University Press.* 2004, 3 (2), pp 113- 121.

It is also important for the Kuwaiti law to declare that a plaintiff should not only be able to proceed with a case against a public authority, but should also be able to challenge a court ruling, which is different to appealing. There are three authorities in Kuwait, executive, legislative, and judicial.[47] Usually 'public authority' means the executive authority which interferes with people's life more often. However, it has to be clear that it is important to give the right to challenge a court decision before the public rights court, which is different than the court of appeal. In the same example, the appeal of a ta'a case would not help, since the court would still apply the family law. However, what needs to be done here is to challenge the family court's decision on the different basis of being in breach of a constitutional right,[48] which adopting s6 would guarantee. Section 6 of the Act discusses 'public authorities.' As Richard Stone has argued, according to the Act, there are some cases when the question of whether a body is considered a 'public authority' depends on the nature of its functions, regardless of the organisation e.g. *Poplar Housing Regeneration Community Association Ltd v Donoghue.*[49] In Kuwait, however, the public bodies are governmental bodies not because of the nature of their activities, instead the law that establishes the body decides whether it is a public authority or not.[50] For example, the Kuwait Oil Company (KOC) operates as a private company, but is nevertheless still considered a public body. Also, for a case like the *R. v. Leonard Cheshire Foundation* where the residents of a care-home claimed that closing the home

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[47] Al-Tabtabae', A. (2001) pp 503.

[48] The Civil Procedures Decree Law No. 38/1980 organised how to challenge a court decision from Articles 127-136, however, these rules can be understood as organising the appeal procedures. The Law is silent about challenging a court ruling before another court, which allows the new law to organise such matter.

[49] [2001] EWCA Civ 595; [2001] 4 All ER 604.
Richard Stone. *Civil Liberties and Human Rights.* (USA: Oxford University Press, 2006) 31, 32.

[50] Article 2 of the CSA No. 15/1979 defines the public body as: "Each ministry, department or administrative unit whose budget within the overall budget of the State or thereto." Also, in appendix 3, it has a list of all bodies considered to be public authorities according to the Ministry of Planning statistics.

and moving them to another is a breach of Article 8 of the ECHR, and under s6 of the HRA the defendant is in act of a public nature. Such a case cannot exist in Kuwait, since it does not matter whether a body is acting as a public or a private capacity, what matters is who owns the body who decides whether or not it is a public authority.[51] However, adopting such a section would give more guarantees to empower the PRA, since 'public authority' would, as it is stated in s6(3), include different kinds of bodies, in particular courts which would give people the right to challenge a court decision. It is essential to have the right to challenge a court decision under the PRA, since it is the most effective way to enforce the new Act. So it is important to include s6 in order to ensure compatibility action with the PRA by a public authority.[52]

Section 2 of the Act discusses the interpretation of the Convention. However, there are two options to adopting such a law. It could either follow the UK way of adopting such rights as stated in S1 of the HRA. Or it could re-estate the rights that are stated in the KC from Articles 27-47. Doing so would be more practical for the legal procedures giving the new law more independence and lessen the complexities that might arise when relating it directly to the Constitution. It would also give such rights more guarantees by stating them in a law in addition to the Constitution. Also, giving some independence to the law would give the regular court the right to interpret the law articles, while if such independence was not granted, the CC would be the only court to have such a right.

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[51] Spencer, M. and Spencer J. (2005) 42,43.

[52] Of course, the Section needs to be modified to suit Kuwait. For example, tribunals do not exist in Kuwait so it can be disregarded. Also, the mechanism of the Houses of Parliament works differently than the National Assembly of Kuwait, besides the House of Lords does not exist in Kuwait.

The point here is not to say that the HRA should be adopted by Kuwait, rather that Kuwait can benefit from learning how the HRA works. Also, Kuwait can benefit from analysing the general principles that the Act has included, especially in the sections discussed above. Most importantly, Kuwait can then consider the idea of following its method of adopting the constitutional rights into a separate law in order to provide more effective enforcement of such rights and to ease the procedures of reaching the court when such rights are breached.[53] However, the Kuwaiti law of public rights cannot just adopt the constitutional rights as they are in Section 1(1) of the HRA. Instead, it would be better to state the rights that are given in the Constitution in more detail.[54] This method would be beneficial in giving more flexibility to the addition of more rights to the law that were not included in the KC (such as Article 12 and 13 of the ECHR). This way, those rights would have an additional guarantee, not only by being included in the Constitution but also by being covered under ordinary law. After stating those rights in more detail, Kuwait could then use some Sections of the HRA as guidelines on how to enforce such laws. It might be noteworthy that some of these rights (stated in the KC from Article 27 – 47) are already adopted by other laws; for example, Article 32[55] of the Constitution is adopted by the Criminal Law, Article 1.

7.2.3. Amending laws

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[53] If such law passed, then naturally a court would be established for the purpose of this law. As will be discussed in the next chapter, courts in Kuwait are divided according to different areas of laws. For example, there is a labour court, an administrative court, and a civil court, and for the purpose of this discussion, the court will be named by the new law the 'public rights' or ' human rights' court.

[54] Since these rights discuss different subjects such as freedom of speech, personal liberty, and some other rights, they will not be discussed in this thesis because the main concern here is equality and sex-discrimination as discussed in Article 29 of the KC.

[55] The Article states that: "There is no crime or punishment without a law."

Before discussing how the existing discrimination in the law can be changed in order either to eliminate discrimination or to at least minimise it, it might be important to discuss the current mechanism for amending laws in Kuwait and the difficulties that can arise in following it.

Ideally, amending a law should not be (both legally and politically) as complicated as introducing a new law. However, the fact that some of the articles concerning family and criminal law are perceived by some to be Sharia might lead to difficulties when attempting to change them. Usually, there have to be reasons for suggesting a new law or amending an existing one. In some cases, the amendments are be made purely for legal reasons,[56]or due to some pressure from the government or from the public or for another reason.[57]

Amending the discriminatory laws can be considered the greatest guarantee to eliminate discrimination and enforce the KC's rights. However, doing so requires that either the government or the MPs are interested in amending the law. This is because one of these parties is needed to present a proposal to be voted on. Articles 97-110 of the National Assembly Law No. 12/1963 discuss the procedures. This is the same procedure as that of amending an existing law. For example, the Law No. 30/1995 is an amendment of the Labour Law No. 30/1964. It replaced Articles 3, 11, 97 and 97 (1) of the old Law. The new Law states that it amends some of the old Law Articles, but that the unamended

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[56] If for example, some articles of a law became out-of-date, or sometimes a law would not be amended, but some new articles would be added by a new law to the old one.

[57] For example, the government introduced Intellectual Property Law No. 64/1999 because it was pressured to include such law in its legal system. Also, the law that forbid co-education in all higher education institutions clearly representing the power of the Islamic movement.

Articles are still valid. In other cases, a new law is added to an old one. For example, the Law No. 15/1996 added 5 sections to the Article 519 of the Civil Decree Law No. 67/1980. However, there are some cases where the law can be struck down. As Hassan Keera argues, there are two main ways to strike down a law:

1. A direct striking down of a law occurs when a new law states that it is to replace the old law, be it the whole law or some articles of it.[58] Or in some cases a law would state a time for its validity, after that, the old law would be considered invalid.

2. Implied striking down has several different possibilities:

2.1. When there is a conflict between a new law and an old law, this implies that the old law has been cancelled without stating it directly.[59] That would be the case if amendments happened within the same law. However, if the new and the old law were different, covering different subjects, then the case is different:

2.1.1. If the new law covers a specific issue, then that does not mean – as Keera argues – that it eliminates the whole old general law rule, rather it just eliminates the part that the new private law has stated. For example, the Supporting National Manpower and Encouragement of National Manpower to Work in Non-Government Agencies Law No. 19/2000 which covers a specific matter to encourage the Kuwaiti labour force to work for the private sector,

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[58] For example, Article 17 of the Supporting National Manpower and Encouragement of National Manpower to Work in Non-Government Agencies Law No. 19/2000 cancels any law that conflicts with this Law.

[59] For example, Article 4 of National Assembly Law No. 12/1963 states that the NA has the jurisdiction to decide on the validity of MP membership, while a latter Law No. 14/1973 of Constitutional Court gave the right of such jurisdiction only to this Court without mentioning Article 4 of Law No. 12/1963.

does not affect the whole Labour Law (in the private sector) No. 38/1964, it only affects the parts that state otherwise in the Law No. 19/2000.

2.1.2. If the new law is a public law and conflicts with an old private law, the old private law is not thereby eliminated. Instead, the private law would still be valid and would be considered an exception to the new public rule, since a public law cannot eliminate a private one. Only a private law can strike down another private law.[60] For example, the Civil Procedural Law No. 39/1980 was issued after the Constitutional Court Law No. 14/1973. Although the former Law 39/1980 covered the judicial procedures and was issued after the Constitutional Law. The Constitutional Court still applies its law regarding the procedures even if it is contradictory to the Civil Procedural Law.

Accordingly, even if Kuwait adopted the constitutional rights into a separate law, it could not effect, eliminate or amend the discriminatory articles within the Family Law. This is because, as Mohammad Abdul-Aziz argues, a public law cannot strike down a private law if it was only implied.[61] However, as he argues, a new public law can state directly that it cancels an older private law.[62] However, as mentioned earlier, the PRA would give the opportunity for victim – especially in regards to equality in here – to challenge the ruling of a court to a different one under a different law, PRA, adding the better chances

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[60] Hassan Keera. *Madkhal ela Al-Ghanoun* (Introduction to the Law). (Egypt: Al-Ma'aref, 1974) pp 332-335.

[61] As Abdul-Aziz argues, if there were a confliction between the two laws, but the new public law did not mention the old rule in the private law if it is still valid or not, then in that case a public law cannot eliminate a private law.

[62] Mohammad AbdulAziz. *Al-Taghnen Al-Madani fe Dawe' Al-Ghada' wa Al-Fegheh* (The Civil Legitimating between the Judgment and Jurisprudence). (Egypt: Nadi Al-Qudat, 1980) Volume One, pp 64.

of reaching the CC which might strike down a discriminatory law that obviously violates the equality principle.

An obstacle to applying the equality principle is that according to Article 2 of the KC, Sharia is a main source of legislation.[63] This leaves the door wide open for sex-discrimination because it is supported by the Sharia. The problem here is not only with enforcing the rights that the Constitution states. The problem is also that those discriminatory laws are seen as Sharia law, which is a main source of Kuwaiti law, according to its Constitution. This explains why the last two chapters extensively examined to what extent these issues are related to the Sharia.[64] The problem was not only that the word 'Sharia' has a broad meaning that includes the main four sources of Sharia,[65] It was also in identifying which of the differing interpretations of the various doctrines of Islam is correct.[66]

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[63] Mohammad Al-Moqatei concluded that the Sharia Law has affected the Kuwaiti laws deeply due to social and historical factors and was considered the only a source to be ruled by until the 50s.. This was clear during the 70s when some MPs presented a bill to amend Article 2 of the Constitution to make Islam 'the main source for the legislations.'
Mohammad Al-Moqatei. Introducing Islamic Law in the Arab Gulf States: A case Study of Kuwait. *Arab Law Quarterly.* May, 1989, 4 (2), pp 138-148.

[64] The role of Islam in the ME constitutions has two different models. The first one is for a country to state that the Qur'an and Hadith is its main constitution, like in Saudi Arabia. The other is to state that it is a main source for the legislations, such as in Kuwait and UAE. However, there are some countries that do not fall within either of these two models, such as Lebanon, Syria and Sudan.
Jim Phipps. et.al. Middle Eastern Law. *The International Lawyer.* 2000, 40 (2), pp 597-626.

[65] Discussed in the 'family law' chapter, they are: Qur'an, Hadith, endeavour and Qiyas. See pp 355,356.

[66] Some seculars took up the idea of adopting the international human rights law, such as UDHR, into the Muslim states believing that such laws were compatible with Islam; however, as Naiz Shah has argued, such ideas have some disadvantages. First, the human rights laws and the Sharia law are two contradictory systems that cannot completely work together. Second, discrimination against minorities and women that are seen in the family laws cannot be compatible with the human right law. Finally, most Muslim states follow the conservative approach of scholarly interpretations and any law incompatible is thereby considered void.
Niaz A. Shah. Women's Human Rights in the Qur'an: An Interpretive Approach. *Human Rights Quarterly.* 2006, 28, pp 868-903.

Now that women have just gained their political rights, they might, by an organised effort from the women's societies, be able to push for the amendments. As discussed before in the second chapter, the women's movement was not well organised and was distracted rather than focusing on the suffrage rights as a main goal. However, it might now be a good opportunity for the societies to prove their capability to push for improving women's status in society by amending the discriminatory laws. If amending the laws failed then the only choice would be either to present a plea of incompatibility with the KC during the hearing of a case under one of the discriminatory articles, or the challenge them before the PRA court if the Act was approved.

In the following sections the formal details of how the Kuwaiti law could be changed to ensure that discrimination is either eliminated or, at least, minimised (in such cases where it is directly related to Sharia) will be suggested. How these suggested amendments might be enforced, and the difficulties therein, will then be discussed.

7.3. Eliminating Discrimination within Existing Laws

7.3.1 Family Law

7.3.1.1 The Age at Marriage

Article 26, which prescribes that the minimum age of marriage is fifteen for girls and seventeen for boys, should be changed in two ways. First, the minimum age of marriage should be unified and raised at the same time. Set at, for example, eighteen for both men

and women as it is in Iraqi[67] and Omani law[68]. Second, the Article should state that the marriage contract cannot be authenticated if the girl is younger than fifteen and the boy under seventeen. This would allow them leniency to marry under the legal age. However, the official age would need to be met for the contract to be authenticated. This might explain why, according to the Ministry of Planning statistics, there are girls who get married under the age of fifteen.[69] If the Section was changed then it could impose a fine on the parents as punishment for marrying their children under age and a fine as an administrative punishment for the marriage officer.

In the fifth chapter it was found that a high number of the respondents in the questionnaire suggested a later age for marriage[70] after agreeing that the age of marriage should be raised for both men and women (see figure 5.2.).[71]

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[67] This is according to Article 8 of the Iraqi Family Law No. 188/1959. It is known that Iraqi people belong to different religions and different sects and thus that some people are against some of the Law Articles because they are against their beliefs. For example, Jewish people believe that men can get married at 13 and women at 12, while the Moslem Shai believe that it women can have their marriage consummated at the age of nine, while they can actually get married at an even younger age but without a sexual relationship.
Strategic Studies Institution of Iraq. *The Iraqi Constitution and the Family Law.* [online] [21st Nov. 2005] Available from:
http://www.rezgar.com/debat/show.art.asp?aid=51055
[Accessed 30th Jan. 2007]

[68] Article 10 of the Family Law No. 32/1997.
Ministry of Information, Sultanate of Oman. *Women's Rights in Omani Laws.* [online] [undated] Available from:
http://www.omanet.om/arabic/social/dev12.asp?cat=sdev&subcat=sdev2
[Accessed 30th Jan. 2007]

[69] See Appendix 3.

[70] Especially that in Kuwait, if a female student gets married while still in primary education (that is, before university), she will be expelled from school because it is believed that she would be a negative influence in the other girls. If she married a little later, then the student would still have the chance to receive a proper education.

[71] Some respondents went too far suggesting that the age of marriage should be raised to 25 +.

Raising the age of marriage is possible in Kuwait, especially since the Sharia does not – as discussed in the family law chapter[72] – place an emphasis on the age of marriage. The legal system can benefit from this. During the early years of Islam, girls married at a young age because of custom - it had nothing to do with the Sharia. The lifestyle today is different from then: while it was suitable for girls to get married young during that time it is not compatible with lifestyles nowadays.[73]

Regardless of the fact that Islam does not stipulate a certain age for marriage, which supports the idea of raising it or at least leaving it as a flexible matter, it might be difficult to be changed due to the fact that in the early days of Islam girls used to get married at young ages, especially the Aisha, the prophet's wife, as was discussed in chapter five. Some believe that she was very young when she married the prophet. Moreover, some seriously believe that whatever used to happen back then should remain the same, and that the prophet's conduct should be followed. This is especially because most of the current MPs who represent the Islamic movements – both brotherhood and salafi – are from a Bedouin[74] background, which has an even more restricted view towards women

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[72] See Chapter five pp 259.

[73] J.N.D. Anderson argues that regardless of the fact that the age of marriage differs from one Arab country to another, reformers have succeeded in restricting child marriage, and moreover some countries made it a criminal offence.
J.N.D. Anderson. Modern Trends in Islam: Legal Reform and Modernization in the Middle East. *The International and Comparative Law Quarterly.* Jan. 1971, 20 (1), pp 1-21.

[74] According to the 2006 election, more than 30 MPs represent either an Islamic movement, or are from Bedouins or represent both.
Al-Qabas. *The National Assembly Election.* [online] [30th June, 2006] Available from: http://www.alqabas.com.kw/Final/NewspaperWebsite/NewspaperPublic/ArticlePage.aspx?ArticleID=181679
[Accessed 30th Jan. 2007] Also,
Al-Watan. 18 Islamists. [online] [30th June, 2006] Available from: http://www.alwatan.com.kw/Default.aspx?MgDid=415015&pageId=26
[Accessed 30th Jan. 2007]

than urbanism.[75] With such facts, it would be concluded that method 1 would be difficult to apply.

Moreover, someone might argue that such issues cannot be changed by Case Law, because if the father does not wish to marry his daughter at a young age then he would not approve the marriage. If the wife was married at a young age against her wishes, then she would not challenge this Article, rather she would argue under Article 29 (or 30 of the Family Law) that the marriage was against her wish. However, in fact, she can also argue, if she got married before the age of 17, that if she was a male she would not be married. This would be a violation of Article 29 of KC giving the right to claim incompatibility (method 2). If the case reached the CC, then it should strike the Article down, since it obviously discriminates against women, and also cannot be justified by Sharia law. It is clear here how difficult it is for judgments regarding this Article to have a retroactive effect, because that would mean nullifying every marriage where the wife was married before the age of 17. If she was married after the age of 15, then – as discussed earlier – she can challenge the legality of the marriage under the PRA (method 3), and still be able to claim incompatibility with the constitution. It is true that the

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[75] Although Kuwait is a small country with a low population, it consists of two diverging cultural groups, namely the Bedouins and the Urbanites (the city-dwellers). The Bedouins are the more conservative group, particularly in their attitude towards women. For example, in Bedouin culture it is still usual for some women to marry without their consent and they are often not allowed to see their husbands before their wedding day. Further, according to Bedouin culture, a woman's cousins always have the priority to marry her. In the past, in the event where she or her father refuse to marry her to one of her cousins then that cousin is considered to have the right to prevent her from getting married. Anyone who proposes to her during this time has to consider their life in danger.
Mohammad Al-Enezi. *The Guardianship in Marriage.* [online] [17th Nov.2006] Available from: http://www.sawamag.com/articles/82/1/
[Accessed 30th Jan.2007] Also, Socio-economic cultural background of Kuwait. For more details about the nomads, their way of living, and their attitudes towards women before and after Islam, see: Nayer Honarvar. Behind the Veil: Women's Rights in Islamic Society. *Journal of Law and Religion.* 1988, 6 (2), pp 355-387.

hearing court under the PRA cannot declare incompatibility, but it can nullify the marriage since it violates the equality principle according to the PRA that the court applies. It also possible, instead of dealing on case by case, that the hearing court of the PRA would transfer the matter to the CC. Now, according to s6, the governmental body – as a public authority – that is concerned with applying such a law, the Ministry of Justice, is discriminating in regards to the age of marriage based on the sex of the couples, which is a violation of the PRA, and that the CC should – under s3 – interpret the law to be compatible with the constitutional right. When the incompatibility plea reaches the CC, and since the article here is based on the fact of inequality in age which is a violation of both the PRA and Article 29 of the KC, the CC would declare incompatibility. In making such a declaration, the CC would consider the law as if it did not exist until a remedial legislation was provided. According to Article 6 of the CC Law, once a law was found to be inconsistent with the Constitution, the matter is transferred to the concerned authority to make it either consistent or to eliminate it. This puts the government in a position where it has to amend this Article of the Family law. The amendments should be made in order to unify it, which means that until the law is officially changed, a woman cannot get married under the age of 17.[76]

7.3.1.2 The Authorisation of Marriage

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[76] Turkey – at the beginning of the new millennium – changed its Family Law for the first time since 1926, one of the major changes was unifying and raising the age of marriage. It used to be 15 for women and 17 for men just as the Kuwaiti's, which became 18 years old for both sexes.
Mona Eltahawy. *Turkish Law Recognises Women, Men as Equal.* [online] [13th Jan. 2002] Available from: http://www.womensenews.org/article.cfm/dyn/aid/777
[Accessed 12th March 2007]

It is important to discuss the marriage contract itself before the authorisation of marriage. Article 1 of the family law states that the marriage contract is a contract between a man and a woman, just as any marriage contract is supposed to be. However, Article 8 states that the marriage will only occur if the guardian offers the marriage and the groom accepts the offer. This means that the contract is actually between the groom and the guardian and not between the bride and groom. This is an obvious contradiction of Article 1. Moreover, it does not require the acceptance of the bride as a condition for the contract to be valid.

On the one hand, Articles 29 and 30 need to be deleted. A woman has to be more involved in such procedures. Now, socially, if the father – as a guardian – is the one who is in charge of his daughter's marriage, it is because the father is responsible for her financially and socially, especially when it comes to marriage. Within ordinary relationships, a woman would be proud for her father to be in charge and it is acceptable in society, but this should not prevent her from authorising her own marriage.

On the other hand, not all of the Islamic jurists – as discussed in the Family Law chapter[77] agree on the guardian matter. In fact, the three classical Islamic jurists insist that marriage for a woman should be through her guardian whether she is a minor or an adult. However, the Hanafi School gives the woman the authority to get married without the authorisation of her guardian. Moreover, it gives minors who were married by their guardian the option to void their marriage after becoming an adult if they still disapprove

[77] See pp 267.

of the marriage. It is not only the Hanafi School, but also the Ja'fari school that gives a woman the right to get married without the authorisation of her guardian.[78]

That is to say, Article 29, which discusses virgin women under the age of 25, should be eliminated (as will be discussed shortly). There are two main ways that the Kuwaiti law may adapt when taking into consideration both the Sharia and gender equality at the same time. First, the guardian system should be abolished, since the legitimate opinion of one of the major Islamic schools does not require it to be a major condition for marriage validity as other schools do. Second, as some claim, since the guardian system can benefit women financially – the guardian is financially responsible before marriage and is also after most divorce cases – it has to remain.[79] However, this is true for men also. If it is extreme to require the guardian to authorise a man's marriage then, for the sake of consistency, it is also extreme to require the guardian to authorise a woman's marriage. However, women who are over 25 or have been married before do not need the guardian to validate their marriage. In fact, Article 30 states that it is only the woman's opinion that should be considered in marriage and it is her choice to activate it. If she does so, she does not necessarily need her guardian to authorise her marriage.

Also, since the first Article states that "a marriage is a contract between a man and a woman", then a woman has to sign her marriage contract in order to activate this article, and to correct an erroneous situation.

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[78] Norman Anderson. *Law Reform in the Muslim World.* (London: The Athlone Press, 1976) pp 102, 103.
[79] Some state other benefits of the guardian system, such as: if the woman got divorced, then she will not be the one who will be blamed since it was not her choice of marriage. Others claim that Kuwaiti society is sex secluded, so that women cannot make a good choice of men since that they do not mingle together. However, those reasons are valid for men too and not only women.

If Articles 29 and 30 are eliminated, then to require women to authorise their marriage should not necessitate the guardian's authorisation accept by delegation. This is because many people are used to the fact that women do not sign the contract, so they may well delegate their guardians to sign in it instead, meaning that the tradition remains the same. It only requires the woman's signature as a first step in order for the contract to be valid.

Judge Rasheed Al-Sabag, a member of the Islamic Committee in Tunis, has stated that according to Islamic teaching, when a person (regardless of whether they are male or female) reaches a certain age where s/he is mature enough -- which varies in different laws -- there should be no guardianship over them. According to Tunisian law, a citizen is considered to be mature enough at the age of 20. Then both the male and female are party to all legal acts including marriage without the need for a guardian.[80]

While it is true that most of the Articles in this Law have depended on the Malki School, in some cases they have not. Some Articles have depended on other schools besides Malki, or they were taken from what all of the four schools have agreed on. For example, Article 3 discusses the eventuality of the fiancée marrying someone else during the engagement. In such a case, the marriage would be valid. This is contradictory to the Malki School, which states that the marriage should be void.[81] The explanatory note in

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[80] Aran Online Newspaper. [online] [24thMay 2006] Available from: http://www.alarabonline.org/index.asp?fname=%5C2006%5C05%5C05-03%5C804.htm&dismode=x&ts=03/05/2006%2004:14:39%20%D9%85 [Accessed on 24thMay 2006]

[81] In fact the Malki School differentiates between two situations regarding this matter: If the marriage was not consummated, then it would be void, otherwise it is valid. However, the Law does not consider such differences.

the Article states that the legislator did not use to annul the marriage after considering the stability of the family. Also, Article 11 states that the marriage witnesses are a condition for the marriage contract to be valid. While according to the Malki doctrine, it is not necessary to have witnesses for the marriage to be valid as long as it is announced. According to the explanatory note, the Law has considered the other schools' opinions. This means that the law does not depend on one school, and takes into consideration other social factors. This could be the basis for the 'incompatibility' plea: that there are different opinions regarding the guardian and Kuwait follows the most restricted one – as explained in chapter five – which is considered unfair to women.

In conclusion, Articles 29 and 30 should be eliminated, giving women the right to get married without supervision. As already mentioned in chapter five, if this law was changed it would not be the only law which would demand the removal of required guardianship over women. For example, Egyptian law allows women to get married without a guardian,[82] and the Moroccan family law of 2003 also gave women the right to marry without a guardian.[83] Moreover, the Tunisian family law, which reflects equality between men and women in most issues, has not only eliminated the guardianship system but has also abolished polygamy and made divorce available by arbitration since 1956.[84]

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[82] Le-Hawa' (for Eve) Magazine, *The Required Conditions for The Guardians in Marriage.*[online] [undated]Available from:
http://www.balagh.com/woman/ahkam/6m0tsdin.htm
[Accessed 2nd June 2006]

[83] Islam online.net. *The Family Laws in Arabic Countries.*[online][30thDec, 2003] Available from:
http://www.islam-online.net/Arabic/adam/2003/12/article15a.shtml
[Accessed 2nd June 2006]

[84] Kawthar Ali. *Netham Ta'dud Al-Zawjat fe Al-Islam* (Polygamy in Islam). (Cairo:Dar Al-E'tesam, 1985)pp 167. Also
Domagh, Abdul-slam, *Tunisian Women in the Presidency Agenda.*[online] [undated] Available from:
http://www.afkaronline.org/arabic/archives/juill-aout2005/femme.html

As Norman Anderson argues, one of the main challenges for the reformer is the Islamic family law in general and the required guardianship in particular.[85] The issue regarding reaching equality can be seen as a conflict between justice on the one hand and culture on the other. It is difficult to predict the practical possibility of such changes, since they would involve a main change to the guardian position and, as Mary Ann Tetreault argues, such a change would mean that fathers would lose their authority over their daughters.[86] So it is true that the greatest guarantee to eliminate discrimination here is to follow the ordinary legal process for amending laws.

These two Articles are both socially and religiously important for some people, however, they can, arguably, be changed by case law rather than in Parliament (method 1). Also, these two Articles have a great chance of being struck down by the CC (method 2). Articles 29 and 30 can be challenged during *Addal* cases – which were discussed in chapter five. When a woman sues her father for preventing her getting married, she can raise an incompatibility issue during the hearing of this case on the grounds that it conflicts with the right of equality under Article 29. Also, as argued earlier, there are several ME countries that do not recognize such systems, such as Jordan (if she was a

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[Accessed 2nd June 2006]

[85] Anderson, N. [1976] pp 102.

[86] Mary Ann Tetreault states: "Kuwait has civil laws that regulate some aspects of personal status, but much of what is reflected in both civil and sectarian codes is highly influenced by religious law. Unlike unambiguously civil codes (such as Turkey's and Tunisia's), which are relatively easy to modify as conditions and preferences change, religious personal-status codes, proponents argue, are divinely ordained and not subject to change. This reinforces the authority of patriarchs who resist civil marriage because they fear it would reduce their authority over their children, and of husbands who resist it as a threat to their priority in divorce and custody and their right to polygamous marriages.'
Mary Ann Tetreault. A State of Two Minds: State Cultures, Women, and Politics in Kuwait. *International Journal of Middle East Studies.* May, 2001, 33 (2), pp 203-220.

divorcé or widower), Egypt, Morocco and Tunisia. This is important because Kuwait adopted most of its laws from Egypt when starting its legislation in the 1960s (this will be discussed in the next chapter). If the court refuses the plea, or does not consider it a serious plea,[87] and does not rule in the woman's favour, then – as discussed earlier – she can challenge such a ruling under the PRA (method 3). She can always claim that if she was a man, she would never face any legal difficulty getting married. She then has two possibilities – as there always are in such situations – she could either challenge the family court decision, as there is always a chance the article is nullified since it is discriminatory, or she could claim incompatibility with the KC. However, she can also bring the law suit before the PRA court based on s6 of the Act against the Ministry of Justice which refused – in the first place – to marry her breaching the equality right. Actually in such a case, she can file it without the need to file an addal case before the family court. Instead she can file it right after the ministry has refused to marry her.

Further, the court itself might, trying to strike down these two discriminatory articles, suspend the case and transfer the matter to the CC. This is because the CC is obliged, according to s3, to read laws in a way that is compatible with the constitutional rights, and because the equivalent court in some other Islamic countries, such as Egypt do not have such role, although they have Sharia as a main source for their legislations, accordingly, the CC should declare incompatibility. In case these articles were struck down, then they do not need to be changed or amended, because there are no such conditions for the male's marriage. If they were not eliminated, they would not have any

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[87] It would be difficult to predict that a family court judge would be convinced that it is a serious plea, because the judges of such a court are conservative Sharia School graduates.

effect, because of the declaration of incompatibility with the Constitution. If a woman can marry herself without requiring the guardian present, then the guardian will lose the authority to ask for a marriage nullity on the grounds that it happened without his permission, as has happened in some of the cases discussed in chapter five.

7.3.1.3 Marriage and Polygamy

7.3.1.3A Marriage Witnesses

Article 11 of Kuwaiti family law states that: "In order for the marriage to be valid, it needs two witnesses who have to be Muslims, adults, wise, and they have to be males. If the bride was not a Muslim, then the witnesses can be non-Muslims."

The Article requires the witnesses to be male. It was previously discussed in the equality theories chapter that when bearing witnesses, the Qur'anic verse states that a woman's testimony is half of a man's in matters related to business with regard to long-term loans. However, the Islamic schools have adopted a broader view and have generalised this verse to cover every single matter, including social life. If it was argued that women do not participate in business very much or at least not as much as men do, then in theory their testimony possibly should only be considered worth half as much as a man's, but in practice her testimony is not considered at all, and this is supported by law. It does not give the family the opportunity to decide who is going to be the witness; rather, it arranges it on their behalf and prevents women bearing witness, no matter how strong the

relationship is between the new couple. This Article, like many other lawful Articles, only ensures the subordination of women.

Nothing in the Sharia law prevents women from bearing witness on marriage, as in other matters, but since the family law requires two males to act as witnesses in a divorce where there is maltreatment, it is thought only reasonable to expect two males to be witnesses to the marriage. This is a condition for the marriage to be valid; if the witnesses were female, then the marriage would be void. In response to such view, Dr. Hassan Al-Turabi, an Islamic thinker, has recently stated that a new fatwa about women has caused controversy in the ME. He argues that it is not true that a woman's testimony is equal to half of a man's; that is not what Islam wanted for women; it is only an illusion and an indication of backwardness.[88] Besides, even if the Qur'an had stated that women could not be witnesses in some specific commercial matters, then, as Afazlur Rahman and Sa'ad Saleh argued, as mentioned in the equality theories chapter,[89] this matter cannot be applied generally to all other matters, meaning that women should be able to be witnesses as well as men.[90]

When following method 1, the alteration of this Article should face fewer complications or opposition if the conservative MPs are taken into account, especially since their stance has no basis according to the Sharia. As mentioned earlier, the Malki School does not

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[88] Esmae'l Adam. *Muslim Woman can Marry Christian or Jewish, and her Testimony is Equal to a man's.* [online] [9th April, 2006] Available from: http://www.asharqalawsat.com/details.asp?section=4&issue=9994&article=357364 [Accessed 23rd May 2006]

[89] See chapter three pp 142.

[90] It might be noteworthy that the Evidence Law 1980/39 discusses the issue of bearing witness (Articles 39-51) but it does not mention the inequality of the law surrounding women as witnesses. It especially discusses proving the debts just like the Qur'an discusses in the verse 2:282 as discussed in chapter three.

require witnesses to validate a marriage, while other schools do. However, strangely enough, the Malki School is the only School that requires witnesses in general to be male. The suggestion to amend the Article to include women as witnesses might appear controversial to some people at first, but it would be necessary to take account of the evidence which suggests that the Article has actually discriminated against women (something the Sharia does not justify). Also, if one followed the other method of changing the law by claiming that the article was incompatible with the constitution, the article would have a greater chance of wining the 'incompatibility' claim. This is because it obviously violates the 'equality' principle stated in Article 29 without any justifiable reasons. Importantly, it would also not affect male authority, as does the guardian matter, but would allow the mother to be a witness. It might be worth mentioning here that some other ME laws allow women to testify to a marriage contract, such as the Syrian Family Law,[91] Article 9 of the Yemeni Law,[92] and Article 34 of the Palestinian's. However, these laws still discriminate against women, since they all consider the testimony of two women equal to one of a man's. So that it is important, for the sake of equality, to change Article 11 of the Kuwaiti Family Law. In some cases – as discussed in chapter five –[93] the marriage would occur without either the mother's nor the bride's knowledge. In this case, both of them can ask to void the marriage on a different basis. The issue here is that the mother can ask to void the marriage because she was deprived of the right to be the

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[91] Abdul-Rahman Tayshory. *A'ghed Al-Zawaj fe Ghanoun Al-Ahwal Al-Shakhseya Al-Sury* (The Marriage Contract Under the Syrian Family Law). [online] [21st Feb. 2006] Available from: http://www.rezgar.com/debat/show.art.asp?aid=57823
[Accessed 13th March 2007]

[92] Abdul-Hakeem Atroosh. *Hughough Al-Mara'a fe Ghanoun Al-Ahwal Al-Shakhseya Al-Yamani* (Women's Rights in Yemeni Family Law). [online] [undated] Available from: http://www.wfrt.org/dtls.php?ContentID=186
[Accessed 13th March 2007]

[93] pp 266 (case 10/87).

witness to her daughter's marriage because of Article 11. She can bring this case under the PRA (method 3), because the Article is discriminatory against women. She can also challenge the Ministry of Justice decision of refusing her to be a witness just because of her sex or to refuse to authorise the marriage just because one of the witnesses is a woman, which is a violation of s6.

She also can bring an incompatibility plea under Article 29 of the KC (method 2). Since the Article – as discussed – is not based on the Sharia, it is an obvious violation of the equality principle. For the sake of s3, the CC should strike it down. However, since having witnesses is an important condition for the validity of marriage; instead of eliminating the Article, the concerned authority would be asked – by the CC – to have it amended. The only amendment necessary would be the elimination of the proposition saying that "they have to be male". This would mean that the witnesses could be two males, one male and one woman, or two women. If the Article was amended, then no one would be able to claim the nullity of a marriage contract on the grounds that the witnesses were women only.

7.3.1.3B Polygamy

Kuwaiti law does not require restrictions on polygamy. What is required is what it is stated in Article 21: "a man cannot marry five women before divorcing one and wait for her *Iddat* to be finished".

If it is far fetched to ban polygamy completely,[94] then it should have more restrictions. A husband should not marry whenever he wants to without valid and strong reasons as it could affect not only his wife but his children too. The only positive thing that the law has recognised in this matter is what is stated in Article 85: "A husband cannot cohabit with another wife and the previous one, unless she agrees." This means that if a husband wants to get married for a second, or further, time he has to provide each wife with separate accommodation.[95]

Some claim that polygamy is not an issue if the husband can treat his wives exactly the same, as if polygamy only concerns financial issues and not psychological factors. Some argue that polygamy can solve the problem of spinsters who are found in high numbers in the region.[96] Fazlur Rahman argues that while the Qur'anic verse allows polygamy, it

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[94] As discussed before in chapter three, Tunis in the only ME country that has abolished polygamy.

[95] In April 2006, in order to encourage polygamy, the Kuwaiti MP Awad Barad proposed that the government give K.D. 2000 (equal to £4000) to any Kuwaiti male who wished to practice polygamy, so long as his new wife (or wives) was Kuwaiti. The argument was that by practicing polygamy men would contribute to solving the spinster problem and that the government must help to bear the cost of that. Two days later, Barad made a statement claiming that he was misunderstood and that when he presented the proposal, he meant that the grant should be given to the male only if there were valid reasons to remarry, for example if his wife was sterile, had a mentally challenged child, or had passed away. This clarification was necessary because if the grant was given without restriction, as he had previously implied, it would create a lot of problems.
Apparently MP Barad was obligated to make such a statement because the proposal initially sounded very derisory. When Barad first presented the proposal, he stated that the government should give the payment for only up to four wives as no one could have an excuse to marry more than two wives. This means that if there is an excuse to marry a second wife, the same excuse cannot be given to marry a third and the fourth time unless the man himself was at fault. When MP Barad presented such a proposal, he knew that even though it would not pass, he might at least gain more support from voters in the next election, especially since he represented the Bedouins for whom polygamy is more acceptable.
Al-Watan. *Awad Barad Suggesting K.D. 2,000 for Polygamy.* [online] [29thApril 2006] Available from: http://www.alwatan.com.kw/Default.aspx?MgDid=403508&pageId=249
[Accessed 24thMay 2006]

[95] Mohammad Al-Salman. *Barad: My Proposal is Restricted to Death and Fertility.* [online] [1stMay 2006] Available from:
http://www.alwatan.com.kw/Default.aspx?MgDid=403857&pageId=249
[Accessed 24thMay 2006]

[96] More than a million and a half million spinsters in Sudia Arabia.

also requires fair treatment, and can be understood from two approaches: legally, where polygamy is permitted, and morally, where the Qur'an hoped that society would move forward into restricting it.[97]

In summary, polygamy can cause problems on different levels aside from discrimination. As discussed in the equality theories chapter, it reflects a great deal of the male domination, especially by society's acceptance of mostly unreasonable excuses for marrying another woman. As Saleh (mentioned in chapter three) states,[98] one should bear in mind that polygamy should not be understood to be the norm; it is an exceptional situation. In this sense, the only excuse that sounds reasonable for polygamy nowadays is if the first wife is infertile and at the same time does not want to get a divorce. Article 21 should be amended and instead state: 'Marriage to more than one is only allowed if the first wife is infertile.' Restricting polygamy is not new since –as discussed in the third chapter – both Syria and Pakistan have added some restrictions.[99]

Athra' Al-Hussaini. *Spinsters is becoming a Phenomena in Saudi Arabia.* [online] [5th Aug.2003] Available from:
http://www.alriyadh.com/Contents/05-08-2003/Mainpage/COV_1253.php
[Accessed 24th May 2006]
58.5% of women (over the age of 34) in Syria, and 30% in Kuwait are single.
Al-Watan. *Spinsters is a Problem.* [online] [9th April 2003] Available from:
http://www.egyptiangreens.com/docs/general/index.php?eh=newhit&subjectid=3615&subcategoryid=260&categoryid=36
[Accessed 24th May 2006]

[97] Fuzlur Rahman. A survey of Modernization of Muslim Family Law. *International Journal of Middle East Studies.* July, 1980, 11 (4), pp 451-465.

[98] See pp 137.

[99] The Muslim Family Law of Pakistan states that:
"no man during the subsistence of an existing marriage shall, except with previous permission in writing of the Arbitrator Council, contract another marriage." Jamila Brijbhushan argues that a woman has the right to appeal the Arbitrator Council's decision. Any violation of such a restriction might result in imprisonment and might be accompanied with a fine. Also, a woman has the right to ask for a divorce on this basis regardless of any circumstances.
Jamila Brijbhushan. *Muslim Women, in Purdah and Out of it.* (New Delhi: Vikas Publishing House PVT Ltd., 1980) pp 65.

It is true that amending the law about polygamy can affect the patriarchal system directly. However, it might be possible to amend it, maybe not in the way just suggested, but by adding more restrictions. It is known to many people that, although the Qur'an has allowed polygamy, it has also added an important condition: to be fair. The idea of adding conditions and restrictions would not require a new singular law.[100] Besides, committing polygamy is occurring less with time, perhaps for financial reasons. On the other hand, since most MPs are Islamists, it might be difficult to win the argument. They are likely to ask why the laws about polygamy should be changed when polygamy is clearly *halal*.

In fact, the Qur'an itself restricted polygamy by requiring fair treatment. Further, even if someone argued that the prophet himself married more than once, it is also known that it was a special case and that the prophet had done so for special reasons. Since it is difficult to measure when someone is being fair, a man would have to have a reason like infertility (which is easy to prove) to justify his polygamy.

It might be difficult for polygamy to be amended by the NA (method 1). It is also difficult to argue for on the grounds of 'incompatibility' before the family court, since the

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J. Anderson states that while Tunisia was the only ME country to ban polygamy, Syria was the first to add restrictions in1953, Morocco in 1958, Pakistan 1961, and Iran in 1967. However, the Iraqi Law 1959, required the judge permission's without which the marriage would be considered null and void.
J.N.D. Anderson. (1971).

[100] In fact Amira Mashhour argues that Qur'an did not introduce polygamy as it was widely practiced, but it tried to limit it as it did with alcohol, which means it just meant to reduce such practice gradually. She also compared polygamy with slavery and claimed that although the latter is not prohibited in Qur'an it has since been considered morally a wrongful act and all scholars agree on that.
Amira Mashhour. Islamic Law and Gender Equality. *Human Rights Quarterly*. 2005, 27, pp 562-596.

first wife cannot claim under the Family Law unless she files for a divorce. However, she can raise the incompatibility plea during the divorce case (method 2). The divorce can be based on maltreatment – discussed in chapter five-[101] mainly because having another wife would be considered as moral maltreatment. During the hearing, she can claim that Article 21 of the Family Law is in conflict with Article 29 of the KC. If she fails to get the case suspended, it can be transferred to the CC, provided the hearing court was not convinced it was a serious plea and she could be granted the divorce. She would still have a chance either to challenge the court decision towards the plea before the Examination of the Pleas Committee – as mentioned earlier –[102] or to represent it again before the court of appeal, if the husband challenges the divorce decision, since she will not challenge it so long as it is in her favour. If she failed to get the divorce – usually the ta'a case would be won – then she can challenge the verdict before the PRA court (method 3), and claim that the verdict is actually a breach of equality, not only because of the ta'a case, but also because her divorce was based on the fact that her husband's polygamy is a breach of the PRA and Article 29 of the KC. It might be hard to expect that the CC would ban polygamy, since it is deeply embedded in social and religious belief that it cannot be abolished as long as it is sanctioned by the Qur'an. However, the CC has to take into account s3 and the enforcement of the Constitutional rights and equality is one of them; polygamy is not only an unequal treatment, it is degrading and humiliating to women. If the CC cannot ban the law, then it should restrict it by, for example, adding the 'fertility' condition. This would not only reduce cases of polygamy but also it would make it difficult for a man to marry more than two women on the grounds of infertility. The CC

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[101] See pp 298-300.
[102] See pp 471.

in this case could declare incompatibility, and should recommend adding an article to the family law stating that: 'Marriage to more than one is only allowed if the first wife is infertile' and at the same time it should strike down Article 21 widely allowing polygamy.

Cases of the above are not merely hypothetical; in fact a case 37/1984 happened in Egypt when a wife (named Abdda Antar) filed for a divorce on the grounds that her husband committed polygamy and so was a case of maltreatment according to Article 11 of Law No. 25/1929 (also added to Law No. 100/1985) of Egyptian family law, which gives the wife the right to file for a divorce if her husband marries another wife.[103] During the hearing the husband presented an incompatibility plea (35/9 constitutional court) of that Article (11). The Husband claimed that, since that the Egyptian Constitution which considers Sharia as a main source for the legislation, allows polygamy under one condition (to treat his wives fairly), then there should not be any further restrictions (maltreatment). However, the CC rejected the plea citing the different Qura'nic verses that recommend that married life should not cause any damage to the spouses.[104]

7.3.1.3C Efficiency

Article 34 requires that the man should have suitable qualifications at the time of the marriage, and both the wife and her guardian have the right to revoke the marriage if he

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[103] That would happen under two conditions: first, during a year of her knowledge that her husband got married to another. She would not have the right for a divorce after that year. Second, if any damages happened to her because of that marriage, which the court would investigate.

[104] Ali Hassan. *Ahkam Al-Mahkama Al-Destoreya Al-Olya fe Mawad Al-Ahwal Al-Shakhseya* (The CC Judgments on the Family Law Cases). (Egypt: Dar Al-Matboua't Al-Jame'ya, 1997) pp 65-79.

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losses his qualifications.[105] Article 35 makes it clear that what is meant by 'qualifications' is 'to be religious'. As discussed in the fifth chapter, this Article should not be under-estimated, since it gives both the wife *and* her guardian the right to revoke the marriage. There is no information which suggests how often this happens, nevertheless, only the wife should decide whether her husband is qualified for her or not, the guardian should have no authority over this matter. According to the family law, the guardian is the one who married her so he should have made the right choice. If the woman marries her husband – outside Kuwait, for example - then no one can decide whether to revoke the marriage but her. This is why the Article should erase the guardian's authority and reserve it for the wife only. If someone in her family thinks that for any reason the husband is not qualified, then they have to convince her to revoke the marriage. Especially when knowing that guardians in some cases would misuse such a 'right'. For example, in a recent case in Saudi Arabia, the brothers of a female citizen called Fatma raised a case to revoke her marriage to a Saudi citizen called Mansour. The first degree court, the court of appeal and the supreme court had to make the decision of whether to separate them or not. The courts ignored three important facts: (1) The marriage happened with Fatma's father's consent. However, the case was raised after seven months of the marriage and after the father had been pressured by the brothers to give them power of attorney to challenge the marriage. (2) They had two children, a 27 month old girl and a 12 month old boy. (3) They did not wish to be separated. The reasons for which the brothers wanted to revoke the marriage were because they were from a tribe of noble origin while Mansour was not, and the court agreed to revoke their marriage on that

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[105] The Article states that: "Due to the marriage's condition, that the man (husband) should be efficient to the woman (wife) at the marriage contract time, proving the right to annul the marriage for both women and her gurdian whenever he loses the required efficiency."

basis. Fatma is in prison with her children because she refuses to return to her family, and insists that if she is let out, then she will go back to her husband.[106] It might be noteworthy that the Saudi system follows the Hanbali School which basis the efficiency decision on 'origin' and not on religion as the Kuwaiti Family Law does.

Since the religious roots in this Article seem vague, it might stand a better chance of successfully convincing MPs (method 1). It is obvious discrimination against women to give almost every male in her family the right to revoke her marriage. If this is not changed through the ordinary legal process, an 'incompatibility' claim could be raised against this Article. So if a woman got married, but her father or any of her guardians decided to revoke the marriage against her wish, then he would have to raise a law suit before the family court, just like the above case (Fatma's). During the hearing of the case, the wife can at any time present the incompatibility with Article 29 of the KC claim (method 2). In fact, if the provisions regarding guardianship in Articles 29 and 30 were amended, then efficiency should also be amended in order to cancel any kind of guardianship over the women. If they were not cancelled and the CC had to look at them separately then it should consider the fact that the Article was based on an atavistic tribal culture. In case that the family court did not consider it as a serious plea, and it ruled in the guardian's favour, the wife can still challenge the verdict under the PRA (method 3).

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[106] Mohammad Deyab. *Al-Tafreegh bayna Al-Zawjeen le Adam Kafa'at Al-Nasab* (Separating the Spouse because of Origin Deficiency). [online] [30th Jan.2007] Available from: http://www.aawsat.com/leader.asp?section=3&article=404087&issue=10290 [Accessed 1st Feb. 2007]
Al-Arabiya Net. 'The Lineage Divorce' refuse to go Back to her Family. [online] [31st Jan. 2007] Available from: http://www.alarabiya.net/Articles/2007/01/31/31232.htm [Accessed 1st Feb. 2007]

As mentioned, the efficiency is supported by the guardian system, which logically should be eliminated by the CC, preserving such a right for the wife only. Doing so would achieve equality between genders, where no one can practice guardianship over a woman. If the CC claimed that the Article is incompatible with Article 29 of the KC and it should according to s3, it would probably just eliminate the word 'guardian' from the original text of the Article. However, even if it was not amended, it would not – after the incompatibility declaration – have any legal effect, and the guardian would not be able to null or revoke a marriage based on that Article.

7.3.1.4 Divorce

As discussed in chapter five, the right of divorce is given solely to the husband, while the wife has to file a law suit to ask for it and it is not always granted. Some might argue that the right to divorce is only given to one partner, in this case the husband, in order to reduce the divorce rate. If both were given the right to divorce then the rate would be much higher. However, some people believe that the right to divorce was given to men because they are more rational and reasonable and therefore better able at making such a decision. The first argument would make more sense if the divorce rate were not increasing.[107]

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[107] The right of divorce for women in Kuwait is judicial and has five grounds as discussed in chapter five. However, Iran is more strict in giving women the divorce, a woman should have written permission from her husband for the court to divorce her, or she has to prove that he is insane, impotent, drug addicted or incapable of providing maintenance. However, the right of divorce was broadened for women via the approval of a new law in 2002.
Omid Memarian. *Braving Threats, Women Demand Legal Reforms.* [online] [2006] Available from: http://ipsnews.net/news.asp?idnews=33570
[Accessed 31st Jan. 2007]
BBC News. *Iran Women Get More Divorce Rights.* [online] [2nd Dec. 2002] Available from:

According to the Ministry of Justice, as the table shows (Appendix 3), the divorce rate is growing every year even though divorce is only in the hands of the husband, or occasionally, the judge. That was one of the main reasons why the Ministry has established the Family Consultancies (FC).[108] As for the second argument, Mohammad Al-Awadhi claims that, Islam has placed divorce in the control of the husband for two main reasons. First, the man is the one who has to pay the dowry and all of the needed alimonies during the marriage. He is then entitled to certain rights for his payments. Therefore, he should be more careful than his wife in commencing divorce proceedings. Second, are the psychological differences between men and women. According to Al-Awadhi, women are more emotional. If she is given the right of divorce, she would divorce her husband "a thousand times a day".[109] However, as Afzular Rahman argues, even if we agree that a woman is more emotional than a man (which is a large concession), she should still be allowed the right to pursue academic qualifications and

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http://news.bbc.co.uk/2/hi/middle_east/2534375.stm
[Accessed 31st Jan. 2007]
Feminist Majority Foundation. Iran's Clerics Broaden Women Right to Divorce. [online] [Dec. 2002] Available from:
http://www.feminist.org/news/newsbyte/uswirestory.asp?id=7314
[Accessed 31st Jan. 2007]

[108] When the divorce rate became higher, the Ministry of Justice established the Family Consultancies (FC) service in order to keep families together. The idea of this service came from the Qur'anic verse:

> **If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: for Allah hath full knowledge, and is acquainted with all things.[4:35]**

The FC tries its best to reconcile the couple. The FC has succeeded in some cases to avoid divorce. If, contra Sharia, the authority to divorce the couple is given to the judge and thereby removed from the husband, then the husband's right can be preserved by adding certain restrictions, such as requiring witnesses. Besides, if the right to divorce cannot be given to the wife, then she should (according to Islam) be guaranteed the right after filing a lawsuit. If the FC can not reconcile the couple, when neither the *nushoz* nor the obedience house is humane, then the couple must be separated peacefully according to the many Qur'anic verses that were discussed in the family law chapter.

[109] Mohammad Al-Awadhi. *Is it Fair that the Divorce is a Man's Hand?* [online] [undated] Available from:
http://www.alnhr.com/marrie/showthread.php?tid=10
[Accessed 18thMay 2006]

apply for suitable jobs, because 'emotion' does not affect her intelligence. Further, as he claims is needless to mention, that there are a lot of women who have proved that they better than men at certain jobs.[110]

As stated before, the Islamic teachings give general principles on relationships. They tell us that they should be built on good manners but they do not specify details on how and when the divorce should happen. This gives more flexibility to change the existing law. In supporting such ideas, Islamic scholars have already formed different opinions on the divorce methods which Kuwaiti law can use. For example, Mohammad Ali argues that the Qur'an verse [4:35] means that if a couple want a divorce, the judge must initially appoint two arbiters — one from her family and the other from his family. Their first task is to reconcile the marriage. If they fail to do so, then only the judge has the final say upon the matter and has the right to announce it. It can be concluded that divorce cannot

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[110] Afzalur Rahman. *Role of Muslim Woman in Society.* (London: Seerah Foundation, 1986) pp 320-324.
In fact, the 'emotional' excuse has been abused when emphasising the differences between men and women particularly when the intent is to deprive women from certain positions or rights. It has been employed in selecting a president, a judge, granting political rights, bearing witness, and now in divorce cases. If the emotional excuse can be used against women in politics or becoming judges for example, then how does the emotional excuse work with the divorce issue? Islamic books and scholars have discussed the fact that if a husband divorces his wife when he was angry, most agree that this kind of divorce would be disregarded since the husband does not know what he is doing or saying. This opinion was adopted by Kuwaiti family law in Article 102 which states that there are seven bases on which the divorce would be ignored if the husband was: insane, crackbrain, constrained, mistaken, under the influence, astonished, and if he was furious. The Section states three emotional conditions: mistaken, astonished, and furious. The law itself recognizes that even a husband can behave emotionally which would lead him to divorce his wife, even if he does not mean too.
Ann Kring, a psychologist from Vanderbilt University, has studied whether women are more emotional than men. She concludes that it is wrong to state that women are more emotional than men. It is only that women show their emotions more than men. She suggests that gender is not the variable factor in showing emotions; rather, it is the 'gender role' which allows women to show their emotions.
Science a Go Go. *Men Just As Emotional As Women- If Only They'd Show It.* [online][20th June, 1998] Available from:
http://www.scienceagogo.com/news/19980520132438data_trunc_sys.shtml
[Accessed 22nd May, 2006]. Also, John Mirowsky and Catherine Ross, in their study about gender and distress, concluded that women feel more free to express their emotions, while men hide those emotions even from themselves sometimes. Also the types of emotions that women express are different to those which men express.
John Mirowsky and Catherine Ross. Sex Difference in Distress: Real or Artefact? *American Sociological Review.* June, 1995, 60 (3), 449-468.

happen without arbitration as only the judge can decide it. However, hitherto divorce has been an exclusive right for the man where he can divorce his wife at any time merely by saying the words 'be divorced'.[111]

Given all of the above, the argument that changing the divorce procedures would go against the Sharia law is invalid. Moreover, the two main sources of Islamic teachings are the Qur'an and Hadith. The Qur'an refers to divorce in some of its *suras*, it emphasises that men have authority but does not give details about why they do. This lack of detail gives Muslims more flexibility in arranging divorces. Also, in the Hadith, stories that occurred in the prophet's days suggest that men should be able to divorce by self volition. On the other hand, there is a famous story of a woman who went to the Prophet and asked him to divorce her. Ibn 'Abbas speaks of the wife of Thabit ibn Qays who came to the Prophet, may Allah bless him and grant him peace, and said, "I do not criticise Thabit ibn Qays for his character or his *deen*, but I dislike ingratitude in Islam." The Messenger, said, "Will you return his garden to him?" "Yes," she answered. The Messenger, said, "Accept your garden and divorce her once." Abu 'Abdullah [al-Bukhari] said, "It is uninterrupted from Ibn 'Abbas."[112]

Although Islam does not encourage divorce and considers it the last solution, the Prophet did not ask the wife why she wanted a divorce but simply asked her to return his dowry. When the family laws adopted the *Khole'* system, they were based on this Hadith. The

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[111] Ali Engineer. *The Right of Women in Islam.*(UK: C. Hurst & Co. (Publishers) Ltd.,1992)pp122-127.
[112] Sunni path, The Sahih Collection of Al-Bukhari, Book of Divorce{4971}.[online][undated] Available from:
http://www.sunnipath.com/Resources/PrintMedia/Hadith/H0002P0071.aspx
[Accessed 23rd May,2006]

point being made here is that the Prophet did not force her to go back to her husband - as the courts sometimes do - even though she did not give any valid reasons for requesting the divorce. Thus there is evidence to suggest that the Qur'an sanctions the ability of women to demand their own divorces. This means that an argument that relies on the premise that changing the divorce laws goes against Sharia is unwarranted.

7.3.1.4. A Nushoz

For the marriage to be more balanced, both parties must have the same rights especially when it comes to the right of ending it, as Riffat Hassan argues.[113] This is only logical, since the marriage is a contract, and as a contract they both should have the right to end it with minimum damage to each party. Islamic teachings do not intend that a husband can easily divorce his wife while the wife may have to suffer a long process that might end without her achieving a divorce.

If it is true that *nushoz* cases are becoming less frequent, as both family judges stated in the interviews in the family law chapter,[114] then that is because the court is being more careful in giving such judgments. This means that family judges have sensed that such kinds of judgment are inhumane, and irrelevant to Islam and that therefore Article 87 of the family law should be cancelled. The legislator added this Article as he was motivated

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[113] See chapter five pp 323.

[114] Adel Al-Failakawi and Faisal Bu-Resli, the latter also stated that the nushoz judgment is becoming less frequent but his answer was not added to the main text, because his interview was mainly to ask him about the *mesyar* marriage.

by the thought that the family as a unit should be protected from being broken up. This goal would not be reached by legally forcing the wife to live with a husband she hates.

Based on the argument in chapter five, there is a lot of evidence from the Qur'an which proves that such judgment is unfair for women and is contradictory to the Islamic teachings.[115] As shown in the questionnaire (Figure 5.26) most women agreed that this Article should be cancelled while most men did not. If this Article was not cancelled through the NA (method 1), we have the perfect scenario to claim incompatibility (method 2). Article 29 (of the KC) starts with saying that 'all people are equal in human dignity' and the *nushoz* law is obviously inhuman. It violates both equality and humanity principles in addition to being unsupported by the Sharia. The incompatibility claim can be presented before the family court during the hearing of ta'a case. For example, if the wife has lost the divorce case, she can present a plea before the appeal court. Or she can present the incompatibility claim during the nushoz case.[116] Also, she can even challenge the ta'a verdict under the PRA (method 3) where she can either just wait for the public rights court to overrule the ta'a judgment, or to try to present the incompatibility plea where the chances are higher for this court to consider it serious. If the wife was able to

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[115] In a study about the public attitude towards women's political rights, the researchers differentiates between two Islamic standards in Kuwaiti society, 'orthodoxy' which means following the beliefs of Islam, and those who supported the women's political rights based on the Islamic principle of gender equality and the prophet's conduct where women used to participate in politics. On the other hand, the 'religiosity' is mixed with the conservative culture and did not support such rights, since it concentrates more on behaviour and practice. Such attitudes can explain the discrimination against women that is in fact against Sharia too.
Katherine Meyer, Helen Rizzo, and Yousif Ali. Changing Sources of Support for Women's Political Rights. *International Social Science Journal.* June, 2005, 57 (184), pp 207-218

[116] Discussed in chapter five, pp 327.

reach the CC in order to strike down Article 87[117] of the Family Law which gives the legitimacy to the *ta'a* cases, then the CC might have different views on the matter. Now ta'a is usually seen as a right for the husband because he is forced to pay alimony to his wife, so it makes sense that if she refused to live with him, she would lose the right for the marriage alimony, since she does not live with him anymore. However, *nushoz* cannot make any sense and it is a breach of equality where a wife would be either forced to go back to her husband or to live as *nashiz* for as long as it takes. If according to s3, a law 'must be read and given effect in a way which is compatible with the constitutional rights', then the CC should strike down such a role, since if a wife reaches that stage then she is serious about getting a divorce and should not be deprived from getting one. Striking down this Article might also be necessary in order that other Articles, such as Article 88 preventing the ta'a judgment to be enforced by the policemen, may follow suit. Also, eliminating such a system from the law would change the procedures for the divorce as will be discussed below.

7.3.1.4. B The Suggested Arrangements for Divorce

The existing divorce process is also only unfair to women. The husband retains the upper hand when deciding to end the relationship, while the wife has to bring a law suit to ask

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[117] The Article states that: "If the wife abstained from the moving to the marital home without justification, or prevented husband living with her in her home (while he agreed), forfeited the right to alimony for the eradication refrain time.
Nushoz would only be proved wife by the final judgment of obedience.
her nushoz would be justified if the husband could not offer her security, did not pay the dowry, did not offer (her) a decent accommodation, or abstained from paying the alimony while she was not able to implement such judgment due to his lack of money."

for a divorce.[118] This carries the risk of her request not being granted and having to live with her husband against her wish. However, the husband cannot be forced to live with a wife he hates or no longer loves. Such discrimination, which has been validated by the Sharia, must be removed, changed or some guarantees to protect women should be introduced. Consequently, divorce should be reorganised as follows: If the husband wants to divorce his wife, he can, but not simply by saying a few words. Divorce should happen only at court in the presence of his wife. If a wife wishes to divorce her husband, the judge should be able to divorce her in the presence of her husband too.

The divorce should also include a financial settlement depending on the length of the marriage and the financial status of each. What usually happens in Kuwait is that after a divorce, a woman becomes dependent on the welfare of the government as most women are unable to support themselves after divorce. If there were a settlement after divorce they would not be a burden on the government. If either the husband or the wife wants a divorce, the court should decide a settlement to be paid to the wife as compensation.

The compensation should be based on the financial status of both of them. The main purpose of this is to leave the spouse (especially the wife) with a sufficient income after the divorce. Some might argue that this is what the *'khol'e'* is for; but it is not the same. What usually happens in the *khol'e* cases is that the husband knows that the wife will not

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[118] While the husband can end the relationship at any time without offering a reason, women – according the Hanafi School – have very limited options to get a divorce. This explains why modernists suggested that the Egyptian Personal Status Law adopt the Malki School thinking which offers more grounds for women to get divorced (which the Kuwaiti Law adopts). This way the women were put in a better situation having the option of judicial divorce since the Law – in Egypt – changed in 1920 and 1929.
Ron Shaham. Judicial Divorce at the Wife's Initiative: The Sharia Courts of Egypt, 1920-1955. *Islamic Law and Society*. 1994, 1 (2), pp 217-257.

get a divorce easily, even by filing a law suit. But she will do whatever it takes to push for a divorce, and might even pay him to divorce her. The divorce case might take a long period of time, and does not always end with the divorce being granted. Some women would give up many of their rights just to get a divorce.

According to the settlement idea, if she is guaranteed a divorce in court, then the judge decides the amount she should pay to the husband. This amount depends on many factors: the length of the marriage, or the damage that the divorce might be causing, for example. In some cultures in the ME countries, it is usual for the wife to ask for a deferral[119] and have this as a condition in her marriage contract. If her husband wants to divorce her, she can ask him to pay her the deferral. Although this sounds like a good plan, it provides no guarantee that the husband would not attempt to make her give up the deferral in order to divorce him.

If a husband or wife wants a divorce, s/he should first report to the FC in order to try to find a way of reconciliation – as the current procedures require. If one or both spouses insist upon the divorce, then it should be left to the judge not to decide whether to grant the divorce, but to decide on the settlement. This should be the only authority the judge has in divorce proceedings.

Sometimes, a wife filing for a divorce suit might be given the divorce in the first degree court only to be denied it in the court of appeal or the Supreme Court. If the new system was applied, the amount of money that a spouse should pay may well be the only thing

[119] A certain amount of money the husband would agree to pay at the divorce.

that would be changed within the Court degrees, not the future of the woman's personal life.

The change in divorce laws is not to encourage divorce. Indeed it should not, given that the divorce rate is already high and needs to be reduced. Rather, the change is motivated by the consideration that it is inhumane to force a wife to live with her husband against her will. This is why the FC is a very good idea, and one that should be encouraged more. While it is a positive step to try to keep the family together, if the FC is unable to do so and if one or both spouses insist on the divorce, then they should get it.

To summarise the proposed divorce situation: a husband still has the right to divorce his wife, in accordance with the original Article, but it has to be in her presence with two witnesses. If he said the words 'You are divorced' (or words to that effect) while they were alone, then the divorce would have no effect. If this restriction was applied, then the rate of divorce might in fact lessen because of the stricter conditions. However, there would also be less of a question of whether he was normal, under the influence, constrained, mistaken, astonished, or if he was furious, for there would be witnesses to the event. The presence of other people might also help to improve the situation. For example, if he was furious they might help to calm him down before he got to the stage of wanting a divorce. Also, it would guarantee that he would divorce her while she is in the same place as him and within earshot. This would eliminate the situation where a husband divorces his wife while he is away and the wife not finding out until much later. The divorce should remain *Raje'e* and the wife should stay in the same house until the

Iddat is finished. If they do not get back together, the FC can take its turn at this point to try to solve the problem before the divorce is registered.

If the FC is unable to work things out, then the divorce would be official and it would be left to the judge to decide the damages. The judge would consider many different factors, such as the length of the marriage, their financial status, and whether or not the wife has a place to live. After registering the divorce, it will then become final. If the wife is asking for the divorce, she has to file a lawsuit. During that time, after the lawsuit is filed and before the hearing, the FC can do its duties. If it works out, then the case will be dropped. Otherwise, the case can proceed. However, the difference is that she would be granted the divorce and the judge would decide the damages, depending on the same factors listed above. The judge would also decide whether a dowry should be paid if they were recently married, whether she is entitled to keep the gifts her husband gave to her, or if she was physically abused by him, the amount of the settlement.[120]

On the other side of the divorce issue, there is another discriminatory procedure against women in regards to missing husband's wife as discussed in chapter five (Article 148). A woman would be in a weird position in this situation, only if she waited until her husband to be announced dead and did not get a divorce, and married to another person. This is because such a procedure specifies that a woman be forced to be divorced from the second husband if she had not consummated her marriage. In any case, if she had consummated her marriage she would be forced get divorced on the grounds that the

[120] Culturally, the bride would get some gifts, not only from the groom, but also from his family, and most of it would be jewellery or watches.

second husband knew that her missing husband has alive and married her anyways. It is obvious that the wife's will is not considered by the law. It mostly depends on the missing husband's wish. Below – along with the enforcement of divorce procedures – some suggestions as to how Article 148 can be changed are ventured.

7.3.1.4.C. Alimony

As discussed in the family law chapter, there are different kinds of alimony. People often think that the law favours women when it comes to settling alimonies, however, even though there are different kinds of payment, these are only small amounts and the ex-wife does not get any alimony herself except for the '*mota'a*,' [121] (which is only for one year), the breast feeding rent, and the rent for being a custodian. Moreover, this ends when the boy under custodianship reaches the age of seven and when the girl reaches the age of nine. The breast feeding rent ends when the child reaches the age of two. However, as discussed in the fifth chapter – the amount paid is humiliating, as more examples show below. There are also different kinds of alimony for children: expenses, rent (only if the mother is renting the house), hiring a maid, and sometimes hiring a driver.[122]

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[121] Two Islamic doctrines have agreed on such alimony, Malki and Shafe'.
J.N.D. Anderson. Reforms in the Law of Divorce in the Muslim World. *Studia Islamica.* 1970, No. 31, pp 41-52.

[122] Akbar Aghajanian argues that divorce in Iran, economically, worsens the women's situation while men, in most cases are not affected by it. Ideally, the alimony he should pay her should cover the cost of her living, but usually it does not, since it depends on each side's power of bargaining on this matter, especially since only 20% of divorced women are employed.
Akbar Aghajanian. Some Notes on Divorce in Iran. *Journal of Marriage and Family.* Nov. 1986, 48 (4), pp 749-755.

If the new system is adopted and the wife (or the husband, in cases where the husband wants a divorce,) gets a settlement for the divorce, then she will not be given any alimony. The only alimony that the divorced husband should pay is for the children, depending on his real income and not just the K.D.50 that the government adds it to his payment for each child. The reason why he should pay according to his real financial status is that in many cases, the children of a divorced mother would have lower living standards than the children of the current wife, which is unfair to the children. There is no need to categorise the alimony as it should be all-inclusive for the sake of children.

Some cases will now be briefly examined to see if the court's decisions provided sufficient alimony for a divorced woman during the late 1990s and early 2000s. In case 190/98, the Supreme Court decided that K.D 900 should be paid in K.D.75 monthly instalments over a year as mota'a. This was for a marriage that lasted for about a year and a half. In case 100/99, when a divorced wife asked for alimony for her four children, for renting the house, and for having a maid, the court gave her alimony only for the children as she was sharing the house with her former husband and his other wife. The alimony was K.D. 200 for the four children and only applied while the children were of custody age.[123] In case 182/98 the Court decided that K.D.400 should be paid as alimony for four children and K.D.80 for a maid and a driver.[124] In 87/98 the Court decided that the divorced wife who had one daughter was entitled to almost all of the alimony prescribed by the family law: K.D80 for the child, K.D. 40 for renting the house, K.D.30 for

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[123] Law and Judgment Journal. The Twenty-eight Year. Volume one. June 2003 pp 422. Ministry of Justice, Kuwait

[124] Law and Judgment Journal. The Twenty-seven Year. Volume two. August 2002. pp 321. Ministry of Justice, Kuwait.

breastfeeding (until the child reached the age of two), and K.D. 25 for the custody - as rent (until the child reached the age of nine years old).[125] Also, in case 148/98 the Court decided the following alimonies for the divorced wife who had the custody of three children: K.D. 150 for the children, K.D. 100 for the rent, K.D. 30 for the custody rent, and K.D. 20 for breastfeeding.[126] In the case of 245/98 the court had decided upon only K.D. 200 for the four children and the rent.[127]

7.3.1.4.D. Enforcement of the suggested arrangements for divorce

Some of the scholars, such as Qasim Amin, who suggested that judicial divorce should not only be the husband's right, also suggested that divorce should happen in front of the judge and two witnesses. In 1926, a bill was produced stating that the divorce would not be valid unless there was permission from the judge. However, there was strong opposition from the religious people who claimed that divorce should not be restricted if, according to Sharia, it is permissible.[128]

If this argument was valid in 1920s, it might not be nowadays. It is true that the Islamic movement is still as strong, however the new restriction is not to limit the right of divorce, rather, that divorce should be taken more seriously[129] for the benefit of the

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[125] Ibid. pp 324
[126] Law and Judgment Journal. The Twenty-seven Year. Volume two. August 2002. pp 334. Ministry of Justice, Kuwait.
[127] Ibid. pp 442.
[128] Ascha, G. (2004) pp 166.
[129] In some cases, a husband would say to his wife 'you are divorced' as a joke, not knowing that in fact – as all Imams have agreed on based on a Hadith – it will be considered as a real divorce and should take all of the effects just like a regular divorce. The Hadith is: Narrated Abu Hurayrah: The Profit

couples' lives. This rings especially true when one considers that – according to some Hadiths[130] – divorce is the 'hateable' option and should be the last solution. Also, it is not about transferring the authority of divorce from the husband to the judge, instead it a change of the procedures only. However, if these factors are ignored, then it is to be expected that the proposal will be denied on the basis of the same old argument.

One way to apply this new role is by adopting the new arrangements within the existing Family Law Articles through the NA (method 1). Although the claim of incompatibility (method 2) can be presented in different types of case that are related to divorce, which can be a divorce case itself, *ta'a*, *nushoz*, or alimony, it is not imaginable that such an arrangement would be applied through the CC, since it would be difficult for the family court to take it as a serious plea if the wife claimed 'incompatibility' against the current procedures of divorce. Particularly, because some of the judges in these courts are Sharia graduates, who despite their legal training, deeply believe that in divorce the husbands have the rights. This should be considered the main obstacle for the divorce arrangement. However, the plea can be presented under the PRA (method 3), which the court would

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(peace_be_upon_him) said: There are three things which, whether undertaken seriously or in jest, are treated as serious: Marriage, divorce and taking back a wife (after a divorce which is not final) (No. 2189)
USC-MSA. *Translation of Sunan Abu-Dawud, Book: 12; Divorce.* [online] [undated] Available from: http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/012.sat.html#012.2184
[Accessed 26th Jan. 2007]

[130] Narrated Muharib: The Prophet (peace_be_upon_him) said: Allah did not make anything lawful more abominable to Him than divorce. (No. 2172) Also,
Narrated Abdullah ibn Umar: The Prophet (peace_be_upon_him) said: Of all the lawful acts the most detestable to Allah is divorce. (No. 2173)
USC-MSA. *Translation of Sunan Abu-Dawud, Book: 12; Divorce.* [online] [undated] Available from: http://www.usc.edu/dept/MSA/fundamentals/hadithsunnah/abudawud/012.sat.html#012.2184
[Accessed 26th Jan. 2007]

take into consideration if there were any violation to the constitutional rights and the divorce procedures as they now stand. If the plea successfully reached the CC, then it should read the divorce procedures very carefully, and remember that Sharia has in fact no fixed way of divorce which allow changes to more of reaching gender equality and put s3 in action. The settlement is not currently a problem, since the idea already exists, it is simply concerned with the different arrangements to make it fairer for the damaged party since the existing procedures are consider to be a violation of s6. Applying the new procedures would eliminate discrimination without a breach to the Sharia, so that women would not suffer from being neither *nashiz* nor poor after divorce. Also, the new system would help stop husbands from using divorce as a threat, because the result of divorce would be equal for both parties, instead of the wife being the loser in most cases.

On the other hand, if the Family Law was amended, then eliminating Article 148 (missing husband) can be done through method one, since it is not related to the Sharia - the role was not stated neither by the Qur'an nor by Hadith as discussed in chapter five.[131] However, if the missing husband was to return after his wife married another, and raises a case before the family court under this Article to ask for the other marriage to be nullified in order to win the wife back, during the hearing of this case, the wife and her other husband as parties of the law suit can present an incompatibility plea, method 2. If they fail (the plea was not considered as serious) and the missing husband won the case, then the wife and the second husband can present a case before the PRA court, method 3. The family court as a 'public authority' under s6, obviously has violated the equality principle, since non of such arrangements would happen if she was the missing spouse.

[131] See pp 333,334.

The PRA can void the family court decision or it can transfer the case to the CC, since Article 148 is a breach of the equality right. The CC should strike down the law since it is not compatible with the KC (s3), and there is no need to provide a remedial legislation because there should not be any special procedures for the return of the missing husband, instead, the decision should depend on *both* his and his previous wife's will and on whether they want to go back to live together or not.

7.3.1.6 Custody

Custody should be a right, not only for the parents, but for the child; this is why the court should consider different factors when deciding custody. It is not appropriate to decide it solely according to the age of the child.

Article 191 of the family law states that the female custodianship would end if she marries someone who is not suitable (*Mahram*) for the child. The Article does not specify the gender of the child. This rule does not apply to men, since it generally only matters to women whether the new husband turns out to be unsuitable (for marriage) and the custodian is the mother.[132] Although the Article does not differentiate whether the custodian is the mother or any other female, the Sharia law does so differentiate. The Article should therefore be amended to add the caveat that 'if the female custodian – other than the mother – got married etc', because in most cases the female custodian

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[132] If the child was a male, then '*Mahram*' is not an issue for him, it is only for the female because according to the Sharia and custom it is not suitable for her to live with someone who is not *a Mahram.* However –as mentioned before - if her mother got married, her step-father will become a *mahram* right away.

would be the mother. However, it is not fair for the mother to end her custodianship if she gets married. In most cases it would be transferred to the father[133] who would usually be re-married, but this would not question his validity to be a custodian. It therefore seems as if the law discourages mothers to get on with their lives and get married again, unlike fathers who remain unaffected if they remarry.

In case 158/99, a man sued his ex-wife in order to end her custody of their two boys because she remarried. He won: all three Courts concluded that the man should have custody on the grounds that his wife had remarried.[134]

In the 195/2000 case a Kuwaiti woman was married to a stateless man for several years and had six children. Later, the husband obtained Saudi Arabian nationality. This means that during their divorce Saudi Law had to be applied according to Article 43 of Law number 5 of 1961: "If the matter is regarding guardianship and custody, then the law according to the father's nationality is the one to be applied." Regardless of the fact that the father had divorced the mother and remarried while the mother was single, the Court still granted him custody, since according to Saudi law the children had reached the age where they have to be with their father. Not only that, but the Court ignored the fact that one of his four daughters raised a case against him when he took her deferred from her ex-husband and did not return it to her.[135] This case raises more than one issue: first, Article 43 of 5/1961 Law of Conflict Laws states that whenever there is a foreigner in

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[133] It is true that the law states that a certain number of females (the mother's relatives) can act as custodians and have priority over the father, but in reality it is rare for people to volunteer to be custodian other than the parents, especially if the grandparents are old, ill, or have passed away.
[134] Judgment and Law Journal. June 2003, the 28thYear. Ministry of Justice, Kuwait (part one).pp 443.
[135] Judgment and Law Journal. July 2005, the 30thYear. Ministry of Justice, Kuwait (part one) pp 642.

the case regarding custody and guardianship, the law of the father's nationality is the one that is applied regardless of everything else. Articles 32-49 in general and specifically Articles 39, 40, 41, 42, and 43 arrange a marriage's effects and divorce. They state that the law of the husband's or the father's nationality is the one to be applied. It does not matter what the mother's nationality is, or which country they are residing in. The law states this because of the cultural principle that believes a wife and children should follow the father (the head of the family), regardless of whether the principle is fair or not.

Second, in this case there were six children. The youngest was over the age of ten, meaning that the oldest was at least sixteen. The court did not bother to give them the choice of whom they wanted to live with, because apparently it was explained in the case that they wanted to live with their mother. Third, the court decided that the custody went to the father, even in the case of the divorced daughter.

In the case of a woman who has been married, the court is still entitled to decide on her behalf with whom she should live, and who should take custody of her. If a marriage does not end custodianship, when is it going to end?

The custody mechanism needs to be changed. First, the custodian rights of the parents if they remarried – to someone else other than the parent – should be equalised. Second, the custody should not be decided solely by the age of the children, the court should consider which of the parents is more suitable to have custody. Here the UK family law – as

discussed in chapter four –[136] states in Section 1(3) of the Children's Act 1989 seven different factors that the Court should consider when deciding custody. These factors could be used as a guide for the Kuwaiti Family Law, especially because the custody rules should be flexible (given that custody is not mentioned by the two main sources of the Sharia law).

Applying the new arrangement of custody differs from applying the divorce cases, mainly because the custody – as discussed in chapter five – was not mentioned in the two first main sources of the Islamic teaching, Qur'an and Hadith.[137] It merely depends on the opinions of Islamic Scholars. This makes change possible through the NA (method 1). Also, challenging the laws before the CC could be successful (method 2), since it sometimes discriminates against both sexes and not only women.[138] In any of the previous cases, a mother, since she would be usually asked to give up her custody right when she gets married, can present an incompatibility claim. The father would not lose custody to his children when he gets married, which is a breach of equality. If the family court ignored the plea, and did not consider it serious, and ended her custody because of her marriage or any other reason due to her sex that cannot be justified, she can challenge the verdict under the PRA (method 3), and raise the incompatibility of Article 191 that deprives the mother from custody whenever she gets married (to a non-*mahram*) and the violation of s6 since the court is discriminating against her based on her sex. If the father loses custody, he can raise incompatibility with respect to Article 189 which puts him in

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[136] See pp 244.

[137] Nayer Honarvar argues that custodial rights are not mentioned in the Qur'an, it can only be concluded from the Sunna, practice, and *the U'lamma* (scholars) interpretations.
Nayer Honarvar. Behind the Veil: Women's Rights in Islamic Societies. *Journal of Law and Religion.* 1988, 6 (2), pp 355-387.

[138] In some cases, since the woman – as a mother – knows she has the right of custody, she will use the right to bargain with her husband.

the seventh rank to deserve the custody, as discussed in chapter five. He can also raise the incompatibility charge with respect to Article 194 which ends the mother's custody of her daughter until the daughter gets married, this might never give the father the chance to be custodian for his daughter. Since the CC is required under s3 to make laws compatible with the public rights, and to be compatible with the KC too, then it should strike down the discriminatory arrangement of custody, and a new principle of who deserves the custody needs to be stated. The doctrine of choosing the 'better person for the child' is already stated in Article 189, if there were more than one person who deservers the custodianship equally (according to their relation with the custodian). That principle should be generalised to any custody. Now it might be -- as it is now – vague, or totally up to the judge's opinion as to how to consider who 'is better for the custodian', which might make it necessary to add some restrictions, for example Section 1(3) of the Children's Act 1989.

7.3.1.6 Inheritance

Inheritance was mentioned in the holy Qur'an in detail and so it is not possible to change it because it was arranged according to spiritual wisdom. However, the organisation or details of the inheritance procedures do not contradict the Qur'an. So the law can reorganise the details in order to keep pace with the more objective Sharia law. The Qur'an verses state that:

Allah (thus) directs you as regards your children's (inheritance): to the male, a portion equal to that of two females[4:11]

In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts[4:12]

According to this, if the inheritor was a brother or a husband, or if he took the inheritance as the male agnate, he would get double the female's share. If he took it as consanguinity[139] allows then he would be doing so because he is the closest male relative to the inheritor.[140] This means that the female who is of the same degree of relation in the family does not have a share, simply because of her gender. However, as discussed in the 'equality theories' chapter, Islamic scholars have agreed that a male in some cases[141] should get double the female's share, since he is the one who is financially responsible for the family.[142] Therefore, it is not his right to spend the inheritance however he wishes; his extra share is supposed to provide for his family's needs. Consequently, this extra share should not be his alone; instead, it should be put into a joint account between him and his wife so that neither can spend it without the permission of the other.[143]

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[139] For further discussion about consanguinity, see chapter five pp 267.

[140] David Powers concludes that: "The Qur'anic legislation and the Islamic law of inheritance are best viewed against the background of the tribal customary law of pre-Islamic Arabia, that is, the customary inheritance practices of the nomadic Arabs living in the Hijaz prior to the rise of Islam. This tribal society was patrilineal in its structure and patriarchal in its ethos; individual tribes were formed of adult males who traced their descent from a common ancestor through exclusively male links. The tribe was bound by the body of unwritten rules that had evolved as a manifestation of its spirit and character. These rules served to consolidate the tribe's military strength and to preserve its patrimony by limiting inheritance rights to the male agnate relatives ('asaba) of the deceased, arranged in a hierarchical order, with sons and their descendants being first in order in priority."
David S. Powers. The Islamic Inheritance System. *Arab Law Quarterly*. 1993, 8 (1), pp 13-29.

[141] In some cases the male and the female relatives would get the same share, for example, if they were the parents of the dead person.

[142] See chapter three pp 138.

[143] It should not be understood from this that men are irresponsible and do not distribute funds to their family. It is meant as a guarantee so that the extra money is spent as it should be.

In some cases the man takes his share from the inheritance and spends it as if it was solely his. If the idea of the wife having permission to spend the share is far-fetched, then it may be possible to have a joint account where only the husband can draw from it but they must both agree on what they want to spend the money on. If the Sharia law, as stated in the Qur'an, gave the man double the share because of his financial responsibilities,[144] it must be legally enforceable that the extra money be spent on his family rather than on something else such as starting a new family.

On the other hand, if the male was not married, then his extra share would be reserved until he either marries or dies. If he gets married then his share would be given to him in a joint account with his wife. If he prefers to stay single, then he should not be given the extra share because he does not have any other financial responsibilities. Besides, it would not be fair to take double his sister's share when he is single and the sister is married with children. If the male died while single, then the extra share would be given to the other inheritors.

Some might argue against such a suggestion on the grounds that it is unusual to discuss a man's share in inheritance. However, if one takes a closer look, this suggestion is not contradictory to the Sharia. Even if it was against the Sharia to equalise the share between the sexes, this suggestion might provide a middle ground between discrimination and equality.

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[144] Jane Smith. Women in Islam: Equity, Equality, and the Search for Natural Order. *Journal of the American Academy of Religion.* 1979, XLVII (4), pp 517-537.

Applying the new arrangement for inheritance will probably be considered far-fetched by the law makers, especially because some see it as a conflict with 'male-supremacy' or the *quamma* principle that was discussed in chapter three. Some conjecture that men were given the *quamma* for financial reasons (this is directly related directly to the inheritance matter).[145] However, before rejecting the idea, for either the inheritance or any of the family issues discussed above, there are two main factors that should be taken into account. First, the suggested amendments are compatible with the Sharia. Second, the existing laws are discriminatory to women, which is in conflict with the equality principle that the KC states. Since both principles are stated in the Constitution, then a balance needs to be struck between the two. If formal equality cannot be applied (because the Sharia differentiates between the two sexes) then substantive equality can take its place.

The amendments should be presented as one draft. If it is passed, then it will replace the existing laws in those areas. Agreement on the amendments by the NA (method 1), depends on many different factors. For example, which party would adopt the draft; how powerful the adopting party would be in the NA (which includes the MPs and the government); and how it would defend itself. It also depends on the timing of the draft and also, more importantly, on how the public reacts to it. Although amending some laws

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[145] The 1959 Iraqi Family Law, has equalised between male and female in their shares in the inheritance, which raised – as stated before – some oppositions, but when the Prime Minister at the time was asked about this matter, he commented that the Qur'anic rule is just a recommendation. However, with the new changes, it is possible to change their family law too.
Isobel Coleman. *Women, Islam, and the New Iraq.* [online] [Feb. 2006] Available from: http://www.foreignaffairs.org/20060101faessay85104-p10/isobel-coleman/women-islam-and-the-new-iraq.html
[Accessed 30th Jan.2007] Also,
J.N.D. Anderson. (1971)

will likely be passed unnoticed by the public, others will grab people's attention – particularly those laws that directly relate to their lives, like the family law.[146] It is unlikely that following methods 2 and 3 will be successful in any inheritance case, since the discrimination between the male and female's share is stated directly in the Qur'an. It is possible to claim incompatibility (method 2) but it would not have a chance to be considered a serious plea. Since the existing arrangements are a clear breach of equality and Article 29, they could be challenged under PRA (method 3), however it would be difficult for that court to nullify the family court decision of distributing the inheritance. However, the CC can add some changes to the existing procedures. Since that court is the one who is concerned with applying s3, and Article 2 of the KC (which considers Sharia as a main source of legislation) at the same time, it can reach to a middle view between the gender equality on one side and Sharia on the other, such as applying the suggested arrangements.

7.3.2 Other Discriminatory Laws

It has become easier for other laws and practices, which discriminate against women, to be cancelled or simply adjusted to eliminate discrimination. The laws and practices discussed in the previous chapter are easier to adjust since they do not relate to Sharia law but are based on culture only.

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[146] Mohammad Shahror argues in his book, that what is meant by the Qur'an is that a woman should get half of the man's share only if she does not have any financial responsibilities towards her family. However, if she does, then the half share is only the minimum she can get, and according to her financial participation she will get the share (calculating her participation in percentage, and given her share of inheritance accordingly).
Mohammad Shahrour. *Al-Ketab wa Al-Qur'an* (The Book and the Qur'an). (Lebanon: Sharekat Al-Matboa't, 2004) 4th pp 602-603.

7.2.2.1 Education

As discussed before in chapter six, there is discrimination in both of the higher education institutions in Kuwait with regard to applicants. In some subjects, a higher GPA is required for girls than boys. It cannot be argued that the higher GPA is set because the number of female applicants is higher than the number of males. If this is true it is because girls work harder rather than because they are greater in number. Accordingly, the required GPA for a student's admission should be unified. However, education will be discussed in more detail in the next chapter, since it is included in the SDA sections.

7.3.2.2 Criminal Law

Three subjects to which the Criminal Law is discriminatory, were discussed in the previous chapter, they were: honour killing, domestic violence, and kidnap and rape. How the Criminal Law can be amended in order to avoid sanctioning discrimination vis-à-vis these three issues will now in be discussed in turn. How the discriminatory legal provisions for public sector occupations and married women can be changed will then be explored.

7.3.2.2.A Honour Killing

Article 153 of the Criminal Law should be cancelled. As discussed in chapter six, this Article is not related to Sharia.[147] It was taken from an old French code which happened to be compatible with the culture. The *Law and Judgment Journal*, which includes all cases judged by the Kuwaiti Supreme Law, does not contain a single case that discusses the matter of honour killing. This means that no cases reached the Supreme Court regarding this matter. This raises the question: Is that because no such cases happened in Kuwait? This is unlikely. The more reasonable answer is that it is because these cases can be reserved before ever reaching the court by using Article104 of the Criminal Acts Procedural Law. In these instances, the Head of the Police and Security has the right to reserve any case that he sees necessary. It is far fetched to say that this kind of crime never happened, but the lack of information -- either official or unofficial -- obfuscates and shows how secretive and sensitive the situation is.

Giving a minor sentence or no sentence at all for this crime not only encourages it, but also ensures the culture of killing women by making the excuse for killing legal.[148] A man might feel shame if he does not kill the woman in such cases especially if everybody knows that the law would excuse him if he did kill her. That is why this Article should be cancelled, to cease the encouragement of the killing. In 2004, Turkey changed its law,

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[147] Amira Mashhour. Islamic Law and Gender Equality. *Human Rights Quarterly*. 2005, 27, pp 562-596.
[148] Foud Al-Sertawe argues that regardless of the fact that the sources of laws of the Arab countries are different, for example, some were adopted from the French, British or only Sharia Law, the honour killing article, as mentioned in chapter six, still exists in most of the Arab countries' criminal laws.
Foud Al-Sertawe. Honour Related Homicide in Law and Sharia. *Journal of Law*. June 2003, 2 (27), pp 137-197.

which used to give lenient sentences to the killer in such murders. However, if the crime is considered a murder, then it must deserve a life sentence.[149]

In some cases, the murderer would ask to be sentenced under Article 153, even if it does not apply. For example in case 99/1996 a sister had spent two weeks away from her family house. Her father was later asked to pick her up from the police station where she had been detained for being found with other men, and had admitted that she had committed fornication and that she was no longer a virgin. The father tried to lock her inside a room to try to keep her brother away from her, so that he would not kill her. However, while the father was away for work, the brother emptied the house of his step mother and sisters, broke the lock and took his sister to a distant area (60 km from the city), stabbed her to death and buried her there. The sentence at the appeal courts was 10 years as second degree murder. He plead before the Supreme Court that he should be punished under Article 153, claming that his sister's admission of committing fornication should be treated as finding her in the actual position. However, the Court rejected the plea, considering the crime as premeditated murder and that the 'surprise' factor mentioned in Article 153 was not relevant to this case.

As mentioned before, the greatest guarantee to eliminating discrimination is to eliminate the Articles that sanction it (method 1). The Article regarding Honour killing is one that should not have problems being removed. Although there are articles in the family law

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[149] U.S. Department of State. Country Reports on Human Rights 2004: Turkey. [online] [28th Feb.2005] Available from:
http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm
[Accessed 30th Nov. 2006]

that are mistakenly thought to be related to Sharia, most people in Kuwait know that honour killing is not derived from Islamic Law. (Figure 6.6).

The complication is that if this Article does not gain the required majority to cancel it, then the only way to eliminate it is to claim 'incompatibility'. However, in such cases the question would be who would present such a plea, since the victims are already dead? It must be remembered that honour killings will always be considered a family issue, since both victim and murderer have a close relationship by blood or by marriage. It is always required by law that if someone is to interfere with a case they have to have a direct interest.[150] The same condition is required for the CC appeal.[151] So in this case, it has to be one of the family members who has already lost one – the female – and does not want to lose the other – the male murderer. However, if it was the husband that murdered his wife, her family members have the chance to present an incompatibility plea before the criminal court during the hearing of the murder case (method 2). According to Article 105 of the Criminal Procedures Law No. 17/1960, if the crime was a felony, the criminal trial would be between the prosecution on one side, and the criminal (or the accused) on

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[150] The criminal procedures are different if the crime is a felony than if it is a misdemeanour. If it is a felony then the case parties would be the prosecution and the defendant. However, if it is a misdemeanour then they are the investigation and the defendant – or defendants who would be the only parties according to Article 105-107 of Criminal Procedurals Law No. 17/1960. However, Articles 111-114 discuss having a third party so long as the crime causes some damages so s/he can sue for compensation as a 'civil right plaintiff.' These Articles allow a party to interfere in the case only for a civil right to sue for compensation. However, Article 2 of the Civil Procedurals Decree Law No 38/1980 discusses that a third party can interfere in the case if he has a direct interest.

[151] However, Al-Tabtaba' argues that the direct interest has a different nature than any other regular case since striking down a law or some provisions of it would effect the public and not only the case parties. It is not only that, but also the Constitutional Court requires a special power of attorney for the lawyer who is holding the case other than the one that the party signed for the original case.
Al-Tabtabae', A. (2001) pp 1076-1077.

the other. However, According to Article 111,[152] a third party can interfere with the trial if there are any damages caused to him/her because of the crime (as civil right claimer). The family member, or any other person, can use this Article to interfere with the case to claim incompatibility. In that case, if the case reached the CC, either by the criminal court, or by the PRA (method 3), and since this Article is a breach of the constitutional right of equality, and cannot be related to the Sharia – as discussed in chapter six- also, applying such Article by the criminal court is consider infringed of s6, it is most likely that the CC would declare it incompatible with Article 29. The Article cannot be amended in order to be compatible with KC, it rather just needs to be eliminated from the Criminal Law. Eliminating it would mean that any further 'honour killing' case would be dealt with as a regular murder.

7.3.2.2.B Domestic Violence

As was already mentioned in chapter six, domestic violence is not addressed in Kuwaiti Criminal Law and is thus treated like any other violent crime. The importance of such a crime is that it happens to many women, but there is no special protection for them; the police treat it like they would any other assault. Since Kuwaiti society is conservative, a woman would hesitate to ask the police for help if she was being assaulted and violated. Moreover, she is unlikely to seek help unless she wants to prove maltreatment in order to help her get a divorce.

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[152] The Article states that: "Each person who has injury caused by a crime, has the right to sue for compensation before the same court hearing the criminal case, at any time during the trial, in this case s/he would be described as the injured defendant in a criminal proceeding if it was (the case) raised by others."

Interviews with the heads of the police stations of two different areas of Kuwait City provoked different reactions. Chief Constable Abdul-Azez Almaso'd, head of the police station in Kefan district (population of 12, 849), was surprised when asked if there were any special procedures for domestic violence cases. He explained his response by claiming that he was unaware of any such cases in his district, and stated that he had never heard of any cases during the four years he had been the head of the police station. In the Sulaibikhat district (population 15,640), the head of the station stated that these cases were very rare and occurred on average once or twice a month maximum, and usually ended with reconciliation. Furthermore, according to the official statistics from the Ministry of Interior, such crimes do not exist, probably because most of these cases end as reconciliation before reaching court.[153]

In its Annual Report on women in the GCC countries, Amnesty International analysed how women in the Gulf experience violence from their family members at early ages, then by their husbands once they are married.[154] The report also added an important

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[153] See pp 402.

[154] The UN Special Report on violence against women has stated: "[v]iolence against women in general, and domestic violence in particular, serve as essential components in societies which oppress women, since violence against women not only derives from but also sustains the dominant gender stereotype and is used to control women in the one space traditionally dominated by women, the home. Gender-based violence coupled with discrimination against women is common throughout the GCC countries and affects women at all stages of their lives. As young girls they are treated by their families as subordinate to their brothers, who are given almost a free hand to exercise control over them. This exercise of control is manifest in restrictions on their freedom of movement and violence in the home. The family's control over girls persists into adulthood, from the restriction of their choice of marriage partner to forced confinement and physical violence if they assert their right to marry the partner of their choice. In view of the very limited possibilities for women to lead their lives economically and socially independent of male relatives, most unmarried women and girls who suffer such violence are faced with a stark choice: to endure the abuse or to try to extricate themselves from the situation by marrying a man considered by their family to be suitable. Some then, as wives, face violence in their new homes. The prohibition on violence against women applies to both women and girls. In respect of girls, states also have binding obligations under the

section detailing how domestic violence in the region is dealt with as a 'family issue' or, in some cases, as a 'normal' issue.

Moreover, social norms lead police to disregard the criminal nature of such assaults against women. This disregard by the police to the assault and suffering of women and girls also plays an important role in deterring women from reporting violence in the home.

Instead of being encouraged to go to the police, women are expected to endure violence from an intimate partner for the sake of 'not ruining the family'. This approach is based on pursuing reconciliation between the parties and resolution through mediation and agreements, rather than seeking justice for the victim and prosecution of the perpetrator or any other action by the courts to ensure the victim's protection. In reality, this approach often puts women at greater risk of further violence, and women find that they cannot break out of a perpetual cycle of violence.[155]

This report may explain how someone who has reached a high rank, such the head of a police station, has never heard of 'domestic violence' before nor been faced with such a

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UN Convention on the Rights of the Child, which contains an explicit prohibition on violence against children.'
Amnesty International, *Gulf Cooperation Council (GCC) countries: Women deserve dignity and respect.* [online] [11thMay 2005] Available from:
http://web.amnesty.org/library/index/engmde040042005
[accessed 19th Aug.2006]

[155] Amnesty International. *Gulf Cooperation Council (GCC) countries: Women deserve dignity and respect.* [online] [11thMay 2005] Available from:
http://web.amnesty.org/library/index/engmde040042005
[accessed 19th Aug.2006]

case. It also explains how such a crime is non-existent in the official statistics of the Ministry of Interior.

It is true that domestic violence has not been studied or researched, as it should have been in Kuwait; nor is this issue taken seriously by the Police. However, these facts do not mean that it is not an existing problem that needs to be dealt with carefully and closely. Kuwait could benefit from the UK measures to this approach. It is not only domestic violence, but also all of the issues that were discussed in the fourth chapter regarding women in the criminal justice system (such as battered women syndrome, provocation, and marital rape), which are not even open for discussion in Kuwait. This is considered a major problem caused by the lack of enough legislation.

Article 38 of the KC states that: "Places of residence shall be inviolable. They may not be entered without the permission of their occupants except in the circumstances and manner specified by law" which resembles some of what is stipulated in Article 8[156] (this article was discussed in chapter four). Both Articles support the idea of the privacy of family life, and give permission for interference by the public authority in certain circumstances. However, the refusal of the police to interfere with domestic violence cases is not based on the constitutional right. The fact is that there are cultural barriers that prevent a policeman from entering people's homes, even when the inference is due to a call from the wife. Similar barriers prevent the wife from making the call in the first place. This

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[156] The Article states that "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

means that this specific issue would not be solved by adding some article to the law, it needs to be organised in a separate law due to its unusual situation.

7.3.2.2.C Kidnap and rape

Article 182 of the Criminal Law should be eliminated. It is too extreme when it states that a woman can marry someone who has kidnapped and raped her. The fact that this Article exists in most of the ME countries does not make it right. If someone commits a kidnap and rape, they are a criminal and should be sent to jail rather than allowed to be married. The idea behind this is that a female in such a situation would be criticised because she is no longer a virgin; therefore it is better to let her marry even for a short time. Such a principal should be disregarded as she is a victim and she should not be punished by being forced to marry her rapist, who is able to divorce her the following day and go absolutely free.

It is difficult to find accurate numbers of such crimes in Kuwait, since they are dealt with in secretive manner. There are two main reasons for this. Firstly, some women – or even young girls - who are rape victims do not report the crime to the police, as they are afraid of the 'scandal' that would surround them. An unmarried woman would lose her chance to get married if it was known that she had been raped, and a married one would be afraid that she would face a divorce. Secondly, even if they reported the crime, rape victims are treated with suspicion as if they had seduced the perpetrator by the way they had

dressed,[157] so instead of being sympathised with, in a way they will be blamed. Since this Article only ensures the women's subordination, it should be cancelled.

Cancelling this Article would not have any other legal effect, since it is not related to any other Articles of the Law. However, cancelling an Article requires going through the same procedures as those required when amending it. This means that it has to go through the NA (method 1). The Human Rights annual reports might help here as they may put pressure on Kuwait to change such Articles or eliminate them. Although, as is the case with honour killing, this Article is not supported by Sharia. That means that it might gain the needed majority to strike it down. The other option is claiming 'incompatibility' (method 2) which might be complicated in this kind of case. The father's agreement to the marriage between his daughter and the kidnapper means giving up his right to raise a case against the kidnapper, meaning that there would be no case and no court to present the plea of incompatibility to. However, if the plea cannot be presented before the criminal court, the kidnapped woman can present a case to void the marriage under Article 182 of the Criminal Law, on the grounds that she got married against her will. Striking down this Article would make the kidnapping sentence the same regardless of the sex of the victim, the kidnapper would be punished under Articles 178-181, and 183-185, since Article 182 would cease to exist after the declaration of incompatibility. Also, the victim can always follow method 3 and file a case before the PRA against the criminal court decision under s6 which violates equality principle, and in that case, the

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[157] Aman website. *Arabic Women: Reality and Anticipation*. [online] [May 1995] Available from: http://www.rightsathome.org/docs/dv/Aman%20Jordan%20-%20VAW%20Study%20A.doc. [Accessed 22nd Aug. 2006]

chances – as explained before – of reaching the CC are better than in method 2. Therefore, the CC should strike down such a role, since the law must be read in a compatible way with the constitutional right of equality that this article obviously violates.

7.2.2.2.D Incest and sexual deviation

Article 189 of the Criminal Law states that "if someone incestuously assaults a woman and acknowledges that without threat or duress, then he would face a maximum sentence of fifteen years." The following Article states that "if a female incestuously assaults a man and acknowledges that, then she would face a maximum of ten year sentence."

Thus, the law gives a lower sentence to the female who commits the same crime. The two Articles should be amalgamated and the law must decide whether incest without threat or duress is a crime and should be punished by either ten or fifteen years. The lower sentence has been used as an excuse and is offered as an example of what women would lose if they had equality. This Article is often given as an example of how the law can be more lenient, and favour treatment for women over men. However, there is no legitimate reason why women over 21 years old should get a lower sentence if they commit the same crime as men.

Another example is the crime of sexual deviation which according to Article 193 of the Criminal Law, which states that "if a male has sexual intercourse with another male

without threat or duress, each one would face a sentence of seven years maximum." The Article only mentions men; it does not refer to sexual relations between females, thereby making them legal. For such kinds of discrimination, the Article should be amended to say "if two adults – males or females."

If the required amendment was agreed (method 1), then it might open the door for amending the other discussed Articles. If the intention is to eliminate discrimination carried out against men in these two Articles, then there can be no other argument to refuse amending the previous Articles, since all of such Articles are only based on a culture of women's subordination. Also, if a male was convicted for such a crime, he can always claim incompatibility during the hearing (method 2), which may be considered as a serious plea, since the discrimination is obvious when simply reading the two Articles. Alternatively, he can bring a case before PRA court for the breach of equality since it is illegitimate sex-discrimination (method 3), which the court should transfer to the CC. Since the Article has to be read in a compatible way (s3) with the constitutional rights, then the Article should be amended to give both sexes the same sentence for such crime.

7.2.2.3. Public Sector Occupations

For a woman to be a judge, prosecutor, army or police officer there is no need for an amendment or the cancelling of a law. As discussed before, this is because laws that organise these jobs do not require the applicant to be a male; it is only a custom that they are male. This is unlike the former Electoral Legislation which requires both the voter

and the elector to be male. When it was eliminated it opened the door for women to participate in the political process. However, although it might sound easy for women to get these jobs because it does not require any changes in law, the issue needs the decision to be made by officials; but not just any official as it might be necessary for someone in a high position to decide.

While it is true that women's rights have been frequently discussed in Kuwait of late, the discussion has yet to reach this point. That is why, when applying a sex discrimination law, a female applicant should be able to file a lawsuit if she is refused the job of a prosecutor (a position prior to becoming a judge) based on her sex. This matter will be discussed in more detail in the next chapter.

7.2.2.4. Married Woman

Discrimination against married women – as discussed in the previous chapter – can take different forms. Some of these laws need to be changed or cancelled.

The current Law of Nationality states that Kuwaiti nationality should only be given if the father is Kuwaiti.[158] This law needs to be changed to give children the privilege of having the nationality of both parents. Moreover, such a privilege should also be conferred to the spouse: just as the Kuwaiti male can pass it to his wife, the Kuwaiti female should be able

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[158] Mary Ann Tetreault and Haya Al-Mughni argue that the children of a Kuwaiti mother are denied political, economic and social protection and in some cases they will be treated like foreigners for example they will be required to have a residency permit.
Marry Ann Tetreault and Haya Al-Mughni. Gender, Citizenship, and Nationalism in Kuwait. *British Journal of Middle Eastern Studies.* 1995, 22 (1/2), pp 64-80.

to pass it to her husband. These laws need to be changed especially since Kuwaiti nationality law has a special standing. No one – even if they have the right to – can claim nationality before the court. This is because to grant nationality is considered a supreme decision that can only be made by the official, which – not even the courts – can interfere with. So in order to make the right of nationality between men and women equal, amendments have to be made to the Law by the NA (method 1), since 'incompatibility' cannot be claimed (method 2 and 3). The Nationality Law as well as other laws like Residency and Media laws are considered to be sovereignty laws that courts have no authority to examine, which means that no one can bring a case based on violation of these laws.[159]

Passport Law's Article 15 needs to be cancelled, so that a married woman can choose to obtain a passport herself, rather than having to rely on will of her husband. If the Nationality Law is amended as suggested, then there is no need to discuss the residency of children with a Kuwaiti mother, because they will have the option of becoming Kuwaiti. If the Nationality Law did not change in the Kuwaiti mother's favour, then at least her children should be given a life-time residency, instead of treating them as foreigners. Other issues regarding the situation of a Kuwaiti woman married to a non-Kuwaiti, such as housing and social mobility, will be covered in the next part chapter.

However, it is possible to change Article 15 of the Passport Law by case law. If a wife has an application at the Immigration and Passport Department (under the Ministry of

[159] Interview with Abdulla Al-Essa in 2-2-2007 at his house.

Interior) to get a passport and does not get her husband's consent, then her application would be refused. She can then appeal before the administrative court against the Ministry of Interior. Of course the Ministry would claim that the refusal was based on Article 15 of Law No. 11/1962, but she can then present an incompatibility plea claiming that this Article is incompatible with Article 29 of the KC (method 2), since it is a discriminatory law based on sex. In the unlikely event that the administrative court did not see it as a serious plea, then it would not rule in her favour because of Article 15. However, she can appeal, or she can represent the plea under the PRA (method 3), which it would accept it, and most likely would suspend the case to transfer it to the CC to examine whether the law is compatible or not. According to s6, the procedures that are applied by the Ministry of Interior are obviously a breach of equality, which the CC is obliged under s3 to make compatible with the constitutional rights. Therefore, The CC would, in considering the equality principle, declare that it is inconsistent with the KC, and that Sharia has never stated anything about passports or the mobilisation of a wife.[160] After such declaration, the law would be consider as it does not exist and then a woman would be able to get a passport without the need of her husband's consent, just as he can.

7.4. Conclusion

With a careful reading of these laws, it can be concluded, as Laila Ahmad has noticed, that Islamic teaching makes moral requirements on both men and women. However, only

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[160] It is true that according to the Sharia, a wife should not go anywhere out of her house without her husband's consent, but that should not be a law. How they manage their life should be left up to the couples themselves. Especially when knowing that in some cases, husbands would abuse such a law – such as Article 15 – and threaten their wives. Not only that, in some other cases, there would be an emergency that required the wife to travel, but if her husband was not around, then she could not.

requirements made on women have became law, while those made on men have become recommendations only.[161] In the same vein, Suad Al-Qudsi[162] has made a list of discrepancies regarding the legal status of men and women, for example:

- She cannot bear witness, regardless of her status or education, even if she saw the crime and could name the criminal, while a male, regardless of his education and status, can.
- She cannot have guardianship over herself even if she is a minister or a judge, while a man can have guardianship over a woman (even if he is younger than her) if she is his sister, niece or cousin, for example.
- The guardian is never punished if the marriage happens without the woman's consent even though this is against the Sharia.
- If a woman chooses the *Khule'*, then she has to pay her dowry back to her husband, regardless of whether she is unemployed, her financial status, and how long their marriage lasted. On the other hand, a man can divorce his wife at any time and without any reason although it is not recommended by Sharia.
- Women are forced to return to their husbands in *ta'a* cases, or is *Nashiz*, but there are no obligations or punishment if a husband does not pay the alimony after a divorce.
- A husband can get away with a murder under the concept of honour killing, but if his wife sees him with another woman and kills him, she will be imprisoned for a long time.[163]

In order to abolish the discrimination in these laws there are three options. First, the direct way, is to amend the laws or cancel them as suggested. However, the successful implementation of this option might take some time as well as some lobbying.[164] The elimination and amendments of the discriminatory laws discussed in the previous two chapters might face some complications e.g. claims that such amendments are against culture or religion. As studied in the previous chapter, the suffrage rights for women

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[161] Laila Ahmad. The Arabic Culture and Writing about Woman Body. In: Pinar Ilkkaracan. ed. *Women and Sexuality in Muslim Societies*. (Damascus: AlMada Publishing Company, 2004) pp 84.
[162] Suad Al-Qudsi. *Women's Rights in Islam: The 2nd Phase.* [online] [15th Feb.2006] Available from: http://www.wfrt.org/dtls.php?PageID=158
[Accessed 1st Feb.2007]
[163] Al-Qudsi, S. (2006)
[164] It is true that the procedures and the required majority are the same, however, to suggest amending law articles is easier than suggesting a new law since the effects of amendments are usually limited as compared to having a whole new law. However, in the case that is discussed, to suggest these amendments might still face complications owing to the cultural background.

would not have happened if it was not for government pressure (which was, in fact, a response to international demands). Also, as discussed earlier in this chapter, Turkey faced a similar situation when it cancelled the 'honour killing' Article in order to prepare itself to be a member of the European Union. Therefore, there are two major obstacles to amending these laws. First, there is the problem of suggesting the amendments, and then passing the amendments as new laws. The idea of having such amendments can be adopted by either the government or some MPs for one reason or another. However, doing so will face complications only because of the current formation of the NA, and due to the fact that most of the MPs represent different Islamic groups. This means that having more liberals in parliament is likely to help improve women's position and make support for amending the current discriminatory laws more probable. It was explained in the second and sixth chapter how such members supported the women's suffrage rights while the Islamists were against it. Those chapters also explained how the liberal MPs were willing to go to the CC, to put the Electoral Law into harmony with the Constitution, and avoid the previous rejections of such cases.[165]

The second option is to claim that these laws are incompatible with the constitution. This way would face some complications with the procedures in order to reach the CC. Also there has no claims of incompatibility have hitherto been heard, which could be either because women are not aware of the right (that such laws are incompatible with the Constitution and breach the 'equality' principle) or because people – in general – do not see it as discrimination, since they think that it is the Sharia law (see figures 5.23, and 6.6

[165] See pp 406,407.

for example.[166] However, there is a possibility of striking down a law that is incompatible with the KC just like the Decree Law No. 65/1979.[167]

The third option is to enforce the constitutional rights in general, and 'equality' in particular, by adopting these rights into a separate law. This explains why the relation between Article 14 and HRA was discussed in this chapter, to set a model for Kuwait to adopt the mechanism of enforcing the law. The purpose was not to discuss the HRA itself but to give an example of one way to enforce the Constitution in order to enforce the 'equality' principle that the Constitution has eventually stated. As Maureen and John Spencer explain, adopting the Conventional rights in the HRA gives protection to people when such rights are breached by a public body under s6. Further, the rights that already exist in other laws should be interpreted consistently with the rights asserted in the Convention, s3.[168] Now, it is true that if Kuwait adopted the constitutional rights into a law, they would only be applied if such rights were violated by a public body and would not be applied in private matters such as the family issues. However, adopting s6 and giving the right to challenge a court judgment under this law would provide a major guarantee to changing the discriminatory laws. Since the PRA court would be specialised in protecting the constitutional rights from being violated, it would have a great chance of either accepting the incompatibility pleas presented to it by the case parties, or to transfer

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[166] On the other had, Donna Artz has concluded that:
"The key to Islamic justice is, more specifically, the degree to which the judiciary is independent of the political authorities." She argues even that even though some Arab constitutions state that their judiciaries are independent in reality they are not.
Donna E. Artz. The Application of International Human Rights Law in Islamic States. *Human Rights Quarterly.* May, 1990, 12 (2), pp 202-230.

[167] There are other incidents where the Constitutional Court decided incompatibility, but this one was remarkable because most of the law articles were struck down, while the incident before only struck down one or two articles of the laws.

[168] Maureen Spencer and John Spencer. *Human Rights.* (London: Sweet and Maxwell Limited, 2004) pp 30,31.

itself whenever it sees that a law is incompatible with the KC. That is when the CC would prove the power of enforcing a law and especially the supremacy law of the Country. It is true that cases where the CC declared incompatibility are few, but it has happened. This means that a strong case and a decent presentation would lead to a successful declaration of incompatibility.

Therefore, although the most guaranteed way to establish equality is for these laws to be amended, if the amendments could not reach the NA, or could not gain a majority vote, then the judiciary authority might establish a more effective guarantee for women in some issues. This would be achieved if the Constitution was enforced further by adopting Constitutional rights into a separate law, or by claiming incompatibility with the Constitution.

However, even if PRA existed, it would still be difficult to adopt the formal equality theory in full, since the Sharia has special accommodations for women and at the same time is a main source for the laws in Kuwait. Also, some laws, like the Nationality law, which also discriminate against women, are considered supreme and the court has no authority to discuss them.

In that sense, there would be fewer difficulties in adopting the UK measure of anti discrimination law than amending the existing laws, mainly because the covered subjects within the SDA 1975 (mainly employment, education, facilities, goods and premises) do not conflict with the Sharia, or at least not directly.

Chapter Eight

The possibility of adopting UK measures, including the SDA, in Kuwait

8.1. Introduction

As discussed in detail in Chapters 5 and 6, many of Kuwait's laws and practices create severe discrimination against women. As discussed before, such discrimination is based either on culture or Sharia. The application of a specific anti-discrimination law can formally guarantee equal treatment in certain spheres and in practice at least minimise or diminish the impact of discrimination. One of the two main goals of this thesis is to discuss whether the UK's anti-discrimination laws, particularly the Sex Discrimination Act 1975 and the Equal Pay Act 1970, could realistically be applied in Kuwait. In this chapter an attempt to answer this question will be made, particularly with regard to the cultural difficulties in importing the equivalent of the UK measures into Kuwaiti law. It will be argued that these anti-discrimination laws can, and should, be adopted by the Kuwaiti legal system, provided that they are adopted in a way that is sensitive to the cultural differences between Kuwait and the UK. This will involve modifying certain sections of the statutes in order to make them suitable for Kuwait. However, in accepting the need for some amendation, at least initially, it is important that adherence to the formal equality model, discussed in Chapter three, occurs as far as possible. Which articles need to be amended and how they need to be amended, will also be discussed in

this chapter. This chapter follows on from Chap 7 in which general changes based on constitutional reform were considered. This chapter considers the need for dedicated anti-discrimination laws in the spheres covered by the SDA and EPA in the UK.

Since Middle Eastern countries do not have sex discrimination laws; the experiences of the West might provide us with good examples of how to, and how not to, introduce such laws. This explains why the Sex Discrimination Act 1975 of the UK, as well as other equality laws, were discussed in chapter four. Kuwait must include a gender equality act (GEA) in its legal system as it is the main instrument to reduce discrimination in different fields just like those that the SDA of the UK covers. Such a law would also provide women with a firm legal ground on which to base their cases, instead of complaining and making ineffective attempts to reach the Constitutional Court (CC).

One of the difficulties surrounding the implementation of such a law is the concern about how it can possibly work with regard to the discrimination based on Sharia law. Since Kuwaiti society is considered religious and conservative, applying the formal equality principle in full might be unacceptable. However, clearly, if it was applied with exceptions to matters related to the Sharia, it might no longer successfully apply the notion of formal equality.

Theoretically, formal equality can be applied without exceptions; however, in reality – as discussed in the equality theories chapter – it will be faced with some religious and cultural barriers. As J. Anderson has explained, most ME countries have two parallel

legal systems, the Western, and the Islamic law. However, only the latter is considered as the original and as a reflection of 'the soul of the people concerned.'[1] Further, in his view the Islamic laws that have been introduced in the ME countries, one after the other, represented a comfortable unity between law and religion.[2] Also Ruth Roded concluded that: "despite attempts to reform Islamic Law dating to the nineteenth century, it is still relevant to a greater or lesser extent in many Muslim countries, particularly in family matters." Moreover, 'Restore the Sharia!' has today become a leading slogan for all neo-Islamic movements, but countered by feminists and their allies.'[3]According to such observations, it is not easy to ignore the Sharia when applying a new law. The problem in seeking to apply the formal equality model in Kuwait is that Islamic concepts as interpreted there have come to be viewed as synonymous with the imposition and maintenance of gender inequality. Therefore, adoption of the formal equality model followed by the introduction of laws with *some* exceptions would – in reality - have to happen in stages, taking account of the influence of Sharia law and the general cultural acquiescence in the oppression of women.

In reality, if a measure equivalent to the SDA 1975 was applied in Kuwait it would have to be modified to suit the country's cultural and religious constraints. Possibly, some Sections would possibly have to be eliminated initially, either because they do not fit

[1] This thought can explain how most ME countries' constitutions contain an article which states that "the religion of the State is Islam, and the Islamic Sharia shall be a main source of legislation." Such an article does exist in the KC as well as the Egyptian (Article 2), Iraqi (Article 2), Syrian (Article 3), Palestinian (Article 7), Bahrain (Article 2), Omani (Article 2), Qatari (Article 1) constitutions. While some other states' constitutions just state that Islam is the state religion, such as the Moroccan (Article 6), Libyan (Article 2), Jordanian (Article 2), Algerian (Article 2) constitutions. However, the Iranian constitution contains a lot more articles, for example Articles 4 and 12, which state that Islam is a main source for not only legislation, but as a system for the Country.

[2] J. N. D. Anderson. *Islamic Law in the Modern World.* (London: Stevens and Sons Ltd, 1959) pp 17- 20.

[3] Ruth Roded. *Women in Islam and the Middle East.* (London: I.B. Tauris & Co Ltd. 1999) pp 93.

legally, or because they do not fit culturally. For example, Sections 2A, 7A and 7B discuss gender reassignment – as will be discussed in more detail later - which Kuwaiti society does not approve. In fact, in Kuwait it is considered a disgrace to admit to transexuality. Socially, it is believed that allowing more rights for such groups of people would be seen as a sign of encouragement to them. Also, religiously they are viewed as the sort of people that to go against very basic human nature. This is an example of the anti-progressive nature of Kuwait society which would make the introduction of an SDA equivalent very difficult, if not impossible, if those sections were included. The inclusion of those sections would render a statute modelled on the SDA too controversial for acceptance, for some years.

Some adjustments and modifications of the SDA would have a more straightforward basis. Another example of SDA 1975's cultural mis-fit can be seen in Part III where education is discussed. In order to adopt this Part into Kuwaiti Law in a way that fits the Kuwaiti education scheme, some adjustments would obviously need to be made; it would have to apply to the education system of Kuwait rather than that of England and Scotland. The consideration of political parties discussed in the SDA cannot be fully applied to Kuwait, since the latter prohibits the formation of certain parties. Accordingly, as will be discussed in more detail, even though adopting the SDA would face some difficulties (due to its needing some adjustments, amendments, and even omission of some sections of the Act), it may still be achievable. On the other hand, a major obstacle lies with the enforcement of the law. The two countries have different ways of enforcing a law: while the UK law covers enforcement within the Act, the Kuwaiti laws usually decide the

enforcement within a code of practice and regulation, rather than containing it in the law itself.

In relation to the question of the extent to which there are cultural complications to applying an equivalent of the UK law, it might be useful to note that when Kuwait first started legislating its laws in 1960s,[4] all of them were adopted from Egyptian laws[5] which are mainly originally adopted from French law.[6] This in effect means that, other than the Family law, most of the laws in Kuwait are French. Thus the cultural difficulties possibly could eventually be overcome under a staged approach. But an important initial question which relates to cultural difficulties must rather be whether or not the SDA is compatible with Sharia.

It is important for the new law to harmonize with the Sharia teachings, since any accusation that the law contradicts the Sharia might undermine and ultimately destroy such a law and make its acceptance in Parliament impossible. Naturally, any contradictions to the Sharia or even to cultural norms would be the source of controversy. However, that does not mean that the idea of introducing an SDA equivalent and other equality measures should be abandoned; instead they could be modified to suit the Sharia and the Kuwaiti culture. The main advantage of the equality laws of the UK in this

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[4] For more details of the legislating development in Kuwait, see:
Abdul-Rasoul Abdul-Reda. A Summary of the Legal and Judicial System in the State of Kuwait. *Arab Law Quarterly.* 1991, 6 (3), pp 267-279.

[5] Ahmad Hijazi states that, in 1959, Kuwait hired the most famous jurist in Egypt at that time, Dr.Sanhouri to help establish a new legal system and bring legislations up-to-date.
Ahmad Hijazi. Kuwait: Development from Semitribal, Semicolonial Society to Democracy and Sovereignty. *The American Journal of Comparative Law.* 1964, 13 (3), pp 428-438.

[6] Anh Nga Longva. Kuwaiti Women at a Crossroads: Privileged Development and the Constraints of Ethnic Stratification. *International Journal of Middle East Studies.*Aug. 1993, 25 (3), pp 443-456.

context (specifically the SDA and EPA) is that they do not necessarily conflict with the discriminatory laws that Sharia states – discussed in the equality theories chapter – against women. Since the issues that those two Acts of UK discuss, such as education and employment, are not related to Sharia, the Acts are unlikely to contradict the Sharia, although there would clearly still be cultural difficulties in introducing the laws which some Islamic extremists would view as related to Sharia. This chapter will discuss the equality law measures of the UK, especially the SDA 1975, and the EPA 1970, examining the possibilities and the importance of adopting them into Kuwaiti Law. [7]

The chapter is divided into ten sections. Each section will discuss a sector of Kuwaiti society that needs the application of an anti-discrimination law and how a modified version of the UK's equality law measures can fit the bill in each case. Section 8.2 will discuss this with regard to direct and indirect forms of discrimination; 8.3 with regard to discrimination in the employment field; 8.4 with regard to education; 8.5 with regard to goods, facilities, services and premises; 8.6 with regard to political parties and voluntary bodies; 8.7. with regard to lawyers; 8.8 with regard to other unlawful acts. Section 8.9 will discuss some general exceptions to the act, and finally, 8.10 will discuss how the new law would need to be enforced.

[7] The new suggested equality law in this chapter will be names as the gender equality act (GEA).

8.2. Direct and Indirect Discrimination

As explained in chapter three, women in Kuwait still struggle to prove that they are an equal sex with equal rights. Now it is true, as discussed in that chapter, that there are five issues in which Sharia has discriminated against women. It was shown (in chapters five and six) that those five issues are the basis for widely spread discrimination, even for issues that did not exist in the early days of Islam like employment and education. Also, as mentioned in the equality theories chapter, the important fact that women are equal to men in the sphere of worship according to Sharia, is often forgotten. Ignoring this fact means emphasising the quamma principle: to prove that God meant to create men as the superior sex and women as the second sex, created simply for the mission of childbearing and rearing.[8] This view can explain the discrimination, especially against women married to non-Kuwaiti citizens who are deprived of all the privileges that the laws give to married Kuwait men (including the social loans offered by the Kuwait Savings and Credit Bank).[9]

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[8] In his study about the effect of fertility on employment on four Arab countries, Jordan, West Bank and Gaza, Oman and Kuwait, Sulayman Al-Qudsi conclude that: "In Islamic culture, a women's role as a 'mobilizer' of human resources and producer of domestic goods is considered essential for child development within a stable and united family structure. More specifically, the strong negative sign of the 'married' variable across all countries corroborates the hypothesis that conventional pattern is for an Arab woman to cease working at marriage or at the birth of her first live child and never to return to work. A third common finding concerns the cultural underpinning of lagging fertility. High fertility is greatly influenced by cultural forces including early age at marriage and preference for male offspring." He also states that although 95% of Kuwaiti citizens work for the public sphere, women hold only 1.6% of all managerial and administrative positions.
Sulayman Al-Qudsi. Labour Participation in Arab Women: estimates of the fertility to labour supply link. *Applied Economics.* July, 1998, 30 (7,1), pp 931-941.

[9] It might worth mentioning that Kuwait Saving and Credit Bank offers a social interest free loan for the newlywed Kuwaitis under a certain conditions:

1. The wife has to be a Kuwaiti citizen, unless she was a handicap, she can be non-Kuwaiti.
2. He can have the loan in the period of two years of the marriage.
3. He has not got this kind of loan before.
4. He has not married a Kuwaiti before, unless he was a widow and married again to another Kuwaiti wife.

For women, the main advantage of an anti-discrimination law would be in the employment field where the unequal treatment among sexes is concentrated.[10] They would also benefit from eliminating discrimination in other fields like education, goods, facilities, and premises. This could happen with the implementation of a law where no exceptions are listed to prevent any possibility of justifying discrimination. This is one of the main advantages of the SDA 1975.

The Kuwaiti version of the equality law could begin in the same way the UK Act does by applying Section 1[11] which defines direct and indirect discrimination against women, and then move on to discrimination against men in Section 2, eliminating 2A and continuing with Sections 3, 4, and 5 just as in the SDA. This would be Part 1.

Adopting this section is essential, since it defines both direct and indirect discrimination, and would be considered a significant move for Kuwait.[12] In relation to direct discrimination, it is usual for a job advertisement to be for 'males only' and without any

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5. The maximum of this loan is K.D. 4,000, the first half would be given as a gift, while he would have to return the other have as certain payments.
6. The payments, would start after three months of the loan's date, and to be maximum of K.D. 40 a month.

The Kuwait Saving and Credit Bank official website. *The Social Loans.* [online] [undated] Available from: http://www.scb.gov.kw/Default.aspx?pageId=39
[Accessed 9th Feb. 2007]

[10] Women's participation in labour force has increased from 2% in 1965 to 14% in 1985.
Nasra Shah and Sulayman Al-Qudsi. Female Work Roles in a Traditional, Oil Economy: Kuwait. *Research in Human Capital and Development.* 1990, 6, pp 213-236.

[11] The number of Sections discussed in this chapter, is the original number in the SDA 1975, and not the suggested SDA for Kuwait.

[12] Evelyn Collins and Elizabeth Meehan argue that an important move for this Act is shifting the burden of proof to the employer to prove that the decision was not based on the sex of the applicant, which also would be as important for Kuwait.
Evelyn Collins and Elizabeth Meehan. Women's Rights in Employment. In: Christopher McCrudden and Gerald Chambers. *Individual Rights and the Law in Britain.* (NY: Oxford University Press Inc., 1994) pp 373.

justified reasons. For example, the Kuwait National Petrol Company (KNPC), advertised a job vacancy in the local newspaper on 25th January 2007[13] for men only. It is usual for such companies to have such conditions. However, this behaviour is not only found in the employment field, but also in education. The annual scholarship opportunities that are mainly offered by the Ministry of Higher Education offer some specialties exclusively for men. This is especially the case within sciences such as Nuclear Medicine Technology, Veterinary Science, and Electrical Engineering, etc.[14]

In relation to indirect discrimination there is a lack of legal protection. For example, if only a small proportion of a particular group (such as women) can comply with a certain requirement or condition less than other groups of people (such as men), employers are never questioned about whether such requirements or conditions are important or related to the job.[15] The new sex discrimination law would seek to guarantee the prohibition of such actions, although in practice there would be difficulties, as discussed below. It is true that an employer can currently make being a male a pre-requisite for a job he wishes to advertise (direct discrimination). However, indirect discrimination also exists in rather more hidden ways. A hypothetical example for indirect discrimination is when an advertisement states conditions that fewer women can comply with than men, such as requiring an undergraduate degree from a University in the U.S. or any Western Country.

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[13] The advertisement is also available on their internet website: www.knpc.com.

[14] Ministry of Higher Education. *The Scholarship Plan for the Academic Year 2006/2007.* [online] [undated] Available from:
http://www.mohe.edu.kw/123/Plan7/science_plan.html
[Accessed 3rd Feb. 2007]

[15] Also, including 'requirement or condition' in S 1 (1) (b) as Adrian Williams argues helped to close any loopholes in sex-discrimination including all forms of discrimination.
Adrian Williams. Appraising the Measures Introduced to Protect Employees Against Discrimination on the Grounds of Their Sexual Orientation. *Business Law Review.* March, 2004, 25 (3), pp 56-65.

It is known that males, for social reasons, have a better chance to go and study abroad than women,[16]so including such a condition would mean that a smaller proportion of women could comply with it than men. If the condition was merely, however, to have an undergraduate degree from a certified university, then that would in theory create equal opportunities for both sexes, since Kuwait University is a certified university and women have equal access to it – though only to a certain extent, as explained in chapter six, with men. Besides, it would be considered a legitimate condition. However, some job specifications require the applicant to be fluent in English, so that graduates from abroad (which are mostly men) have a better chance to get the job. Also, in some cases, a company (such as the KOC) would not require a male for the job directly, but require a vocational certificates for the job, and most of the vocational majors, as will be discussed later, are open to males only. However, only if there was a sex-discrimination law, would the inclusion of such condition be considered a case of indirect discrimination (provided the employer failed to justify the reasons for requiring it).

Also, as suggested in chapter four, Kuwait can adopt the 'disadvantage' term since it is broader than the 'proportion' term.[17] As previously stated in that chapter regarding direct discrimination, any lesser treatment is related to the person's sex will be considered discrimination regardless of the motive.[18] Married women and, in particular, pregnant women are not treated equally. This is especially the case in the private sector.[19] The

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[16] Traditionally, a lot of Kuwaiti families still have restriction for their daughters to study abroad, unlike for their sons.

[17] See pp 179.

[18] See pp 173.

[19] The problem with the image of married women is that it is known that they take a lot a days-off because of their responsibilities, which the private sector cannot usually allow. Also, in many cases the private sector pays to train their employees, and some of them (women) especially after marriage, quit their jobs

main idea of Part 1 in the SDA is just to give a definition of discriminatory acts; it does not make them unlawful until Part 11.[20]

8.3. Discrimination in the Employment Field

8.3.1. The Public Sphere[21]

In Part II the Act starts to list unlawful acts by addressing the "employment field." This is very important for Kuwait owing to the different kinds of discrimination against women. There is more than one law that organises employment. First, there is the Civil Service Act No. 15/1997(CSA), which organises employment in the public sphere only. This Act does not mention discrimination between men and women;[22]nor does it mention the difference in payment, assuming that both men and women are receiving the same payment for doing the same job. However, employees receive their payment according to a scale in a separate regulation. In that scale, payments are decided according to four different employment categories: 1. managerial jobs; 2. civil service jobs; 3. vocational

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when they find a job in the public sector, which is usually more laid back. They can then take leave and days off with less or no problems, unlike in the private sector. Then that employer in the private sector has to pay to train a new employee.

[20] A Guide to the Sex Discrimination Act 1975. (Crown Copyright: 1997). [online] [1997] available at: http://www.womenandequalityunit.gov.uk/legislation/discrimination_act/sda-guide.pdf
[accessed 12 nd Aug.2006]

[21] The Public Sector in Kuwait includes the highest number of employees, which is 74%, whereas 76% of employees in the Private Sector are non-Kuwaitis.
Mesh'al Melte. Education, Job Satisfaction and Gender in Kuwait. *International Journal of Human Resource Management.* March 2001, 12 (2), pp 313-332.

[22] In fact the Law gives the 'administration' the full authority to choose its employee without any general frames as long as they were Kuwaiti citizens. As Ahmad Wajdi argues, even the administration itself did not issue any regulations to organise the matter or the limits of such authority, since neither the Cabinet (represent the Executive Authority) not the Civil Service Commission want to limit their freedom of choices.
Ahmad Wajdi. *Netham Al-Tawthef Al-Markazi be Dawlat Al-Kuwait* (The Employment System in the Public Sector in Kuwait). (Kuwait: Civil Service Commission, 2004) pp 36-37.

jobs; and 4. unskilled jobs.[23] Each category has a certain number of degrees that an employee would assign themselves to according to their qualifications (if they have no qualifications they would be assigned to the fourth group.).

However, if this Act organises and regulates the relationship between the employee on one side and the public administration on the other, it does not cover the applicants for such jobs or give them any guarantee of equality. An example is the advertisement just discussed for a job or for a scholarship. It is not only this, but also the fact that applicants do not have any legal protection via any other law. For example, in 2003 a group of female engineers presented a complaint to the Petition and Complaint Committee in the NA, because out of the 25 fields that the KNPC announced they had job vacancies in[24] 17 (i.e. 80 %) were for men only. Unfortunately, not one of the MPs were enthusiastic to do anything about such an unjust violation of Article 29 of the KC.[25] Preventing the occurrence of such a scenario would be one of the major guarantees against sex-discrimination that the GEA would offer. So applicants would not be prevented from applying to any jobs just because of their sex, and, moreover, be able to bring successful

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[23] Civil Service Commission Official Site. [online] [undated] Available from
http://www.csc.net.kw/maincsc8.htm
[Accessed 15th Sep.2006]

[24] The Company offers training programs in different specialties regarding its unique nature of work.

[25] Moreover, Hadi Darweesh argues that the main two reasons jobs are offered exclusively to men for such specialties cannot be convincing:

1. that the jobs would require field trip in distance areas, forgetting that – as Darweesh argues – Sara Akbar was a female engineer that helped to put out a fire in hundreds of oil tanks – by the Iraqi troops in 1990 – while she was the only female in that mission.
2. Darweesh argues that the major reasons for the condition of men only is in fact due to some people who interfere with the job's requirement to get their relatives into the jobs, and most of these connections and interference is for male relatives. So it was easier if the Company has a condition so it can employee as many men as it can.

Hadi Darweesh. *Claiming Sex-Equality.* [online] [22nd Nov. 2003] Available from:
http://local.taleea.com/archive/newsdetails.php?id=6181&ISSUENO=1604
[Accessed 3rd Feb. 2007]

lawsuits against companies which practise discrimination under the newly adopted Kuwaiti GEA.

8.3.3.1. Discrimination in Social Pay

Each degree in each group of the employment categories stipulates a certain amount of pay for each employee, whether they are male or female. In some cases, either ministries which follow the CSA, or public authorities which have their own administrative regulations (within the general frame of the CSA), specify a raise for certain degrees or professions, for example, engineers and lawyers '*kadar khas*.'[26] However, payment discrimination does not exist against single employees, it only exists against married employees as discussed in chapter six.[27] Only men receive the *Alawa Ejtemae'ya* or "marriage rise" when they get married. This rule is exclusively for Kuwaiti men, whether or not they are married to a Kuwaiti. There are two kinds of 'marriage rise'. In the first, the Kuwaiti man would get the rise, when he first gets married, added to his salary each month.[28] The amount of the rise depends on which job category he falls in, and to which degree. However, the second kind of the 'marriage rise' is known as the 'children's rise' (Law No. 14/1992), which is a fixed amount of money for each child regardless of the

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[26] They would receive the same amount of pay that other employees within the same degree receive but with an extra bonus.

[27] See pp 440,441.

[28] It used to be given to the married female employee before 1st July 1979, if her Kuwaiti husband was not employed within the public sector. It, however, returns to be given to all Kuwaiti employees whether in the public or private sector by the Law No. 19/2000.

father's job or grade which is K.D. 50.[29] Both of the rises are added to the father's salary only.[30]

Adding the GEA would help in eliminating the unnecessary discrimination in payment that is based on the sex of the employee. Naturally, it would require having a new arrangement for the payment schedules, whether in the public or private sectors. Social and children payment have to be divided between husbands and wives; if both of them are employed, it would be given to the working parent whether they are male or female, or married to a Kuwaiti or a non-Kuwaiti. It is true that – as discussed in the previous chapter – new laws, e.g. the GEA, cannot have supremacy on old laws, e.g. the social raise law. However, since the new law is regulating the specific matter of the social raise then it would have to be the new role that eliminated the old, whether it was silent about the matter, or stated it directly as in Article 17 of the Supporting National Manpower and Encouragement of National Manpower to Work in Non-Government Agencies Law No. 19/2000, which states that: "Any conflict with this Law by any other law shall be cancelled".[31] Of course, the enforcement of the equality of the social rise can be enforced by adopting equal pay laws as will be discussed later on.

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[29] Marry Ann Tetreault and Haya Al-Mughni. Gender, Citizenship, and Nationalism in Kuwait. *British Journal of Middle Eastern Studies.* 1995, 22 (1/2), pp 64-80.

[30] Nasra Shah and Sulayman Al-Qudsi found out in their study that, in general, Kuwaiti women earn two-thirds less than the Kuwaiti men.
Shah N. and Al-Qudsi S. (1990)

[31] For details see the discussion in the previous chapter, 479.

8.3.1.2. Discrimination in Promotion

Also, another kind of discrimination can occur in the giving of promotions. Whether the job is to a higher level (within the same job category) or to a senior post, in most cases men are favoured for such promotions, due to the lack of an equality law, and especially since, according to the questionnaire discussed in chapter six, there are many who still think that men are more qualified for leading jobs than women (29% of men strongly agreed and 35% agreed with this statement). This view can also be clearly seen when comparing the number of women who work in the public sector and how many of them are holding senior jobs compared to men.[32]

The latest statistic in this matter was given in 1996, when Dr. Badria Al-Awadhi observed that regardless of the fact that there were 45,231 working women and 55,268 working men, there were only eight women in managerial jobs (for example, ministers, under secretaries or assistant under secretaries in Ministries), compared to 291 men in such positions.[33] There are general rules regarding the qualifications required for

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[32] Regardless of the fact that the Ministry of Planning has detailed statistics in the field of employment showing the numbers of males and females in each category, senior jobs were treated in one category that did not show the number of males and females in such positions. However, the number of women in manpower has reached 40,70% in 2005, though in the Human Rights Library of Minnesota University in a Kuwait report, it stated that women in Kuwait are under-represented in leading jobs compared to men. For more:
Al-Taleea Newspaper. [online] [5th April 2006] Available from:
http://www.taleea.com/newsdetails.php?id=7457&ISSUENO=1722
[Accessed 3rd Sep. 2006]
Minnesota University. Human Rights Library. [online] [July 2000] Available from:
http://www.law.wits.ac.za/humanrts/arabic/k-ccpr.html
[Accessed 3rd Sep. 2006]

[33] For more in the matter regarding women in Kuwait and the Middle East, see Dr.Badria Al-Awadhi's paper, presented in a seminar held by the Kuwaiti Lawyers Association in Cooperation with Amnesty Organisation about 'Justice and Human Dignity', 2,3 Feb.2000
Al-Taleea Newspaper. [online] [26th April, 2000] Available from:

promotion to a senior job,[34] but the decision ultimately rests with the person in charge of doing the hiring. It is here that there is room for discrimination to take place.

It should be noted that there are laws and regulations that are under the category of the administrative law in Kuwait, and there is an administrative court where an employee can file a petition if s/he felt that a certain administrative decision was unjust to them.[35] For example, this might occur if another person gets a promotion when he believes that he deserved the promotion more than the other employee. However, the court would only discuss the eligibility for the promotion with regard to the qualifications of each employee and seniority according to who was appointed first into the institution. The employee's sex is not within the court's consideration. It would not be discussed as there is no lawful ground to support such an argument. In that case it would be difficult to consider a claim of 'incompatibility' under Article 29 of the KC as a serious plea, since the employer can always justify it under the notion of work benefit without needing to give details. So if the employee who brought the suit was a female and had the same qualifications as the other employee who got the promotion, then the person in charge could always claim that he had chosen the right person based on the fact he has the right to do so among his employees.[36] As long as they were equal in their qualifications, the

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http://local.taleea.com/archive/newsdetails.php?id=10887&ISSUENO=1424
[Accessed 3rd Sep.2006]

[34] For example, head of the department, or sub-department.

[35] The establishment of the administrative court is stated by the KC in Article 169:
'the law shall regulate how the administrative dispute should be decided by establishing a special court that the law should gives detail on its establishment and how it will examine the administrative judiciary that includes its jurisdiction of striking down and remedies to the administrative decisions that violate the law'.

[36] According to the SCA, and Articles 22, 24, 26 of the Decree No. 44/1979 of the Civil Service Regulation, there are two kinds of promotions: seniority *Aghdameya*, and selection promotion *Elkhteyar*. The first one depends on the period the employee spent on the recent degree before the promotion. The second one, however, depends on the good ability of doing the job; as s/he has to get 'excellent' on the

female employee cannot claim that she was deprived of the promotion because of her sex, since such a ground is irrelevant to the trial court. For example, in case 511/2000, a female plaintiff sued the administration where she worked (the National Assembly). The plaintiff claimed she deserved the promotion more than the male employee who was promoted to be the Head of the Office for Financial and Economics Affair Committee. The court cancelled the promotion decision and granted it to the plaintiff because she was able to prove that she was senior to him (appointed before the defendant), better qualified and thus more eligible for the promotion. Further, the administration could not justify the reason why the plaintiff was deprived the promotion.[37] However, had the plaintiff and the defendant been equal in terms of qualification and seniority, and had she been deprived of her promotion just because of her sex, then – without the proposed GEA – she would not have had any grounds to claim discrimination.

On the other hand, there clearly is discrimination in the employment field, given the list of jobs that women cannot have; this was discussed in chapter six. Those jobs are: judges and prosecutors, police of all ranks and the army. Besides, even though it is not forbidden, no woman was appointed as a minister until 2005,[38] and only one has the job

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annual report to get the promotion. Each kind of promotion has its conditions and regulations, however, both of them an employee can sue for his/her right of promotion before the administrative court according to Article 1 of the Decree Law No. 20/1981.

[37] Markaz Tasneef wa Barmajat Al-Ahkam Al-Ghadae'ya (The Classification and Programing of the Judicial Ruling Center. [online] [undated] Available from:
http://ccda.kuniv.edu.kw/CCDSEARCH.ASP
[Accessed 26th March 2007]

[38] Some MPs who were against suffrage rights for women, had opposed appointing a woman as a minister, and threatened to sue in front of the Constitutional Court on the grounds that all women including the new minister were not registered as voters, so they do not have the right to be appointed as ministers, since the minister in the parliament enjoys some of the MPs rights. However, the decision was final and such a case was never brought.
Program on Governance in the Arab Region. [online] [from April – Sep. 2005] Available from:
http://www.pogar.org/arabic/govnews/2005/issue3/kuwait.html

of undersecretary of the ministry.[39] Since the establishment of the Kuwait University (KU) in 1966 only one woman has been the University Director. It is also very r

are for a woman to be Dean of a college, whether in the KU or the PAATE (Public Authority for Applied and Training Education). Even in the diplomatic field only five women work in the diplomatic corps and only one as an ambassador among the seven thousand men who work in the same field.[40]

It can be concluded that women suffer from being discriminated against in different domains of employment, especially in the public sector. However, in the public sector, the Civil Service does not practice sex-discrimination in its employment procedures.[41] In fact, the getting of jobs depends, in general, on the qualifications of each applicant and the offered jobs from ministries and other governmental bodies. However, discrimination can occur after getting a job e.g. on getting promoted to a senior job. This can be seen in the number of women who occupy such jobs. Also, appointment of women to high ranking jobs, such as ministers and ambassadors, may be only to prove that women in Kuwait have equal rights. Also, women are still banned from certain jobs that are exclusive to men.

[Accessed 16th Aug.2006]

[39] United Nations Development Programme. *Women in Kuwait.* [online] [undated] Available from: http://gender.pogar.org/arabic/countries/gender.asp?cid=15

[Accessed 3rd Dec. 2006]

[40] Al-Qabas Newspaper. [online] [22nd June 2006] Available at: http://www.alqabas.com.kw/Final/NewspaperWebsite/NewspaperPublic/ArticlePage.aspx?ArticleID=179060

[Accessed 16th August 2006]

[41] That would be the case only in the administrative departments that accept to employ both sexes, but there are other administrations that do not appoint females as employees, especially in the Ministry of Interior and Ministry of Defence. There are some departments especially in those two ministries that take males only.

Legally, since the GEA would cover employment, a woman would be able to challenge a promotion decision, for example, if she believes that she was not given it just because of her sex. The burden of proof should be shifted to the employer to justify that the promotion was not based on sex if a prima facie interference is raised by the woman. If it was decided not to have a special court for this law,[42] then the cases related to the public sector would be raised in the Administrative Court. This would be not only for the promotion cases, but also regarding appointment and payment, since Article 1 of the Administrative Court Decree Law No. 20/1981 states that:

> An administrative court should be established and contain three judges to be one court or more as needed. It would be the only court that would specialise in the following and have solely the cancelling and compensation jurisdiction:
>
> First: disputes concerning salaries, pensions, bonuses, and raises owed to civil servants or their inheritors.
>
> Second: Applications by stakeholders to cancel a decision regarding appointment in the civil service jobs.
>
> Third: Applications by civilian staff to cancel the promotion by an administrative decision.
>
> Fourth: Applications by civilian staff to cancel the decisions of the termination of their services or signing disciplinary penalties.
>
> Fifth: Applications by individuals or bodies to cancel the administrative decisions except the decisions of the employer regarding questions of nationality, residence,

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[42] The court system in Kuwait will discuss in more details within the 'enforcement' part later on this chapter.

the dimensions of the non-Kuwaiti, the licenses of newspapers and magazines and places of worship.[43]

However, the question might be whether there are any cultural or social difficulties to raising such issues as legal difficulties? People who have been discriminated against might prefer not to take a stand for fear of the social consequences, particularly since a new law could only provide a small history of cases for plaintiffs to compare their cases against.[44]

Legally, the GEA would conflict with some of the existing procedures that could be considered discriminatory. For example, the social pay, which would have to be changed when applying the new law, especially if it includes the equal payment provisions. As was discussed in the previous chapter, the GEA (including its provisions for payment – this chapter will later suggest that an equal pay provision ought to be included) would replace any old law that did not harmonise with it, including the existing social pay law and regulations. On the other hand, the new law cannot be considered to conflict with the appointing and promotion laws and regulations. It would, however, guarantee a different ground for a claim that someone was deprived from any of those (appointing or promotion) because of his or her sex. Moreover, since some of the administrative

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[43] These five issues have sovereignty as discussed in chapter 7, pp 544.

[44] In some administrative bodies, women know that they are discriminated against, but they would not make a complaint, for example. It would be either because they knew that the complaint would not only not get them any where better, but it might have disadvantages, since it would create problems against the person who got the promotion – for example – especially if s/he was their direct boss, or because their enjoying the privileges of not having any more job responsibilities, since some of them are not ambitious enough. On the other hand, it might be because of their faith because the majority of people believe that if someone takes advantage and it is not his right and he deprives another person – who really deserves it – he will get paid back badly later on.

departments do not appoint women, especially in the Interior and Defence Ministries, the GEA will guarantee the prohibition for such discrimination without conflicting with any existing law. As mentioned in chapter six, the laws that regulate these jobs (judges for example) do not state that these jobs are exclusive to men.[45] It just gives general requirements without stating the sex (being a male) as a condition, but the regulations and practices are discriminatory when they prevent the appointment of women. However, as explained in the previous chapter, the law has supremacy over regulation. So that approving the new law, would replace the discriminatory regulations, since they are at a lower level than the regular law and the GEA will fall under this, higher-level, category.

8.3.2 The Private Sphere

In the private sector, women can be discriminated against when they first get a job. It is well known that companies do not favour married nor pregnant applicants; the unspoken policy in some of these companies is not to appoint them at all.[46] That could be the main obstacle that faces women in the private sector,[47] especially pregnant women as mentioned in chapter four.[48]

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[45] See pp 430,431.
[46] It may be noticed that the difference in the discrimination against women between the two sectors is that in the private sphere the discrimination happens when considering them as employees, but once they were appointed they will – in usual cases – be treated equally, since the good ability of doing the job is the main requirement, while in the public sphere they will have – in most cases – the equal opportunities to get a job, however, the discrimination would happen after in the raises and promotions.
[47] A confidential data from an administer in one of the largest co-operations in Kuwait MTC, stated that the whole administration have instructions to ignore the applications of pregnant women.
[48] See pp 173.

Legally as the CSA organises employment in the public sector, the Labour Law 38/1964 organises the employment in private sector, and there are few Articles in this law that address the protection of women or that ensure they receive the same pay as men. These Articles are from 23 – 27. Article 23 states that: "employing women at night is unlawful, unless it was for health institutions or other institutions that have special regulations from the Ministry of Social Affairs and Labours."

Article 24 states that: "It is unlawful to employ women in industries or occupations which are hazardous and involve noxious substances, this was issued by the decision of the Ministry of Social Affairs and Labour."

Article 25 discusses maternity leave,[49] stating that: "Pregnant women are entitled to maternity leave of up to thirty days before and forty days after delivery with full pay; she can also cut off from work after this period-without-pay for a maximum period of a hundred days or intermittently connected to the disease because of a medical certificate proving that it is as a result of pregnancy and childbirth." In relation to the previous Article, Article 26 states that: "She would not be entitled for the annual leave if reported privileges guaranteed by Article (25)." Lastly Article 27 states that: "women should receive equal pay as men if they do the same work."

Although the above are the only four Articles that refer to working women, examining them makes the difference between how the two sectors treat women noticeable. Women

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[49] For a comparison between maternity leave in Kuwait and maternity leave in the UK, see Paul Lewis. Pregnancy and Maternity Leave: Employment Law as Family Friend?. *Industrial Relations Journal.* June 2000, 31(2), pp 130-143.

in the CSA are entitled to more holidays. For example, with respect to maternity leave, in the CSA a worker has the right of two months paid leave followed by an optional four months at half pay. However, according to the CSA and its Regulations, there are two different kinds of maternity leave. The first kind is "delivery leave" consisting of two months leave at full pay for the pregnant employee and four months – after – with half salary (optional). The second kind is maternity leave. Any married woman – whether she has children or not – is eligible for such leave, entitling her to four years' maternity leave which can be taken as a whole or in periods of not less than six months. However, the CSA does not discuss discrimination in payment as the Labour Act does, which means that the later Act provides protection of payment that the CSA does not provide in that way.

Nevertheless, in 2000 a new law was launched in order to encourage Kuwaitis to work in the private sector. This addressed the fact that about 66% of Kuwait's manpower was in the public sector – while only 1.29% of the manpower in the private sector was Kuwaiti, according to 1998 statistics.[50] In order to do this, the government offered to pay both kinds of 'social rise', usually paid to employees in the public sector only, to Kuwaiti employees in the private sector too.[51]

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[50] Ramzi Salama. *Gadeyat Al-Tawtheffe Al-Mojtama' Al-Kuwaiti* (Employment in the Kuwaiti Society). [online] [1999] Available from:
http://www.majlesalommah.net/run.asp?id=817
[Accessed 3rd Dec. 2006]

[51] Section 41 of the Kuwaiti Constitution states that the government is obliged to provide citizens with jobs. That is why it came up with the Supporting National Manpower and Encouragement of National Manpower to Work in Non-Government Agencies Act 2000, so that instead of appointing an employee and paying him the full salary – whatever his grade was or the job group he belonged to- he would be appointed by a non-governmental agency and that social and children rise would be given on top of whatever the non-governmental agency was willing to pay him.

This has resulted in the fact that married male and female employees in the private sector receive different payment, just like workers in the public sector. Apparently that gap in payment is not seen as discrimination because the cultural view sees men as the ones who are responsible for expenses according to the *quamma* issue, as discussed in the equality theories chapter. However, if these rises are to be given to the husband because the cultural view is that he is responsible for the expenses, then the fact that such a situation only works if the wife is a housewife should not be overlooked. As suggested earlier for the public sphere, here the suggestion is that if both spouses work, then the rise should be divided into two halves. If only one of them is working, s/he would receive the whole amount. In the case of the Kuwaiti worker married to a non-Kuwaiti, she ought to receive the whole amount too.[52] Moreover, if they are divorced, then the children rise should go to the parent who has custody.

Part 1 and Part 11 of the Act could end all of the previously discussed discriminations. Of course, Kuwait could avoid the complexity of the multi equality laws of the UK by adding the GEA as a clause that bans discrimination when paying salary, and thereby adopting some clauses of the Equal Pay Act 1970.

Unlike Part I, Part II needs some adjustment in order to fit into Kuwaiti law and culture. Section 6 could be applied as it is, since it discusses "Discrimination against applicants and employees," and subsection 6 (4) excludes the Pension Scheme Act from this Article, which is incompatible with Kuwaiti Law as it already has a separate pension scheme law.

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[52] As mentioned earlier, the female Kuwaiti employee used to receive such a rise if her husband worked in the private sector, however that was stopped in 1979.

Accordingly, even though the Labour Law offers protection for women regarding their payments under Article 27, it does not offer any other protection from matters regarding their appointment or promotion, for example, which the GEA would offer. Since the private sector is not in favour of women (especially if they are married),[53] the new law would offer women legal protection and deter the management in this sector from discriminating against them. It might be a fact that the private sector does favour males, but it would be difficult for a female applicant to challenge such decisions, since the employer has full authority to choose the employees without explaining why under the existing laws. However, if a new law was passed, then the employer would have to provide an explanation, and it would be difficult for the employer to give a 'genuine occupational qualification' reason as will be discussed shortly. Therefore, if a female applicant was rejected from getting the job, the new law would offer her the legal ground to challenge such a decision. Then, the employer has to justify the rejection; failing to do that would lead to different results according to how the new law would be enforced, as will be discussed at the end of this chapter.

8.3.3. Genuine Occupational Qualifications

Section 7 raises some reservations. On the one hand, this Section justifies the fact that in certain cases the employee has to be a man for the reasons it states in the Act. If this is

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[53] However, in any case Kuwaitis prefer the public service, especially women. Ikhlas Abdalla and Moudi Al-Homoud describe the private sector in Kuwait as "Kuwaitis are, generally reluctant to work in the private sector; they are usually lured by the attractive offers of the government sector." They argue that the private sector depends on the non-Kuwaitis, since they are cost effective and have more experience in general.
Ikhlas A. Abdalla and Moudi Al-Homoud. A Survey of Management Training and Development Practices in the State of Kuwait. *Journal of Management Development.* 1995, 14 (3), pp 14-25.

acceptable in a country such as the UK,[54] adding it to the Kuwaiti version might defeat the purpose of having such law, or at least it might leave the door open for discrimination, sanctioning the claiming of any of the reasons that are given in the Section. On the other hand, for certain jobs men are justifiably preferred, for example, jobs requiring physical strength, dramatic performance, entertainment, to preserve decency, in a state of undress, physical contact, or for the purpose of accommodation; those jobs could remain exceptions to the law.

However, this Section cannot be adopted in its entirety for the reasons stated above. Only one subsection can be applied to Kuwait, which is 7(2)(a), while the others ought to be disregarded. In fact, the decision of whether to take a job that potentially violates the idea of preserving decency and privacy stated in 7(2)(b) and the social contact and intimacy in 7(2)(bA), should be up to a woman's own judgment. The Kuwaiti culture that has been discussed in different parts of this study has great appreciation where privacy across gender is needed. Also, 7(c) cannot be significant for Kuwait, since there are not many businesses that provide accommodation for their employees, especially if they are Kuwaiti.[55] Any future business might as well provide separate accommodation for its employees from the start, and for that reason it might be better for Kuwait not to adopt it. The reference to prisons and hospitals in 7(d) is already dealt with: the prisons provide

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[54] David Pannik argues that this Section of the SDA should not be underestimated, since it makes sex-discrimination a lawful act. Also, he argues that the subsections are vague to the extent that they can threaten the principle of anti-discrimination in the employment field. Besides, this Section is based on three factors physical, social and functional differences between men and women that society has become accustomed to and have became part of culture. Here it is needless to argue that the Kuwaiti culture has stereotyped women in a more aggressive way.
David Pannik. When Is Sex a Genuine Occupational Qualification? *Oxford Journal of Legal Studies.* 1984, 4 (2), pp 198-234.

[55]This is because Kuwait is a small country (17,818 km), and places are not very far from each other.

separate buildings, and the hospitals have separates wings, so this subsection can also be disregarded. Meanwhile subsections 7(2)(e) (g) (h), 7(3) and 7 (4) could be misused. It is important at this stage to have as few exceptions as possible. Some of them apply to such a very limited number of cases e.g. 7(g) and (h) that there is little need to give discriminators a legal excuse for more exceptions.

8.3.4. Gender Reassignment

Both 7A and 7B should be omitted in consideration of Kuwaiti culture, since Islam does recognise the three kinds of androgynous persons. First, there are those who have more masculine genes who are called androgynous males. Second, if the female gene is overlapped they are called an androgynous female. Third, if the female and male genes are equal in the body, they are called the complex androgynous.[56]

Androgynous males are treated as males and androgynous females are treated as females. The third kind is called "complex" because they have both male and female genitalia. In the past, when medicine was less advanced, people would decide whether they would be considered male or female by where they urinated from before reaching puberty. She would be considered a female if she used the female genital, and male if he used the male genital. After puberty, their sex would be determined by the way s/he changed. That was in the past, but nowadays, because of the advancements in medical technology, clinical

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[56] Al-Arabiya TV: Special Mission: *The World of Androgynous in Pakistan*.[online] [23rdMay 2004] Available from:
http://www.alarabiya.net/Sections/2004/05/23/3625.htm
[Accessed 17thAug, 2006]

tests can determine whether a patient is male or female, and surgery can now be performed in order to unify the genital.[57] This is the only way that society admits the existence of an androgynous sex, as the medical problem of having the genitals of two sexes. In case 861/2003 the civil court in Kuwait agreed to admit the transsexual surgery, for the first time ever, of a man called Ahmad who became a woman called Amal. In all of the official papers and authorities s/he had to be treated as a female. The reason that the court granted the plaintiff's request of being treated a female was the forensic medicine report. The report agreed that the plaintiff had a lack of male hormones (Testosterone), and that s/he did not have any internal genitals. In 2002, the plaintiff undertook surgery in Thailand where he had his male genitals removed, and had breasts implanted, thus ending up looking more like a female. The court also considered the Sharia, which prohibits changing sex unless there is an exception or necessity for doing so.[58]

8.3.5. Equal Pay Act

Section 8 should be modified in certain ways. First, since it discusses the subject of 'equality' in payment, it should remain in Part II of the new law. However, it would go under Section 6, as discrimination in payment is also another kind of discrimination. Second, since Section 8 originally stated amendments to the Equal Pay Act 1970, these

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[57] Muslim Tent website. *Androgynous is neither a Male nor a Female.* [online] [23 June 2006] Available from:
http://hewar.khayma.com/showthread.php?t=55186
[Accessed 17 Aug,2006]

[58] Al-Mo'tamar Net. *Ahmad Yatahawal ela Amal* (Ahmad Became Amal). [online] [26th April 2004] Available from:
http://www.almotamar.net/news/9517.htm
[Accessed 26th March 2007]

amendments need to be reviewed before being considered. As was discussed in chapter four, there is some conflict between the SDA and the EPA with regard to the 'comparator'.[59] The SDA only requires a hypothetical comparator (those it allows the comparator to be actual), while the EPA requires an actual comparator. Knowing the complex results that are produced from the different standards that each Act adopts requires consideration.

In order to avoid the comparator complexity, Kuwaiti law should adopt the principle of the SDA and require either an actual or hypothetical comparator. So that providing one would depend on the facts of each case, in order to prove the discrimination against him/her. Also, in order to avoid another kind of complexity (other than that concerning the comparator) in this matter, some of the EPA Sections ought to be incorporated into a separate Section in the new law. Some of the Sections included in the EPA might be otiose in Kuwait, so not all of them need to be adopted.[60] However, only some of them can provide enough protection for women – and men – in the employment field with

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[59] See pp 185,186.

[60] Mayer Freed and Daniel Polsby argue that if two identical employees, as regards their qualifications, do the same exact job, but the female gets paid less just because of her sex, it will be considered as a clear violation of the Act. However, they argue that they are not identical employees, there has to be some differences as well as in their jobs, but the Act would still be applied requiring enough similarities between the two jobs. In comparison in Kuwait there is a schedule for each degree for the payment, so all the employees receive the same payment except for the social pay. On the other hand, Freed and Polsby present a hypothetical situation in which two applicants male and female, have the same qualifications in regards to their education and they apply for the same job. In such a case if the female was offered certain payment and accepted, while the male was offered the same payment, but he did not accept, instead he bargained until he successfully was able to raise the offer ending up to be paid more than the female while both are doing the same job, in that case, would the employer still be considered as violating the Act? Although it seems that it should not be considered as a violation, since sex is not a factor in this case but bargain for economical reason. However, Freed and Polsby argue that it would be a violation of the Act, explaining that the employer in this whether intentionally or not was 'influenced by the sex of the prospective employee' explaining that in fact if the female was the one who bargained for her salary, the employer would also raise the salary of the male. Regardless of the fact that there is no evidence for this, but it is believed that in that case the employer would still be liable for violation.
Mayer G. Freed and Daniel D. Polsby. Comparable Worth in the Equal Pay Act. *The University of Chicago Law Review.* 1984, 51 (4), pp 1078-1111.

regard to their payment. Section 1 of the EPA has several subsections which only guarantee more protection for women regarding equality of payment if they are doing the same work as a man does as stated in 1 (2) (a), doing equivalent work as in 1 (2) (b), or if (a) and (b) do not apply the subsection (c) states an "equal value" job with a man in the same employment. Sections 1 (4), and 1 (5) can be used as a guideline when considering whether a woman is doing the same job or equivalent to a man's. Section 1(6) decides how to interpret "employed" and when to consider the "same employment", and in that sense the Kuwaiti version can adopt different definitions to fit the employment fields in Kuwait. For example, the word "employed" can include workers in both public and private sectors. In the public sector, there are already two groups of worker, Kuwaitis and non-Kuwaitis. The first group get the job by being appointed because they are citizens. It is supposed to be a lifetime job and deserves pension at the end of the service. The second group which is for the non-Kuwaitis[61] consists of what are called 'contract-workers.' Such people are only contracted for a limited period of time, but can have their contracts renewed.

Accordingly, the terms of employment are different for the two groups. Comparison when considering sex discrimination should be drawn among people within the same group.

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[61] In Kuwait, as in most of GCC countries, since its population is low comparatively and needs professionals such as judges, engineers, doctors, etc to be appointed, so it accepts immigrants for that purpose. However, the government policy is to have more Kuwaitis as professionals, and that is why the non-Kuwaitis are appointed by short-term contract, until there is a Kuwaiti to fill in. however, for more details about this matter, see:
J.S. Birks, I.J. Seccombe and C. A. Sinclair. Migrant Workers in the Arab Gulf: The Impact of Declining Oil Revenues. *International Migration Review.* 1986, 20 (4), pp 799-814.

Subsection 1 (8) defines where such provisions apply; subsection 1 (7) of the Kuwaiti law can also decide the same thing. As in the public sector there are usually two groups, Kuwaitis and non-Kuwaitis. The non-Kuwaiti workers can be found in larger numbers in the private sector. The latter, in many cases, prefers hiring non-Kuwaitis because their payment is usually less than the Kuwaiti's. However, salaries in the private sector are in general lower than salaries in the public sector. This is where the idea of Supporting National Manpower and Encouragement of National Manpower to Work in Non-Government Agencies Law No. 19/2000 came from; to encourage both the private bodies and Kuwaiti manpower to be directed to the private sector.[62]

In fact, applying an equal pay law should not face serious objections, since men and women working in the public sector do get equal payment except for the social pay. Also, equal pay in the private sector is supported by the Labour Law, which means that applying it now would not create any conflict. So the private sector employee would have double protection. However, it gives the public sector employee a guarantee of equal payment that they did not have before. Since the social raise can – to some – be strongly connected to the quamma, it is critical to decide whether the new arrangement is going to pass or not. However, if legislation ensuring equal pay was applied, and the social pay was not amended, the door will be left open to claim incompatibility before the CC.[63]

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[62] Wajdi, A. (2004), pp 37.

[63] Nathan Brown describes the relationship between the executive authority and the judiciary, by saying "it is unclear if the Kuwaiti judiciary is likely to emerge soon as a force holding the executive accountable to clear legal and constitutional standards. In most sensitive political cases, Kuwaiti courts tend to shy from issuing a clear judgment. The Kuwaiti Constitutional Court, for instance, has been faced by some of the most vexatious constitutional disputes over issues including press, freedom, women's suffrage, and emergency rule but avoided ruling on them, often through a legal technicality. Other Kuwaiti courts have been similarly reluctant to rule in sensitive cases."

8.3.6. Contract Workers

As is discussed in Section 9 of the SDA, the non-Kuwaiti worker fits into the category of the 'contract worker'. However, some of Section 9's details can be avoided, since most of the 'contract workers' are not Kuwaiti,[64] and they would have been hired before they came to Kuwait. Also, because of the immigration law, changing their job from one body to another is not as easy for them.[65] In that event, workers might face more complicated problems than just sex-discrimination.

However, Section 9 can be useful for Kuwaitis who are, in certain cases, contract workers. Also, residents of the GCC would be the main targeted group in this case. Immigration law does not apply to GCC citizens, yet they are not hired like Kuwaitis, they are assigned as contractors in either the public or the private sector. So Section 9 can

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Nathan Brown. *Mechanism of Accountability in Arab Governance: The Present and Future of Judiciaries and Parliaments in the Arab World.* United Nations Development Program. Dec. 2001.

[64] Most on non-Kuwaiti workers would be categorized as either Arab or non-Arab migrants. The non-Arab migrants are mainly from those four countries: Bangladesh, India, Pakistan and Sri Lanka. Nasra Shah argues that in the year 1994/95 880,000 workers migrated from those countries to the Gulf, while there were already an estimated number of 4 million living in the region. Moreover, Hamid Atiyya argued that during the 1980s, 25% out of the 20 million migrants workers in the world, worked in the Gulf including both Arab and non-Arab nationalities.

Nasra Shah. Relative Success of Male Workers in the Host Country, Kuwait. *International Migration Review.* 2000, 34 (1), pp 59-78.

Hamid Atiyya. Expatriate acculturation in Arab Gulf Countries. *Journal of Manegment Development.* 1996, 15 (5), pp 37-47.

[65] In order for any migrant to enter Kuwait, he has to have a permit visa issued when a Kuwaiti or a GCC resident or institution invites him for a job and be the sponsor. Sponsor-ship is called 'kafala' and the sponsor is called 'kafeel' and is responsible for the migrant legally that the former cannot change his work unless he has a permission from the 'kafeel.'

Anh N. Longva. Keeping Migrant Workers in Check: the *Kafala* System in the Gulf. *Middle East Report.* 1999, No. 211, pp 20-22.

benefit Kuwaitis who work as contract workers for any reason, non-Kuwaitis after they get a job in Kuwait and residents of the GCC.[66]

The main difference between the contract worker – usually non-Kuwaiti – and other employees is the way in which they are hired. While the contract would specify the time limit for the job, the other gets the job for a lifetime. The payment is different but the basic salary is supposed to be the same. However, the different rises that are added result in a higher salary for the Kuwaiti employees. The Kuwaitis get a pension after retiring while the contract worker gets remuneration at the end of his service.

Section 10 explains in more detail what is meant by 'employment' at establishments in GB. So in order to avoid duplication and complexity in the Kuwaiti version, it should adopt Section 10 and modify it into the Kuwaiti system to be applied to all Sections in the new act. Then there would be no need to define 'employment' in Section 8, which discusses 'equal payment' because it would be defined in this Section in more detail.

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[66] According to the Ministry of Planning statistics of 2004, there are 49,626 non-Kuwaiti contract workers in the public sector, whether ministries, attached budget, independent budget, or governmental companies, while 827,195 non-Kuwaiti workers. 302,227 of that number are Arabs for the private sector as contract workers.

8.3.7. Discrimination by Other Bodies

8.3.7.1. Partnership[67]

It would be significant for Kuwait to adopt the other section of Part II, which addresses the discrimination in other bodies, since it gives further protection and prevents any discriminatory acts that might not be included in the first section. Section 11 might also be important and useful, but, again, it might be an idea to reconsider the subsections 11 (3B) (a) with its two paragraphs (i) and (ii) when attempting to adopt it. Those two paragraphs consider discrimination lawful when a man or a woman has the genuine occupational qualifications for the job. As suggested before, since in Kuwait such an Act would be new to the system, employers who have never felt an obligation to give a reason for why they wanted to assign a particular sex for a job, are likely to misuse these two paragraphs from the very beginning. If appointing a certain sex was for a 'genuine occupational qualification', it should be able to hold scrutiny in court. The employer should be able to justify the reasons for appointing an employee of a certain sex, especially once Section 7(2)(b) (which states exceptions "where sex is genuine" for certain jobs) is adopted.

The matter of partnership can happen in law firms and engineering offices because, for example, these firms take trainees – or already existing employees – which could be potential partners in the future. Such choices are not organised by a law, thus the owner

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[67] Judith Reid argues that the inclusion of the institutions that provide support for employment such as the qualifying bodies, partnership, and employment agencies can be considered as a main advantage for the SDA 1975.
Judith Reid. Women in Employment, the New Legislation. *The Modern Law Review*. July, 1976, 39 (4), pp 432-451.

of such offices has the freedom to choose partners on any basis.[68] However, when adopting this section to Kuwait the question might be which court would have the authority to examine such cases? According to Article 3 of the Organization of the Judiciary Decree Law No. 23/1990, there are four courts that form three levels of judiciary. The first degree court is divided into two types of court, first is the court of summary jurisdiction which specializes in civil and commercial cases, where the claim does not exceed K.D. 5,000 (almost £2,500). In all cases that do not exceed K.D. 1,000 the judgment by this court is final according to Article 29 of Civil Procedural Decree Law No. 38/1990. The second court of the first degree trial is the court of first instance[69] which according to Article 34 of Law No. 38/1990 specialises in examining appeals from the court of summary jurisdiction and the decision in these cases is final – as long as it does not exceed K.D. 5,000. This court is mainly divided into several circuits depending on the subject of the case. For example, there are the labour court, administrative court, family court, commercial court, and civil court. However, Article 7 of the Amendments of the Organization of the judiciary Decree Law No. 10/1996 states that 'circuits – within the primary court – shall be established as needed', and of course, 'circuits' here means according to its specialties. It would be difficult to apply 'partnership' to any of the existing courts, especially because it is not related to the labour law, which organises the relationship between the employer and his/her employees not partnerships. For this

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[68] In fact there are no laws that organise the training programs in such offices. In some cases they will take fresh graduates on as trainees and refuse to give them any payment or without any intention of appointing them in the future. Also, there is no limit for the unpaid training program.

[69] Nathan Brown argues that the Kuwaiti court system can be considered as the oldest in the Arabian Peninsula. Nathan Brown. *Arab Judicial Structure.* A study presented to the United Nations Development Program (Program On Governance in the Arab Region POGAR). August 2001.

reason, it is recommended to have a circuit within the primary court, which specialises in this area of law to avoid jurisdiction complications.

8.3.7.2. Trade Unions

As important as it might be to prevent discrimination in the 'trade unions' in general, it might be important for Kuwait to add the 'quota' system too,[70] especially since the political experience for women has just started, so women are still not aware of what full participation entails. It is true that trade unions never banned women from being members, though women have rarely shown any interest. This might be due to the social and religious views that such activities are only for men. Participation in the trade unions is like the 'glass ceiling' that women cannot break. As Kuwait is launching a new law regarding sex-discrimination, it might be the right time (in case it was approved) to adopt the 'quota' scheme, and not only in the trade unions but also in the local council and the parliamentary elections.[71] Three countries in the ME (Jordan, Tunis and Morocco) have adopted the 'quota' in its parliament elections, because of this women's participation

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[70] Khadeeja Abu-Ali argues that Egypt was the first country in the ME to adopt the quota, when it amended its Constitution in 1964, during Jamal Abdul-Naser rule, but it was cancelled later on, which lowered the women's participation to 2,4%. Meanwhile Egyptian women still struggle to regain this system back.
Khadeeja H. Abu-Ali. *Al-Quota Ka-Aleya Tadakhul EyjabiLe-Saleh Al-Mara'* (The Quota as a Positive Mechanism for Women). [online] [undated] Available from:
http://216.239.59.104/search?q=cache:2ApGqV-2uQYJ:www.panoramacenter.org/Pages/files/Khadigeh_Abu_Ali.doc+%D9%86%D8%B8%D8%A7%D9%85+%D8%A7%D9%84%D9%83%D9%88%D8%AA%D8%A7&hl=en&ct=clnk&cd=2&gl=uk
[Accessed 4th Feb. 2007]

[71] As mentioned in chapter four, the Labour Party in the UK has used the affirmative action or positive discrimination to increase the number of women. Such policy has doubled the number of women in the Westminster Parliament from 1992-97 proving its effectiveness.
Pippa Norris. Women's power at the Ballot Box. Cambridge University Press, 2001.

increased:[72] In Jordan it went from 2.5% in 1995 to 5.5% in 2003; in Morocco it went from 1% in 1995 to 11% in 2003; and Tunis' has remained almost the same.[73] The last election in Kuwait in June 2006, was the first opportunity for women to vote and get elected: there were 28 women candidates out of 253 in total, although none of them won. It is believed that there are many factors regarding the special circumstances that accompanied the 11th election in Kuwait since 1963, however, no one expected any of the 28 women candidates to reach parliament,[74] and the results were expected regardless of the fact that there were more women voters than men at 57%.[75] The number of women participating in elections worldwide is still at its minimum.[76] This suggests that the minimum is unlikely to be reached in a country with a resent history of women's subordination until many years from now. The quota can shorten the way, and give women a head start.

The problem with the 'quota' idea is that it has to be enforced by officials (the Legislative Authority) and not just by case-law. As Abdulla Al-Madani argues, it is true

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[72] Other than ME countries, following the Beijing Conference on women in 1995, Costa Rica has adopted three different kinds of laws on quota.
Mark Jones. Quota Legislation and the Election of Women: Learning from the Costa Rican Experience. *The Journal of Politics.* Nov. 2004, 66 (4), pp 1203-1223.

[73] Shou'la Shakeeb, *Empowerment of Arabic Women.*[online] [undated] Available from: http://www.annoormagazine.com/mag/ar/174/dirasat/dirasat_03.asp
[Accessed 19th Aug. 2006]

[74] For further discussion, see pp 422.

[75] BBC News. [online] [24thJune] Available from:
http://news.bbc.co.uk/hi/arabic/middle_east_news/newsid_5113000/5113876.stm
[Accessed 18th Aug.2006]
http://news.bbc.co.uk/hi/arabic/middle_east_news/newsid_5113000/5113876.stm

[76] Pippa Norris argues that in some democratic countries women's participation in politics is still struggling such as in Japan, France and Greece. Also 9 out of 10 parliament members are men in most countries. However, in the other countries that changed their policies adopting the positive discrimination, women had better chance at achieving in political participation.
Pippa Norris. Breaking the Barriers: Positive Discrimination Policies for Women. In: Jyette Kluasen and Charles Maier. *Has Liberalism Failed Women? Parity, Quotas and Political Representation.* (NY: St. Martin's Press, 2001) pp 89-110.

that only 15% of women participate in parliament worldwide, but the percentage is different from one country to another; it has reached 45.3% in Sweden[77] but it is 0% in Kuwait and Bahrain, for example. Moreover, as Al-Madani continues, even though women's participation in most democratic countries is still quite low, just like in the developing world, the reasons are different in the two worlds. Al-Madani concludes that in the developed world the sex of the legislator does not make a difference, but, however, that in the developing world it does where there are some cultural, religious and social barriers that prevent women from reaching the parliamentary level they need to be part of the legislature that can stop more discrimination being made 'legal' by male law makers. Regardless of the fact that there are 80 countries that apply this system, including many Asian courtiers like Afghanistan, Srilanka, and Bangladesh, the idea is still rejected in more conservative societies – such as those in the Gulf. They use the excuse that if a woman should be member of parliament, then she should gain the required votes without any quota or affirmative action, according to the principles of real democracy.[78] This means that it would be optimistic to hope such a system would be applied any time soon.

The matter of the trade unions is organised by the Labour Law No. 38/1964 from Article 69-87 which discuss the conditions, rights and duties of its members. However, it does not mention the sex-discrimination matter, and in fact – except for article 78 - merely

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[77] Andrew Reynolds argues that where there are still some barriers that prevent the 'gender-neutral' but in Scandinavia in general, the gender roles is at its narrowest. However, he concluded that in 'unfriendly' societies where women are segregated and lack the equal opportunities in education, especially if it includes other factors such as religion, it would be difficult for women to participate in politics.
Andrew Reynolds. Women in the Legislatures and Executives of the World: Knocking the Highest Glass Ceiling. *World Politics*. July, 1999, 51 (4), pp 547-572.

[78] Abdulla Al-Madani. *Netham Al-Quota Al-Nesae'ya Asyaweyan* (The Womenly Quota System in Asia). [online] [24th March, 2005] Available from:
http://www.rezgar.com/debat/show.art.asp?aid=34467
[Accessed 4th Feb. 2007]

organises the relationship between the unions and the Ministry of Labour, it does not organise the relationship between its members.[79]

8.3.7.3. Qualifying Bodies, Vocational Training, Employment Agencies and Manpower Services Commission

Sections 13 and 14 which offer more protection for women against discrimination by the previously stated bodies will now be discussed. These sections should remain in Kuwaiti law, especially as 'qualifying bodies' also exist in Kuwait. For instance, the Lawyer and Engineers Associations are responsible for giving licenses to practice such professions in Kuwait. Also, there currently are many institutions that provide vocational training, profitable or not. However, according to Section 15, employment agencies do not exist in Kuwait. Neither the kind that provide profit services nor the kind that provide non-profit services exist. According to Section 16, which discusses the Manpower Services Commission in Kuwait, there is one body in this area, the Civil Service Commission which provides employment for citizens in the public sector only, such a body could be organized under the 'employment' Section in Section 10.

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[79] The Article states that: "an employer would be entitled of the punishment stated in Article 97, if he fired on of the workers or punished him/her to force the worker to join a union, not to join it, or to withdrawn, when s/he was doing his duties in the union or was implementing its legitimate decisions."

8.3.7.4. Non-Profit Organizations[80]

It might now be important to discuss non-profit societies.[81] The Ministry of Social Affairs and Labour provide these societies with annual payments[82] because they are non-profit organizations that help society in different fields.[83] Some of those organizations are one-sex ones such as the Women Culture Social Society (WCSS) that was discussed in the women's movement chapter, but the reason that it is a one-sex society is because it is directed to work for women and its activities cannot be preformed by men, since that would not be acceptable to the majority. However, there are other societies whose members, without legitimate reason, are all of one sex.

It is true that Kuwaiti society is conservative and disapproves- in most cases – of co-boards (consisting of both men and women). However, this provides no barrier to organisations' having a separate women's committee. It is true that these kinds of societies and non-profitable organisations are not like the other bodies discussed in this section. However, the importance of these societies is that some of them are in fact more

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[80] The right to establish such an organisation is stated in the KC, Article 43 which states that:
'Freedom to form associations and unions on a national basis and by peaceful means shall be guaranteed in accordance with the conditions and manner specified by law. No one may be compelled to join any association or union.'

[81] There are 55 of them in Kuwait with 40,000 members with different purposes since the Law does not allow two societies to be established they share the same purpose or activities instead the later applicant would have to join the previous one. [online] [undated] Available from:
http://www.pogar.org/arabic/countries/civil.asp?cid=15
[Accessed 9th Sep. 2006]

[82] Abdul-Wahab Al-Wazzan. *A Study about the Current Situation of the Non-Profit Organizations.* [online] [Sep. 2001] Available from:
http://local.taleea.com/archive/newsdetails.php?id=4956&ISSUENO=1492
[Accessed 6th Feb. 2007]

[83] Article 24 of the Law No. 24/1962 states that:
'The Ministry of Social Affairs and Labour shall specify a budget from its own budget for the non-profit organization.'

like political parties, but since political parties are banned in Kuwait they perform as non-profit societies.[84]

Non-profit organisations are organised by the Law No. 24/1962 which mainly deals with the relationship between the organisation and the Ministry of Labour.[85] However, as has already been mentioned, the law gives the authority to the members who establish the organisation to put the membership conditions, under Article five, without any restriction. This could give them the right to be, without legitimate reason, a one-sex organisation, especially because the Ministry would usually refuse the application of an organisation if another is already established and has the same kind of activities.

8.3.7.5 Police

There are a number of special cases that are stated from Section 17 to 20 (since Section 21 has been repealed). Section 17 discusses the case of the police, which is dominated by men as discussed in the chapter six. In Kuwait, the issue of women in the police force has recently been discussed. In the academic year of 2006/2007, the manager of the Academy stated that 'the first cohort of female students will join the Sa'ad Alabdllah Academy for Security Sciences soon.' Initially they will be appointed in the airport, seaports, and land

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[84] Mona Marshy. *Freedom of Association with regard to Political Parties and Civil Society in the Middle East, North Africa, and the Gulf.* For: International Development Research Centre (IDRC). April 2005.

[85] Regardless of the fact that the organisations have the authority to create its own constitution and the conditions on members the Ministry, however, have full authority to refuse any application to license an organisation, to dissolve the elected board members, or to dissolve the organisation for certain reasons stated by the Law.
Haya Al-Mughni. Women's Organization in Kuwait. *Middle East Report.* Mar.,Apr. 1996, No. 198, pp 32-35.

ports; and will also be officers in women's prisons.[86] Regardless of the fact that in 2001 the previous manager of the Academy said that the Academy was ready to accept women, it has still not been effected. The manager specified that there would be jobs for women in womens' prisons, at the self-inspection points for women at airports, in transferring women prisoners and any other mission that women are involved in.[87] In April 2006, the current General Manager of the Academy Yousif Al-Saudi stated that four new bodies had been added to the Academy, one of them is what he called the "Institution of the Support", a supporting force made up of women.[88] The statement made in a graduation ceremony (2006) is not clear with regards to what exactly women would be studying at the Academy, or what exactly they would be doing when they graduated. "Supporting the police force" is vaguc, not only with regard to the status that women will hold as police officers, but it is vague about when the Academy is going to admit women and in which academic year, since there are contradictions in the statements given in this matter.[89] However, the statements of both the previous and current manager conclude that even if there are women in this sphere, they will be restricted to issues that involve women or maybe to administrative work only.

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[86] Al-Mishal website. [online] [19th Aug.2006] Available from:
http://almishal.blogspot.com/
[Accessed 22nd Aug,2006]
[87] Islamonline website. [online] [26th April 2006] Available from:
http://www.islamonline.net/Arabic/news/2001-04/27/article9.shtml
[Accessed 22nd Aug. 2006]
[88] Al-Rai Al-Aam. [online] [23rdApril 2006] Available from:
http://www.alraialaam.com/23-04-2006/ie5/homepage.htm
[Accessed 22nd Aug. 2006]
[89] Al-Qabas. [online] [19th July, 2006] Available from:
http://www.alqabas.com.kw/Final/NewspaperWebsite/NewspaperPublic/ArticlePage.aspx?ArticleID=186673&searchText=%CA%CE%D5%D5%C7%CA%20%D8%E1%C8%C9%20%C7%E1%C8%DA%CB%C7%CA
[Accessed 25th Aug. 2006]

It also shows that even though there are intentions to allow the participation of women, there is still hesitation regarding how such participation should be implemented and to what extent. Although there is a lot of work that still needs to be done, women can now be seen working as immigration officers at the airport. This puts Kuwait at a more advanced stage towards female integration than the other ME countries, as well as the other GCC countries. In 1972, Oman was the first ME Country in the region – among the Arabic countries – to allow women to participate in the police force.[90] Furthermore, women work as police officers in Syria, Egypt, Yemen, Lebanon and Jordan. However, although such participation started two or three decades ago, it is far from reaching the levels of male participation. For example, in 1995 Egypt had 300 female police officers and 22,000 male officers.[91]

Section 17 of the SDA, in order to protect women, should remain unchanged, especially as regards jobs in the Police sector, which has until recently been exclusively for men. The exceptions in subsection 17(2) should also remain the same, with the exception of the wording of the subsection – and all of the subsections that refer to the 'act'- since in Kuwait there is no police act; the police force are organised through regulations.

It should, instead, state that "treatment of men and women in the police force should not be different except", meaning that the new SDA would end the discrimination in the

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[90] Dawn Chatty explains how the take over of Sultan Qabus in 1970 has helped to modernise Oman in every aspect. He goes on to explain here how they adopted policies to encourage the female participation in the public sphere, involving them in the army, police, media, and education.
Dawn Chatty. Women Working in Oman: Individual Choice and Cultural Constraints. *International Journal of the Middle East.* May, 2000, 32 (2), pp 241-254.

[91] Aman website. *Arabic Women: Reality and Anticipation.* [online] [May 1995] Available from: http://www.rightsathome.org/docs/dv/Aman%20Jordan%20-%20VAW%20Study%20A.doc. [Accessed 22nd Aug. 2006]

police force field. This could be a key development to the Criminal Law, as was mentioned in the discussion of Criminal Law in chapter six. In many cases women do not report domestic violence. One of the reasons for this is that, knowing that the police stations are full of men, women do not feel comfortable about discussing personal matters with the police. However, if there were female police officers to talk to, women might be more willing to report crimes committed against them. This is particularly the case with regards to rape, where, in a conservative society like that of Kuwait, women who discuss such cases are regarded as "shameless" even though they are the victims. Instead of having women in each police station, it would only be necessary to have a separate body that would be a subordinate administration to the Ministry of Interior. It would only specialise in crimes that involve women, such as domestic violence and rape. If the previous Manager of the Academy has already suggested that women should be involved in self-inspection or in womens' prisons, then there should be no obstacle to going a step further and set up separate institutions, especially as there already are women who work as investigating officers.[92]

The Section needs some modifications and eliminations as most of its subsections are focused on the interests of the UK system. It would be important to add a paragraph specifying the bodies that would be included in this section, since the Ministry of Interior has some dependant and independent bodies that should all be included in the Article.

Also, it is needless to put 'prison officers' in a separate section in Kuwait, they should be

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[92] Crime investigation is divided into two major divisions. First, if the crime's punishment is three years or above, felony, the prosecutor would investigate, and the Prosecution Department follows the Ministry of Justice, and here is where women cannot be appointed. Second, if the crime is a misdemeanour punishment for which is less than three years, it is investigated by the Investigation Department which follows the Ministry of Interior, in that department women can be appointed as investigators

included in the previous Section, since prisons are under the jurisdiction of the Ministry of Interior.

In any case, women will eventually be able to join the police force with or without the GEA. This looks especially likely given that the Under secretary of the Interior Ministry, Ahmad Al-Rujaib, has recently announced it most probable that women will be able to join the police-force by September 2007 as long as the training building for the mission is ready. Therefore, it can be concluded that it is just a matter of time before they do.[93] However, the question is not whether women will join the police or not, the question is: how will they? Al-Rujaib and Al-Saudi agreed that women would be in 'support' jobs in places where they are needed. Further, Al-Rujaib added that women would not have any police grades. Instead, women who join the police will receive 'special' treatment. This is why it is important to add the police Section to Kuwaiti Law. However, this new law would only add a limited guarantee to this matter, since, as Ebraheem Al-Nuqaimish points out,[94] if an application to the Police Academy is, for some reason[95] unsuccessful, the decision[96] cannot be examined by a court. Also, policemen are tried by a military court because they are not considered 'civil service employees', and, where convicted of a crime, go to a special prison.[97]

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[93] Kuwait News Agency (Kuna). *Admission for Women in the Police Force Next September.* [online] [Jan.2007] Available from: http://www.kuna.net.kw/home/Story.aspx?Language=ar&DSNO=945129 [Accessed 4th Feb. 2007]

[94] Interview at his house on 8th Feb. 2007 with the previous Director of Human Development Department, and Head of the Education Department of the Police Academy previously.

[95] Especially if there were special 'notes' on the applicant or one of his family members with the State Security.

[96] Unless the Interior Minister himself or the undersecretary interfere to accept a student.

[97] However, according to Al-Nuqaimish, there are two types of violations, if it was from a policeman toward an ordinary person, that person can sue him – and the Ministry according to the procedural laws –

8.3.7.6. Ministers of Religion

It might also be beneficial to discuss Section 19, since Islam is a 'one-sex' religion in terms of the professions of Imam[98] and Muezzin[99]at mosques. Besides, except for the practice of Islam and the activities of a few churches, no religious activities can be performed in Kuwait.[100]

The Section should be included in order only to allow the appointment of men as Imams or Muezzins in mosques. However, there are other religious bodies that women are excluded from, such as the Ministry of Islamic Affairs. This Ministry has multiple departments, but only one of them is responsible for the mosques. This department decides the exceptions and thereby which jobs are exclusive for men, i.e. Imams and Mueszzins.

All other departments, and most importantly the *fatwa* department, should no longer be exclusive to men.[101] A fatwa is important as it is issued to clarify the Sharia opinion with

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before an ordinary civil court. The other type of violation, if it was regarding doing his job, then he would be presented to a military court.

[98] Is the one who leads the five prayers at mosques.

[99] Is a term defined by Wikipedia as: "*is a chosen person at the mosque who leads the call (adhan) to Friday service and the five daily prayers, or salat, from one of the mosque's minarets (in most modern mosques, electronic amplification aids the muezzins).*" [online] [undated] Available from: http://en.wikipedia.org/wiki/Muezzin
[Accessed 24thAug.2006]

[100] There are seven churches in Kuwait for all of the Christian's sects, and a license to have more is very hard to get.
http://enjeely.com/vb/showthread.php?t=134
[Accessed 3rd Sep. 2006]

[101] Some thinkers still relate the two jobs of judge and moftee together explaining that if a women cannot be judge then she cannot be a moftee and vice versa. Such an argument might have been acceptable in the early days where there were no laws at all, and the judge would only rule according to the Islamic teachings.

regard to a specific issue. Sometimes, when the government needs a fatwa regarding a specific issue – for example, the suffrage rights for women – it refers to this department to decide on the matter. Either to agree on the issue or to refuse it is based on the opinion of this department. In some ME countries that position is held by one person, and not a department. This person is always a very well-respected man because his job is to guide the people and government of that country towards the right Islamic opinions or fatwa the 'official' moftee of the country.

In Kuwait, however, the fatwa issue is under the jurisdiction of a department and not just one man. Since this department in the Kuwaiti Ministry was established it has only included men, one reason being that society does not accept the idea that a woman can be a *moftee*. This could simply be because Kuwaitis are used to seeing only men in such a position. It is a controversial issue whether the Sharia allows women to be *moftees* or not. There are some official fatwas [102] that adopt the view that there are no valid reasons that prevent women from having such jobs.[103] While others have adopted the view that women are forbidden from being moftees based on the fact that the Hadith says:

"Allah's Apostle once said to a group of women: 'I have not seen any one more deficient in intelligence and religion than you. A cautious, sensible man could be led astray by some of you.' The women asked: 'O Allah's Apostle, what is deficient in our intelligence and religion?' He said: 'Is not the evidence of two women equal to the witness of one

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[102] 'fatwa' was discussed in chapter three, see pp 124.
[103] Islamic Web. [online] [undated] Available from: http://www.islamweb.net/ver2/Fatwa/ShowFatwa.php?lang=A&Id=47647&Option=FatwaId [Accessed 24th Aug.2006]

man?' They replied in the affirmative. He said: 'This is the deficiency of your intelligence' ... 'Isn't it true that a woman can neither pray nor fast during her menses?' The women replied in the affirmative. He said: 'This is the deficiency in your religion.'"[104]

In Egypt, there has recently been discussion regarding whether women should be appointed as moftees. For example, Dr. Suad Saleh has argued that nothing in the Sharia (including what is stated in the Hadith above) suggests that women should be prevented from being appointed to such a job. She explains that this Hadith, as everybody knows, meant deficiency for only two very particular situations and cannot be generalised. As the Qur'an says:

"The Believers, men and women, are protectors, one of another: they enjoin what is just, and forbid what is evil."[9:71]

This verse can be interpreted as proof that women can be *moftees*, since the purpose of the moftee's job to 'enjoin what is just, and forbid what is evil'. However, as Dr. Saleh concludes, if allowing women to such a position is too extreme for society to accept, then there should be a committee of women's *moftees* to give answers for women's questions to start with, since a lot of women may be embarrassed to ask men for fatwa in some private matters. Yet, considering that the matter is still 'in the debate' stage in Egypt, it is unlikely that, without legal protection, a woman will reach the point of being a *moftee* for many years to come, since Kuwait is a more conservative country than Egypt. However, Kuwait holds the advantage of having a committee responsible for fatwa matters,

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[104] Sahih Bukhari, Arabic-English translation, 1 Hadith No. 301. See also vol. 3, Hadith No. 826. Available online too from:
http://debate.domini.org/newton/womeng.html#def

allowing for more scope to include women than having only one person in charge, as does Egypt.[105] With regard to the new law, it is suggested that only the two jobs in the mosque should be secluded for men, while others like the moftee in the Ministry should include women, particularly when the women have studied for such positions at the College of Sharia and Islamic Studies. In conclusion, Section 19 ought to remain the same with regard to the other religions in Kuwait. However, it should mention exceptions, in a separate subsection, when it comes to the jobs of Imam and Mueszzins.

It is true that 'houses of worship' are considered sovereign matters that the administrative court cannot examine according to Article 1 of Law No. 20/1981. However, as explained earlier, appointments in the 'houses of worship' (mosques) would have to be an exception even under this new law. However, it should be assumed that passing this law would signify a real intention to empower women and voice a belief that they can represent themselves in all sectors regarding religion. The difficulty here is not only in accepting that women can be moftees, but in finding a woman who is willing to be in that position. Any potential candidate would be a Sharia school graduate who would have been taught that the best place for women is in the private sphere or in segregated working places like public schools and that any places employing co-workers are sinful. It is therefore difficult to imagine someone with such qualifications challenging the law, if she ever got the nerve to apply for such a job.[106]

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[105] In fact, lately, Ali Juma' the *moftee* of Egypt, stated that according to Islam, women can be *moftee* since women in the early days of Islam participated in such matters, and the only reason they cannot – nowadays – is because of the tradition and conservative culture that are not related to Islam.
Idarat Al-Efta' (The Ifta' Administration). Yajouz Tae'yen Al-Mara' Ka-Moftee (Woman can be a Moftee). *Al-Waei Al-Islami Journal.* Dec. 2006, issue no. 493.

[106] In her study about women in Kuwait, Helen Rizzo argues that in some cases the debate in Kuwait, as with most of the ME countries regarding women, is democracy versus tradition and Islam. She concludes

The Kuwaiti version of the SDA does not need to include Section 20, since the job of midwife does not exist. Also Section 21 cannot be included, since it has been repealed. However, in Section 20A the SDA 1975 has extended its protection to ex-employees as well as to present employees. Kuwait should adopt this section in order to offer more protection to employees in that particular position.

Consequently, Section 19, which addresses the discrimination against women in religious institutions, would be the end of Part II of the new GEA. It might be useful for this part to include the 'judicial system' as a special case. This field has also been exclusive to men since the day it was established. Women are not only banned from being prosecutors and judges, but also from the other judicial assistance jobs such as clerks.

8.4. Education

8.4.1 Introduction

The educational system in Kuwait does not adhere to the formal equality model which was discussed in chapter six.[107] There are three main issues which this section will consider. First the respect in which the Kuwait educational system fails to afford the formal equality model will be identified. Secondly, the cultural difficulties that such

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that there are two groups of thinking towards the participation of women in the public sphere in general. First is to support such participation which is adopted by the professional women, those who believe in Arab nationalism, some liberals, secularists, some orthodox Islamists, Shia Islamists, and urban residents. The second group is against the matter and include women who believe in the 'traditional' role of women, Sunni Islamists, rural residents, and tribal members.
Helen Rizzo. Are Religious and Democratic Practices Compatible in the Middle East. *Democracy and Society*. 2005, 3 (1), pp 5-16.

[107] See pp 371.

changes would face will be considered. These factors were considered in Chapter six[108] and so will only be referred to briefly in this section. Thirdly, the ways that the SDA could be applied in practice, taking account of such difficulties, to change the system so that direct discrimination no longer occurs, will be examined. Clearly, the SDA cannot be applied as it is applied in the UK for two reasons. Firstly, the cultural barriers are extremely significant and have to be taken account of. Secondly, the method of enforcing the law in Kuwait differs significantly from the method adopted in the UK. The method used to enforce a new law is considered below. However, an example of the enforcement of a new law about education is examined in this section.

8.4.2 Discriminatory practices in the educational system

The educational system in the UK might be different to the Kuwaiti system, but Section 22 of Part III SDA can be applied unchanged in order to indicate a general principle demonstrating the way that discrimination against women might exist in education in Kuwait. Adopting such a Section will have an effect in prohibiting the direct discrimination that exists in the Kuwaiti educational system in regards to the difference in the required GPA to be accepted in the only two governmental higher education institutions (KU and PAATE – as discussed in chapter six). It will also curb the policy of offering some majors to one sex only, as will be discussed shortly. So that both of these institutions – and the law would of course be applied to any other educational institution with sex discriminatory policies – have to change their policies and apply the criteria for admission regardless of whether an applicant is male or female.

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[108] See pp 363-381.

In Kuwait there are different sectors and systems for education. Both private and public schools perform under the supervision of the Ministry of Education.[109] Schooling, from kindergarden until the end of the high school, is supervised directly by the Ministry of Education. All public schools – except for the kindergarden – are one-sex schools. However, some private schools are co-educational, and one-sex schools depend on the will of the owners. Higher education is supervised by the Ministry of Higher Education. Higher education has always been dominated by the public sector; private higher education institutions used to be banned in Kuwait. However, in June 2000 the Kuwaiti Parliament passed a new law forcing the KU to provide one-sex education – since PAATE already has one-sex institutions for all of its colleges. The new law also allows private higher education institutions on the condition that they are one-sex institutions. Thus the law, in effect, bans co-education in all higher education institutions. The Islamist MPs had prepared a massive campaign to support the draft law.[110] Richard

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[109] Primary and intermediate education – 8 years of studying starting at the age of 6-year-old – is compulsory in Kuwait for both sexes. Female pupils in such education reached 46% in 1974-75, which is considered an achievement comparatively.
Afaf I. Meleis, Nagat Al-Sanabary and Diane Beeson. Women, Modernization and Education in Kuwait. *Comparative Education Review*. Feb., 1979, 23 (1), pp 115-124.

[110] They visited *Dewaniyas* to get the support of its people for the law, meeting with the university students and its academics, and organising lectures to present the law as if it was required from all people whatever their position. The voting result was surprising with 37 votes, with, 22 sustained, and only one MP who was Mohammad Al-Sagher – who is considered a liberal – voted against the law. The surprise was that even the liberals choose to sustain and not to vote against it. The MPs tried to base their argument on the fact that one-sex education is the only compatible way with the Sharia, the customs and traditions of the conservative Kuwaiti society, and not to forget that co-education is the western way of education.
Islam Online website. [online] [28th June 2000] Available from:
http://www.islamonline.net/iol-arabic/dowalia/alhadath2000-june-28/alhadath4.asp
[Accessed 25th Aug. 2006]
Dewaneya is:
A place that is separate from the main house and usually used by men for social gathering, it offers a unique insight into local life. Within a social atmosphere the '*Dewaniya*' provides a meeting place for discussions on politics, business, and life – a kind of forum that provides a barometer of public opinion. All Kuwaiti men belong to or own a '*Dewaniya*' – something that has existed throughout the history of the country. Source:

Townshend-Smith argues that segregating by gender cannot be considered an unlawful act, unless it results in less favourable treatment.[111] So that if it is lawful to provide separate schooling for girls so long as it is equivalent to that of the boys, what is unlawful in Kuwait is to deprive one sex from taking a particular major, only on the grounds of their sex .

Just as the UK SD Act identifies the educational establishments in England, Wales, and Scotland; the Kuwaiti law can identify the institutions in Kuwait. It should include all public and private schools and higher education institutions. It also should include all kinds of scholarship in Kuwait, whether they are offered by the Higher Ministry, KU, the PAATE, ministries, or any other institutions (whether public or private). In this section the gap between the two countries can be seen very clearly, since Kuwait still lacks any law that organises education, and it is all arranged by administrative decisions or regulations. However, what is important in the present context is to ban any kind of sex discrimination.

Discrimination against women in education in Kuwait can be found in three main areas. Firstly, there is the difference between the required GPA for men and women. KU or PAAET both accept men with lower GPAs, as explained in chapter six. Secondly, there is the fact that women (and sometimes men) are excluded from taking certain majors,

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http://en.wikipedia.org/wiki/Dewaniya

[111] Richard Townshend-Smith, *Discrimination Law: Text, Cases and Materials.* (London,Sydney: Cavendish Publishing Limited, 2001) 2nd pp 373.

especially in the PAAET colleges.[112] Thirdly, there is the different attitude taken to teaching girls. Most schools are more lenient (see figure 6.1) with the boys. Adopting Section 22 in regards to subsection 22(a) would end the first kind of discrimination.[113]

However, the second kind of discrimination is still justified by some people on the grounds that those majors are socially not acceptable for a certain sex. For example, the College of Basic Education – one of the PAATE colleges – offers a "home economics" major which is basically about learning how to cook; only girls are allowed to enrol in this major. Also, only women are allowed to enrol on the same colleges' kindergarden major, since all the teaching staff in Kuwait kindergadens are women.

These are not the only examples, the Vocational Training Institution only has one campus for boys; the PAAET does not provide a campus for girls to study any of the nine majors that the boys study: Automotive Mechanics, Automotive Electric, Refrigeration and Air Conditioning Maintenance, Offset Printing, Welding and Metal Casting, Formwork and Reinforced Concrete, Electrical Installation, Cabinet work and Decoration. While the KU

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[112] Modhaffar Abdulla. *The Breach of CEDAW.* [online] [1st Nov. 2006] Available from: http://www.taleea.com/newsdetails.php?id=8956&ISSUENO=1748
[Accessed 17th Nov. 2006]

[113] In fact, sex-discrimination is not the only kind of discrimination that affects potential students in the higher education institutions. For example, KU discriminate between the Kuwaiti and non-Kuwaiti student requiring higher GPA from the non-Kuwaitis. While, in the 1980s, the students – according to their citizenships – were divided into three categories: Kuwaitis, GCC citizens, and residents other countries. Each category required less GPA than the other starting with the Kuwaitis. However, that policy has changed to only Kuwaitis (Non-Kuwaitis from a Kuwaiti mother fall in that category too), and non-Kuwaitis, equalizing the GCC citizens with the others.
A.Qayum Safi. Kuwait University and its Evaluation Program. *Higher Education.* 1986, 15 (5), pp 421-447. Also,
Kuwait University Official Site. *The General Admission Conditions.* [online] [Academic year 2006-07] Available from:
http://www.reg.kuniv.edu.kw/link.asp?page=2
[Accessed 7th Feb. 2007]

has – until now – only been obliged to provide separate sections for boys and girls, the PAATE is obliged to offer separate campuses for all of its colleges, and of course this requires more academic staff. Thus, providing a separate campus with majors that are socially not acceptable for a certain sex is a monetary risk.

Under a formal equality model, as described in Chapter four, offering some majors to one sex based on social and culture factors, cannot be justified. For example, PAATE offers "medical secretary", "dental health", and "medical lab preparation" for females only, while all majors that are related to technology, electricity and engineering are offered only to men. Furthermore, the PAATE has recently opened a new college called the "Skills Institute for Tourism and Cosmetics" which provides majors for girls only. The matter of sex discrimination is relevant to both sexes, not only to women.[114]

8.4.5 Cultural factors

To reach ultimate equality in this matter may mean confronting some complications, especially since there is no demand from either males or females to be allowed to take those majors they have hitherto been banned from taking. As discussed in Chapter six

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[114] The discrimination against female students can be understood better if related to the historical background of the education of women in Kuwait that was discussed in chapter six. Also Gawdat Bahgat argues that the traditions of the GCC countries – in general – towards women can affect their education and being in the labour force later on. Three main factors should be considered here. First, the principle of 'sex-equality' is rejected by the majority and second, the sex-segregation and the public sphere being exclusively for men. Finally, the main ideal role of women should be being a good mother and a good wife. Also, the women's education was rejected by the Islamic scholars for a long time, and that can explain the late beginning of their education in the region.
Gawdat Bahgat. Education in the Gulf Monarchies. *International Review of Education.* Mar., 1999, 45 (2), pp 127-136.

various cultural factors make it difficult to change the educational system rapidly.[115] Realistically, offering those majors to both sexes might cost the educational institutions a lot of money. Since offering majors for one sex – as discussed in chapter four – [116] is considered sex discrimination,[117] then the law should state that this would be an exception for a limited period of time. So that society will have some time to get accustomed to a law that prohibits the discriminatory practise of excluding women from taking certain majors,. Here, since one of the tasks that the Anti Sex Discrimination Committee (the establishment of this committee will be discussed later) would be given is to revise the discriminatory laws and suggest amending them, then it should work together with the Ministry of Higher Education towards eliminating such discrimination. For example, certain majors could be opened gradually for the other sex, so that within a certain period of time, those majors would be available to both sexes. Also, any other educational institution that opened in the future should offer all of its majors to both sexes. Stating that the exception in the new law provision should be for a certain period of time would eventually afford legal protection from direct discrimination in education. Later on, once the period of time in question had lapsed, a man or a woman could sue the Ministry of Higher Education for excluding him/her from a certain major. It is true that the new law states this as an exception, but it is only for a limited time, so that in such cases the court would require the Ministry to have a time frame to end such discrimination.[118] For example, if the time frame was 5 years, and after that a student was

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[115] See pp 365.
[116] See pp 167.
[117] For example, see the case discussed in the forth chapter *R v Birmingham City ex p Equal Opportunity Commission (EOC).*
[118] The same thing happened when the Law that banned the co-education – previously mentioned – was passed, it was difficult to be implemented right away. The KU, is still applying it to its schools one by one,

not accepted to study a certain major because of his/her sex, s/he would be able to sue the Ministry of Higher Education. The latter would then have to show the reasons of failing to provide the major to the plaintiff's sex, whether or not it is working on eliminating the discrimination, as the law requires. In any case, the plaintiff would be entitled to compensation for being a victim of an unlawful act by the Ministry, according to the remedies section that the GEA should adopt – this will be discussed in more detail later. That would be a major way of enforcing the new law, since such cases will open the door for more cases on the same grounds, which would lead the Ministry to put the new law into effect and work towards eliminating such discrimination.

In regard to Part III, the new Kuwaiti law should adopt the first Section 22, 22A, in order to define what kind of students the law includes, whether they include just students in Kuwait or the ones who study abroad, such as scholarship students. Owing to the differences in the education systems, Kuwait can disregard the rest of the Sections in this Part until Section 28. However, the new law should include a list of all the educational bodies that are included in law. It also should include a separate Section for scholarships. There are different kinds of scholarship, provided by many different type of institutions, not only within the public sector (such as the KU and PAATE), but also there are private bodies, educational and commercial, which also offer scholarships to their employees. A clause regarding such scholarships should also be included in the law in order to ensure that they are equally distributed. Also, it should specify what kinds of scholarship there are, for instance whether they are for undergraduate or post graduate studies, and whether

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so that until this moment, the law is not fully implemented, as separating the sexes in all Universities and schools requires time.

they are given conditionally or unconditionally. This is because some bodies, both public and private, offer scholarships on the condition that the scholar works for them for a certain period of time upon finishing their studies. What level of remuneration these scholarships would offer should also be specified in this new document. Discrimination against teachers from all sectors should be addressed the 'employment section' of Part II.

Given that there are no laws regarding education in Kuwait, it might be easiest to apply the new law to the education section.[119] It might conflict with some administrative decisions like the unjustified discrimination regarding the specialties for the scholarship. This should not be a problem, however, since the law has supremacy over administrative decisions.

8.5. Goods, Facilities, Services and Premises

The discussion in chapter six regarding the position of women, especially those who are married to non- Kuwait, clearly shows the discrimination against them that is based on their sex in different fields and can show the significance of adopting Section 29 of the SDA.

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[119] The only law that regulates education was created when the government decided to make education compulsory for all citizens from primary to intermediate education in 1965. Also the Constitution provided the right for education in Article 13 in saying that:
'Education is a fundamental requisite for the progress of society, assured and promoted by the State.'
Zuhair M. Husam-Aldeen. *Ta'leem Al-Enath fe Al-Alam Al-Eslami* (Females' Education in the Islamic World). (Morocco: Islamic Educational Scientific and Cultural Organization, 2002) pp 30-32.

Prevention of discrimination in goods, facilities, services and premises is contained in Section 29. This Section with its subsections can be adopted by Kuwait unchanged except for subsection 29(4) because in refers to Section 2A which should be disregarded in Kuwaiti law as explained earlier. Since this Section gives 'examples' of the facilities and services, it would be helpful to add, in subsection 29(2)(c), the loans given by the Kuwait Saving and Credit Bank which are exclusive for Kuwaiti males as explained earlier in this chapter. Also, if Section 30 in particular was approved, it would end the long term suffering for women regarding premises. As discussed in chapter six, Kuwaiti women who are married to non-Kuwaitis suffer from discrimination in this respect. At the interview with the Manager of the House Distribution, Mr. Abdul-Azez Al-Qunae' admitted that even though the PAHW provides women with houses just as they do to Kuwaiti men, the quality of the houses that are specified for women is much lower, to the extent that some women would rather pay for rented accommodation than live in those houses.[120] It might, then, be important to add a paragraph to 30(1) saying: "in regards to the unit of premises whether in terms of equality or the residential area, or any other difference than those units that are given to the male Kuwaiti." The Section should include all types of housing, privately rented or provided by the PAHW. Also Sections 31 and 32 should be adopted to organise the discrimination in assignment and sub-letting and gives exceptions for small houses as stated in Section 32.

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[120] As discussed in chapter six, Kuwaiti women used to enjoy the privilege of having a house. This stopped in 1982, and women were denied the housing loan later on 1992. Due to such policies that result in the living misery for those families, some of them have immigrated to Canada and UK.
Marry Ann Tetreault and Haya Al-Mughni. Gender, Citizenship, and Nationalism in Kuwait. *British Journal of Middle Eastern Studies.* 1995, 22 (1/2), pp 64-80. Also,
Zosia Kmietowicz. Victory for Women's Rights in Kuwait Reawakens hope. *British Midical Journal.* Oct. 2006, 333 (7573), pp 826.

Applying this section to Kuwait does not eliminate the need to amend some articles of the housing laws, for example Articles 14, 15, 16, 19 of the Housing Law No. 47/1993 which state conditions in relation to privileged housing care.[121] Those Articles are directed to the 'male head of the household' and should be changed to be directed to both men and women that are married to non-Kuwaitis. There are also the administrative decisions 564/1993 regarding Articles 3, 4, 10, 15, 18, 19, 20, and 24, these articles in the Law and the administrative decision put the details (especially in the administrative decision) of the rights and duties in return. Also, Article 41 needs to be cancelled because it states that if a Kuwaiti woman married to a non-Kuwaiti was given a house, it should be returned to the PAHW after her death, provided she does not have children, and her female daughters are married. This means that the family can never own the house. However, if the law was changed, then both men and women would be treated equally in this respect. As was discussed in the previous chapter, amending the law can be achieved either through the NA, by a proposal and vote, or by claiming 'incompatibility' on the grounds that the laws in question are in violation of the equality principle. This will be discussed in more detail in the enforcement part at the end of this chapter.

8.6. Political Parties and Voluntary Bodies

Section 33 cannot be included in the new law because political parties are forbidden in Kuwait. It is possible to add some exceptions for the voluntary bodies (or non-profit societies) to Section 34. However, exceptions to one sex societies should have greater restrictions. Such bodies, usually supervised by the Ministry of Social affairs and Labour,

[121] The PAWH gives different kinds of housing, either house, apartment, or peace of land with a loan.

have to obtain written exception from the Minister. Section 35 would be necessary in Kuwait where there would be a lot of institutions and bodies for men or women only that need exceptions to perform well.[122]

8.7. Lawyers

Sections 35A and 35B of the SDA discusses discrimination practised by barristers and advocates. There sections were added to the SDA in 1976, hitherto barristers were not included in the Act because they did not have contracts or partnerships.[123] Kuwait can learn from this experience, and make sure barristers are included in a proposed act. However, since the Kuwaiti system is different (there is one term for both barristers and advocates) it might be beneficial for Kuwait to adopt Section 35A but only address it as 'discrimination by, or in relation to lawyers', and also to include 35C offering more protections to ended relationships in that matter. Section 36 can be the conclusion of Part III. It is important that it is included, since it draws the limitations to the law.

It is true that Law No. 42/1964 organises the legal profession (the bar). However, this Law discusses the profession in regards to its relationship with the courts, not the

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[122] The KC did not prevent the political parties nor accept them, it simply remained silent about the matter. However, as mentioned earlier, there are non-official political parties that represent mainly four different currents: Islamic brotherhood, Salafi (orthodox), the Islamist Shia, and the nationalists and liberals. Mohammad Al-Mutairi. *The Importance of the Political Parties*. [online] [22nd April, 2006] Available from:
http://www.alqabas.com.kw/Final/NewspaperWebsite/NewspaperPublic/ArticlePage.aspx?ArticleID=159722
[Accessed 7th Feb., 2007]

[123] Richard Townshend-Smith, *Discrimination Law: Text, Cases and Materials*. (London, Sydney: Cavendish Publishing Limited, 2001) 2nd pp 361.

organising of the profession itself. However, the lawyers in such firms are covered under the Labour Law No. 38/1964, since in Article 1 states that a:

"labourer is a person – whether male or female – that does handwork or intellectual work, for a certain wage under the supervision of the employer, and employer is every person whether natural or judicial, considering the work as a profession or occupation and use workers for wages in return."

Nevertheless, such laws do not provide protection from sex-discrimination, which shows the importance of organising, without conflictions, this law in such matters.

8.8. Other Unlawful Acts

Part IV, which addresses 'other unlawful acts', could also be very useful to Kuwait, since it covers other issues that might cause discrimination such as indirect discrimination. It would contain a requirement or a condition that would make unlawful discrimination illegal, even in cases where though there are no women or men in the group, if there were they would face indirect discrimination when attempting to obtain benefits. Section 37 can be assimilated into Kuwaiti law as it is except for subsection 37(3). The same thing can be applied to Section 38, except for subsection 38(3) which needs some adjustments. Addressing someone in the Arabic language requires stipulating whether the person addressed is male or female, one cannot address them neutrally.

Nonetheless, it has become known that when advertisements use male pronouns, they are to be taken to include both males and females; when they are directed exclusively to men

they add the phrase: 'male only'.[124] So unlike section 38(3), the Kuwaiti section should say: "directing the advertisement in male pronouns or using of job descriptions with sexual connotation shall not be an indication of discrimination, unless the advertisement contains an indication to the contrary." Then the rest of the Section can be adopted as it is. One of the main advantages of this Act is that it covers all practices of discrimination that exist or might exist, not just those that do exist, and also makes sure that the act of discrimination holds everyone who is liable for it to account. It states this in Sections 39, 40, 41 and 42. The Kuwaiti GEA can include Part VIII, Section 77 (which addresses the 'validity and revision of contract') as part the Part of 'other unlawful acts' instead of as a supplement. It can include the subsections of the Section from 77(1) to 77(3). Since subsections from 77(4) to 77(6) are more about procedural matters, and would be applied differently in Kuwait, they can be disregarded.

8.9. General Exceptions

8.9.1. Affirmative Action

Part V of the SDA stipulates the exceptions to Parts II to IV. It starts with Section 42A, which states the principle of 'affirmative action.'[125] This Section discusses the 'selection of candidates' by the political parties, but since political parties are forbidden in Kuwait,

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[124] For more details about the grammer and pronoun in Arabic Language, see:
Shereen Khoja. *APT: Arabic Part- of- Speech Tagger.* Proc. Of the Student Workshop at NAACL 2001.
T. A. El-Sadany and M. A. Hashish. An Arabic Morphological System. *IBM Systems Journal.* 1989, 28 (4), pp 600-612. Also, for comparison Arabic to other languages in regards to gender:
Mary Flaherty. How A Language Gender System Creeps into Perception. *Journal of Cross-Cultural Psychology.* 2001, 32 (1), pp 18-31.

[125] For further discussion about affirmative action, see pp 179-184.

then this Section can be disregarded. However, as suggested earlier, affirmative action or a 'quota' system can be used by elected bodies.

Due to the fact that sex-discrimination against women is widely practiced in Kuwait, 'affirmative action', in Section 49, should be accepted not only by the trade unions and elective bodies, but by every council, board of directors formed by elections or by appointment, part of a public or private body. It should also be noted that the Section does not impose the principle, it is just makes it a lawful action.[126]

Sections 43, 44, 45, and 46 also can be adopted, especially Section 44 which gives exceptions in sport which is needed in Kuwait. The same goes for Section 46, since all sorts of accommodation in Kuwait are separated according to sex.

8.9.2. Discriminatory training

As regards Section 47, if the law sanctioned single-sex facilities for training, it might encourage them to take advantage of certain opportunities. The conditions for such exclusive advantage are stated later in the Section. With regard to subsection 47(2), it might be important for the Kuwaiti law to state in the law itself, as supplement, or in a separate regulation, what the procedures are during a 12 month period. This is to ensure

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[126] Norris argues that the affirmative action in the electoral formula has four main kinds: proportional representation which depends on the party lists, semi-proportional-system, Majoritrian, and mixed.
Pippa Norris. Women's Representation and Electoral System. *In The International Encyclopaedia of Elections*. Edited by Richard Rose. Washington, D.C: CQ Press. pp 348-351.
However, for how affirmative action can effect women in the labour force, see:
Jonathan S. Leonard. Women and Affirmative Action. *Journal of Economic Perspectives*. 1989, 3 (1), pp 61-75.

that the number of people in question is comparatively small, since it might be taken advantage of or misused to ensure legal discrimination.

As regards subsection 47(2), there is an important geographic difference between UK and Kuwait. The later is a small country where there is not a large distance between cities. This Section might be disregarded, unless – for future reference - there are new cities built with further distance, then it can add a Section explaining what 'an area' means. Also, the addition of subsection 47(3) offers protection for people with special conditions which makes it important to adopt.

Section 48 can be adopted, but it has to clarify how the employer or the organisation is going to prove that there are 'no persons of that sex' doing the work or their numbers 'are comparatively small'.

8.9.3. Indirect Access to Benefits

Incorporating sections, 50, and 51 into a new law would be important for Kuwait, since most trade union members are men. Besides, Section 50 provides more protection against discrimination in terms of access to benefits. Section 51 offers a further protection provided for women by laws other than this Act, so it is important to be adopted. Some legislations in Kuwait do provide special treatment for women, for example the Labour Law prevents – as mentioned earlier – hiring women in dangerous, health or security wise jobs, or putting them in dangerous situations by being made to work at night.

Also, as well as maternity leave, the CSA provides a special leave for woman if her husband dies, since according to the Sharia widows should remain home for four months and ten days. However, it is not considered a right, and is contingent on whether her employer wishes to grant the leave. It is thus important that women do not loose their protections, given that they are provided for valid reasons. As Section 51A is important for Section 50, it might follow it. However, there might be some provisions that state 'special protection'[127] for women only to ensure their domination. These rights should either be provided for both sexes or be eliminated from the law. Although it is important to give women maternity leave at child birth, having other times when she can take maternity leave for four years – even though it is not paid leave – is not needed, especially since the only condition to get such leave is that she is married. If the CSA wants to grant married employees the chance to have a holiday, then such a chance should be granted to all employees regardless of whether they are men or women, married or single.[128]

Section 52 refers to 'safeguarding national security,' which does not exist in Kuwait. There are three Laws that might, to a certain extent, be similar to this Law: General

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[127] 'special protection' as discussed in chapter three has some disadvantages. It is mainly based on the 'differences' standard that can keep women away from certain jobs, and prevent them from reaching 'equality'.

[128] The SDA 1975, faced a problem with the pregnancy and delivery leave due to the lack of an actual or hypothetical 'comparator'. Paul Lewis argues that pregnancy within the SDA in case law has passed through three stages: 1. The Act cannot be applied to pregnant women due to the lack of the comparator, *Turley v. Allders Department Stores Ltd.* [1980] ICR 66.
2. The 'sick man' approach was adopted comparing pregnant woman to a sick man, *Webb v. EMO Air Cargo (UK) ltd.* [1992] IRLR 116.
3. Any unfavourable treatment against pregnant woman would be considered discriminatory by itself without any comparison, *Brown v. Rentokil* [1998] IRLR 445 ECJ.
Lewis, P. (2000), pp. 130-143.

Mobilisation Decree Law 65/1980 regarding the procedure that would be taken in the event of a war; The 22/1967 Martial Law; and the Civil Defence Decree Law 21/1979. These Laws have different procedures and arrangements that are not related to sex-discrimination directly, because they are only applied at certain times and in very special circumstances.

8.10. Enforcement of the Law

8.10.1. The ASD Committee

Part VI of the SDA specifies the needed procedures to enforce the Act. Establishing the Equal Opportunities Commission was one of the first steps towards achieving such an objective. From Section 53 to Section 61, it explains the mission of the Commission, the formation, the duties, authorities, and the limits of such authority. The situation in Kuwaiti Law, however, is that whenever a law is passed, a code of practice – as a regulation and not as a law – would be issued later to give the details of how to enforce the law. It is not usual to discuss the procedures mostly within the law's articles; rather, discussion will focus on the subject of the law.

There are several different ways of deciding what 'body' would have the authority to issue the code of practice for any law, according to the legal system of Kuwait. The first method specifies the body in the law, such as Article 12 of the 31/1990 Law (which regulates the security of the investment funds). It states that the Trade Minister has the authority to issue the code of practice for such a law. Another example is Article 49 of

the Traffic Law No. 67/1976, which grants the Interior Minister the authority to issue the code of practice. Also, Law No. 46/1987 (which regulates the establishment of the labour court) states that "The Minister of the Justice and Legal Affairs should implement this Law." The second method is not to specify which authority issues the code of practice. In this case, the relevant article just states that 'the authorised body' or 'the authorised minister' has to enable the law which gives the indication of the authority issuing the code of practice, since the law needs to specify the needed procedures in order to be enabled. Third, a law might just state that "the Ministers – as appropriate – should implement this law, or refer it to the Cabinet in general." Also, in some cases the law is silent and says nothing about how the law is to be enforced. If the law referred to the Cabinet, directed readers to all ministers, or was silent, then the Cabinet would decide which governmental body is mostly concerned with the law and give it the authority of issuing the code of practice and all the needed regulations to enable it.

The establishment of the Equal Opportunities Commission provides a significant way of helping to ensure the enforcement of this Act with all of its mission and authorities given by the Act. Establishing a committee by the Kuwaiti law is possible, since some laws have done so, but without giving such details. The GEA of Kuwait should identify the missions or authorities by, for example, leaving the details to be specified in the code of practice. In a similar way that, for example, Article 92 of the Labour Law No. 38/1964 states that:

"A Committee shall be composed and would be called 'Supreme Advisory Committee for Labour' comprising representatives of the Ministry of Social Affairs and Labour and the

other concerned ministries, employers and workers, the task of the Committee is giving its views on labour legislations or the amendment. The Committee opinions would be taken as advisory." Then the following Article determines which body is responsible for deciding the authorities of such Committee by stating that:

"The Ministry of Social Affairs and Labour would issue the decisions and regulations governing the formation of the Supreme Advisory Committee and its operating procedures."

Also, Article 27 of the Immigration Law No. 17/1959 states the following:

"Without prejudice to the provisions of Article 20, may, at any time after the issuance of this law, to form a committee to list the foreign residents in Kuwait without a residence permit to consider giving them a permit in accordance with the provisions of the above. The formation of this committee, rules, and procedures that should follow should be based on a decree by the Chief of the Police and Public Security. Taking into account the formation of the commission is to include members from the Police and the Public Security Department, Nationality, Passports and Immigration Department, the Department of Social Affairs and representatives of the Kuwaiti contractors and businessmen."

Article 20 of Law No. 31/1987, which organises the air transportation market, has also addressed the establishment of a committee and decided who its members are to be. This article states that: "the Department of Civil Aviation shall form a Committee chaired by the general director of civil aviation or nominated from among senior staff specialists in air transport and the membership of each: Delegate of the Ministry of Information, a

representative of the Ministry of Trade and Industry, Delegate of the Chamber of Commerce and Industry of Kuwait, Representative offices of the Union of Kuwaiti travel and tourism, and a member of Legal Advice and Legislation Department. The composition of the Committee's decision of the minister, Committee meets upon an invitation of the president and the presence of the majority of its members."

These Articles are examples that highlight the possibility of establishing a committee for a certain purpose in Kuwaiti Law. However, compared to the SDA 1975, the law just gives a general principle of the formation of such committees. For example, the previously mentioned Article 92 of the Labour Law has specified the mission of the Committee to be "the task of the Committee is giving its views on labour legislations or the amendment." This gives the Labour Minister the authority to legislate over the "decisions and regulations governing the formation of The Committee" in more detail. However, the decisions of this Committee are only 'advisory' which limits the power of its decisions. However, the task and members of the Immigration Committee left the other details in the decree to the Chief of the Police and Public Security.

The Law No. 31/1987 states in the following Article, 21, two main missions for the Committee, which are: to consider the complaints made in the subject where the Committee is concerned, and to rule over certain complaints.

Therefore, a committee can be established with the purpose of overseeing the GEA. The organisation of the committee can be legislated for in more than one article. The first article should say "A Committee shall be formed for the purpose of this Law called the

'Anti Sex discrimination Committee', the task of the Committee is to work toward the elimination of discrimination, revising all the laws and suggest amendments to any discriminatory laws, considering the complaints regarding sex-discrimination." Of course, the first task is adopted from Section 53(1)(a) of the SDA 1975. The following article can arrange the membership of the Committee, it should state that: "The Committee should have members from both genders as follows:

- Ministry of Education,
- Ministry of Higher Education,
- Civil Service Commission,
- Ministry of Social Affaires and Labour,
- Chamber of Commerce and Industry,
- The Legal Advice and Legislation Department.

Though, whenever it is necessary, the concerned minister would have the authority to appoint members from other bodies." It is strongly recommended that, since the Committee is about sex-discrimination, members should be from both sexes. Although it is not usual to state that in a law, it might be appropriate to state it here because the whole matter is about sex discrimination.

Some of the authorities of the Committee can be described in the following Article by stating that: "any sex-discrimination complaint should be presented first to the Committee. The Committee can investigate and decide any remedies for the complaint, though its decision is not final. If any of the individuals/bodies party to the complaint are

not satisfied with the Committee's rule and want to appeal, then the Committee should decide which Court the complaint should be maid at."

The SDA 1975 has differentiated between two bodies, the Equal Opportunities Commission (EOC) and the employment tribunal. However the Anti Sex Discrimination Committee of Kuwait, would have some of the tasks of the EOC, which are to work towards the elimination of discrimination, empower the Law, and, also, at the same time, to investigate any complaint with regard to sex-discrimination. It is true that the EOC has a wider mission than just eliminating sex-discrimination, namely "to promote equality of opportunity between men and women generally." However, it is important, for Kuwait to focus on the anti-discrimination as a first step, the 'equal opportunities' between genders can be added to the Committee's missions later on by regulation. The suggested Article, which decides the missions of the Committee, does not limit it to these missions. This leaves the door open for more tasks in the future.

According to the Kuwait justice system – as explained earlier – the first degree court is divided into different courts according to the subject of the law suit. For example, there is the Administrative Court, the Labour Court, and the Civil Court. Since the sex-discrimination law covers different areas where discrimination might happen, it is important for the Committee to decide which Court has the correct focus to hear the case.[129]The last Article here would be the same as most of the Kuwaiti laws which

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[129] Or as suggested earlier, it is possible to establish a court room within the first instance court to specialise in the new equality law of Kuwait, since it is not only allowed by the Civil Procedural Law. However, mainly because some of the cases within this law might have a unique subject, it is more convenient to have its own court.

concern the code of practice. It could read as follows: "The concerned minister should issue the code of practice that would help implement this Law, and regulate the ASDC mechanism." It is true that stating the procedures by Law, like the SDA 1975 does, gives them more power (since regular laws have a higher rank than regulations).[130] At the same time, if these procedures were decided by the code of practice, they would have the main advantage of being more flexible to any change. This is because it is easier to change the regulations than to change a law with its complicated steps between the Legislative and Executive Powers. However, the law, and at the same the article, can decide which issues should be arranged in the regulation. The code of practice for this Law would not only state the detailed procedures, but also would decide the mechanism of the Committee, like the meetings and authorities such as investigation or obtaining the information, and to whom the Committee is going to report. One of the most important things that should be established by the code of practice is the investigation authority, so that the committee is able to set up a well founded ruling regarding the complaints. For example, it is important to give the committee the authority to have access to all the information needed to investigate the complaint. In that case, if, for example, a female employee in a ministry was deprived from a promotion which was given to a colleague just because of her gender, she should first present a complaint before the ASDC. The Committee would then investigate whether discrimination had occurred. However, the decision of the Committee is not final, meaning that if it found that discrimination had occurred, then the ministry can either accept the verdict and give the female employee the promotion or, in case the ministry refused to put this verdict into effect, then the employee can proceed with a law suit. Also, the ASDC can include remedies for the plaintiff if it rules in their

[130] See pp 464.

favour. The remedies can either be decided according to the general principle of Kuwait's Civil Law, or according to Section 65 (1)(b) if adopted as will be discussed shortly.

8.10.2 Enforcement of the GEA

Enforcement of the law in Kuwait is usually made through a separate regulation. However, it can be established by the new law through the ASDC. As stated, because of the differences between the UK and Kuwaiti legal systems, adopting the enforcement rules which regulate the procedural acts in Part VII (discussed in the SDA from Section 62 to Section 72), could create conflict with the legal system of Kuwait. However, there are some Sections in this Part that may act as guidelines to the Kuwaiti law. Even though it might be complicated to adopt them as they are, they can be modified in order to fit the legal system of Kuwait. Those Sections can provide victims with support, and ease their claims proceedings such as the 'burden of proof' Sections, or Section 65 which affords the right of the victim to compensation, should be adopted.

Furthermore, some Kuwaiti Laws state general principles and procedures to cover all disputes and complaints in general. Other than that, some of the Sections in the Enforcement Part are only there to fit the UK, such as Section 62 which discusses the restriction of breach of the Act. Section 63 discusses the 'employment tribunal' which will not be needed since, in Kuwait, there are the administrative court and the labour court which are specialized in hearing cases regarding employment. Sections 63A and 66A, discuss the 'burden of proof' which according to the Kuwaiti legal system, are

enforced by the Legislative Decree 39/1980 Law of Evidence in Civil and Commercial Issues. The law discusses in detail the 'burden of proof' and it covers all of the lawsuits and disputes as long as they do not fall under Criminal Law.

Section 66 discusses claims under Part III. Now according to Kuwait, any civil case – as long as it is not under the criminal law – would follow the same procedures which are organised by Law No. 38/1980 Articles 45-53 which explain how to proceed (initiate) with a case. Section 68 discusses the appeal which is also, in Kuwait, organised by the above Law from Articles 137-147, so that any sex-discrimination case under the new law can follow such procedures. This makes it unnecessary for Section 68 to be adopted. Section 71 discusses the persistence of a case, in Kuwait; however, according to Article 133 of Law No. 38/1980, the court's judgement (within any of the three degrees) would then have the power to be implemented. In case of persistent discrimination, then the 'victim' of discrimination would have the right to proceed with a new case. This makes Section 71 insufficient for Kuwait. Also, the same discussion can be applied to Section 76. This Section discusses the period within which proceedings need to be brought, which makes it needless for Kuwait since – as mentioned – Law No. 38/1980 organises the matter.

Also, when organising the establishment of the ASDC, there are other Sections in this Part, such as Sections 67, 69, 70, 72, 73, 74 and 75, that can be organised separately from the Law's code of practice. Some of these Sections mostly discuss the details of the procedures for a discrimination claim and the Commission's part in that matter i.e. the

investigation. The registrar for non-discrimination notices could be discussed within the code of practice establishing the ASDC. Of course, as stated before, the court's part in these Sections can be disregarded, since the Civil Procedural Law covers all the procedural matters.

8.10.3 Remedies and Compensations

With regard to the Remedies, subsection 65(1)(b) states that compensation should be paid, which is different from the system in Kuwait. Most Kuwaiti laws do not discuss punishment or remedies. A few of them do however, such as the Labour Law Article 97, and Law No. 28/1969 regarding the Labour in the Oil Industry Sector Article 21. However, as a general rule, compensations and remedies should be according to a civil law suit based on these Articles of the Civil Law:

Article 227 states that: "If a wrongful act produces detriment to another person, compensation must be paid, whether the act was caused directly by him or indirectly, even though he was indistinctively.[131]"Also Article 231 states that: "compensation for unlawful act includes the moral damage- -

The moral damage inflicted on the particular person from psychological or sensory impairment resulted by the trespass of his life, body, liberty, honour, reputation, social or financial status. The moral damages also include the sadness and grief a person might

[131] According to the Kuwaiti legal system, a person – according to his liability to any act- is divided into three groups: indistinctive if he was under the age of seven, distinctive, between the age of seven and 21, and adult when he reaches 21.

suffer from losing a close relative. However, compensation for moral damages may only be ruled for the death of spouses and up to second degree relatives."

There are more Articles included in the Civil law covering the issue, but in principle these are the only two Articles included in the Civil Law. As discussed before, there are a few other acts which provide compensation in certain circumstances. Therefore, the SDA could refer to the Civil Law Article, or it could include compensation in its own Articles and thereby guarantee more protection for the people. So it is recommended that such a Section be added, with all of the remedies, since its nature is different from that of any other law. The remedies can be stated in the same Article that discusses the authorities of the ASDC by stating that: "It is in the hearing court and the Committee's authority to decide remedies or compensation for any damages when any of the provisions stated in this Law are breached." According to this article, in the above example where an employee was deprived from a promotion because of her sex, the ruling (by the ASDC) in her favour should not only include remedies for the amount of money for the period she was deprived from the promotion. It should also include remedies for any other damages that the Committee was convinced were caused by depriving her of the promotion. It would also give the hearing court, if any of the parties decided to file a law suit and was not satisfied with the Committee's judgment, the authority to decide the remedies aside from the Civil Law.

Except for Section 77, the rest of the Sections included in Part VIII are either the concern of the UK only or they cannot be applied to Kuwait, such as Sections 78 and 79. As

stated before, it is because Kuwait already has general principles concerning the matter, such as Sections 80 and 81.

Consequently, as much as the enforcement part is important, according to Kuwaiti laws only the remedies principle (section 65) would be significant for the new law. However, the new law would be enforced according to the general role given by the existing laws, especially in the Civil Procedural Decree Law No. 38/1980. However, some of the details regarding the mechanism of the work of the ASDC can be explained in more detail in the following code of practice. If this Law was adopted, it is suggested that the minister be able to give his authority of issuing the code of practice to the ASDC. This would mean it could regulate the procedures more effectively, since it would be the body that is most concerned with the Law. Therefore, the minister can only organise the establishment of the Committee, the latter will decide the most efficient procedure to empower the Law.

Establishing the ASDC could be considered the main guarantee of enforcing the law, since the complainants would have an additional level, over and above the three judiciary levels, to compound the dispute. This is because the sex-discrimination complaint – as suggested – should first present the complaint to the ASDC, then, if one or more of the parties is not satisfied with the judgment of the Committee, can proceed with a law suit.

8.10.4 Claiming 'incompatibility'

It can be concluded that all the existing discrimination discussed in this chapter is in clear violation of Article 29 of the KC.[132] The difference between these discriminatory acts and those discussed in the previous chapter, is that the former cannot be justified under Sharia law. Nevertheless, some relate the position of married women to the Sharia, owing to the quamma principle. This principle states that a woman should follow her husband in nationality and residence, and not the other way around. The husband is the one who should be responsible for her and can – according to most nationality laws in ME – pass his nationality onto her. However, the link results in limiting women's choices in marriage especially because most non-Kuwaitis married to Kuwaiti women are from the Middle East – since they cannot marry non-Muslims. Meanwhile a Kuwaiti male can marry a woman from any country and will actually gain more rights (social pay and housing for example).[133] This imbalance, not only violates the equality principle, but is also a violation of the right of marriage.

However, as explained in the previous chapter, the incompatibility claims cannot be made unless there is a case being heard by the court in which to present the plea of

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[132] W M Ballantyne argues that the GCC who has written constitutions, since some – like Saudi Arabia does not – are influenced by four major sources which are: the Egyptian Constitution, French, USA and the Universal Declaration of Human Rights of 1948.
W M Ballantyne. The Constitutions of the Gulf States , a Comparative Studies. *Arab Law Quarterly.* Fb. 1986, 1 (2), pp 158-176.

[133] The only restriction that was added recently, is that a Kuwaiti husband cannot pass the nationality to more than one non-Kuwaiti wife.
Kuwaiti Lawyers. *Abolition of passing the Kuwaiti Nationality to the Second Non-Kuwaiti Wife.* [online] [undated] Available from:
http://www.mohamoon-kw.com/default.aspx?action=GlobleSearch&SearchType=3&SearchIn=0&SearchAbout=0&searchWord=زوجة ž° غير ž° الكويتى
[Accessed 4th Feb. 2007]

incompatibility. This makes it difficult because it means that some of the discriminatory matters – without the equality law – will not reach the court in the first place. Or cases can be presented, but it would be difficult to prove the sex-discrimination. For example, a female student can bring a case against the Ministry of Higher Education if, for example, she was denied a scholarship in the same major that another male student was given. If her GPA was higher than his, for example, the court might have to accept her right to the scholarship. However, it will not be seen as a case of sex-discrimination, it will rather be seen as misuse of authority. Further, the courts will not hear cases of sex-discrimination that are based on the grounds that a woman was prohibited to apply from a specialty that is exclusive for men. This is because her application would not have been processed, making it difficult to have a legal ground for the case. If she applied and got rejected, she will be able to sue the administration, but that cannot happen since she cannot apply at all. The same thing could apply to the police situation, applying for housing care, social pay or to be a moftee. These issues cannot be challenged at the moment, since they lack the legal protection from the sex-discrimination. There are other issues that were also discussed in this chapter that cannot be examined by the court for two main reasons: firstly, they lack the legal protection; secondly, employers have the full authority to decide the matter. For example, consider the case of partnership and lawyer appointments in the private sphere. Or, the case of applicants to non-profit organizations where it is usually the members who establish the organization who have the authority to specify the conditions of membership.

On the other hand, there are other issues that can be challenged, but on the basis of authority rights, not on the basis of sex-discrimination. For instance, the matters of promotion either in the private or public sphere and membership in trade unions. Even if these were challenged there is no possibility of claiming incompatibility with the KC.[134] Adopting the PRA, however, as suggested in the previous chapter, will help in providing the grounds to challenge all of the previous decisions, to do with scholarships and appointments, for example, before the court and also claim incompatibility with KC. Since all of above stated cases have no direct relation to the Sharia, they have a greater chance of being stuck down. However, claiming incompatibility with regard to some of the discussed issues will be against regulations and not laws, such as in regard to scholarships. However, the CC also has the authority to examine the compatibility of the regulations – and not only laws – according to Article 1 of Law No. 14/1973.

In any case, adopting an equality law to Kuwait such as the SDA 1975 is considered one of the methods of enforcing the constitutional rights[135] as well as adopting a 'public rights law' in a separate law. There are different reasons for not claiming 'incompatibility', including the difficulties of reaching the court and the fact that most cases claiming incompatibility get rejected. Thus, it ought to be concluded that the elimination of

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[134] Nathan Brown argues that regardless of the fact the freedom of the press was guaranteed by the KC, the Constitutional court, however, is not able to strike down a law, which restricts the freedom of press. He argues that there are two main important factors that can affect the decisions of the constitutional courts in the Arab countries including Kuwait. First, is the procedure of appointing the judges which some times can affect their independency. Second, is the complicated procedure of bringing a case before the courts.
Nathan Brown. Judicial Review and the Arab World. *Journal of Democracy*. Oct. 1998, 9 (4), pp 85-99.

[135] Marry Ann Tereault argues that Kuwait is facing a real problem since it tries to reach to the 'impossible dream' of applying two conflicting laws, those of a developed and modern country on one side, those of a tribal tradition on the other.
Mary Ann Tetreault. A State of Two Minds: State Cultures, Women, and Politics in Kuwait. *International Journal of Middle East Studies*. May, 2001, 33 (2), pp 203-220.

discrimination and the prevention of clear violations of the equality principles cannot be achieved via amendment of the discriminatory laws.

8.11. Conclusion

Owing to the established fact that sex discrimination against women is part of the history and culture of Kuwait, it is recommended that some supremacy be given to this Act. This means that it could include a Section (in the enforcement part) stating that "if any Sections included in other laws impose any kind of sex-discrimination – not as an affirmative action – they should either be deleted or modified."[136]

This could be done either by the ASDC, which has the authority of suggesting such changes by revising all the laws that might include discrimination, or by the Supreme Court, which can decide to neglect any other provision in any law that contradicts the new law and imposes any kind of sex-discrimination.

The Kuwaiti version, like the SDA 1975, should adopt the formal equality principle, since most of its suggested sections are adopted from the UK. As discussed earlier in the 'equality theories' chapter, there are some disadvantages to applying formal equality. Nevertheless, it might, to a certain extent, be the most suitable to be applied now. 'Treating equals equally and unequals unequally' may create the same problems due the fact that the Sharia maintains gender inequality as mentioned in the introduction of this

[136] Judge Abdulla Al-Essa stated that a lot of laws in Kuwait would include such a statement. However, it would be interpreted in a very restricted way, and could only have jurisdiction over the previous laws (older) and not to the new laws (after).

chapter. Both the history of women's subordination and the misinterpretations of the controversial verses of the Qur'an ensure the inequality principle and that men are considered the superior sex. However, introducing a staged approach to SDA equivalent to the new law with *only* some exceptions could be a step towards achieving at least a certain level of equality between the sexes. It would minimise the differences between the sexes either through the GEA or the PRA, taking into consideration the suggested amendments – as discussed in the previous chapter – to the other Kuwaiti articles that legalised some sex-discrimination practices on minor differences based on Qur'an verses in areas such as inheritance, and bearing witness. Both suggested laws will work to minimize the gender discrimination to a great extent, of course – as discussed in the previous chapter – the PRA will not only enforce equality according to article 29 of the KC, but also will enforce other public rights stated in the Constitution. However, the PRA could be considered a more comprehensive law than the GEA, since the first would be applied whenever there was a breach of equality, while the latter would be applied in regards to a certain grounds of sex-discrimination as discussed earlier in this chapter. Applying the new laws might not achieve the total abolishment of sex-discrimination right away, but it would at least reduce it. Further, this reduction can be achieved within a complicated social and religious setting. Putting these laws into practice, together with practicing the right of claiming incompatibility, will eventually improve women's situation and build up a new view towards women that sees them as equal to men. This could even change Sharia-based discrimination against women with regard to issues such as the inheritance due the massive changes in lifestyle that have taken place been since the time when the Qur'an was first revealed. Further, such a scenario would benefit from

the great flexibility in interpreting the Qur'an in general, and by the time the formal equality principle could be applied in full.

In fact, the SDA and PRA are (in regards to Article 29 of the KC) only fulfilling the Sharia teachings, since the principle of 'equality' is stated in several positions in both Qur'an and Hadith as stated in the 'equality theories' chapter especially in the sphere of worship. If the Sharia espouses equality between the two sexes in the worship sphere, that should provide enough proof that they are equal in the socio-economic era too. If the Acts were applied, women's positions would greatly improve, as society gradually absorbs the idea of 'equality', especially that which is based on both religion – in some parts – and the Constitution as Article 29 stated.

Legally applying the UK equality laws is possible in Kuwait so long as they are modified to take into account what is, and is not, suitable for Kuwait. As stated before, the primary difficulty might be that it is a western law, seen only as destructive to society and to its traditions. If this argument was valid then there would be a strong claim that such a law is against the Sharia. Most would accent to this argument, especially most of the MP members of the 2006 NA represent Islamic parties – as mentioned in the previous chapter.[137] In this regard, two factors must be taken on board: firstly, that it is a western law, and, secondly, that it is against the Sharia. Contrary to what might be claimed, these two factors are not related to each other. The fact that it is a western law does not necessarily mean that it is against the Sharia. On the contrary, most human rights laws, conventions, and societies which originate in the West also harmonise with the Sharia.

[137] See pp 486.

Second, the question of whether it is a western law that will ruin culture and traditions, would lead to another discussion of what kind of culture and tradition it would ruin. It might be true that it would produce cultural change, but perhaps it would only put to an end the wrong, unethical, unreligious traditions that only ensure the domination of women. This kind of culture and tradition should not be preserved any longer. Some people argue along these lines because they are against the principle of 'changing' per se, others – especially males – are against it because they would loose their positions morally and materially.

Including an anti-discrimination law, especially of the sex discrimination kind, in the legal system of Kuwait might not be a question of legality as much as of politics. However, if such a law was applied, it might face other cultural complications, especially in the employment field. It is usual for job application forms, either in the private or public sector, to include a condition saying that 'in case of rejection, the administration is not obliged to set the reasons.' The administration gives itself the full authority to reject any application without giving any explanation, and people are used to such a system, and usually would not know why they got rejected unless it was a special case. Usually the applicants do not know who their competitors are. Further, a new applicant may fear starting a new job by a court decision; s/he might rather just look for another job and start 'right.' On the other hand, the general attitude towards courts is that they are not a place for a good-mannered person, especially a woman. So a woman might also worry that

suing might affect her reputation. That is why it is important to promote the awareness of this law.[138]

In conclusion, the equality law measures of the UK as presented here are legally achievable for Kuwait. However, even if the Legislative Authority agreed to adopt such an Act, it might have some reservations about some of its Sections. As the women suffrage rights were not promulgated until 2005, there might be opposition to the suggested Sections stating affirmative action, particularly in the National Assembly and Local Council elections, especially when certain MPs who were against the suffrage rights are still members in the current NA, and most likely will remain so for a long time. However, it is possible that this Act would not be adopted as it is suggested, regardless of the fact that it was modified to suit Kuwait and not taken as it is from UK law. If some of the suggested provisions were not approved or modified, the implementation of a sex-discrimination law should still be considered a considerable achievement, not only for Kuwait but for the whole ME area where no anti-discrimination laws are recognised.

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[138] When the Public Institution for Social Security and the Public Authority for Civil Information were first established, they produced TV commercials to help people understand the system and the importance of registration. Now it is true that the sex-discrimination law might be different in its nature, but it is also can use the idea of the TV commercials.

Chapter Nine

The Conclusion

In 12-04, the former Amir of Kuwait, sheikh Jabber Al-Ahmad Al-Sabah, gave a grant of K.D.200 to every Kuwaiti citizen. Again, in 09-06, the new Amir of Kuwait, Sheikh Sabah Al-Ahmad Al-Sabah, gave a grant of the same amount to all Kuwaiti citizens. The grants for citizens under the age of 18 were added to their fathers' account. Socially, such practices are still considered as the norm because it is expected that the father is the one who is responsible for his children allowance. However, there are no guarantees that this grant would actually be spent on the children. There has been no suggestion that the grants should be divided between both parents, since mothers also spend money and make payments for their families.

As mush as sex-discrimination against women has been discussed world wide in books, papers and at conferences, it has not been documented or discussed as it should have been in regard to Kuwait. The main focus while discussing sex discrimination in Kuwait, was been the suffrage rights (before they were introduced) on the one hand, and Kuwaiti women married to non Kuwaiti men on the other hand. However, rarely would some of these issues be discussed with regard to the Family Law. It is true that some discriminatory laws and practices have been discussed through the media, but the

discussion was mostly been very general, addressing the whole of the ME, or the Gulf in some other cases.

The major problem with the women's movement and its activists in Kuwait can be summarised in two points: First, some of the activists think that women's rights only mean suffrage rights, and as these rights have been passed, the campaign is considered over. Second, although some women activists – primarily academics and researchers – are aware of discrimination against women, they cannot highlight it properly because they are aware of the negative image being 'feminist' carries, and because they are worried of being accused of being anti-Islam.

Some who are against women's having any rights at all, have successfully drawn a very negative image of those who demand such rights to the extent that demanding 'equality' can be an accusation in itself. Unlike the UK, where the suffrage rights campaign in the women's movement included both men and women, there are no men in Kuwait that would demand or discuss the subject except in very rare cases. On the contrary, there is a great deal of denial that there is a sex-discrimination problem and, unexpectedly, the denial comes from both sexes.

In this matter this study documented all of the discriminatory laws, and most significant practices mainly against women that clearly show that discrimination does exist in several different fields. It also shows that much of the discrimination cannot be justified even when it is claimed to be derived from the Sharia.

The complication lies in the mix of religion and culture that emphasises the idea that 'woman' is an inferior sex. According to religion and culture, the rights that women have got so far are more than enough for them. Some still believe that women are created to . serve her family so that to give them rights, especially regarding the participation within the public sphere, would be regarded as overly generous. This thesis has argues that all the traditions that degrade women should be disregarded, including the Hadiths that contradict the Qur'an and only ensure women's subordination. For example, the Hadith that says:

"The woman is like a rib; if you try to straighten her, she will break. So if you want to get benefit from her, do so while she still has some crookedness."[1] That Hadith is contradictory to the Qur'anic verses:

> **[O mankind! reverence your Guardian-Lord, who created you from a single Person, created, of like nature, his mate, and from them twain scattered (like seeds) countless men and women 4:1]**
>
> **It is He Who created you from a single person, and made his mate of like nature [7:189]**

The tradition of women's subordination needs to be abolished to allow space for anti-discrimination laws to take place, to ensure equality among gender in every field with very limited exceptions. This is why the UK equality laws were examined to set a model for Kuwait to ensure the abolishment of sex-discrimination.

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[1] M. Rafiqul-Haqq and P. Newton. *The Place of Women in Pure Islam.* [online] [1996] Available from http://debate.domini.org/newton/womeng.html#def
[Accessed 4th Dec. 2006]

It has been shown that regardless of the fact that Article 29 provides equality among people regardless of their sex, race, language or religion, sex-discrimination is still widely practiced.

However, since the second Article of the Constitution states that the Sharia is a main source for legislation, it has to be remembered that the Sharia has a very broad meaning and includes more than the two main sources: Qur'an and Hadith, the endeavour that has a number of schools and doctrine. Also within the Qur'an, there are verses that contradict other previous verses, and the accuracy of many Hadiths is uncertain. This means that there is flexibility for interpretation of the verses in general, and about women in particular. Any attempt to interpret a verse has to be based on justice, since delivering justice is the main purpose of Islam as a religion, a religion which thus cannot be accused of discrimination.

An interesting question might be raised here: what if there were any female Islamic scholars? Would they have different interpretations to those controversial verses? Also, with all of the women's subordination throughout history particularly in the Arabian Peninsula would it be possible to have fairer interpretations from men raised in such a culture? If the Qur'an has the gradualness in banning some habits such as drinking alcohol, was this system meant to deal with women too? Meaning that, for example, Arabs used to marry as many times as they wanted before Islam, then the Qur'an limited it to four. Could this first limitation have been only the start of a process that sought to end with allowing people to be married only one, because it was not the right time to impose such a strict law initially? Another example is in the inheritance matter:

Originally people did not recognise any rights for the female to inherit, instead would usually she herself would be part of what the inheritance consisted in. Later on, in certain situations, the Qur'an gave her half the inheritance of men, perhaps because it was too early to give her equal rights to men. However, might it not be the right time to give women their equal share now? It might be worth mentioning here that the Kuwaiti judiciary has shown some positive movement in this matter by not to include some discriminatory distinctions, based on Islamic Endeavour, in the Civil Law. For example, the major Islamic schools have agreed on the fact that the wergild for killing a woman is half than the wergild for killing a man and lately it is been argued that such opinion does not have any support from either the Qur'an or Hadith. However, when the Civil Law passed in 1980 it did not distinguish between the two sexes in the matter

Most traditional books that discuss women in Islam start with a comparison between women in Islam and women in some of the ancient civilizations or other religions, and conclude that Islam is the only religion that recognises rights for women. If that is true, then such a comparison might be out of date. It might be time to compare the status of women in the laws of Islamic countries to their status in the laws of the civilized world and then benefit from their legal system if it offers more protection for women. It must recognise her as an equal to man, instead of justifying discrimination and mistakenly relating it to the Sharia. Such comparison would benefit Moslem women, unlike comparing her position with past civilisations that no longer exist. For this reason, this study has focused on the equality laws that exist in the UK and has attempted to investigate whether Kuwait could viably adopt them or not. To avoid complexity, since the UK has many equality laws, the study concentrated on the SDA 1975 and the EPA

1970. At the end of this study a gender equality act, based on the SDA 1975 from the UK (appendix one), was proposed. One of the main factors that was taken into account for this proposal was not to contradict the Sharia' and to attempt, by any means, to be compatible with it. Also, an important issue that the SDA 1975 discusses is the establishment of the 'Equal Opportunities Commission'. It is true that the study has suggested an Anti-Sex Discrimination Committee to look after the wide practice of sex-discrimination at different levels and fields. However, it might be more effective to have a more focused committee in its mission at the beginning. The missions that are stated in Sections 53(1)(b) and 53(1)(ba) are significant and so this study highly recommended that Kuwait enforce such a mission after eliminating sex-discrimination. Furthermore, it is recommend that Kuwait adopt the UK way of enacting the ECHR Articles into domestic law, to enforce it within the local legal system. It might be beneficiary for Kuwait to also do the same with the human rights Articles included in its Constitution in order to give people more security from the violation of such rights in general and 'equality' in particular.

The suggested sex-discrimination law is also translated to Arabic so it can be presented as a draft to Parliament. Legally, the difficulties of adopting such laws were eliminated, though the main challenge in that matter might be political at first. If the suggested law was implemented, it would be difficult to predict the complications and the sufficiency of such law, but the law can be amended – as any other law might – in order to be more practical. However, the enforcement of a law is as important as its inception and thus should be taken into account in order for the law to be effective.

There are some laws and principles that the UK legal system has included that might be beneficial for Kuwait to include. In the Criminal Justice system Kuwait lacks any legislation regarding domestic violence. The present system ignores most the incidents of violence that actually happen, such as within the family or on the street, by claiming that there is no need for domestic violence law Furthermore, marital rape should also be recognised in the law as well as Battered Women Syndrome and Provocation for both sexes. Further research could consider the Criminal Justice system and take a closer look at the possibilities of including such issues in the Kuwaiti Criminal Law and what the major obstacles would be.

Such issues were discussed in this study in order to show the difference between the two countries. Also to show how Kuwait, not only does not consider protection for women within the Criminal Justice like in the UK, but still preserves discrimination against women and protects murderers and kidnappers of women.

It is not only the Criminal Justice system, but also the Family law which can show the differences between the two countries. UK law states the grounds for divorce for both husband and wife equally, while Kuwaiti law addresses them for the wife only, since the husband can divorce at any time upon his wish.

Sex-discrimination against women in Kuwait is supported by women themselves, as was proved by the suffrage rights campaign period where high numbers of women from different religious and social backgrounds were against it. When women participated in the first election of June 06, they did not support any women candidate but supported male candidates who were against their rights instead. Also only 35% of the country's

women voted.[2] This heritage, where society is still in denial that there is discrimination, or claims that it is against Sharia, might be another challenge for the suggested sex-discrimination law. The latter excuse confronts the massive confusion of what is from the Sharia and what is not. For a long time scholars have drawn a wrong dark image of women accusing them of being the reason for the first sin, and all sins afterwards. They picture women as the default creature claiming that they were created from a crooked rib and so that righteousness cannot be expected from women, or at least not all of the time. This picture is incompatible, however, with the discussed Qur'an verses.

Not only has the U.K introduced sex-discrimination laws, it has also initiated some affirmative action which has been important in some cases. If it was significant for the UK to adopt, it would be even more significant for Kuwait to do so. This is not only because of the history of women's subordination, but the present subordination that women still suffer from in many fields. If Kuwait really believes in the role and importance of women, it should also believe it is important to have affirmative action in different fields, especially where elections would take place since it is a huge material and moral obstacle for women to overcome.

For the sex-discrimination law and the principle of affirmative action to be adopted, politicians need to believe that such discrimination does exist and herein lies the main challenge. Since this subject is new, and has never been discussed either in Parliament, or at any other level, it is difficult to predict the reaction. A strategy might be needed to

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[2] Programme on Governance in the Arab Region. *Kuwait's Election*. [online] [undated] Available from http://www.pogar.org/countries/elections.asp?cid=8
[Accessed 4th Dec. 2006]

decide when, and under what circumstances, to present it. It is also important to have the approval of the Islamist MPs, since they form the majority of the current Parliament.

So, in this matter two main steps are needed to be taken: First, eliminating and amending laws that contain discrimination as was suggested in this study. Second, including the recommended sex-discrimination law in order to abolish any further discrimination. The law that was presented in this study has taken both religion and cultural barriers into consideration, so that it can fit the social standards in this regards. The two steps are important and one of them would not help without the other. By doing so, the 'equality' principle would be enforced in society until people starting believing in it.

It is usual, when discussing discriminatory acts, to suggest fair treatment by eliminating such laws or practices, but not to suggest adopting a law that would make discriminatory acts illegal. A step further would be the disregarding of any discriminatory acts that are stated in any other laws in order for the suggested law to meet its purpose of eliminating discrimination and enforce equality among the sexes.

Women's issues and their suffering have never been taken seriously either by the officials or by the MPs. The only time when the issue became of interest to the MPs was when women became part of the political process and were given the right to vote. The situation of married women and their true misery were never touched upon by candidates until the last elections (2006) when some of them discussed it as a way of encouraging female candidates to vote for them, and that was the only reason that such issues were

discussed in many election seminars. More women than men have the right to vote, with 57% of total voters. Therefore, if more women believed in their cause and more organized women's movements then they could form a major lobby.

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Appendix One

Gender Equality Act of Kuwait

Adopted and Modified from the UK's

Sex Discrimination Act 1975

Sex Discrimination Act Against Women

–. Direct and Indirect Discrimination against Women

1(1) In any circumstances relevant for the purposes of any provision of this other than a provision to which subsection (2) applies, a person discriminates against a woman if:

1(1)(a) on the ground of her sex he treats her less favourably then he treats or would treat a man, or

1(1)(b) he applies to her a requirement or condition which he applies or would apply equally to a man but:

1(1)(b)(i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it, and

1(1)b)(ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and

1(1)b)(iii)which is to her detriment because she cannot comply with it.

1(2) In any circumstances relevant for the purposes of a provision to which this subsection applies, a person discriminates against a woman if[1]:

1(2)(a) on the ground of her sex, he treats her less favourably than he treats or would treat a man, or

1(2)(b) he applies to her a provision, criterion or practice which he applies or would apply equally to a man, but

1(2)(b)(i) which is such that it would be to the detriment of a considerably larger proportion of women than of men, and

1(2)(b)(ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and

1(2)(b)(iii) which is to her detriment

1(3) Subsection (2) applies to:

1(3)(a) any provisions of Part 2

1(3)(b) sections 29, and

1(3)(c) any other provisions of Part 3, so far as it applies to vocational training.

1(4) If a person treats or would treat a man differently according to the man's marital status, his treatment of a woman is for the purposes of subsection (1)(a) or (2)(a) to be compared to his treatment of a man having the like

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[1] Kuwait can instead adopt Section 3 of the Employment Equality (Sex Discrimination) Regulation 2005.

marital status."

2. Sex Discrimination Against Men

2(1) Section 1, and the provisions of Parts II and III relating to sex discrimination against women, are to be read as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are requisite.

2(2) In the application of subsection (1) no account shall be taken of special treatment afforded to women in connection with pregnancy or childbirth.

3. Direct and indirect discrimination against married persons in employment field

3(1) In any circumstances relevant for the purposes of any provision of Part 2, a person discriminates against a married person of either sex if:

3(1)(a) on the grounds of his or her marital status he treats that person less favourably than he treats or would treat an unmarried person of the same sex, or

3(1)(b) he applies to that person a provision, criterion or practice which he applies or would apply equally to an unmarried person, but -

3(1)(b)(i) which is such that it would be to the detriment of a considerably larger proportion of married persons than of unmarried persons of the same sex, and

3(1)(b)(ii) which he cannot show to be justifiable irrespective of the marital status of the person to whom it is applied, and

3(1)(b)(iii)which is to that person's detriment.

3(2) For the purposes of subsection (1), a provision of Part 2 framed with reference to discrimination against women shall be treated as applying equally to the treatment of men, and for that purpose shall have effect with such modifications as are requisite.

4. Discrimination by way of victimisation

4(1) A person ("the discriminator") discriminates against another person ("the person victimised") in any circumstances relevant for the purposes of any provision of this Act if he treats the person victimised less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimised has --

4(1)(a) brought proceedings against the discriminator or any other person under this Act.

4(1)(b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act.

4(1)(c) otherwise done anything under or by reference to this Act in relation to the discriminator or any other person, or

4(1)(d) alleged that the discriminator or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Act, or by reason that the discriminator knows the person victimised intends to do any of those things, or suspects the person victimised has done, or intends to do, any of them.

4(2) Subsection (1) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.

4(3) For the purposes of subsection (1), a provision of Part II or III framed with refcrence to discrimination against women shall be treated as applying equally to the treatment of men and for that purpose shall have effect with such modifications as are requisite.

5. Interpretation

5(1) In this Act --

5(1)(a) references to discrimination refer to any discrimination falling within Sections 1 to 4; and

5(1)(b) references to sex discrimination refer to any discrimination falling within Section 1 or 2, and related expressions shall be construed accordingly.

5(2) In this Act --
"woman" includes a female of any age, and
"man" includes a male of any age.

5(3) A comparison of the cases of persons of different sex or marital status under section 1(1) or (2) or 3(1) or a comparison of the cases of persons require, must be such that the relevant
circumstances in the one case are the same, or not materially different, in the other.

PART II

DISCRIMINATION IN THE EMPLOYMENT FIELD

Discrimination by employers

6. Discrimination against applicants and employees

6(1) It is unlawful for a person, in relation to employment by him at an establishment in Kuwait, to discriminate against a woman --

6(1)(a) in the arrangements he makes for the purpose of determining who should be offered that employment, or

6(1)(b) in the terms on which he offers her that employment, or

6(1)(c) by refusing or deliberately omitting to offer her that employment.

6(2) It is unlawful for a person, in the case of a woman employed by him at an establishment in Kuwait, to discriminate against her --

6(2)(a) in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or

6(2)(b) by dismissing her, or subjecting her to any other detriment.

6(3) Subsections (1)(b) and (2) do not render it unlawful for a person to discriminate against a woman in relation to her membership of, or rights under, an occupational pension scheme in such a way that, were any term

of the scheme to provide for discrimination in that way, then, by reason provisions stated in the 61/1976 and its regulation, and also any other status regarding the pension scheme or regulations stated by The Public Institution for Social Security regarding women, an equal treatment rule would not operate in relation to that term.

6(5) Subject to 7(8), subsection 1(b) does not apply to any provision for the payment of money which, if the woman in question were given the employment, would be included (directly or otherwise) in the contract under which she was employed.

6(6) Subsection (2) does not apply to benefits consisting of the payment of money when the provision of those benefits is regulated by the woman's contract of employment.

6(7) Subsection (2) does not apply to benefits, facilities or services of any description if the employer is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public comprising the woman in question, unless –

6(7)(a) that provision differs in a material respect from the provision of the benefits, facilities or services by the employer to his employees, or

6(7)(b) the provision of the benefits, facilities or services to the woman in question is regulated by her contract of employment, or

6(7)(c) the benefits, facilities or services relate to training.

7. Discrimination against women in payment

7(1) It is unlawful for a person, in relation to employment by him at an establishment in Kuwait, to discriminate against a woman in payment- -

7(1)(a) where the woman is employed on like work, equivalent, or of equal value with a man employed or would be employed in the same employment--

7(1)(b) if, any term of the woman's contract is or becomes less favourable to the woman than a term of a similar kind in the contract under which that man is employed, or would be employed, that term of the woman's contract shall be treated as so modified as not to be less favourable, and

7(2) A woman is to be regarded as employed on like work with men if they were on the same grade and belong to the same employment category if they were employed in the public sector, share the same job title, job description, or her work and theirs is of the same or a broadly similar nature, and the differences (if any) between the things she does and the things they do are not of practical importance in relation to terms and conditions of employment; and accordingly in comparing her work with theirs regard shall be had to the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences.

7(3) A woman is to be regarded as employed on work rated as equivalent with that of any men if, but only if, her job and their job have been given an equal value, in terms of the demand made on a worker under various headings (for instance effort, skill, decision), on a study undertaken with a view to evaluating in those terms the jobs to be done by all or any of the employees in an undertaking or group of undertakings, or would have been given an equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.

7(4) it is unlawful to discriminate against women during or after statuary maternity leave in regards to - -

7(4)(a)her full payment during the maternity leave including the raises,

7(4)(b)her bonus, promotion, raise as any other worker described in section, or

7(4)(c)access to any benefits, vocational training as any other worker described in section.

7(5) If the terms of a contract under which a woman is employed at an establishment in Kuwait do not include (directly or by reference to a collective agreement or otherwise) an equality clause they shall be deemed to include one.

7(6) section 1, of the sex discrimination against women in regards to payment, are to be read as applying equally to the treatment of men.

7(7) it shall not render as unlawful when differentiating in payment between contract workers and appointed employee even when doing same job, equivalent or have equal value.

7(8) interpretation

7(8)(1) maternity leave is- -

7(8)(1)(a) what the Civil Service Regulation Act stated in Article 47, for the purpose of the public sector employee,

7(8)(1)(b) what Article 25 of the 38/1964 of the Labour Law regarding working in the private sector.

8. Exception where sex is a genuine occupational qualification

8(1) In relation to sex discrimination --

8(1)(a) section 6(1)(a) or (c) does not apply to any employment where being a man is a genuine occupational qualification for the job where - -

8(1)(a)(i) the essential nature of the job calls for a man for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman.

8(1)(a)(ii) section 6(2)(a) does not apply to opportunities for promotion or transfer to, or training for, such employment.

9. Discrimination against contract workers

9(1) This section applies to any work for a person ("the principal") which is available for doing by individuals ("contract workers") who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal.

9(2) It is unlawful for the principal, in relation to work to which this section applies, to discriminate against a woman who is a contract worker –

9(2)(a) in the terms on which he allows her to do that work, or

9(2)(b) by not allowing her to do it or continue to do it, or

9(2)(c) in the way he affords her access to any benefits, facilities or services or by refusing or deliberately omitting to afford her access to them, or

9(2)(d) by subjecting her to any other detriment.

9(3) the principal does not contravene subsection (2)(b) by doing any act in relation to a woman at a time when if the work were to be done by a person taken into his employment being a man would be a genuine occupational qualification for the job.

9(4) Subsection (2)(c) does not apply to benefits, facilities or services of any description if the principal is concerned with the provision (for payment or not) of benefits, facilities or services of that description to the public, or to a section of the public to which the woman belongs, unless that provision differs in a material respect from the provision of the benefits, facilities or services by the principal to his contract workers.

10. Meaning of employment at establishment in Kuwait

10(1) for the purpose of this Act, employment does include employment in public sphere which includes any governmental bodies, ministries, dependant or independent bodies. It shall also be applied to the private sectors whether it was owned by private persons or the government- -

10(1)(a) whether the employment was made by the Civil Service Commission, or

10(1)(a)(i) made by the decision of a private person when selecting its employees.

10(1)(b) "employed" means employed under a contract as temporary employee, or employment by appointment.

10(1)(b) two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control [and men shall be treated as in the same employment with a woman if they are men employed by her employer or any associated employer at the same establishment or at establishments in Kuwait which include that one and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes].

10(2) employment is to be regarded as being at an establishment in Kuwait unless the employee does his work wholly outside Kuwait.

10(3) The reference to "employment" in subsection (1) includes –

10(3)(a) employment on board a ship registered at a port in Kuwait, and

10(3)(b) employment on aircraft or hovercraft registered in Kuwait and operated by a person who has his principal place of business, or is ordinarily resident, in Kuwait.

10(4) In the case of employment on board a ship registered at a port of registry in Kuwait (except where the employee does his work wholly outside Kuwait, and outside any area added under subsection (5)) the ship shall for the relevant purposes be deemed to be the establishment.

10(5) Where work is not done at an establishment it shall be treated for the relevant purposes as done at the establishment from which it is done or (where it is not done from any establishment) at the establishment with

which it has the closest connection.

Discrimination by other bodies

11. Partnerships

11(1) It is unlawful for a firm, in relation to a position as partner in the firm, to discriminate against a woman --

11(1)(a) in the arrangements they make for the purpose of determining who should be offered that position, or

11(1)(b) in the terms on which they offer her that position, or

11(1)(c) by refusing or deliberately omitting to offer her that position, or

11(1)(d) in a case where the woman already holds that position --

11(1)(d)(i) in the way they afford her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or

11(1)(d)(ii) by expelling her from that position, or subjecting her to any other detriment.

11(2) Subsection (1) shall apply in relation to persons proposing to form themselves into a partnership as it applies in relation to a firm.

11(3) Subsection (1)(b) and (d) do not apply to provision made in relation to death or retirement except in so far as, in their application to provision made in relation to retirement, they render it unlawful for a firm to discriminate against

a woman -

11(3)(a) in such of the terms on which they offer her a position as partner as provide for her expulsion from that position; or

11(3)(b) by expelling her from a position as partner or subjecting her to any detriment which results in her expulsion from such a position.

12. Trades Unions etc.

12(1) This section applies to an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession or trade for the purposes of which the organisation exists.

12(2) It is unlawful for an organisation to which this section applies, in the case of a woman who is not a member of the organisation, to discriminate against her –

12(2)(a) in the terms on which it is prepared to admit her to membership, or

12(2)(b) by refusing, or deliberately omitting to accept, her application for membership.

12(3) It is unlawful for an organisation to which this section applies, in the case of a woman who is a member of the organisation, to discriminate against her --

12(3)(a) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or

12(3)(b) by depriving her of membership, or varying the terms on which she is a member, or

12(3)(c) by subjecting her to any other detriment.

12(4) This section does not apply to provision made in relation to the death or retirement from work of a member.

13. Qualifying bodies

13(1) It is unlawful for an authority or body which can confer an authorisation or qualification which is needed for, or facilitates engagement in a particular profession or trade to discriminate against a woman --

13(1)(a) in the terms on which it is prepared to confer on her that authorisation or qualification, or

13(1)(b) by refusing or deliberately omitting to grant her application for it, or

13(1)(c) by withdrawing it from her or varying the terms on which she holds it.

13(2) Where an authority or body is required by law to satisfy itself as to his good character before conferring on a person an authorisation or qualification which is needed for, or facilitates, his engagement in any profession or trade then, without prejudice to any other duty to which it is subject, that requirement shall be taken to impose on the authority or body a duty to have regard to any evidence tending to show that he, or any of his employees, or agents (whether past or present), has practised unlawful discrimination in, or in connection with, the carrying on of any profession or trade.

13(3) In this section

13(3)(a) "authorisation or qualification" includes recognition, registration,

enrolment, approval and certification,

13(3)(b) "confer" includes renew or extend.

14. Persons concerned with provision of vocational training

14(1) It is unlawful, in the case of a woman seeking or undergoing training which would help fit her for any employment, for any person who provides, or makes arrangements for the provision of, facilities for such training to discriminate against her -

14(1)(a) in the terms on which that person affords her access to any training course or other facilities concerned with such training, or

14(1)(b) by refusing or deliberately omitting to afford her such access, or

14(1)(c) by terminating her training, or

14(1)(d) by subjecting her to any detriment during the course of her training.

14(2) Subsection (1) does not apply to

14(2)(a) discrimination which is rendered unlawful by section 6(1) or (2) or,

14(2)(b) discrimination which would be rendered unlawful by any of those provisions but for the operation of any other provision of this Act.

15. Non-profit Societies

15(1) This section applies to societies and organisations constructed under the management of the Ministry of Social Affairs and Labour.

15(2)It is unlawful for such society or organisation to which this section applies, in the case of a person of a certain sex, who is not a member of the organisation, to be discriminated against –

15(2)(a) in the terms on which it is prepared to be admitted to be a member, or

15(2)(b) by refusing, or deliberately omitting to accept, the application for the membership.

15(3) If the society is a one-sex society, then it has to show that there is a genuine reason for that.

Special cases

17. Police

17(1) Regulations regarding the Police Force in Kuwait shall not treat men and women differently except –

17(1)(a) as to requirements relating to height, uniform or equipment, or allowances in lieu of uniform or equipment, or

17(1)(b) so far as special treatment is accorded to women in connection with pregnancy or childbirth, or

17(1)(c) in relation to pensions to or in respect of special constables or police cadets.

17(2) Nothing in this Part renders unlawful any discrimination between male and female constables as to matters such as are mentioned in subsection (2)(a).

17(3) this section might be applied to all dependant or independent bodies that fellow the Ministry of Interior.

18. Ministers of religion etc.

18(1) Nothing in this Part applies to employment for purposes of an organised religion where the employment is limited to one sex so as to comply with the doctrines of the religion or avoid offending the religious susceptibilities of a significant number of its followers.

18(2) for the purpose of this section, it shall not render unlawful appointing men as Imams and Mo'azzins by the Islamic Affairs Ministry to hold such positions in mosques.

19. Judiciary System

19(1) holding a position in the Judiciary system in Kuwait shall be treated as Part of 'employment'- -

19(2) it is unlawful for the Kuwaiti Court system, Judicial system or, Presecution Department to discriminate against a woman- -

19(2)(a) in the way he affords her access to opportunities for promotion, transfer or training, or to any other benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or

19(2)(b)

by dismissing her, or subjecting her to any other detriment.

20. Relationships which have come to an end

20(1) This section applies where –

20(1)(a) there has been a relevant relationship between a woman and another person ("the relevant person"), and

20(1)(b) the relationship has come to an end (whether before or after the commencement of this section).

20(2) In this section, a "relevant relationship" is a relationship during the course of which an act of discrimination by one party to the relationship against the other party to it is unlawful under any preceding provision of this Part.

20(3) It is unlawful for the relevant person to discriminate against the woman by subjecting her to a detriment where the discrimination arises out of and is closely connected to the relevant relationship.

PART III

DISCRIMINATION IN OTHER FIELDS:

Education

21. Discrimination by bodies in charge of educational establishments.

21(1) it is unlawful, in relation to an educational establishment falling within column 1 of the following table, for a person indicated in relation to the establishment in column 2 (the "responsible body") to discriminate against a woman --

21(1)(a) in the terms on which it offers to admit her to the establishment as a pupil, or

21(1)(b) by refusing or deliberately omitting to accept an application for her admission to the establishment as a pupil, or

21(1)(c) where she is a pupil of the establishment --

21(1)(c)(i) in the way it affords her access to any benefits, facilities or services, or by refusing or deliberately omitting to afford her access to them, or

21(1)(c)(ii)by excluding her from the establishment or subjecting her to any other detriment.

21A. Meaning of pupil in section 21

21A(1)For the purposes section 22, "pupil" includes, any person who receives education at a school or institution to which that section applies.

21A(2) section 22 applied to all persons who receive education whether in pre-schools, schools, undergraduate or post-graduate.

21A(3) section 22 shall be applied to all educational institutions whether public or private institutions.

21B. it shall render unlawful act offering a major for one-sex only, though if a certain number of the other sex showed the interest to study such major, the educational institution whether public or private, are obliged to provide them such major.

21B(1) offering a major for one-sex only, shall be taken as an exception for a certain period of time- -

21B(1)(a) The Anti Sex Discrimination Committee should work together with the Ministry of Higher Education, to have a time frame to offer those majors for both sexes.

21B(1)(b) that should apply to all students who study in any educational institution in Kuwait.

22. Scholarships

22(1) it is unlawful to discriminate agaist women in granting a scholarship- -

22(1)(a) in the terms on which it offers to accept her application, or

22(1)(b) by refusing or deliberately omitting to accept her application, or

22(1)(c) where she is a pupil or employee of the establishment --

22(c)(i) in the way it affords her access to the scholarship or any benefits, facilities or services related to the scholarship, or by refusing or deliberately

omitting to afford her access to them, or

22(c)(ii) by excluding her from the scholarships or
subjecting her to any other detriment.

22(2) it shall render unlawful for any institution offering scholarship, to offer a major for one sex only. All majors for any scholarship shall be offered equally to both sexes.

22(2) this section shall be applied to all bodies that offer scholarship whether by Kuwait University, Public Authority for Applied and Training Education, Ministry of Higher Education, or any other persons whether governmental or private.

22(3) this section would be applied to all kind of scholarship whether conditioned or unconditioned, including different type of payment, and a scholarship for any level of education.

Goods, Facilities, Services and Premises

23. Discrimination in provision of goods, facilities or services.

23(1) It is unlawful for any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public to discriminate against a woman who seeks to obtain or use those goods, facilities or services --

23(1)(a) by refusing or deliberately omitting to provide her with any of them, or

23(1)(b) by refusing or deliberately omitting to provide her with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in his case in relation to male members of the public or (where she belongs to a section of the

public) to male members of that section.

23(2) The following are examples of the facilities and services mentioned in subsection (1) --

23(2)(a) access to and use of any place which members of the public or a section of the public are permitted to enter;

23(2)(b) accommodation in a hotel, boarding house or other similar establishment;

23(2)(c) facilities by way of banking or insurance or for grants, loans including the loans of the Kuwait Saving and Credit Bank, credit or finance;

23(2)(d) facilities for education;

23(2)(e) facilities for entertainment, recreation or refreshment;

23(2)(f) facilities for transport or travel;

23(2)(g) the services of any profession or trade, or any local or other public authority.

23(3) For the avoidance of doubt it is hereby declared that where a particular skill is commonly exercised in a different way for men and for women it does not contravene subsection (1) for a person who does not normally exercise it for women to insist on exercising it for a woman only in accordance with his normal practice or, if he reasonably considers it impracticable to do that in her case, to refuse or deliberately omit to exercise it.

24. Discrimination in disposal or management of premises.

24(1) It is unlawful for a person, in relation to premises in Kuwait of which he has power to dispose, to discriminate against a woman --

24(1)(a) in the terms on which he offers her those premises, or

24(1)(b) by refusing her application for those premises, or

24(1)(c) in his treatment of her in relation to any list of persons in need of premises of that description.

24(2) It is unlawful for a person, in relation to premises managed by him, to discriminate against a woman occupying the premises --

24(2)(a) in the way he affords her access to any benefits or facilities, or by refusing or deliberately omitting to afford her access to them,
or,

24(2)(b) by evicting her, or subjecting her to any other detriment.

24(3) Subsection (1) does not apply to a person who owns an estate or interest in the premises and wholly occupies them unless he uses the services of an estate agent for the purposes of the disposal of the premises, or publishes or causes to be published an advertisement in connection with the disposal.

24(4) this section shall be applied to all premises to include the Public Authority for Housing Welfare, the premises managed by private real estate agents, and individuals- -

24(4) for the purpose of this section, it shall render unlawful for the PAHW to discriminate against women in houses that were given or would be given to men- -

24(4)(a) in regards of the quality of the houses,

24(4)(b) in the areas of the houses, or

24(4)(c) in regards to the space (sequer foot) of the houses.

25. Discrimination: consent for assignment or sub-letting.

25(1) Where the licence or consent of the landlord or of any other person is required for the disposal to any person of premises in Kuwait comprised in a tenancy, it is unlawful for the landlord or other person to discriminate against a woman by withholding the licence or consent for disposal of the premises to her.

25(2) Subsection (1) does not apply if --

25(2)(a) the person withholding a licence or consent, or a near relative of his ("the relevant occupier") resides, and intends to continue to reside, on the premises, and

25(2)(b) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of his household, and

25(2)(c) the premises are small premises as defined in section 32(2).

25(3) In this section "tenancy" means a tenancy created by a lease or sub-lease, by an agreement for a lease or sub-lease or by a tenancy agreement or in

pursuance of any enactment; and "disposal", in relation to premises comprised in a tenancy, includes assignment or assignation of the tenancy and sub-letting or parting with possession of the premises or any part of the premises.

25(4) This section applies to tenancies created before the passing of this Act, as well as to others.

26. Exception for small dwellings

26(1) Sections 23(1) and 24 do not apply to the provision by a person of accommodation in any premises, or the disposal of premises by him, if –

26(1)(a) that person or a near relative of his ("the relevant occupier") resides, and intends to continue to reside, on the premises, and

26(1)(b) there is on the premises, in addition to the accommodation occupied by the relevant occupier, accommodation (not being storage accommodation or means of access) shared by the relevant occupier with other persons residing on the premises who are not members of his household, and

26(1)(c) the premises are small premises according to the trial court's definition of what is consider "small premises".

27. Exception for voluntary bodies

27(1) This section applies to a body --

27(1)(a) the activities of which are carried on otherwise than for profit, and

27(1)(b) which was not set up by any enactment.

27(2) Sections 23(1) and 24 shall not be construed as rendering unlawful --

27(2)(a) the restriction of membership of any such body to persons of one sex (disregarding any minor exceptions), or

27(2)(b) the provision of benefits, facilities or services to members of any such body where the membership is so restricted, even though membership of the body is open to the public, or to a section of the public.

27(3) Nothing in section 24 or 24 shall --

27(3)(a) be construed as affecting a provision to which this subsection applies, or

27(3)(b) render unlawful an act which is done in order to give effect to such a provision.

27(4) Subsection (3) applies to a provision for conferring benefits on persons of One sex only (disregarding any benefits to persons of the opposite sex which are exceptional or are relatively insignificant), being a provision which constitutes the main object of a body within subsection (1).

28. Further exceptions from ss.23(1) and 24

28(1) A person who provides at any place facilities or services restricted to men does not for that reason contravene section 23(1) if --

28(1)(a) the place is, or is part of, a hospital, or

other establishment for persons requiring special care,
supervision or attention, or

28(1)(b) the place is (permanently or for the time being) occupied or used for the purposes of an organised religion, and the facilities or services are restricted to men so as to comply with the doctrines of that religion or avoid offending the religious susceptibilities of a significant number of its followers, or

28(1)(c) the facilities or services are provided for, or are likely to be used by, two or more persons at the same time, and

28(1)(c)(i) the facilities or services are such, or those persons are such, that male users are likely to suffer serious embarrassment at the presence of a woman, or

28(1)(c)(ii) the facilities or services are such that a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user.

28(2) A person who provides facilities or services restricted to men does not for that reason contravene section 23(1) if the services or facilities are such that physical contact between the user and any other person is likely, and that other person might reasonably object if the user were a woman.

29. Discrimination by, or in relation to, lawyers

29(1) It is unlawful for a lawyer, in relation to any offer of a pupillage or tenancy, to discriminate against a woman -

29(1)(a) in the arrangements which are made for the purpose of determining to whom it should be offered;

29(1)(b) in respect of any terms on which it is offered; or

29(1)(c) by refusing, or deliberately omitting, to offer it to her.

29(2) It is unlawful for a lawyer, in relation to a woman who is a pupil or tenant in the chambers in question, to discriminate against her –

29(2)(a) in respect of any terms applicable to her as a pupil or tenant;

29(2)(b) in the opportunities for training, or gaining experience, which are afforded or denied to her;

29(2)(c) in the benefits, facilities or services which are afforded or denied to her; or

29(2)(d) by terminating her pupillage or by subjecting her to any pressure to leave the chambers or other detriment.

29(3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a lawyer, to discriminate against a woman.

29(4) Section 3 applies for the purposes of this section as it applies for the purposes of any provision of Part II.

29A. Relationships which have come to an end

29A(1) This section applies where -

29A(1)(a) there has been a relevant relationship between a woman and another person ("the relevant person"), and

29A(1)(b) the relationship has come to an end (whether before or after the commencement of this section).

29A(2) In this section, a "relevant relationship" is a relationship during the course of which an act of discrimination by one party to the relationship against the other party to it is unlawful under -

29A(2)(a) section 29, or

29A(2)(b) any other provision of this Part, so far as the provision applies to vocational training.

29A(3) It is unlawful for the relevant person to discriminate against the woman by subjecting her to a detriment where the discrimination arises out of and is closely connected to the relevant relationship.

Extent

30. Extent of Part III

30(1) Section 23(1) --

30(1)(a) does not apply to goods, facilities or services outside Kuwait except as provided in subsections (2) and (3), and
30(1)(b) does not apply to facilities by way of banking or insurance or for grants, loans, credit or finance, where the facilities are for a purpose to be carried out, or in connection with risks wholly or mainly arising, outside Kuwait.

30(2) Section 23(1) applies to the provision of facilities for travel outside Kuwait where the refusal or omission occurs in Kuwait or on a ship,
aircraft or hovercraft within subsection (3).

30(3) Section 23(1) applies on and in relation to --

30(3)(a) any ship registered at a port of registry in Kuwait, and

30(3)(b) any aircraft or hovercraft registered in Kuwait and
operated by a person who has his principal place of business, or
is ordinarily resident, in Kuwait,

30(4) This section shall not render unlawful an act done in or over a country outside the Kuwait, or in or over that country's territorial waters, for
the purpose of complying with the laws of that country.

PART IV

OTHER UNLAWFUL ACTS

31. Discriminatory practices.

31(1) In this section "discriminatory practice" means

31(1)(a) the application of a provision, criterion or practice which results in an act of discrimination which is unlawful by virtue of any provision of Part 2 or 3 taken with section 1(2)(b) or 3(1)(b) or which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of one sex or

31(1)(b) the application of a requirement or condition which results in an act of discrimination which is unlawful by virtue of any provision of Part 3 taken with section 1(1)(b) or which would be likely to result in such an act of discrimination if the persons to whom it is applied were not all of one sex.

31(2) A person acts in contravention of this section if and so long as --

31(2)(a) he applies a discriminatory practice, or

31(2)(b) he operates practices or other arrangements which in any circumstances would call for the application by him of a discriminatory practice.

32. Discriminatory advertisements

32(1) It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention by a person to do any act which is or might be unlawful by virtue of Part II or III.

32(2) Subsection (1) does not apply to an advertisement if the intended act would not in fact be unlawful.

32(3) For the purposes of subsection (1), use of a job description with a sexual connotation (such as "waiter", "salesgirl", "postman" or "stewardess") shall not be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary.

32(4) The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection in respect of the publication of the advertisement if he proves --

32(4)(a) that the advertisement was published in reliance on a statement made to him by the person who caused it to be published to the effect that, by reason of the operation of subsection (2), the publication would not be unlawful, and

32(4)(b) that it was reasonable for him to rely on the statement.

32(5) A person who knowingly or recklessly makes a statement such as is referred to in subsection (4) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine of an amount decided by the trial judge.

33. Instructions to discriminate.

33(1) It is unlawful for a person --

33(1)(a) who has authority over another person, or

33(1)(b) in accordance with whose wishes that other person is accustomed to act,

to instruct him to do any act which is unlawful by virtue of Part II or III, or procure or attempt to procure the doing by him of any such act.

34. Pressure to discriminate.

34(1) It is unlawful to induce, or attempt to induce, a person to do any act which contravenes Part II or III by --

34(1)(a) providing or offering to provide him with any benefit, or

34(1)(b) subjecting or threatening to subject him to any detriment.

34(2) an offer or threat is not prevented from falling within subsection (1) because it is not made directly to the person in question, if it is made in such a way that he is likely to hear of it.

35. Liability of employers and principals

35(1) anything done by a person in the course of his employment shall be treated for the purposes of this Act as done by his employer as well as by him, whether or not it was done with the employer's knowledge or approval.

35(2) anything done by a person as agent for another person with the authority (whether express or implied, and whether precedent or subsequent) of that other person shall be treated for the purposes of this Act as done by that other person as well as by him.

35(3) In proceedings brought under this Act against any person in respect of an act alleged to have been done by an employee of his it shall be a defence for that person to prove that he took such steps as were reasonably practicable to prevent the employee from doing that act, or from doing in the course of his employment acts of that description

36. Aiding unlawful acts

36(1) A person who knowingly aids another person to do an act made unlawful by this Act shall be treated for the purposes of this Act as himself doing an unlawful act of the like description.

36(2) For the purposes of subsection (1) an employee or agent for whose act the employer or principal is liable under section 41 (or would be so liable but for section 41(3)) shall be deemed to aid the doing of the act by the employer or principal.

36(3) A person does not under this section knowingly aid another to do an Unlawful act if --

36(3)(a) he acts in reliance on a statement made to him by that other person that, by reason of any provision of this Act, the act which he aids would not be unlawful, and

36(3)(b) it is reasonable for him to rely on the statement.

36(4) A person who knowingly or recklessly makes a statement such as is referred to in subsection (3)(a) which in a material respect is false or misleading commits an offence, and shall be liable on summary conviction to a fine of an amount decided by the trial judge.

37. Validity and revision of contracts

37(1) A term of a contract is void where –

37(1)(a) its inclusion renders the making of the contract unlawful by virtue of this Act, or

37(1)(b) it is included in furtherance of an act rendered unlawful by this Act, or

37(1)(c) it provides for the doing of an act which would be rendered unlawful by this Act

37(2) Subsection (1) does not apply to a term the inclusion of which constitutes, or is in furtherance of, or provides for, unlawful discrimination against a party to the contract, but the term shall be unenforceable against that party.

37(3) A term in a contract which purports to exclude or limit any provision of this Act is unenforceable by any person in whose favour the term would operate apart from this subsection.

PART V

GENERAL EXCEPTIONS FROM PARTS II TO IV

38. National Assemble and Local Council Election

38(1) Nothing in Parts 2 to 4 shall-

38(1)(a) be construed as affecting arrangements to which this section applies, or

38(1)(b) render unlawful anything done in accordance with such arrangements.

38(2) This section applies to arrangements made by the National Assembly and Local Council which-

38(2)(a) regulate the selection of the its candidates in a relevant election,

38(2)(b) by reserving seats on the body for persons of that sex, or

38(2)(c) by making extra seats on the body available (by election or co-option or otherwise) for persons of that sex on occasions when the number of persons of that sex in the other seats is below the minimum,

38(2)(d)are adopted for the purpose of reducing inequality in the numbers of men and women elected, as candidates of the party, to be members of the body concerned.

39. Charities

39(1) Nothing in Parts II to IV shall --

39(1)(a) be construed as affecting a provision to which this subsection applies, or

39(1)(b) render unlawful an act which is done in order to give effect to such a provision.

39(2) Subsection (1) applies to a provision for conferring benefits on persons of One sex only (disregarding any benefits to persons of the opposite sex which are exceptional or are relatively insignificant), being a provision which is contained in a charitable instrument.

39(3) In this section "charitable instrument" means an enactment or other instrument passed or made for charitable purposes or an enactment or other instrument so far as it relates to charitable purposes.

40. Sport etc.

Nothing in Parts II to IV shall, in relation to any sport, game or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man, render unlawful any act related to the participation of a person as a competitor in events involving that activity which are confined to competitors of one sex .

41. Insurance etc.

41(1)Nothing in Parts II to IV shall render unlawful the treatment of a person in relation to an annuity, life assurance policy, accident insurance policy, or similar matter involving the assessment of risk, where the treatment --

41(1)(a)
was effected by reference to actuarial or other data from a source on which it was reasonable to rely, and

41(1)(b) was reasonable having regard to the data and any other relevant factors.

42.Communal accommodation

42(1)Nothing in Part II or III shall render unlawful sex discrimination in the admission of persons to communal accommodation if the accommodation is managed in a way which, given the exigencies of the situation, comes as near as may be to fair and equitable treatment of men and women, whether the accommodations was provided for students or workers for a certain persons.

42(2) In applying subsection (1) account shall be taken of --

42(2)(a) whether and how far it is reasonable to expect that the accommodation should be altered or extended, or that further alternative accommodation should be provided; and

42(2)(b) the frequency of the demand or need for use of the accommodation by men as compared with women.

42(3) Nothing in Part II or III shall render unlawful sex discrimination against a woman, or against a man, as respects the provision of any benefit, facility or service if --

42(3)(a) the benefit, facility or service cannot properly and effectively be provided except for those using communal accommodation, and

42(3)(b) in the relevant circumstances the woman or, as the case may be, the man could lawfully be refused the use of the accommodation by virtue of subsection (1).

43. Discriminatory training by certain bodies

43(1) Nothing in Parts II to IV shall render unlawful any act done in relation to particular work by any person in, or in connection with --

43(1)(a) affording women only, or men only, access to facilities for training which would help to fit them for that work, or

43(1)(b) encouraging women only, or men only, to take advantage of opportunities for doing that work,
where it reasonably appears to that person that at any time within the 12 months immediately preceding the doing of the act there were no persons of the sex in question doing that work in Kuwait, or the number of persons of that sex doing the work in Kuwait was comparatively small.

43( ) Nothing in Parts II to IV shall render unlawful any act done by any person in, or in connection with, affording persons access to facilities for training which would help to fit them for employment, where it reasonably appears to that person that those persons are in special need of training by reason of the period for which they have been discharging domestic or family responsibilities to the exclusion of regular full time employment.
The discrimination in relation to which this subsection applies may result from confining the training to persons who have been discharging domestic or family responsibilities, or from the way persons are selected for training, or both.

43( ) The preceding provisions of this section shall not apply in relation to any discrimination which is rendered unlawful by section 6.

44. Other discriminatory training etc.

44(1) Nothing in Parts II to IV shall render unlawful any act done by an employer in relation to particular work in his employment, being an act done in, or in connection with --

44(1)(a) affording his female employees only, or his male employees only, access to facilities for training which would help to fit them for that work, or

44(1)(b) encouraging women only, or men only, to take advantage of opportunities for doing that work, where at any time within the twelve months immediately preceding the doing of the act there were no persons of the sex in question among those doing that work or the number of persons of that sex doing the work was comparatively small.

44(2) Nothing in section 12 shall render unlawful any act done by an organisation to which that section applies in, or in connection with, --

44(2)(a) affording female members of the organisation only, or male members of the organisation only, access to facilities for training which would help to fit them for holding a post of any kind in the organisation, or

44(2)(b) encouraging female members only, or male members only, to take advantage of opportunities for holding such posts in the organisation,

where at any time within the twelve months immediately preceding the doing of the act there were no persons of the sex in question among those doing that work or the number of persons of that sex doing the work was comparatively small.

44(3) Nothing in Parts II to IV shall render unlawful any act done by an organisation to which section 12 applies in, or in connection with, encouraging women only, or men only, to become members of the organisation where at any time within the twelve months immediately preceding the doing of the act there were no persons of the sex in question among those members or the number of persons of that sex among the members was comparatively small.

45. Trade unions etc. elective bodies

45(1) If an organisation to which section 12 applies comprises a body the membership of which is wholly or mainly elected, nothing in section 12 shall render unlawful provision which ensures that a minimum number of persons of one sex are members of the body -

45(1)(a) by reserving seats on the body for persons of that sex, or

45(1)(b) by making extra seats on the body available (by election or co-option or otherwise) for persons of that sex on occasions when the number of persons of that sex in the other seats is below the minimum, where in the opinion of the organisation the provision is in the circumstances needed to secure a reasonable lower limit to the number of members of that sex serving on the body; and nothing in Parts II to IV shall render unlawful any act done in order to give effect to such a provision.

45(2) This section shall not be taken as making lawful --

45(2)(a) discrimination in the arrangements for determining the persons entitled to vote in an election of members of the body, or otherwise to choose the persons to serve on the body, or

45(2)(b) discrimination in any arrangements concerning membership of the organisation itself.

45(3) this section shall include any council, board of director, administrative department whether private or governmental persons.

46. Indirect access to benefits etc.

46(1) Reference in this Act to the affording by any person of access to benefits, facilities or services are not limited to benefits, facilities or services provided by that person himself, but include any means by which it is in that person's power to facilitate access to benefits, facilities or services provided by any other person (the "actual provider").

46(2) Where by any provision of this Act the affording by any person of access to benefits, facilities or services in a discriminatory way is in certain circumstances prevented from being unlawful, the effect of the provision shall extend also to the liability under this Act of any actual provider

47. Acts done for purposes of protection of women

47(1)(a) Part II,

47(1)(b) Part III so far as it applies to vocational training, or

47(1)(c) Part IV so far as it has effect in relation to the provisions mentioned in paragraphs (a) and (b), shall render unlawful any act

done by a person in relation to a woman if -

47(1)(c)(i) it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision concerning the protection of women, or

47(1)(c)(ii) it was necessary for that person to do it in order to comply with a requirement of a relevant statutory provision and it was done by that person for the purpose of the protection ofthe woman in question (or of any class of women that included that woman).

47(2) In subsection (1) -

47(2)(a) the reference in paragraph (i) of that subsection to an existing statutory provision concerning the protection of women is a reference to any such provision having effect for the purpose of protecting women as regards -

47(2)(a)(i) pregnancy or maternity, or

47(2)(a)(ii) other circumstances giving rise to risks specifically affecting women, whether the provision relates only to such protection or to the protection of any other class of persons as well; and

47(2)(b) the reference in paragraph (ii) of that subsection to the protection of a particular woman or class of women is a reference to the protection of that woman or those women as regards any circumstances falling within paragraph (a)(i) or (ii) above

47(3) In this section "existing statutory provision" means (subject to subsection (4)) any provision of -

47(3)(a) an Act passed before this Act, or

47(3)(b) an instrument approved or made by or under such an Act (including one approved or made after the passing of this Act).

47(4) Where an Act passed after this Act re-enacts (with or without modification) a provision of an Act passed before this Act, that provision as re-enacted shall be treated for the purposes of subsection (3) as if it continued to be contained in an Act passed before this Act

47(5) Nothing in –

47(5)(a) the relevant provisions of Part III, or

47(5)(b) Part IV so far as it has effect in relation to those provisions, shall render unlawful any act done by a person if it was necessary for that person to do it in order to comply with a requirement of an existing statutory provision within the meaning of this section.

Part VI

Enforcement of the Law

48. (1) 'A Committee shall be formed for the purpose of this Law called the 'Anti Sex discrimination Committee' the task of the Committee is to work toward the elimination of discrimination, revising all the laws and suggest amendments to any discriminatory laws, considering the complaints regarding sex-discrimination'.

48.(1)(1) 'The Committee should have members from both genders as follows:

- Ministry of Education,
- Ministry of Higher Education,
- Civil Service Commission,
- Ministry of Social Affaires and Labour,
- Chamber of Commerce and Industry,
- The Legal Advice and Legislation Department.

Though, whenever it is necessary, the concerned minister would have the authority to appoint members from other bodies'.

48(1)(2) 'any sex-discrimination complaint should be presented first to the Committee. The Committee can investigate and decide any remedies for the complaint, though its decision is not final. If any of the individuals/bodies party to the complaint party are not satisfied with the Committee's rule and want to appeal, then the Committee should decide which Court the complaint should be maid at'.

48(1)(3) 'It is in the hearing court and the Committee's authority to decide remedies or compensation for any damages when any of the provisions stated in this Law are breached'.

48(1)( ) 'The concerned minister should issue the code of practice that would help implement this Law, and regulate the ASDC mechanism.'

قانون ضد التمييز بسبب الجنس
الكويت

الجزء الأول
التمييز الذي يشمله هذا القانون

– التمييز بطريقة مباشرة أو غير مباشرة ضد المرأة

– يعد تمييزا ضد المرأة تحت أي ظرف له علاقة فانه يندرج تحت هذا القانون اذا كان

– يعامل المرأة معاملة أدنى من معاملة الرجل بسبب الجنس انها أنثى .

– يطبق عليها شروطا كما تطبق على الرجل و لكن

– عدد النساء الذين ينطبق عليهم الشرط أقل من عدد الرجال

– لا يمكن تبرير هذا الشرط دون أن يكون له ارتباط بالجنس و أيضا

– يكون الشرط له تأثير ضار عليها لأنه لا ينطبق عليها

– يعد تمييزا ضد المرأة حسب هذه الفرعية من هذا النص تحت أي ظرف إذا كان

– يعاملها معاملة أقل مما يعامل الرجل لأنها امرأة أو

– يطبق عليها نصا معيارا ممارسة كما يطبقها أو على افتراض تطبيقها على الرجل تماما و لكن

– تتضرر منه النساء بنسبة أكبر مما يتضرر منه الرجال و

– لا يمكن تبرير وجود هذا النص المعيار أو الممارسة دون أن يكون له علاقة بالجنس و

– مما يكون له تأثيرا ضارا عليها

– الفقرة الفرعية تنطبق على

– أي نص من الجزء الثاني سيأتي لاحقا .

– الجزء أو ب و

– على أي نص من الجزء الثالث كما يطبق على التدريب المهني

– إذا كان الرجل يعامل أو ممكن أن معاملة مختلفة بسبب وضعه الاجتماعي متزوج فان معاملته للمرأة بالرجوع إلى نص أ تقارن بمعاملته للرجل الذي هو بنفس وضعيتها الاجتماعية متزوجة .

التمييز ضد الرجل

- الجزء الأول و النصوص من الجزء الثاني و الثالث و المتعلقة بالتمييز ضد المرأة فانها تنطبق أيضا على معاملة الرجل فيما إذا كان هناك تمييزا ضده مع ما يستلزم ذلك من تعديلات ضرورية

- في تطبيق الفقرة الفرعية لا تتعلق فيما إذا كان هناك معاملة خاصة ممنوحة للنساء فيما يتعلق بالحمل والولادة

التمييز بطريقة مباشرة و غير مباشرة ضد الشخص المتزوج في المجال الوظيفي

- شخص يميز ضد أي شخص متزوج الجنس في أي ظرف من الظروف ذات الصلة لإغراض أي حكم من أحكام الجزء الثاني إذا

- أ على أساس وضعه الاجتماعي انه متزوج فانه يعامله معاملة أقل من الشخص العازب الذي هو من نفس جنسه أو

- ب يطبق عليه ذات الشروط التي تطبق أو تطلب من الشخص العازب و لكن

- أ ب ينطبق على فئة الأشخاص العازبين أكثر من الأشخاص المتزوجين أو عدد العازبين الذين يستطيعون تلبية هذا الشرط أكثر من عدد العازبين .

- ب لا يستطيع تبرير وجود هذا الشرط لسبب آخر غير الحالة الاجتماعية

- ب ج يكون لهذا الشرط تأثيرا سلبيا لأنه لا ينطبق عليه

- فيما يخص هذا القانون فان الجزء الثاني من هذا القانون حول التميز ضد المرأة فانه ينطبق أيضا على معاملة الرجل لهذا قان لها نفس النتيجة أو يشملها القانون بما قد يتطلب من تعديلات ضرورية

التمييز ضد الضحية ضحية التمييز

- يعد تمييزا إذا كان الشخص يسمى المميز بضم الميم يميز ضد الشخص الثاني يسمى الضحية تحت أي ظرف له علاقة بأي نص في هذا القانون إذا كان يعامل الضحية معاملة أدنى من معاملة الأشخاص الاخرين في حالة إذا كان هذا الضحية

- أ رفع دعوى ضد هذا المميز تحت هذا القانون أو قانون المساواة في الراتب

- ب أعطى معلومات خاصة بالدعوى ضد المميز

- ج أو قام بفعل يتعلق بهذا القانون له صله بمن قام بفعل التمييز أو أي شخص اخر أو

- د اشتبه بقيام المميز أو شخص احر بعمل من شانه مخالفة هذا القانون أو لأي سبب يعتقد المميز أن الضحية ينوي ذلك أو اشتبه انه قام بالفعل أو أحدهما

- الفرعية لا تنطبق إذا كانت المعاملة لأسباب متعلقة بالدعوى القضائية و لكن بنيت على أساس خاطئ أو على نية سيئة

فيما يخص هذا الفرعية فان نصوص الجزء الثاني أو الثالث من هذا القانون حول التميز ضد المرأة فانه ينطبق أيضا على معاملة الرجل لهذا قان لها نفس النتيجة أو يشملها القانون بما قد يتطلب من تعديلات ضرورية

تفسيرات

الجزء الثاني

التمييز في المجال الوظيفي

التمييز من رب العمل

التمييز ضد المتقدمين للوظيفة و الموظفين

يعتبر عملا غير قانوني لأي شخص بما له علاقة بالتوظيف في أي مؤسسة في المملكة المتحدة أن يميز ضد امرأة ±

أ- في الترتيبات التي يستعد لها لعرض الوظيفة أو

ب- في الشروط التي يطبقها عليها عند عرض الوظيفة أو

ج- برفضه أو تركه عمدا أن يعرض عليها الوظيفة!

انه غير قانوني لأي شخص أن يميز ضد امرأة تعمل في أي مؤسسة في المملكة المتحدة ±

أ- سواء في الطريقة التي يعرض عليها فرص للترقية أو نقل أو تدريب أو أي مميزات أخرى تسهيلات خدمات أو رفضه أو عدم عرضه عمدا فرص للأشياء السابقة!

ب- عن طريق طردها أو إخضاعها لما قد يسبب لها الخسارة أو الضرر!

ملغية

الفرعية ـ ب و لا يعد عملا غير قانوني إذا كان التمييز ضد المرأة له علاقة بعضويتها أو حقها بالنظام التقاعدي عندما يكون في هذا القانون تمييزا ضدها !!الخ غير مهم .

أ-

بالمقارنة مع [الفرعية ـ ب لا تنطبق على أي نص فيما يخص الراتب في حالة ما إذا كانت المراة في الدعوى أعطيت الوظيفة مشمولة بطريقة مباشرة أو لا في عقد هذه الوظيفة!

الفرعية لا تنطبق على المعونات التي تحتوي على دفعات مالية إذا كان الاتفاق على هذه المعونات منظم في عقد توظيف المراة المعنية .!

الفرعية لا تنطبق على المعونات التسهيلات أو الخدمات أيا كانت إذا كان الموظف المعني بهذا النص بخصوص المعونات التسهيلات أو الخدمات بهذا الوصف إلى العامة أو جزء من العامة بما في ذلك المراة المعنية في الدعوى إلا إذا

أ-

ب.

ج.

- بتطبيقه على أي تمييز يقع في إطار الجزء فان هذا الجزء له نفس التأثير مع اسبعاد الفرعية
الى

التمييز ضد المرأة في المرتب

- يعتبر عملا غير قانوني لأي مؤسسة في الكويت فيما لع علاقة بالوظيفة أن يميز ضد المرأة في الراتب

- ب. عندما تكون المرأة موظفة في نفس الوظيفة أو مساوية لها أو تحمل ذات القيمة لرجل موظف في تلك المؤسسة أو يفترض أنه موظف فيها

- ب. اذا أي شرط في عقد عمل المرأة يجعلها في معاملة اقل أفضلية عن شرط وارد في نفس نوعية العقد لرجل موظف أو ممكن أن يكون موظف فمن شأن هذا الشرط في عقد المرأة أن يعدل بحيث يرفع عنها المعاملة الأقل في الأفضلية عن الرجل

- تعتبر المرأة موظفة في نفس نوعية العمل مع رجل اذا كانوا على نفس الدرجة و ينتمون لنفس الدرجة الوظيفية من الوظائف التابعة للقطاع العام و يحملون نفس المسمى الوظيفي و التوصيف الوظيفي أو كان عملها و عملهم له ذات أو متفارب من حيث طبيعة العمل و الاختلاف ان وجد بين ما تقوم به و ما هم يقومون به لا يشكل أهمية للوظيفة لذلك عند مقارنة عملها بعملهم يجب أن يأخذ بالاعتبار الاختلافات في الواقع العملي و طبيعة العمل

- تعتبر المرأة موظفة في عمل مساوي لعمل أي رجل اذا فقط في حال اذا كان عملها و عمله مساو في القيمة قيمة العمل فيما يتعلق بما يتطلبه من الموظف القيام به تحت مسميات مختلفة اذا كانت هناك دراسة توصي بأن العمل له ذات القيمة

- يعتبر عملا غير قانوني أن يميز ضد امرأة خلال أو بعد اجازة الوضع فيما يتعلق بـ

- أ. مرتبها كاملا خلال الاجازة مشمول بالعلاوات

- ب. المكافات الترقيات العلاوات كأي موظف اخر يشمله هذا النص من القانون

- ج. الحصول على أي مزايا تدريب مهني كأي موظف يشمله هذا النص من القانون

- اذا كان عقد عمل امرأة تعمل في أي مؤسسة في الكويت لا يشتمل على نص يساويها بالرجل فانه يجب أن يشتمل عليه كاجراء الزامي

- المادة – يجب أن يفهم منها على أن المساواة تكون مع الرجل

- لا يعتبر عملا مخلا بالقانون اذا كان الاختلاف في المرتب بين الموظف بعقد و الموظف بالتعيين حتى اذا كان في حالة القيام بذات العمل أو مساو له في القيمة

- تعريفات

- – اجازة الأمومة
- – أ. هي المنصوص عليها في قانون الخدمة المدنية المادة بما يخص القطاع العام
- – أ. المنصوص عليها في قانون العمل ? – المادة بما يخص القطاع الخاص

استثناءات عندما يكون الجنس من متطلبات الوظيفة فعليا

بما يتعلق بالتمييز بسبب الجنس

المادة لا تنطبق على أي وظيفة عندما يكون الرجل كرجل من متطلبات الوظيفة فعليا

المادة كذلك لا تنطبق إذا كان الأمر متعلقا بترقية أو تدريب على هذه الوظيفة

يكون الرجل كرجل بالفعل هو الأصلح للوظيفة عندما

طبيعة العمل تفرض ذلك لعلاقة بالشكل و لا يشمل الشكل هنا القوة الجسدية أو أداء تمثيلي أو أي مجال ترفيهي أخر فليكون الأداء واقعي و دقيق بحيث أنه إذا قام بالدور امرأة فلن يكون له نفس الواقعية و الدقة في الأداء أو

التمييز ضد الموظف عن طريق التعاقد

هذه المادة تنطبق على أي صاحب وظيفة يطلب أشخاص المتعاقدين الذين لم يتعاقدوا عن طريق صاحب الوظيفة مباشرة لكن عن طريق شخص اخر الذي تم التعاقد معه

يعتبر عملا غير قانوني لأي صاحب وظيفة أن يميز ضد امرأة تعمل بطريق العقد

سواء في الشروط التي بها يتم تأدية العمل

بمنعها من تأدية ذلك العمل

بطريقة العرض عليها الحصول على أي مميزات تسهيلات خدمات أو برفضه العرض عليها أو استبعادها عمدا من ذلك

أو تعريضها لما قد يضرها

معنى الوظيفة في مؤسسة داخل الكويت

تحت هذا القانون الوظيفة تشمل الوظائف في القطاع العام و لأي مؤسسة تتبعها سواء كانت وزارة أو أي مؤسسة أو هيئة سواء كانت ذات ميزانية مستقلة أو ملحقة و كذلك ينطبق على القطاع الخاص سواء مان بادارة مملوكة بالكامل لأفراد أو كانت الحكومة تملك جزء منها

سواء كانت الوظيفة عن طريق مجلس الخدمة المدنية أو

تم التعيين عن طريق مؤسسة في القطاع الخاص

التوظيف يشمل التعيين و كذلك التعاقد مع مراعاة الوضع الخاص بالتعاقد فيما ورد في المادة السابقة

التمييز بواسطة أشخاص اعتبارية أخرى

الشراكة

يعد عملا غير قانوني لمكتب ما يتعلق بمنصب الشريك بالمكتب أن يميز ضد امرأة سواء بـ

الترتيبات اللازم إعدادها لتحديد من له سلطة عرض المنصب أو

في الشروط المطلوب توافرها عند عرض الوظيفة عليها أو

برفضها أو استبعادها عمدا من عرض الوظيفة عليها أو

في حالة ما إذا كانت المرأة شاغله لهذا المنصب فعليا

في الطريقة التي تم عرض عليها أي ميزة تسهيلات خدمات أو رفض أو عدم عرضها عليها عمدا أو

بطردها من المنصب أو تسبب أي مضرة لها

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ـ نقابات العمال

ـ هذا الجزء ينطبق على نقابات العمال نقابات الموظفين أو اي نقابة يؤدي أعضاءها مهنة معينة أو تجارة و التي من أجلها تأسست النقابة

ـ يعد مخالفا للقانون مما ينطبق عليه هذه الفقرة من القانون التمييز ضد امرأة ليست عضوا في النقابة في حالة 2

ـ ا في الشروط المطلوبة منها لعضويتها أو

ـ ب برفض عضويتها أو استبعاد طلبها العضوية عمدا

ـ يعد مخالفا للقانون مما يستوجب تطبيق هذه الفقرة منه لأي منظمة أن تميز ضد عضوة امرأة في المنظمة

ـ ا في طريقة عرض اي مميزات تسهيلات أو خدمات أو برفضها أو استبعادها عمدا من أي من هذه المميزات أو

ـ ب بحرمانها من العضوية أو تغيير شروط عضويتها أو

ـ ج أن يضرها يسبب لها ضرر باي طريقة أخرى

ـ هذه المادة لا تنطبق على النصوص المتعلقة بالوفاة أو تقاعد العضو

ـ الجمعيات المرخصة باعطاء رخص ممارسة المهنة

ـ يعد عملا مخالفا للقانون لأي هيئة أو اي شخص اعتباري ممن تملك اعطاء ترخيص أو مؤهل قد يحتاج لها أو تسهيلات خاصة بمهنة معينة أو تجارة أن تميز ضد امرأة

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ـ ب

ـ ج

ـ عندما يكون مطلوبا من هذه السلطة أو الجهاز حسب القانون أن تتأكد من الشخص قبل منحه أي سلطة أو مؤهل ضروري أو تسهيلات لها علاقة باي مهنه أو حرفة دون المساس لأي من الواجبات الخاضع لها ذلك الشرط هذه المتطلبات تفرض على هذه الهيئة أن تأخذ بالاعتبار أي دليل يثبت أنها اي الهيئة أو اي من موظفيها أو

وكلائها سواء في الماضي أو الحاضر قد مارسوا أي تمييز غير مشروع سواء في تلك الوظيفة أو متعلقة بها أو باي مهنة أو حرفة اخرى

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-الأشخاص المعنيين بتوفير التدريب المهني

-يعد عملا مخالفا للقانون في حالة ما اذا كانت المرأة تبحث أو تحت التدريب بما يساعدها في الحصول على وظيفة لأي شخص ممن يوفر هذا النوع من التدريب أو مسئول عن إعدادها أن يميز ضد هذه المرأة

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-جمعيات النفع العام

-تنطبق هذه المادة على الجمعيات و المنظمات التي تتشكل تحت رعاية وزارة الشئون الاجتماعية و العمل

- يعد عملا غير قانوني لأي جمعية أو منظمة من التي تنطبق عليها هذه المادة لأي شخص غير عضو فيها أن

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حالات خاصة

-الشرطة

- فيما يخص هذا الجزء من القانون فان من يتولى العمل كشرطي يعامل معاملة الموظف سواء

- من كبير الضباط بأي عمل له علاقة بالشرطي أو بالمكتب

- من دائرة الشرطة بأي عمل له علاقة بالشرطي أو بالمكتب

- ج

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- رجال الدين

- لا ينطبق هذا الجزء فيما يتعلق بتنظيم ديانة معينة التي يكون التوظيف فيها محصورا على جنس معين بما ينسجم مع تعاليم تلك الديانة أو لا يضر بمشاعر أتباع تلك الديانة

- لذلك لا يعتبر عملا غير قانوني عند تعيين المؤذنين و أئمة المساجد

- السلك القضائي

- يعتبر التعيين في السلك القضائي مشمولا بمفهوم التوظيف

- يعد عملا غير قانون للسلك القضائي و المحاكم الكويتية بشكل عام أو الادعاء العام أن يميز ضد أمرأة

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ž علاقات العمل المنتهية

ž - تطبق هذه المادة عندما

ž - تكون هناك علاقة عمل بين رجل و امرأة و

ž - تكون علاقة العمل قد انتهت

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ž - عملا غير قانوني أن يميز ضد امرأة أو يعرضها للضرر عند نهاية أو ما يقارب النهاية عملها

الجزء الثالث

التمييز في مجالات أخرى

التعليم

- التمييز في الهيئات المسئولة عن المؤسسات التعليمية

- يعد عملا غير قانوني في أي مؤسسة تعليمية من ضمن المؤسسات المنصوص عليها لاحقا في هذا القانون للشخص المسئول فيها أن يميز ضد امرأة

- في طريقة قبولها كتلميذة أو

- رفضها أو استبعاد طلب قبولها كتلميذة عمدا أو

- إذا كانت تلميذة في المؤسسة التعليمية

- في طريقة عرض أي خدمة أو ميزة أو تسهيلات أو عدم عرضها من الأساس عمدا أو

- بإقصائها عن المؤسسة أو تعريضها لما قد يضرها

- من ينطبق عليهم مصطلح التلميذ

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- البعثات

يعد عملا مخالفا للقانون التمييز ضد امرأة في منح البعثات

السلع التسهيلات الخدمات الأراضي

التمييز فيما يخص السلع التسهيلات الخدمات

يعد عملا غير قانوني معني بتقديم هذه السلع التسهيلات الخدمات سواء كانت مدفوعة أم غير مدفوعة الى عامة الناس أو جزء منهم أن يميز ضد امرأة ترغب في استعمال أو الحصول على تلك السلع التسهيلات أو الخدمات

أ سواء برفضها أو استبعادها عمدا من تزويدها بأي من تلك أو

ب برفضها أو استبعادها عمدا من تزويدها بتلك السلع النسهيلات أو الخدمات مساوية في جودتها لتلك المقدمة الى الرجل اذا كانا منتمين الى نفس الفئة بمعنى ان ذات الشروط يجب أن تنطبق عليهما
فيما يلي أمثلة على الخدمات و التسهيلات المذكورة في الفقرة .

أ الحصول على أو استعمال أي من الأماكن التي من شان عامة الناس أو فئة منهم مسموح لهم بذلك

ب الإقامة في فندق منزل بغرف مؤجرة بنسيون أو ما شابهها

ج الخدمات الخاصة بالبنوك أو شركات التأمين سواء في منح إقراض استدانة أو تمويل

د خدمات للتعليم

هـ الخدمات الخاصة بالترفيه الراحة و الاستجمام المنعشات من الشراب و الطعام

و خدمات التنقل و السفر

ز الخدمات الخاصة بأي مهنة أو تجارة أو أي سلطة محلية أو عامة

لإزالة أي شبهه فانه بموجب هذا القانون اذا كان هناك مهارات معينة تمارس من قبل الرجال بطريقة مختلفة عن النساء فان ذلك لا يتعارض مع الفقرة من هذه المادة في حالة ما اذا كان الشخص لم يتعود أن يمارس هذه المهارة عادة بواسطة امرأة أو لاعتقاد منطقي أنه من غير العملي أن يمارس المهارة بواسطة امرأة

التمييز في إدارة و توزيع الأراضي

يعد عملا مخالفا للقانون فيما يتعلق بالأراضي داخل المملكة المتحدة لكل من له سلطة توزيع الأراضي أن يميز ضد امرأة

أ في شروط العرض المقدم إليها

ب برفض طلبها للحصول على تلك الأراضي

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ـــ ـ يعد عملا غير قانوني لأي شخص فيما يتعلق بالأراضي التي تدار بواسطة أن يميز ضد أي امرأة تشغل أحد تلك الأراضي

ـــ ـ ـــ ا سواء بطريقة عرضه للحصول على أي من المزايا و التسهيلات أو عن طريق رفضه أو استبعاده عمدا من عرض أي مزايا أو تسهيلات

ـــ ـ ـــ ب بطردها أو جعلها عرضة لأي ضرر من هذا القبيل

ـــ ـ الفقرة رقم ـــ ـ لا تنطبق اذا كان الشخص يملك مقاطعة أو يملك حصصا فيها و يشغلها بالكامل الا اذا كان يستفيد من خدمات مكتب عقاري لتوزيع الأراضي التي يملكها أو يملك حصصا فيها أو لنشر أو ما يتعلق بنشر إعلان له علاقة بالأراضي

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التمييز الاذن بتحويل الممتلكات

ـــ ـ اذا كانت الرخصة أو اذن المالك أو أي شخص اخر مطلوبة لبيع الأراضي لأي شخص في المملكة المتحدة ضمن الايجار فانه يعد مخالفا للقانون للمالك أو لأي شخص اخر أن يميز ضد امرأة عن طريق حبس الاذن أو رخصة البيع عنها

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استثناءات للمنازل الصغيرة

ـــ ـ نصوص المادة و لا تنطبقان اذا كان الشخص

ـــ ـ ـــ ا قريب للشص المالك و ينوي الاقامة

ـــ ـ ـــ ب .

استثناءات للمؤسسات التطوعية

تطبق هذه المادة على المؤسسات التالية:

أ. الأنشطة غير الربحية

ب. التي لا ينظمها أي تشريع.

ج. المادة لا يعتبر مخالفا لها:

1. تقييد العضوية من قبل أي من المؤسسات على أشخاص من ذات الجنس بغض النظر عن أي استثناءات جزئية أو

2. فيما يتعلق بالمزايا التسهيلات و الخدمات لأعضاء تلك المؤسسات التي تكون عضويتها مقيدة جدا بالرغم من أن باب العضوية مفتوح للعامة أو جزء منهم.

استثناءات أخرى من المواد و

أ. الشخص الذي من أي موقع يزود تسهيلات أو خدمات محصورة للرجال فقط لا يعتبر مخالفا للمادة في حالة:

ب. اذا كان الموقع أو جزء منه عبارة عن مستشفى أو وحدة اعادة تأهيل

ب. اذا كان الموقع سواء بشكل دائم أو مؤقت مشغول أو يستخدم لأغراض ديني أو تنظيم ديني و هذه التسهيلات و الخدمات مقصورة على الرجال حسب مبادئ هذا الدين أو تفاديا لجرح مشاعر أتباع هذا الدين أو

ج. التسهيلات و الخدمات معطاة أو في الأغلب سيتم استخدامها من قبل شخصين أو أكثر بنفس الوقت و كذلك

ج. تحتم طبيعة هذه التسهيلات و الخدمات او يغلب على هؤلاء الأشخاص أن من يستعمل هذه التسهيلات و الخدمات من الرجال أن يحرجوا من استخدامها أمام النساء أو

ج. ب. تحتم طبيعة هذه الخدمات و التسهيلات لمن يستعملها ألا يكون بكامل لبسه المعتاد أو شبه متعري مما يسبب معارضة منطقية للرجال أن يتم ذلك بحضور النساء.

أ. الشخص الذي من أي موقع يزود تسهيلات أو خدمات محصورة للرجال فقط لا يعتبر مخالفا للمادة اذا كانت هذه التسهيلات و الخدمات تؤدي الى ملامسة جسدية فيما بين المستخدم و الشخص الاخر فيما يؤدي الى اعتراض منطقي أن يكون المستخدم امرأة.

التمييز بواسطة أو متعلقة بالمحامين

يعد مخالفا للقانون لأي محامي فيما يتعلق بالتمرين أو التعاقد أن يميز ضد امرأة

أ في الترتيبات التي من شأنها اعتبار من سيعرض عليه التمرين أو التعاقد

ب في أي شرط من شروط العرض

ج برفضها أو اسبعادها عمدا من العرض عليها

يعد عملا غير قانوني اذا كانت المرأة متدربة أو تعمل لمحامي أن يميز ضدها ±

أ في الشروط المطبقة عليها كمتدربة أو كموظفة

ب في فرص التدريب اكتساب الخبرة التي عرضت عليها أو اسبعاد العرض عليها

ج في المزايا التسهيلات أو الخدمات التي عرضت عليها أو اسبعاد العرض عليها أو

د بانهاء عقد التدريب أو تعريضها لأي ضغط لتترك العمل أو اي ضرر أخر

يعد مخالفا للقانون فيما يتعلق باعطاء او حفظ أو قبول التعليمات لمحامي أن يميز ضد امرأة

الفقرة السابقة تنطبق على هذه المادة و أي مادة أخرى في هذا الجزء

علاقات العمل المنتهية

أ تطبق هذه المادة عندما

أ تكون هناك علاقة عمل بين رجل و امرأة و

ب تكون علاقة العمل قد انتهت

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عملا غير قانوني ان يميز ضد امرأة أو يعرضها للضرر عند نهاية أو ما يقارب النهاية عملها

امتداد

امتداد للجزء الثالث

المادة الفقرة

لا تنطبق على السلع التسهيلات الخدمات خارج الكويت باستثناء ما ورد في الفقرة و

المادة الفقرة تسري على التسهيلات الخاصة بالسفر خارج الكويت اذا كان الرفض أو الاستبعاد حدث داخل المملكة أو على سفينة طائرة طائرة برمائية حسب الفقرة

المادة الفقرة تسري على كل من

أي سفينة مسجلة في الكويت و

أي طائرة جوية أو برمائية مسجلة في الكويت و تدار بواسطة شخص مكان عمله أو اقامته الاعتيادية في الكويت

الجزء الرابع

تصرفات أخرى غير قانونية

- ممارسات تمييزية

- حسب هذه المادة فان الممارسات غير القانونية تعني

- تطبيق نص أو شرط أو ممارسة من شأنها أن ينتج عنها فعل التمييز و الذي هو بالأصل غير قانوني حسب نصوص المواد في الجزء الثاني و الثالث الفقرة ب أو ب أو مل من شأنه أن ينتج عنه تمييزا اذا كان الأشخاص المطبق عليهم ليسوا من جنس واحد أو

- تطبيق ما هو مطلوب أو تطبيق شرط ينتج عنه تمييزا و الذي يعد غير قانوني حسب نصوص الجزء الثالث الفقرة ب أو مما قد يتسبب بعمل يعد تمييزا اذا كان الأشخاص المطبق عليهم ليسوا من جنس واحد

- يعد عمل الشخص مخالفا لهذه المادة اذا كان

- يطبق ممارسات تمييزية أو

- يدير أعمالا أو يعد ترتيبات من شانها تحت أي ظرف تتبنى أعمالا تنطوي على تمييز

إعلانات تمييزية

يعد عملا غير قانوني إصدار أو التسبب في إصدار إعلان فيه إشارة أو يفهم منه كإشارة بنية شخص بالقيام بأي عمل أي قانوني من الأعمال المنصوص عليها في الجزئيين الثاني و الثالث

الفقرة لا تنطبق على الإعلان إذا كان بنية عمل ليس من الأعمال الغير قانونية

فيما يخص الفقرة وصف العمل إذا كان فيه ما يميز بالجنس كالقول رجل البريد مثلا من شانه أن يعد تمييزا إلا إذا كان بالإعلان ما ينطوي على غير ذلك

لا يعد المعلن مخالفا للقانون حسب الفقرة و لا يكون مسئولا تحت هذه الفقرة السابقة الذكر فيما يتعلق بإصدار الإعلان إذا تمكن من إثبات ما يلي

إذا كان الإعلان قد تم نشره بالاتكال على من أخرج هذا الإعلان بألا يكون الإعلان منطويا على ما هو غير قانوني حسب الفقرة

و يكون من المعقول أن يعتمد على ما قاله له

الشخص الذي يكون عامدا أو مهملا في إعطاء تصريح كهذا القصد منها الخطأ و التضليل يعد جنحة و معرض لدفع غرامة

إعطاء تعليمات أوامر للتمييز

يعد عملا مخالفا للقانون للشخص

له سلطة على شخص أخر أو

أن يكون هذا الشخص الاخر لابد له من تنفيذ رغباته أن يوجهه للقيام بأي عمل غير قانوني الواردة في الجزأين الأول و الثاني أو أن يحرضه على محاولة القيام أو التحريض على القيام فعليا بأي من تلك الأعمال

الاكراه على التمييز

يعد عملا غير قانوني الحث على أو محاولة الحث على القيام بأي عمل يخالف ما ورد في الجزأين الأول و الثاني عن طريق

اعطاء أو عرضه اعطاء بأي مزايا أو

تعريضه أو التهديد بتعريضه لأي ضرر

مجرد العرض أو التهديد لا يمنع من وقوعه تحت طائلة الفرعية لأنه لم يقدم مباشرة الى الشخص المعني اذا تمت بطريقة مكنته من السماع بها

مسؤلية الرؤساء أصحاب العمل و المدراء

أي فعل يقوم به شخص في العمل من الأفعال المدرجة في هذا القانون يكون صاحب العمل مسؤلا عنها كأنها قد صدرت منه شخصيا سواء كان الفعل قد صدر بموافقة مسبقة منه أم لا

أي شخص يقوم بعمل مخالفا لنصوص هذا القانون بصفته وكيلا عن شخص آخر بسلطة مخولة منه إليه سواء بتعبير صريح أو ضمني سابق أو لاحق فان الموكل بكسر الكاف يكون مسؤلا عن ذلك العمل و كأنه قد صدر منه شخصيا

في أي قضية تنظر حول أي من مواد هذا القانون ضد أي شخص بسبب فعل قام به أحد موظفيه فان هذا الشخص يمكنه أن يدفع التهمه عنه إذا استطاع إثبات أنه قد قام بعمل كل ما بوسعه القيام به لمنع الموظف من القيام بذلك العمل أو من القيام به خلال وظيفته

المساعدة في القيام بعمل غير قانوني

المساعدة في القيام بأي عمل غير قانوني من الأعمال الواردة في هذا القانون فأنه يتم التعامل من قام بالمساعدة كأنه قد قام بالفعل بنفسه

فيما يخص الفقرة السابقة فان الموظف أو الوكيل و الذي بسبب فعله فان المدير أو الموكل هو المسؤل حسب المادة – أو قد يكون مسؤلا عنها حسب ما ورد في – فإنها تفهم على أنها المساعدة في القيام بذلك العمل من قبل الرئيس أو المدير

- لا يعد الشخص مشتركا رغم علمه بفعل بالمساعدة في القيام بعمل يخالف القانون إذا كان

- تصرف بناء على إقرار و ثقته بذلك التصريح بأن ما يقوم به من مساعدة بعمل لا يعد مخالف لهذا القانون و

- انه من المنطقي أن يطمئن لهذا الإقرار

- إذا كان الشخص قد قال هذا الإقرار المنصوص عليه في الفقرة سواء عن طريق العمد أو الإهمال قد أدت إلى التضليل أو كان كاذبا فانه يعتبر مرتكبا جنحة مما يتوجب علي دفع غرامة من الجدول المرفق بالقانون

صحة و مراجعة العقود

- يعتبر الشرط في العقد لاغيا في حالة

- اذا كان محتوى العقد يخالف هذا القانون أو

- اذا كان محتوى في اضافات العقد ما يخالف هذا القانون أو

- يزود ما من شانه مخالفة هذا القانون

استثناءات عامة من الجزء الثاني الى الجزء الرابع

- مجلس الأمة و المجلس البلدي

لا شيء من الجزء الثاني الى الرابع من شانه أن

- أن يؤثر على الترتيبات التي تشملها هذه المادة أو
- يعد غير مخالف للقانون فيما يتعلق بالترتيبات

هذه المادة تنطبق على ترتيبات مجلس الأمة و المجلس البلدي و التي

- من شأنها اختيار المرشحين للانتخابات
- بحجز مقاعد لأشخاص من جنس معين أو
- اضافة مقاعد لأشخاص من ذلك الجنس اذا كان عدد الأعضاء من ذلك الجنس أقل من المستوى المطلوب

- اذا كانت هذه الترتيبات تمت من أجل تقليل عدم المساواة و الاختلاف في عدد الأعضاء الرجال و النساء

- المؤسسات الخيرية

لا شيء من الجزء الثاني إلى الجزء الرابع من شانه أن

- يسري ليطبق على ما هو منصوص عليه في هذا الفرع أو
- يقدم عملا كغير قانوني تم القيام به من أجل ما هو منصوص عليه في هذه الجزئية

الفرعية تطبق عند إعطاء مزايا لأشخاص من جنس واحد بغض النظر عن المزايا التي تعطى للجنس الأخر و التي تكون بشكل استثنائي أو ليست بتلك القيمة بمكان كجزء من البنود التي يحتويها تنظيم خيري

في هذا النص فان التنظيم الخيري المقصود بها أي تنظيم مخصص للعمل الخيري أو أي إدارة أو تنظيم لها علاقة بالأعمال الخيرية وفي سكوتلاندا الخ .

- الرياضة

لا شيء مما ورد في الأجزاء من الثاني إلى الرابع بما يتعلق بالرياضة العاب أو أي نشاط آخر له طابع المنافسة و الذي تكون للقوة الجسدية الطاقة و البنية الجسدية للمرأة العادية أقل حظا فيها من الرجل العادي يعد غير قانوني عند المشاركة في أي من المنافسات عند اشراك المنافس فيها في مسابقات محصورة على جنس واحد

- التأمين

- لا شيء مما ورد في الأجزاء من الثاني إلى الرابع يعد غير قانوني بما يتعلق بمعاملة شخص بدخله السنوي التأمين على الحياة التأمين ضد الحوادث أو ما شابهها من أعمال المتعلقة بالمخاطرة بالممتلكات إذا كان التعامل

- كان على أساس مصادر من إحصاءات حسابية لمخاطر التأمين على الحياة و توقعاتها أو مصادر أخرى من شأنها أن يعتمد عليها و

- من المنطقي التأويل على المعلومات أو عوامل متعلقة بها

المبنى المشاع

في هذه المادة فان مصطلح "المبنى المشاع" يقصد به المبنى السكني الذي يتضمن السكن الداخلي أو أي سكن يتضمن أمكنة جماعية للنوم و الذي يتطلب لدواعي الخصوصية و الاحتشام أن يكون اما مخصصا للنساء فقط أو للرجال فقط سواء كان السكن مخصص للموظفين أو للطلبة

و هذه المادة تعني بمصطلح "المبنى المشاع" تلك التي تتضمن جزء منها أو كلها مكان للإقامة يستعمل بواسطة الرجال فقط أو النساء فقط لما تتطليه طبيعة بناء و تصميم دورات المياه في المبنى

لا شيء من الجزاين الثاني و الثالث من شأنه أن يطبق كعمل غير قانوني على قبول الأشخاص في السكن المشاع إذا كانت طبيعة السكن المشاع تحتم معاملة غير متساوية بين الجنسين

التدريب التمييزي بواسطة بعض الأجهزة

لا شيء من الجزء الثاني و حتى الرابع من شانه أن يوصف كعمل غير قانوني على عمل تم بواسطة أي شخص له علاقة بـ

أن يعرض على النساء فقط أو على الرجال فقط الحصول على تسهيلات للتدريب مما يؤهلهم لاحقا للحصول على تلك الوظيفة أو

تشجيع النساء فقط أو الرجال فقط للحصول على مزايا أكثر في فرص للقيام بتلك الوظيفة

عندما يكون من المنطقي الاعتقاد بأن ذلك الشخص و خلال – شهرا اتخذ الاجراءات بحيث أنه لم يكم هناك أشخاص من الجنس الذي تميز ضده يقوم بتلك الوظيفة في الكويت أو أن من يستطيع منهم ذلك عددهم قليل بالمقارنة

إذا كان الفعل متعلقا بعمل معين الظاهر فيه لأي شخص أنه على الرغم من الشرط المذكور في الفرعية السابقة لا ينطبق على الكويت و انما ينطبق على احدى المناطق فيها فقط فانه لا شيء من الأجزاء من الثاني الى الرابع يوصف بأنه غير قانوني على هذا الشخص الذي قام بالفعل أو له علاقة به

عرض على أشخاص أعضاء من الجنس محل التساؤل و كان ظاهرا أنه له نية القيام بمهمة العمل في تلك المنطقة و حصلوا على تسهيلات لتدريب يؤهلهم لتلك الوظيفة أو

تشجيع أشخاص من الجنس المذكور للحصول على مزايا فرص الحصول على الوظيفة في تلك المنطقة

- لا شيء من الأجزاء من الثاني الى من شانه أن يوصف فعل بأنه غير قانوني قام به أي شخص في أو له علاقة بالعرض على أشخاص الحصول على تسهيلات للتدريب تؤهلهم الحصول على وظيفة مما يكون ظاهرا لذلك الشخص ± الذي قام بالفعل

تمييز في تدريبات أخرى

- لا شيء من الجزء الثاني حتى الرابع يعتبر عملا غير مخالف للقانون في أي عمل متعلق بصاحب الوظيفة له علاقة بـ

- العرض على الموظفات فقط دون الموظفين الرجال الحصول على مزايا التدريب تأهلهم للحصول على الوظيفة أو

- يشجع النساء فقط أو الرجال فقط للحصول على فرص في أداء عمل في حالة أنه خلال سنة الفائتة لم يتقدم أحد من الجنس الاخر للعمل أو كان عدد المتقدمين ± مقارنة بالجنس الاخر قليلة

تقابات العمال و الأجهزة الانتخابية

- إذا كانت المنظمة تنطبق عليها المادة – تشمل أجهزة تتطلب عضويتها كلها أو جزء رئيسي منها الانتخابات فان لا شيء من المادة – يمكن أن توصف العمل بأنه غير قانوني و التي تحرص على أن يكون في عضويتها عدد معين من أعضاء من جنس معين

- عن طريق حجز مقاعد لهؤلاء الأشخاص من ذلك الجنس أو

- عن طريق تخصيص مقاعد اضافية لهؤلاء الأشخاص عندما يكون عددهم في المقاعد الأصلية اقل من الحد الأدنى

عندما تكون المنظمة تؤمن بأنه من الضروري تامين حد أدني من الأشخاص من ذلك الجنس كأعضاء يعملون لديها فلا شيء من الأجزاء من الثاني الى الرابع يمكن أن يصف ذلك بأنه مخالف للقانون

- هذه المواد التالية تعد أعمالا مخالفة للقانون

- التمييز في ترتيب تعيين أشخاص لهم صلاحية التصويت في الانتخابات لعضوية المنظمة أو في اختيار أشخاص يعملون لصالح الجهاز التابع للمنظمة أو

- التمييز في أي ترتيبات بشأن عضوية المنظمة ذاتها
- تنطبق هذه المادة على أي مجلس ادارة دائرة ادارية سواء تتبع القطاع العام أو الخاص

الحصول على معونات بشكل غير مباشر و ما شابه

- استنادا على هذا القانون فان عرض الحصول على معونات تسهيلات أو خدمات من قبل أي شخص لا تعتبر محصورة على هذه المعونات و التسهيلات و الخدمات و إنما تشمل كل هذه التي يزودها هذا الشخص لحساب أو لصالح شخص آخر الممول الحقيقي

- تحت أي نص في هذا القانون فان عرض الحصول على أي من الإعانات التسهيلات أو الخدمات من قبل أي شخص إذا كان فيه العرض تمييزا بطريقة تجعله غير مخالف للقانون فان آثار هذا النص و بموجب هذا القانون تمتد لتشمل أيضا مسؤولية الممول الحقيقي

الأفعال التي تؤدى بهدف حماية النساء

- الجزء الثاني

- ب الجزء الثالث فيما ينطبق على التدريب المهني أو

- ج الجزء الرابع بخصوص آثار النصوص المتعلقة بما أشير له في الفقرات أ و ب

تعتبر أعمالا غير قانونية أي فعل يؤديه شخص لامرأة إذا

- ج أ كان مفروضا على هذا الشخص تماشيا مع ما يتطلبه تشريع موجود يختص حماية النساء أو

- ج ب كان مفروضا على الشخص القيام به تماشيا مع متطلبات قانون ذا علاقة و المعني هو الجزء الأول من قانون الصحة و السلامة لعام و قد قام بذلك العمل حماية للمرأة محط التساؤل

- في الفرعية السابقة رقم

- بالرجوع إلى الفقرة ج أ السابقة و المتعلقة بالتشريع المختص بحماية النساء يعتبر مرجعا لأي نص له علاقة بحماية النساء بما يتعلق بـ

- الحمل و الأمومة

- أي ظروف تعرض النساء بشكل خاص إلى مخاطر متزايدة

سواء كان النص يتعلق بهذا النوع من الحماية فقط أو بحماية أي طبقة أخرى من الأشخاص و

- ب بما يتعلق بالفقرة أ ب السابقة حول حماية امرأة معينة أو طبقة معينة من النساء فانها تسري أيضا على حماية المرأة أو تلك الطبقة من النساء بأي ظرف من ما نص عليه في الفقرة أ و ب .

- في هذه الجزئية فان مصطلح النصوص التشريعية الموجودة تعني و تتبعها الفقرة التي سترد أي نص

- قانون صدر قبل هذا القانون أو

~~ ~~ب ~اي مستند قانوني أو تم اصداره تبعا لقانون!

~ ~ ~~
~ ~~
~~ ~ ~~
~~ ~~ب

اللجنة ضد التمييز بسبب الجنس

تنشأ لجنة من أجل تطبيق هذا القانون تسمى "اللجنة ضد التمييز بسبب الجنس" تكون مهمتها العمل لازالة التمييز، مراجعة القوانين التي تتضمن التمييز مع اقتراح تعديلها، كذلك النظر في الشكاوى بهذا الخصوص.

تتألف اللجنة من أعضاء من الجنسين من الهيئات التالية

- وزاة التربية،
- وزارة التعليم العالي،
- مجلس الخدمة المدنية،
- وزارة الشئون الاجتماعية و العمل،
- غرفة التجارة و الصناعة،
- ادراة الفتوى و التشريع.

و يكون للوزير المختص تعيين من يراه ضروريا في اللجنة.

أي شكوى بخصوص التمييز بسبب الجنس من شانها أن تقدم أولا الى اللجنة للتحقيق و تقرير التعويضات اللازمة، و لكن قرار اللجنة لا يعتبر نهائيا، يحق لأحد أطراف الشكوى أو كلاهما الطعن في قرار اللجنة أمام المحاكم الكويتية، و على اللجنة تقرير الدائرة ± في المحكمة ± المختصة بنظر الدعوى.

يعتبر من أحد اختصاصات اللجنة و المحكمة المختصة بنظر الدعوى تقرير التعويضات اللازمة عن الضرر الناجم عن خرق أي مادة من مواد القانون.

يقوم الوزير المختص باصدار اللائحة التنفيذية لهذا القانون، و تقرير عمل و اختصاصات اللجنة بما يمكنها من أداء عملها.

Appendix Two
The Questionnaire

Sex

☐ Female
☐ Male

Age

☐15-19
☐20-24
☐25-29
☐30-34
☐35-39
☐40-44
☐45-49
☐50 and above

Education

☐Read and write
☐Primary
☐Secondary
☐High-school
☐College graduate
☐University graduate
☐Post graduate

District

☐Kuwait City
☐Hawali
☐Al-Farwaniya
☐Al-Ahmadi
☐Al-Jahra
☐Mubarak Al-Kabeer

Do you agree that polygamy can solve marriage problems? (M,W1, 2)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

If you agree, can you give some example to these problems. (M)

Do you agree that a husband should tell his wife that his going to marry a second wife? (M)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Do you consider marrying another woman? (M)

Would you agree if your husband got married to another woman? (W1,2)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

What would you do if your husband got married to another woman? (W1,2)

If you agree, would you agree to live with you at the same house? (W1, 2)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Do you agree that accepting polygamy is part of being a good Moslem? (M, W1, 2)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Do you agree that polygamy can help to prevent adultery? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

"I would rather my husband got married to another women than he have an affair." Do you agree? (W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Polygamy is an absolute right for men that does not need to be justified. Do you agree? (M)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Polygamy should not happen unless there are valid reasons for it. Do you agree? (M)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that a man can treat his wives as fair even if they were four? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that a man take care of more than one family? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that some legal conditions should be placed on polygamy? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that each wife has the right of having independent accommodation?(M)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Do you agree that a wife should have the right to get a divorce if her husband married another woman? (M, W1, 2)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

A woman cannot authorize her own marriage. Do you agree? (M,W)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Do you agree that a women, of a certain age, should have the right to authorize her own marriage? (M, W)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

If yes, at what age do you think she should gain such a right? (M,W)

Do you agree that the legal minimum age of marriage, according to the law, is suitable for both men and women? (M,W)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Do you agree that the legal minimum age of marriage should be raised? (M, W)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Do you agree that the legal minimum age of marriage should be the same for men and women? (M, W)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you think that the agreement of the man's guardian should be required too, assuming he is under 21? (M)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree with the idea of al-mesyar marriage? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Would you agree to be the wife in an al-mesyar marriage? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree with the idea of al-Mota'a marriage? (W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Would you agree to be the wife in an al-mota'a marriage? (W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that 'Al-Neshoz' and 'At-ta'a' are compatible with Islam? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree with al-ta'a, when a wife is neither married nor divorced? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that some wives deserve such punishment? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that this Article should be removed? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that custody should depend on the age of the children? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that custody should be given to the parent who can best provide for the children? (M, W1, 2)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that boy's schools are more lenient with their students? (M, W)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that female students work harder than male students? (M, W)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

If you agreed, for which of the following reasons did you agree? (M, W)

Do you agree that in general men are more intelligent than women? (M, W)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that male students should be accepted into universities with lower GPA scores than female students? (M, W)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree with honour killing Article? (M, W)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that the Article is compatible with Islam? (M, W)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Did you agree with the suffrage rights for women? (M, W)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you agree that Sharia banned such rights for women? (M, W)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Do you have a strategy as to whom you will vote for? (M, W)

○ yes ○ no ○ I don't know

Do you agree that women are under-represented in the leading jobs? (M, W2, W3)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Do you agree that men have more chance of getting better jobs than women? (M, W2, W3)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Do you agree that men have more chance of getting promoted than women? (M, W2, W3)

Do you agree that men are more qualified than women in regard to the leading jobs? (M, W2, W3)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Do you agree that married women have less chance than unmarried women to get a job? (M, W2, W3)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Have you ever hidden the fact that you are pregnant to get a job? (M, W2)

○ yes ○ no ○ I don't know

Do you know if one of your colleagues hid the fact she was pregnant to get a job? (M, W2, W3)

○ yes ○ no ○ I don't know

Do you agree that the children of Kuwaiti mothers should be Kuwaiti nationals? (M, W)

□ strongly agree □ agree □ I don't know

□ disagree □ strongly disagree

Do you agree that Kuwaiti mothers should be able to pass on their nationality to their children? (M, W)

☐ strongly agree ☐ agree ☐ I don't know

☐ disagree ☐ strongly disagree

Appendix Three
The Statistics of Ministry of Justice and Ministry of Planning (of Kuwait)

Second: Constitutional court
Table (6)
Number considered matters during 2002 – 2004 and what have been done in that matter.

ثانيا ـ المحكمة الدستورية
جدول ـ
عدد المسائل المنظورة خلال žž ـ žž م وما تم بشانها

žž	žž	žž	الدعوى و الطعون و الطلبات بحسب نوع المسائل الواردة للمحكمة **Law suites, appeals and demands received by matters type into court**
		–	طلبات تفسير Explanation demands
		–	قرارات صادرة في طلبات التفسير Promulgated decision in explanation demands
			دعاوي دستورية Constitutional appeals
–	–		قبول الدعوىشكلا و رفضا و موضوعا Accepting law suites by form and rejecting by subject
		–	قبول الدعوى شكلا و بعدم الدستورية Non-Constitutional formally accepting law suites
–	–	–	عدم قبول الطعن Rejecting formally law suites
5	5	7	طعون امام لجنة فحص الطعون Appeals in front of Appeals Testing Committee
			قبول الطعن شكلا و رفضه موضوعا Accepting appeals by form and rejecting by subject
			عدم قبول الطعن Rejecting appeal
	–		عدم جواز الطعن Non-valid appeal
			الغاء الحكم المطعون فيه و الإحالة الى المحكمة الدستورية Revoking appealed judgment and referred to constitutional court
	–ž		طعون انتخابية Election appeals
	——		قبول الطعن شكلا و رفضه موضوعا Accepting approvals by form and rejecting by subject
–			عدم جواز الإلتماس Non-valid petition
–			عدم قبول طلب الرد Rejecting response command
–			عدم قبول الطلب Rejecting command
–	–	–ž	**العدد الإجمالي للمسائل الواردة** **Total received matters**
	–	–ž	**العدد الإجمالي لما تم انجازه** **Total of achieved**
°	–žž°	–žž°	**نسبة الإنجاز** **Percentage of achieved**

Legal Authentications:
Table (129)
Number of authenticated divorce cases by Husband and wife nationality during 1982 – 2004

التوثيقات الشرعية
جدول ˇ –
عدد حالات الطلاق الموثقة خلال الفترة –˜± žž م
حسب جنسية الزوج و الزوجة

Nationality / Year	Kuwaiti husband		Non-Kuwait husband		**Total**
	Kuwait wife	Non-Kuwait wife	Kuwait wife	Non-Kuwait wife	
1982	994	470	145	837	**2446**
1983	1007	482	179	839	**2507**
1984	1029	470	201	859	**2559**
1985	1120	474	224	920	**2738**
1986	1198	515	216	905	**2834**
1987	1212	380	243	862	**2697**
1988	1284	392	260	898	**2834**
1989	1338	473	235	941	**2987**
1991	1131	267	181	217	**1796**
1992	1693	418	264	334	**2709**
1993	1579	463	222	330	**2594**
1994	1803	467	267	461	**2998**
1995	1862	460	260	433	**3015**
1996	1973	459	261	502	**3195**
1997	1861	493	238	504	**3096**
1998	2053	526	265	584	**3428**
1999	2014	502	283	613	**3412**
2000	2214	523	280	632	**3649**
2001	2334	551	278	688	**3851**
2002	2475	521	274	654	**3924**
2003	2551	488	260	698	**3997**
2004	2766	526	323	736	**4351**

Note: A person who not proved to be Kuwaiti in nationality is considered to be a non-Kuwaiti.

Year	Marriages	Divorces	Divorce Rate
1985	5674	1818	32 %
1986	5895	1929	32.8 %
1987	6016	1835	30.5%
1988	6340	1936	30.5 %
1989	6609	2046	30 %
1990	2603	1161	45 %
1991	5920	1638	27.7 %
1992	9474	2442	25.8 %
1993	8255	2583	31.3 %
1994	7819	2568	32.9 %
1995	7684	2582	33.6 %
1996	7120	2693	37.8 %
1997	7266	2592	35.7 %
1998	7712	2844	36.9 %
1999	7865	2799	35.6 %

Source: Ministry of Justice
http://www.moj.gov.kw/Divorce/one.htm

جدول رقم Table No 7

عقود الزواج حسب فئات عمر الزوج وجنسية الزوجة وفئات عمرها لسنة 2002

Marriage Contracts by Age Groups of Groom, Nationality of Bride and Age Groups 2002

A- Kuwaiti

ا ـ كويتي

المجموع TOTAL	AGE GROUPS OF BRIDE فئات عمر الزوجة												جنسية الزوجة NATIONALITY OF BRIDE	فئات عمر الزوج AGE GROUPS OF GROOM
	غير مبين NOT STATED	60 +	55 - 59	50 - 54	45 - 49	40 - 44	35 - 39	30 - 34	25 - 29	20 - 24	15 - 19	اقل من 15 LESS THAN 15		
330	0	0	0	0	0	0	1	0	6	66	262	13	كويتي K	اقل من 20 LESS THAN 20
47	0	0	0	0	0	0	0	1	3	9	33	1	غير كويتي NON-K	
427	0	0	0	0	0	0	1	1	11	135	295	14	المجموع TOTAL	
3531	3	0	0	0	0	1	2	10	125	1722	1537	24	كويتي K	20 - 24
385	0	0	1	0	0	0	0	4	28	179	171	4	غير كويتي NON-K	
3916	3	0	1	0	0	1	2	14	191	1928	1708	28	المجموع TOTAL	
2414	0	0	0	0	1	5	6	52	438	1322	480	10	كويتي K	25 - 29
288	1	0	0	0	2	2	2	15	84	135	65	2	غير كويتي NON-K	
2702	1	0	0	0	3	7	10	67	550	1527	525	12	المجموع TOTAL	
827	0	0	0	1	1	7	32	132	262	312	52	1	كويتي K	30 - 34
168	0	0	0	0	0	4	6	38	45	56	27	0	غير كويتي NON-K	
995	0	0	0	1	1	11	40	160	323	367	85	1	المجموع TOTAL	
354	1	0	0	0	4	13	60	111	102	52	7	0	كويتي K	35 - 39
120	1	0	0	0	1	6	13	26	34	23	16	0	غير كويتي NON-K	
474	2	0	0	0	5	19	73	137	140	75	23	0	المجموع TOTAL	
171	0	0	0	1	2	19	44	56	35	13	0	1	كويتي K	40 - 44
83	0	0	0	0	4	9	9	29	12	17	3	1	غير كويتي NON-K	
254	0	0	0	1	6	28	53	85	51	30	3	2	المجموع TOTAL	
99	0	0	0	1	4	25	22	29	12	7	1	0	كويتي K	45 - 49
55	0	0	0	1	2	4	13	7	12	12	3	1	غير كويتي NON-K	
154	0	0	0	2	6	33	35	33	24	19	4	1	المجموع TOTAL	
43	0	0	0	2	7	13	9	8	3	1	1	0	كويتي K	50 - 54
17	0	0	0	0	1	3	1	4	4	3	1	0	غير كويتي NON-K	
60	0	0	0	2	8	21	10	12	7	4	2	0	المجموع TOTAL	

جدول رقم Table No 7

عقود الزواج حسب فئات عمر الزوج وجنسية الزوجة وفئات عمرها لسنة 2003

Marriage Contracts by Age Groups of Groom, Nationality of Bride and Age Groups 2003

أ- كويتي

A- Kuwaiti

المجموع TOTAL	فئات عمر الزوجة AGE GROUPS OF BRIDE												جنسية الزوجة NATIONALITY OF BRIDE	فئات عمر الزوج AGE GROUPS OF GROOM
	غير مبين NOT STATED	60 +	55 - 59	50 - 54	45 - 49	40 - 44	35 - 39	30 - 34	25 - 29	20 - 24	15 - 19	أقل من 15 LESS THAN 15		
396	0	0	0	0	0	0	0	1	5	78	272	13	كويتي K	أقل من 20 LESS THAN 20
54	0	0	0	0	0	0	0	0	2	15	37	0	غير كويتي NON-K	
423	0	0	0	0	0	0	0	1	7	93	309	13	المجموع TOTAL	
3683	7	0	0	0	0	0	4	20	160	1254	1568	30	كويتي K	24 - 20
344	0	0	1	0	0	0	0	3	20	172	144	4	غير كويتي NON-K	
4027	7	0	1	0	0	0	4	23	180	2029	1732	34	المجموع TOTAL	
2433	2	0	0	1	2	0	16	70	560	1303	473	8	كويتي K	29 - 25
286	0	0	0	0	0	0	6	16	69	135	58	2	غير كويتي NON-K	
2724	2	0	0	1	2	0	25	86	629	1438	531	10	المجموع TOTAL	
830	4	0	0	0	3	6	37	112	312	227	58	1	كويتي K	34 - 30
156	0	0	0	0	2	4	3	33	44	49	21	0	غير كويتي NON-K	
986	4	0	0	0	5	10	40	145	356	346	79	1	المجموع TOTAL	
360	2	0	0	0	4	8	53	98	125	60	10	0	كويتي K	39 - 35
122	0	0	0	2	2	1	9	25	41	32	10	0	غير كويتي NON-K	
482	2	0	0	2	6	9	62	123	166	92	20	0	المجموع TOTAL	
176	1	0	1	0	3	16	44	61	33	13	3	1	كويتي K	44 - 40
60	0	0	0	0	1	7	15	21	10	15	3	1	غير كويتي NON-K	
236	1	0	1	0	4	23	59	82	43	28	6	2	المجموع TOTAL	
101	0	1	0	1	8	12	32	25	10	6	6	0	كويتي K	49 - 45
37	1	0	0	1	0	4	2	7	6	12	2	0	غير كويتي NON-K	
138	1	1	0	2	8	16	34	32	24	18	2	0	المجموع TOTAL	
37	0	0	0	2	1	9	12	6	5	1	1	0	كويتي K	54 - 50
26	0	0	0	0	1	4	1	7	4	7	2	0	غير كويتي NON-K	
63	0	0	0	2	2	13	13	13	9	8	3	0	المجموع TOTAL	

Employees in Government Civil Service

30 June 2004

Authority*	Grand Total — الجملة العمومية — جملة	غير الكويتيين Non-Kuwaiti	الكويتيين Kuwaiti	Special Occupations of Contracts — العقود والوظائف الخاصة — جملة	غير الكويتيين Non-Kuwaiti	الكويتيين Kuwaiti	جملة Total
First: Ministries and Department							
Ministry of Education	55,662	11,493	44,169	11,493	11,493	0	634
Public works	6,352	758	5,594	758	758	0	222
Ministry of Communication	7,357	133	7,224	133	133	0	315
Higher Education	588	97	491	229	97	132	1
Finance	1,777	130	1,647	130	130	0	10
Information	5,435	575	4,860	575	575	0	53
Social Affairs	11,427	718	10,709	720	718	2	548
Public Health	38,450	16,077	14,373	17,811	16,077	1,734	465
General Administration of Customs	2,543	74	2,469	74	74	0	63
Commerce & Industry	1,654	26	1,628	26	26	0	17
Civil Service Commission	627	85	542	85	85	0	4
Amiri Diwan	1,310	499	811	499	499	0	6
Justice & Legal Affairs	4,310	892	3,418	1,445	892	553	70
Awqaf & Islamic Affairs	3,850	1,278	2,572	1,278	1,278	0	43
Audit Bureau	570	169	401	564	169	395	0
Directorate General of Civil Aviation	1,282	95	1,187	98	95	3	8
The Council of Ministers	1,111	177	934	182	177	5	6
Electricity & Water	8,443	2,273	6,170	2,273	2,273	0	80
Foreign Affairs	1,010	84	916	458	84	374	2
Planning	734	82	652	82	82	0	4
Interior	11,571	1,319	10,252	1,882	1,319	563	512
Defence	2,546	126	2,420	136	126	10	26
General Head Qeuarters National Guard	130	129	1	129	129	0	0
Oil	451	5	446	5	5	0	12
Legislation & Fatwa Department	442	49	433	301	49	252	1
National Council for Culture,Arts Literature	551	44	507	44	44	0	8
Total	162,193	37,387	124,806	42,418	37,387	4,823	2,910
2: Governmental Authorities& Establishment :							
a- Attached budgets:							
National Assembly	632	210	422	630	210	420	-
Kuwait Municipality	6,860	853	6,007	984	853	131	479
Kuwait University	4,876	2,061	2,815	3,066	2,061	1,005	3
Public Authority for Applied Education	3,374	660	2,714	1,816	660	1,156	11
Thepublic Authority for Civil Information	503	172	331	172	172	-	-
Kuwait Investment Authority	305	74	231	13	11	2	-
Fire Department	3,340	101	3,239	2,938	101	2,837	4
General Authority for Minors Affairs	627	80	547	80	80	-	11
Public Authority for Agriculture & Fisheries	1,254	348	906	348	348	-	15
Shoura liquidation office	6	6	-	6	6	-	-
Public Authority for Sports & Youths Affairs	447	74	373	74	74	-	1
Public Authority for Assessment of Compensation	151	44	107	54	44	10	1
Public Authority for Industry	699	58	641	50	50	-	11
Public Authority for Environment	361	55	306	55	55	-	2
Total	23,835	4,758	19,047	10,346	4,725	5,621	538

* Excluding departments which does not use lists of civil employees.

Employees in Government Civil Service

30 June 2004

Authority*	Grand Total جملة	Non-Kuwaiti غير كويتي	Kuwaiti كويتي	Special Occupations of Contracts جملة	Non-Kuwaiti غير كويتي	Kuwaiti كويتي	جملة
	الجملة العمومية			العقود والوظائف الخاصة			
	Total	Non-Kuwaiti	Kuwaiti	Total	Non-Kuwaiti	Kuwaiti	Total
B: Independent budgets:							
Central Bank Of Kuwait	743	165	578	242	165	77	-
Kuwait fund for Arab Economic Development	368	72	296	98	72	26	-
Savings & Credit Bank	348	46	300	78	46	32	4
Kuwait Airways	4,090	1,748	2,342	1,484	993	491	-
Kuwait News Agency	482	75	377	89	75	14	-
Thepublic Institution for social security	884	127	757	0	-	-	67
Kuwait Ports Authority	890	0	890	12	-	12	2
Kuwait petroleum corporation	824	177	647	18	18	-	-
Kuwait Institute for Scientific Research	797	202	595	33	33	-	-
Zakat House	325	43	282	43	43	-	3
Kuwait stock Exchange	195	103	92	69	68	1	29
Secretariat - General for Awqaf	197	21	176	21	21	-	-
Public Authority for Housing	1,117	429	688	403	398	5	33
Total	11,188	3,218	7,970	2,590	1,932	658	138
Third: State-Owned Companies:							
Kuwait flour Milk & Bakeries Comp.	2,390	2,275	115	2,276	2,275	1	-
Public Utilities Management Comp.	112	80	32	95	80	15	0
Kuwait Public Transport Comp.	3,343	3,173	170	3,123	3,173	20	2
K.O.C	5,050	1,297	3,753	3	3	0	-
K.N.P.C	5,601	1,151	4,450	310	5	305	-
Petrochemical Industries Comp.	829	243	586	1	1	0	-
Kuwait Oil Tanker Comp.	530	203	327	0	0	0	57
Kuwait Foreign Petroleum	117	50	67	28	28	0	-
Kuwait Aviation Fueling Comp.	59	8	51	0	0	0	0
Gulf Oil Comp.	64	15	49	0	0	0	0
Santafey Comp	16	15	1	15	15	0	0
Small Project Comp.	17	7	10	0	0	0	4
Technology Comp.	4	2	2	3	2	1	0
Total	18,152	8,519	9,633	5,824	5,582	342	63
Grand Total	215,348	53,912	161,436	63,270	49,626	10,644	3,649

- Source Civil Service Commission

* Excluding departments which does not use law of civil employees

Expatriates Labour Force in Private Sector by Nationality
2004-2000

العمالة الوافدة في القطاع الخاص حسب الجنسية

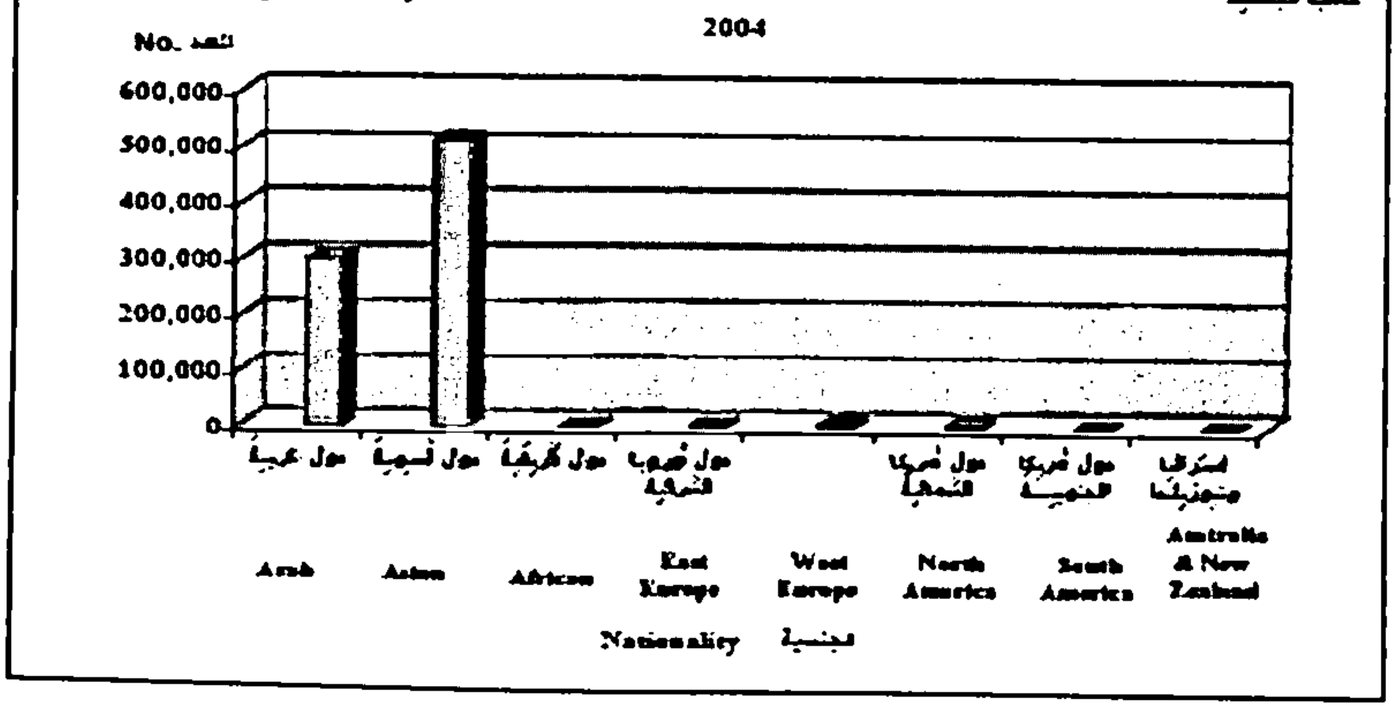
Nationality	Year 2004	2002	2001	2000	الجنسية / السنة
Arab Countries	302,227	274,667	253,640	262,422	دول عربية
Asian Countries	513,210	461,995	431,015	426,247	دول آسيوية
African Countries	1,323	1,184	862	851	دول أفريقية
East European Countries	1,492	1,491	1,065	1,479	دول أوروبا الشرقية
West European Countries	3,194	3,315	3,488	3,570	دول أوروبا الغربية
North American Countries	5,053	4,975	4,136	4,016	دول أمريكا الشمالية
South American Countries	225	219	180	187	دول أمريكا الجنوبية
Australia and the New Zealand	469	457	341	323	أستراليا ونيوزيلندا
Total	827,395	752,303	697,368	699,155	الجملة

Data not available for 2002.

بيانات عام 2002 غير متوفرة

Expatriates Labour Force in Private Sector by Nationality

العمالة الوافدة في القطاع الخاص حسب الجنسية



Newly Admitted Students at Training Institutes and Tailored by Sex Nationality & Semester

الطلبة المقبولون بمعاهد التدريب والدورات الخاصة حسب النوع والجنسية والفصل الدراسي

2004/2005

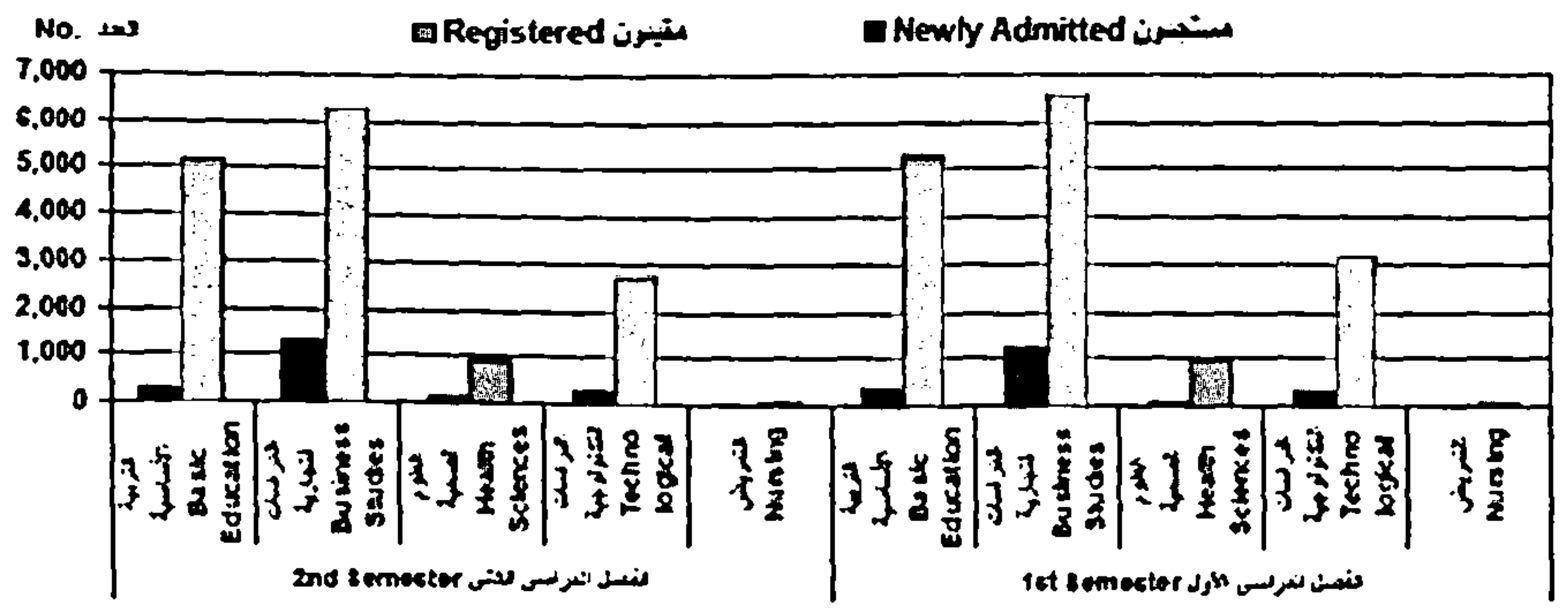
Institute	Sex	2nd Semester الفصل الدراسي الثاني			1st Semester الفصل الدراسي الأول			النوع	المعهد
		الجملة Total	غير كويتي Non-Kuwaiti	كويتي Kuwaiti	الجملة Total	غير كويتي Non-Kuwaiti	كويتي Kuwaiti		
Telecommunications and Air Navigation	M	119	0	119	252	2	250	ذ	الاتصالات وملاحة الجوية
	F	100	0	100	216	5	211	أ	
	T	219	0	219	468	7	461	جـ	
Electricity Training and Water	M	250	0	250	213	1	212	ذ	تدريب الكهرباء والماء
	F	0	0	0	0	0	0	أ	
	T	250	0	250	213	1	212	جـ	
Industrial Training	M	455	0	455	584	0	584	ذ	التدريب الصناعي
	F	0	0	0	0	0	0	أ	
	T	455	0	455	584	0	584	جـ	
Courses for Special Purposes (Tailored Courses)	M	1,321	0	1,321	1,237	41	1,196	ذ	الدورات الخاصة
	F	894	0	894	1,757	100	1,657	أ	
	T	2,215	0	2,215	2,994	141	2,853	جـ	
Special Education	M	0	0	0	343	0	343	ذ	التعليم الخاص
	F	0	0	0	0	0	0	أ	
	T	0	0	0	343	0	343	جـ	
Nursing	M	0	0	0	78	0	70	ذ	التمريض
	F	0	0	0	112	0	112	أ	
	T	0	0	0	182	0	182	جـ	
Establishment Training	M	0	0	0	217	0	217	ذ	التدريب المنشأي
	F	0	0	0	0	0	0	أ	
	T	0	0	0	217	0	217	جـ	
Secretary & Office Work	M	76	0	76	0	0	0	ذ	السكرتارية والعمل المكتبي
	F	90	0	90	0	0	0	أ	
	T	166	0	166	0	0	0	جـ	
Skills	M	0	0	0	0	0	0	ذ	المهارات
	F	55	0	55	0	0	0	أ	
	T	55	0	55	0	0	0	جـ	
Total	M	2,221	0	2,221	2,946	44	2,902	ذ	الجملة
	F	1,139	0	1,139	2,085	105	1,980	أ	
	T	3,360	0	3,360	5,031	149	4,882	جـ	

Newly Admitted and Registered at Applied Education Colleges by Semester, Nationality & Sex 2004/2003

الطلبة المستجدون والمقيدون بكليات التعليم التطبيقي حسب الفصل الدراسي والجنسية والنوع

College	2nd Semester Non-Kuwaiti جملة Total	ذكور M	إناث F	2nd Semester Kuwaiti جملة Total	ذكور M	إناث F	1st Semester Non-Kuwaiti جملة Total	ذكور M	إناث F	1st Semester Kuwaiti جملة Total	ذكور M	إناث F	الكلية
Newly Admitted Students													الطلبة المستجدون
Basic Education	109	17	92	190	54	136	195	49	146	190	54	136	التربية الأساسية
Business Studies	251	92	159	1,043	524	519	185	62	123	1,043	524	519	الدراسات التجارية
Health Sciences	62	0	62	59	0	59	43	11	32	59	0	59	العلوم الصحية
Technological studies	120	88	32	193	141	52	123	86	37	193	141	52	الدراسات التكنولوجية
Nursing	30	9	21	11	6	5	29	13	16	11	6	5	التمريض
Total	572	206	366	1,496	725	771	575	221	354	1,496	725	771	الجملة
Registered Students													الطلبة المقيدون
Basic Education	618	152	466	4,536	1,084	3,452	559	151	408	4,724	1,187	3,537	التربية الأساسية
Business Studies	778	259	519	5,505	1,853	3,652	656	201	455	5,926	1,844	4,082	الدراسات التجارية
Health Sciences	317	81	236	611	104	507	317	110	207	678	122	556	العلوم الصحية
Technological studies	410	278	132	2,326	1,648	678	373	248	125	2,757	1,936	821	الدراسات التكنولوجية
Nursing	50	19	31	56	14	42	30	13	17	55	15	40	التمريض
Total	2,173	789	1,384	13,034	4,703	8,331	1,935	723	1,212	14,140	5,104	9,036	الجملة

Newly Admitted & Registered at Applied Education Colleges — الطلبة المستجدون والمقيدون بكليات التعليم التطبيقي



Semester & College الفصل الدراسي والكلية

Newly Admitted Students at Kuwait University by Sex, Nationality & Field of Study

الطلبة المقبولون بجامعة الكويت حسب النوع والجنسية والتخصص

2004/2003

Field of Study	Sex	2nd Semester Total	2nd Semester Non-Kuwaiti	2nd Semester Kuwaiti	1st Semester Total	1st Semester Non-Kuwaiti	1st Semester Kuwaiti	النوع	التخصص
Science	M	26	7	19	236	26	210	ذ	العلوم
	F	42	20	22	381	36	345	أ	
	T	68	27	41	617	62	555	جـ	
Arts	M	13	1	12	136	12	124	ذ	الآداب
	F	18	8	10	363	31	332	أ	
	T	31	9	22	499	43	456	جـ	
Education	M	7	2	5	60	7	53	ذ	التربية
	F	28	5	23	429	44	385	أ	
	T	35	7	28	489	51	438	جـ	
Law	M	0	0	0	61	3	58	ذ	الحقوق
	F	0	0	0	130	5	125	أ	
	T	0	0	0	191	8	183	جـ	
Sharea'a & Islamic Studies	M	19	5	14	92	11	81	ذ	الشريعة والدراسات الإسلامية
	F	9	3	6	139	14	125	أ	
	T	28	8	20	231	25	206	جـ	
Adm.Science	M	41	8	33	142	12	130	ذ	العلوم الإدارية
	F	27	3	24	284	17	267	أ	
	T	68	11	57	426	29	397	جـ	
Engineering	M	32	7	25	279	29	250	ذ	الهندسة
	F	23	1	22	206	16	190	أ	
	T	55	8	47	485	45	440	جـ	
College For Woman	M	0	0	0	0	0	0	ذ	كلية البنات
	F	6	2	4	101	2	99	أ	
	T	6	2	4	101	2	99	جـ	
Allied health	M	0	0	0	24	7	17	ذ	الطب المساعد
	F	1	1	0	122	19	103	أ	
	T	1	1	0	146	26	120	جـ	
Social-Sciences	M	8	1	7	34	3	31	ذ	العلوم الإجتماعية
	F	13	1	12	171	14	157	أ	
	T	21	2	19	205	17	188	جـ	
Medical Science Center	M	0	0	0	41	7	34	ذ	مركز العلوم الطبية
	F	0	0	0	111	10	101	أ	
	T	0	0	0	152	17	135	جـ	
Total	M	146	31	115	1,185	117	988	ذ	الجملة
	F	167	44	123	2,437	208	2,229	أ	
	T	313	75	238	3,542	325	3,217	جـ	