



## Opinion of NIHR on proposed Law on Abolishing Article No. (353) of Decree-by-Law No. (15) of 1976 on Issuing the Criminal Law

### **Introduction:**

In appreciation of the efforts exerted by the esteemed Council of Representatives in relation to the issues of Human Rights in its capacity as the Legislative body charged with protecting the rights and public freedoms; and all due respect for the considerations sought by the proposed Law on cancellation of Article No. (353) of Decree-by-Law No. (15) of 1976 on issuing the Criminal Law; and based upon the request of the Council's Committee of Foreign Affairs, Defense and National Security, the National Institution for Human Rights hereby refers to you its visions on the proposed law taking into account relevant provisions of the Constitution, international and regional conventions on human rights.

Whereas, the above-mentioned proposed law consists of two articles in addition to the preamble and proposes the cancellation of Article No. (353) of Decree-by-Law No. (15) of 1976 on issuing the Criminal Law and an executive article.

Whereas, the mandate determined for NIHR pursuant to provisions of Law No. (26) No. 2014 on Establishing the National Institution for Human Rights; especially, paragraph (b) of article (12), stipulates that NIHR:

**"To examine legislation and regulations enforced in the Kingdom which are related to human rights, and recommend amendments as it deems fit, particularly in connection with the consistency of such regulations with the Kingdom's international obligations in the human rights field. NIHR shall be empowered to recommend enacting new legislation related to human rights".**

Thereupon, NIHR will limit its visions regarding the proposed law to the aspects that are related to or may influence the basic human rights and freedoms and the legal problems that may interfere with the application of the proposed law in its current version.

**This is detailed as follows:**

Article No. (353) of Criminal Law promulgated by Decree-by-Law No. (15) of 1976 on issuing the Criminal Law

**Text in the original law:**

No Criminalty shall be inflicted against a person who has committed one of the crimes set forth in the preceding articles if a valid contract of marriage is made between the offender and the victim. However, If he was subject to a final court judgement before concluding the marriage, such judgement shall be subject to a stay of execution and its Criminal effects shall cease.

**Stipulation as mentioned in the proposed law:**

Article No. (353) of Criminal Law promulgated by Decree-by-Law No. (15) of 1976 on issuing the Criminal Law and the amendments thereof shall be cancelled.

**Visions of the NIHR:**

1. In principle, the NIHR hereby appreciates the bases and principles of the proposed law subject matter of opinion represented in cancellation of article No. (353) of Criminal Law promulgated by Decree-by-Law No. (15) of 1976 ruling that the offender who has committed an assault against the woman, shall not be punished as long as a correct marriage contract has been concluded between him and the victim. The presenter of the proposal considers that the cancellation of the above article will ensure that the offender will not escape from criminal punishment by just marrying the victim, because the current formula of the article doesn't ensure the protection for the woman from assault act and the remaining of the same encourages committers of rape crime and ravishment crimes to commit further crimes, as long as there is a legal mean that prevents punishment represented in concluding a correct marriage contract between the offender and victim. This contradicts the philosophy of the determined punishment.
2. Although the Arab Commission on Human Rights (Committee Charter) emanating from the Arab Charter on Human Rights approved by



Kingdom of Bahrain by virtue of Law No. (7) of 2006 stipulated the final recommendations thereof during the examination of the first report of Kingdom of Bahrain in the 3<sup>rd</sup> round held on (16-21) February 2012 that **"The Criminal law shall be amended and it shall be ensured that the rapers will not escape from the criminal responsibility in case of marriage from the victim. This guarantees the principles of marriage established on the complete satisfaction without any coercion as stipulated in the Charter"**. This agrees with the proposed law subject matter of opinion.

3. However, in this concern, the NIHR things that article No. (353) of Criminal Law promulgated by Decree-by-Law No. (15) of 1976 binds the court not to rule the determined punishment against the offender who has committed the assault act, because it is accompanied with the correct marriage contract between him and the victim as the "correct marriage contract" determined in the above article necessitates that it shall satisfy all elements and conditions thereof.
4. Thereupon, the marriage of the offender with the victim according to provision of the article subject matter of opinion necessitates the complete satisfaction of the woman (offender), because she may not be forced to perform such marriage of the offender, who has committed the assault act and she shall be absolutely free to conclude such correct contract with the offender. In such case, this leads to the failure to rule a criminal punishment against the offender on the basis that while the punishment aims at achieving the general deterrence and protection of the society, but it also seeks to maintaining the social structure and avoiding the family disintegration. In addition, the victim woman shall be absolutely free not to accept such marriage and this means that the determined criminal punishment shall be applicable to the offender, due to the absence of the purpose aimed at by the legislator by lack to inflict the same. At such time, the woman will be at a weak legal position or her rights will be disparaged and degraded.
5. The recommendation issued by the Arab Charter Commission during the review of the report of Kingdom of Bahrain, mentioned above, has joined the amendment of provisions of Criminal Law and the guarantee that the committers of the assault crimes will not escape from the criminal responsibility in case of marriage of the victim in way ensures the principle of marriage established on the full satisfaction without coercion. However, by reference to provisions of article No. (353) of the same law, it is noted that such article necessitates the existence of a

correct marriage contract between both parties and this means that neither party thereof is forced to conclude the same in way achieves the complete satisfaction in the same. According to this contract stipulated in the law, the stipulation is in agreement with the Charter provisions.

**Thereupon:**

With full appreciation for the principles and bases aimed at by the proposed law by cancellation of Article No. (353) of Decree-by-Law No. (15) of 1976 on Issuing the Criminal Law, but it recommends that such article shall be maintained as stipulated in the original law as long as the marriage contract concluded between the offender and the victim woman has been achieved with complete satisfaction of the victim and without coercing her in this regard. In addition, such article has necessitates that in order not to inflict the determined punishment against the offender, a correct marriage contract of complete elements and conditions shall be concluded between both parties and this agrees with the purposes aimed at by the legislator by virtue of this article.