

# UNIVERSITY OF PÉCS

Faculty of Law, Doctoral School of Law

## **Establishing Effective Legal Framework for New Generation – A Comparison of the Jordanian and some European Constitutions.**

PhD. Thesis



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## **Abstract**

The research work is centred on comparing the Jordanian constitution with the constitution of different European countries to establish an effective legal framework for the new generation irrespective of race, religion, sex and nationality. The research seeks to find similarities and differences amid the Jordanian constitution and the constitution of European countries to further determine lacking areas and devise a framework on the basis of areas of improvement for enhancing equality of rights for the new generation.

In order to accomplish the research purpose and complete the research task, the research included the comparison of key elements Jordanian constitution with constitutions of European countries such as Austria, Germany, Greece, France, Poland and Portugal. The European Union does not have a common constitution so the above mentioned six countries are chosen for comparison with Jordan. The qualitative research method is integrated for data collection and obtains a comprehensive and better understanding of the views and perceptions of different scholars regarding constitutional law and legislation in European countries and Jordan. Secondary data collection tools are used and information procured by reviewing academic databases and relevant journal articles and books to draw substantial findings. Further, interpretivism philosophy and qualitative analysis technique is incorporated into this research.

The data is analysed by the detailed description of chosen European countries' constitutions and Jordanian constitution with a focus on gender equality, protection and promotion of human rights, women participation and involvement and discrimination practices rooted in religion. It is found from data analysis that constitutions of European countries foster security, freedom and justice within the border of the European Union and it comprises strict measures against gender-based or religion-based discrimination. The Jordanian constitution has undergone several changes but there is a wide scope for improvement in terms of securing equal rights for the new generation and eradicate discriminatory practices on the basis of gender, sex and religion. It is recommended that there is a need for alignment of theories and practices in the legal system, ensure 30% quota for women in parliament, give legal status to Syrian and Iraqi refugees, implement CEDAW and extend the application of constitution to every individual under the jurisdiction of Jordan.

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## **List of Abbreviations**

ADS-Anti-Discrimination Agency

AGG-Gender Equal Treatment Act

CEDAW-Convention on the Elimination of All Forms of Discrimination against Women

CJEU-Court of Justice of the EU

CSW-Commission on the Status of Women

DDHC- Declaration of the Rights of Man and of the Citizen

ECHR-European Convention of Human Rights

EEA-European Economic Area

EU-European Union

FRC-Fundamental Rights' Charter

GID-General Intelligence Directorate

HRC-Human Rights Council

IGC-Intergovernmental Conference

JCC-Jordanian Constitutional Court

MEPs-Members of European Parliaments

SPD-Social Democratic Party

TCE-Treaty Establishing a Constitution for Europe

TEU-Treaty on European Union

TFEU-Treaty on the Functioning of the European Union

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## Chapter 1: Introduction

### 1.1 The Problem Statement and Research Enquiries

A country's Constitution conducts a vital role through its responsibility to safeguard the human rights, which are provided to citizens irrespective of their class, sex, religion or personal appearance. Therefore, the effectiveness of a constitution is mainly relied on how it safeguards the rights and privileges of citizens. Thus, the constitution is very important for every nation and serves as a supportive pillar of government's system and states, as it provides social security to the people and ensures their privileges and human rights. Moreover, due to the central role of constitution to protect people, there are many studies conducted to explore and detect the power of constitutional law to protect the rights of people.

In this regard, the study conducted by Elliot (2014) mentioned that constitutional laws in countries contributes in forming the basic rights of citizens, as well as guaranteeing various rights and provisions to individuals and groups on behalf of which they can ensure their dignity and wellbeing. Additionally, it assists citizens to avail their basic rights which are included in various constitutional laws, such as the right to freedom, right to speak, and right to life<sup>1</sup>. Authors like Roberts (2017) elaborated that constitutional law puts higher emphasis to the state's role in the establishment and maintenance of national security and public order comparing to the rights of the individuals towards housing, employment, health, education and protection and sustenance of the ecological environment<sup>2</sup>. Continuously, Hartog (2012) added that constitutional law is important as it is a set of rules that concerns things that are acknowledged in the public areas. If there were no constitutional law, there might be conflicts among social networks and social gatherings<sup>3</sup>.

However, although there are plenty of studies dived in exploring the importance of constitution and its ability to protect the rights of people; there is a gap in previous researches relating to the comparison of Jordanian Constitution with European countries' constitution for establishing an effective legal framework for new generation irrespective of religion, race, nationality and sex. Therefore, this present study will provide a comprehensive comparison of Jordanian Constitution and European countries' constitution in an attempt to discover new legislative framework through excluding racial, gender along with religious discrimination for the modern generation.

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<sup>1</sup> Mark Elliott, 'Constitutional Legislation, European Union Law and the Nature of the United Kingdom's Contemporary Constitution' (2014) 10 ECLR 3, 379.

<sup>2</sup> Anthea Roberts, *Is International Law International?* (Oxford University Press 2017), pp. 103-104.

<sup>3</sup> Hendrik Hartog, 'Introduction to Symposium on "Critical Legal Histories": Robert W. Gordon'. 1984. *Critical Legal Histories. Stanford Law Review* 36: 57-125' (2012) 37 LSI 1, 147.



### ***Research Questions and Sub-Questions***

The study is designed to compare the Constitution of Jordan and European countries with the aim of developing a new constitutional framework for both Jordan and European countries. Thus, to attain the main aim of this research, the study endeavours to answer the following main and sub-questions:

Q.1. How can the comparative components of Constitution of Jordan and European countries can be utilised to form an efficient legalised framework for the current generations regardless of their race, religion, sex and nationality?

- Thus, based on the aforementioned main question, the following sub-questions are divided:

Q1.1. What are the similar and dissimilar elements in the Jordanian Constitution and the European countries' constitution?

Q1.2. What are the components of the Constitution of Jordan and European countries' that can enhance equality of rights for the new generation?

Q1.3. What are the lacking areas in European countries' constitution and Jordanian Constitution?

Q1.4. What is the stability of the European countries' constitution as well as Jordanian Constitution?

### **1.2 Research Objectives**

Due to the significance of a country's effective provisions of constitution to protect the rights of its citizens, the present study reviewed many studies in order to define the gap in literature. However, since there is no research focused on elaborating the efficiency of Jordanian Constitution to protect the rights of the current generation; the study is primarily constructed to compare the Jordanian Constitution along with constitution of European countries in an attempt to assist the new generation dealing with a legal framework regardless of religion, nationality, race and sex. Therefore, to accomplish this core aim, this research seeks to attain the following related objectives:

- 1- Describing and analyzing the key elements of the constitution of European countries;
- 2- Elaborating and exploring the major components of the Jordanian Constitution;
- 3- Ascertaining the constitutional theories and legal provisions in relation to European countries' constitution and Jordanian Constitutions;
- 4- Identifying the ongoing changes in constitutional theories and their practices in the Constitution of Jordan and European countries;

5- Comparing and contrasting the Constitution of Jordan and European countries in an attempt to formulate an effective legal framework irrespective of nationality, race, sex and religion; and

6- Identifying the suitable approaches for integrating new legal framework in the existing constitution in regard to eradicate discrimination and foster equality across Jordan and European countries.

### **1.3 Reason for Choosing Specific Countries**

Jordan has been selected to be studied in this research project because the constitution of the country concentrates legislative and executive authority on the king. The human rights problems in Jordan are on high as compared to rest of the countries that includes torture and allegation by security officials, arbitrary detention and arrest of journalists and activities, undue restrictions of freedom of speech and the press integrating censorship, criminalisation of libel, internet site blocking, restriction of assembly and association, forced labour and discrimination and violence against women, bisexual, intersex, gay and lesbian. In general, the constitutions of Jordan lacks offer equal rights to its citizens that needs increased focus by the government to take initiatives that respect the rights and freedom of persons<sup>4</sup>. Besides, the six countries of the EU including France, Greece, Germany, Austria, Portuguese and Poland have been chosen because unlike Jordan the constitutions in these EU countries focus extensively on promoting equality and anti-discriminatory practices. However, there are some countries that have specifically defined some of the grounds for discrimination like Germany and Greece while the constitutions in most of the rest countries have not defined the basis of discrimination like France, Austria, Poland and Portuguese<sup>5</sup>. Hence, the research has chosen to review the constitutions of EU members those who have specifically defined ground for discrimination and those who does not so as to gain in-depth knowledge and make detailed comparison between constitutions of different EU countries and Jordan.

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<sup>4</sup> US Department, '2018 Country Reports on Human Rights Practices: Jordan', (2018) Available at: <<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/jordan/>> accessed 27 February 2020.

<sup>5</sup> European Commission, 'European network of legal experts in gender equality and non-discrimination', (2017) available at: <[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiVuYeEuMvwAhWhjuYKHZX0Bx8QFjAAegQIAhAD&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fjust%2Fdocument.cfm%3Faction%3Ddisplay%26doc\\_id%3D49316&usg=AOvVaw0Wk8h5uEMhBgHGD3MIxIWK](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiVuYeEuMvwAhWhjuYKHZX0Bx8QFjAAegQIAhAD&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fjust%2Fdocument.cfm%3Faction%3Ddisplay%26doc_id%3D49316&usg=AOvVaw0Wk8h5uEMhBgHGD3MIxIWK)> accessed 1st May 2021.

## 1.4 The Study Rationale

This research is very crucial for the present times as it is focused on equality of every person irrespective of religion, race, nationality and sex. It is clearly evident that awareness among the people around the globe has increased regarding the bias they face on the basis of religion, race, nationality and sex. For instance, in the case of the citizens of Jordan, awareness among the people regarding their rights have increased, and many issues are faced by the people due to the rise in the inequality issues<sup>6</sup>. Flaws are also observed in the constitutions of European countries as the people still face issues regarding equality, and all the communities do not have equal rights<sup>7</sup>. Therefore, this research is crucial in order to determine the flaws in the Jordanian Constitution and the constitutions of European countries such as France, Greece, Austria, and Germany. It will help in developing a constitutional legal framework for the upcoming generation irrespective of religion, race, nationality and sex.

This research is also vital as it helps in understanding the shortcoming that is observed in the Constitution of Jordan and Constitutions of European countries. For example, it is known that the political system of Jordan is based on ruling families and conservative elements and religion is used by the people in order to achieve political objectives, just like politics is used for various religious aspects. This interaction process is notable in the Jordanian Constitution where religious authority is legalised in order to run the rights of all the citizens, which has a negative impact on the rights of women in Jordan<sup>8</sup>. These types of flaws have a massive impact on the liberalisation of the duties and rights of the citizens, which is evaluated by the help of this research. An effective legal framework can only be established if all the flaws in the Constitution that are made on the basis of religion, race, nationality and sex can be determined.

As it is known that European Union does not have a common constitution, and different European countries have their own constitution, six European countries have been chosen to compare with the Constitution of Jordan in order to understand the flaws present in the constitutions. Therefore, this research concentrates on providing a comprehensive comparison of Jordanian Constitution and Constitutions of European countries, such as France, Greece, Austria, Portugal, Poland and Germany, in an attempt to discover a new legislative framework through excluding racial, gender along with religious discrimination for the modern generation. It has been perceived that Constitutions of the European Countries and the Jordanian

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<sup>6</sup> Kumaraswamy, *The Palgrave Handbook of the Hashemite Kingdom of Jordan* (Springer Nature 2019) 56.

<sup>7</sup> Nicola Lupo, *Interparliamentary Cooperation in the Composite European Constitution* (Bloomsbury Publishing 2016) 22.

<sup>8</sup> Amin Al-Mashaqbeh, *Jordanian Political System* (Xlibris Corporation 2019) 13.

Constitution concentrated on reducing discriminations in the countries; however, there are certain flaws in the constitutions due to which the countries have still been witnessing biased actions. For instance, although Jordanian Constitution's Article 6 Chapter II highlights that every individual is equal in front of the law, the failure of mentioning women bounds this law to be enforced on men particularly, resulting in the continuation of discriminatory acts in the country<sup>9</sup>.

Likewise, issues can also be witnessed in the European Countries' constitutions in regards to discriminations on the grounds of sex, religion, race and nationality. For instance, in Poland's constitution, Article 53 concentrates on religious freedom; however, some citizens of the country have expressed their resentments against the church as the people believe that the constitution has provided many rights to the churches, and the churches have misused the power by turning the worship places to a political market, in which the rights of the citizens are being traded<sup>10</sup>. However, the France constitution has been witnessed to give greater emphasis on minimising discrimination in the country as France, via its constitution, guarantees equality among every individual in the country. Article 1 of France constitution offers equal access to offices and elective posts to men and women, as well as equal professional positions and social accountability<sup>11</sup>. France even provided provisions of fifty per cent of gender parity and has also offered 40 per cent of Assemblee Nationale's seat to women in the country, along with 33 per cent of Senate's seat<sup>12</sup>. Thus, the comparison of the constitutions of different countries will help in understanding the drawbacks present in the countries' constitution, as well as guide in diminishing the issues of discrimination and fostering equal rights to every individual in future.

The research holds great importance as a new framework is essential in the modern era that is not based on gender, religion, nationality and sex because it has become essential to empower each and every individual. It means that the laws regarding equality in human rights need to be taken seriously and be reconstructed for the development of every individual or for the evolution for the benefit of each and every citizen rather than just showing fake modernity in the international community. Therefore, the research can help in discovering the areas where

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<sup>9</sup> OECD, Women in Public Life Gender, Law and Policy in the Middle East and North Africa: Gender, Law and Policy in the Middle East and North Africa (OECD Publishing 2014) p.50.

<sup>10</sup> Justyna Pawlak and Alicja Ptak, 'As Poland's Church embraces politics, Catholics depart' (3 February 2021) <<https://www.reuters.com/article/us-poland-church-insight-idUSKBN2A30SN>> accessed 7<sup>th</sup> February 2021.

<sup>11</sup> Constitute 'France 1958 (rev. 2008)' (2008) Available at: <[https://www.constituteproject.org/constitution/France\\_2008?lang=en](https://www.constituteproject.org/constitution/France_2008?lang=en)> accessed 7<sup>th</sup> February 2021.

<sup>12</sup> International IDEA, 'Gender Quotas Database' (2020) Available at: <<https://www.idea.int/data-tools/data/gender-quotas/country-view/154/35>> accessed 7<sup>th</sup> February 2021.

the Jordanian Constitution and Constitutions of European Countries are lagging and develop an effective framework that will help in influencing people to treat every individual equally. The research will also help to determine how the legal framework can be integrated into the Jordanian Constitution and the constitution of European countries. The research will also be beneficial for the governments in order to understand the flaws in the Constitution and provide insights on the things that are lacking in the constitutions so that steps can be taken in order to rectify them.

The review of previous researches showed that studies including Komarek (2014) asserted that since constitutional law conducts a vital role in countries, there is no doubt that the absence of constitutional law can lead to significant conflicts, as well as confusion among communities and social groups<sup>13</sup>. Similarly, Drymiotou (2018) provided that constitutional law plays the most significant role by addressing the fundamental issues associated to the society and the government. Additionally, it also helps in defining clear roles for the government such that no major disputes exist between the governmental parties and the constitution commits itself to the principles of democracy and the dignity of a citizen<sup>14</sup>. Continuously, Driver (2015) insisted that a constitutional law assists people realizing the consequences of their actions; therefore, encouraging the citizens of a country to perform the right actions and concerning of the country's development<sup>15</sup>.

However, since the above reviewed studies didn't elaborate the role of Jordanian Constitution and the Constitutions of European countries in protecting the rights of the current generation, regardless of their race, religion, sex and nationality; this study will help in mitigating this literature gap and get a significant constitution that can effectively focus on eradicating inequalities. This research presents a new issue in terms of its purpose because it enables to achieve a comparison between the legislative systems of European countries and Jordan, by emphasising on the new and undiscovered aspects regarding the lacking areas in their legal framework.

### **1.5 Research Methodology**

In order to obtain a crucial insight into the differences between the constitutional aspects of Jordan and European countries; the study collected a pertinent set of knowledge and information on the chosen area. There are two types of research methodologies which are

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<sup>13</sup> Jann Komarek, 'National constitutional courts in the European constitutional democracy', (2014) 12 IJCL 3, 525.

<sup>14</sup> Elena Drymiotou, *Human Rights, Constitutional Law and Belonging: The Right to Equal Belonging in a Democratic Society* (Routledge 2018).

<sup>15</sup> Justin Driver, 'The significance of the frontier in American constitutional law' (2012) 2011 TSCR 1, 345.

utilized in a study, which are qualitative and quantitative methods. Whereas, the qualitative approach is referred as the inductive methodology, which is primarily focusing on building a new theory, while the quantitative approach is linked with the deductive method which is mainly concerned with testing an available theory through reviewing the most related literature<sup>16</sup>. Since the current study was mainly constructed for the aim of comparing the Jordanian Constitution along with the constitution of European countries in order to help the new generation to deal with a legal framework regardless of religion, nationality, race and sex; the study relied on collecting secondary data to attain the core aim of this study. Since the current research work aims at exploring a subjective area; the use of qualitative research method was selected. The qualitative research method is the most suitable method for this research to explore the general trends, views and experiences of the participants pertaining to the research area<sup>17</sup>. The use of this method helps to understand a greater and broader insight into the views and perception of the experts of constitutional law and legislation in Jordan and European countries. Thus, in order to obtain a comprehensive array of qualitative resources, data collection methods have been conducted in this research. Using these tools, a detailed subjective insight has been gauged in regard to the Jordanian Constitution and the constitutions of European countries to support the rights of the new generation<sup>18</sup>.

On the other hand, the study relied on reviewing the available literatures to identify their findings. A literature review or survey method gives the opportunity to determine different perspectives of the scholars to compare and contrast. This data collection method is chosen to develop a theory-based knowledge of constitutional theories and existing gaps in the constitutions that directly affect the stability and robustness of the legislative system. Secondary data collection method is integrated in this thesis so as to infer valid and credible conclusion whether Jordan constitution in contrast to the European countries' constitution is more stable or not, and extent of amendments in the existing Constitution of Jordan and European countries to safeguard citizens' right irrespective of discrimination. Since the study utilized on secondary data to attain the core aim of this research, the mixed methodology will be followed to compare, and contrast the constitutions, which are followed in Jordan and some European countries to identify the major determinants or areas of change to develop a legal

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<sup>16</sup> Saunders, M., Lewis, P. and Thornhill, A., 2012. *Research Methods for Business Students*. 6<sup>th</sup> ed. Harlow: Pearson Education Limited.

<sup>17</sup> Baran and Mette L, *Mixed Methods Research for Improved Scientific Study* (IGI Global 2016).

<sup>18</sup> Sarah J. Tracy, *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact* (John Wiley & Sons 2019).

framework for the new generation. Where, the collection of qualitative data is mainly focused on secondary research to integrate views of scholars and legal experts. A literature review or survey method gives the opportunity to determine different perspectives of the scholars in compare and contrast format. This data collection method is chosen to develop a theory-based knowledge of constitutional theories and existing gaps in the constitutions that directly affect the stability and robustness of the legislative system. Secondary data collection method is integrated in this thesis to infer valid and credible conclusion whether Jordanian Constitution in contrast to the European countries' constitution is more stable or not, and extent of amendments in the existing Constitution of Jordan and European countries to safeguard citizens' right irrespective of discrimination.

The determination of a suitable research's philosophy is considered as the most crucial and foremost step in initiating the research work. It explains the assumptions, ideologies, values and beliefs that guide the efforts of researcher towards the desired goals and the knowledge's development. The assumptions under the research philosophy are mainly of three types, including ontological, epistemological and axiological. Under them, positivism, interpretivism and pragmatism philosophical instances are lying down<sup>19</sup>. Among them, the application of interpretivism philosophy has been made in the research due to its significant emphasises on studying humans and providing greater understanding and interpretation of the social contexts and world that found highly relevant in performing a detailed study on the subjective context of the chosen research topic. The current research has selected a broad topic and complex area of investigating, wherein the application of interpretivism philosophy is examined highly crucial as it assists in drawing subjective findings explicitly focusing on deriving multiple interpretations, complexity, the richness of data and diverse meaning by involving the human insights<sup>20</sup>. The use of the philosophy has helped in entering the social world of the constitutional law of Jordan and EU countries. This nature and a large array of the benefits of the interpretivism philosophy make it the suitable philosophy for the research to carry out a detail investigation on the similarities and differences between the constitutional provisions at Jordan and European countries in the light of safeguarding the rights of the new generation.

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<sup>19</sup> Xabier Larrucea, Izaskun Santamaria, Rory V. O'Connor and Richard Messnarz, *Systems, Software and Services Process Improvement: 25th European Conference, EuroSPI 2018, Bilbao, Spain, September 5-7, 2018, Proceedings* (Springer 2018).

<sup>20</sup> Ngulube and Patrick, *Handbook of Research on Connecting Research Methods for Information Science Research* (IGI Global 2019).

A study design is a comprehensive phase that is linked to provide a robust framework to the research supporting the integration of the data collection process, sample selection, performing the data analysis and integrating the philosophical assumptions. The research design that can be used by a researcher is mainly of two types, namely descriptive research design and exploratory research design. The current study has selected a topic on which currently no specific research has been performed and thus, the chosen area has been remained clearly not defined yet. For this reason, the use of exploratory research design has been made in the research to explore Constitution of Jordan and European countries and examining similarities and differences between it. The design is adopted in the research due to the benefits of greater adaptability and flexibility to change, a greater understanding of the research area and better conclusive evidence to draw crucial findings<sup>21</sup>. In support of the exploratory research design, the use of inductive approach has been made in the research. In order to provide a better explanation to the collected data, the use of inductive research approach is optimal.

The qualitative data analysis of this study was done by utilizing secondary studies review using thematic analysis. This data analysis method helps to identify common themes to process analysis and interpretation of the meaningful pattern from the collected qualitative data<sup>22</sup>. Hence, the comparison between Jordanian constitutions and constitutions of different EU countries has been made based on the information acquired from secondary sources where the views and opinions provided by scholars and academicians have been reviewed to make comparisons. Lack of quantitative data is one of the major limitations of the research. Besides this, statistical data is not integrated in this thesis, which is also a key limitation that might affect the validity of the result. The usage of the qualitative methods has been made in strict abidance to the ethical norms and guidelines pertaining to the research. Along with this, strict compliance with the guidelines of plagiarism norms has also made in this research to protect the credibility and reliability of the study's findings.

### **1.6 Theoretical Framework**

This study primarily aims at comparing the Jordanian Constitution along with constitution of European countries in order to help the new generation to deal with a legal framework regardless of religion, nationality, race and sex. In chapter 1 the study elaborated

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<sup>21</sup> Viktoria Schoja, *Determining Consumer Behaviour in the Catering Industry: A Case Study Of Starbucks UK* (Academic Publishing 2016).

<sup>22</sup> Greg Guest and Kathleen M. MacQueen and Emily E. Namey, *Applied Thematic Analysis* (SAGE 2012) 10.



the definition of constitutional law, a constitution's main functions and its importance for a country. The chapter is also showed the study's problem statement and main enquiries, the main aim and objective, the study rationale and finally the study's methodology. Thus, in an attempt to provide a sufficient understanding of the background of both the Constitution of Jordan and European countries, the current chapter was constructed. Significant theories have also been applied in order to better understand the effectiveness of constitutional law.

According to Whittington (2014), in governing and guiding the framing of the constitution, constitutional theory plays a vital role. In this, the scholars of the constitution have made significant focus on exploring the ways in which the constitution assist in providing a higher level of constraining political actors, along with the pros and cons of the counter-majoritarian court having armed power of judicial veto. Constitution theory is explained as decisively framed by the conflict images shaped in between the political branches of the new deal and the Supreme Court<sup>23</sup>. In arguing to the views, Coan (2017) has underlined John Har Ely's theory of judicial review claiming as representative reinforcement. The theory argues that judges should limit themselves to questioning the process rather than substance, as doing it has made it necessary for ensuring the judicial review democratic legitimacy. Substantive claims made by the judges highlight the correct approach concerned to the constitutional decision-making, as assessed by the moral desirability of the undertaken decisions. The review of the authors' views has revealed that framing of the constitution relies significantly on constitutional decision-making that encompasses judicial review and a detailed study of the decision of judiciary power<sup>24</sup>.

In elaboration to the views, Strauss (1999) has asserted constitutional theory as the key area of constitution law centred on constitutional government underpinnings. It is claimed to be not limited by jurisdiction or country and examined to overlap with constitutionalism, philosophy of law, democratic theory and legal theory. The author defined constitutional theory as both prescriptive and descriptive, which is supposed to produce diverse results seeming morally right results and makes the proponents of the theory uncomfortable. Constitutional theory is based upon the agreement that exists in the legal culture and extends crucial constitutional principles of specific points of law.<sup>25</sup> In arguing of the views, Jordan (2018) has asserted that the majority of the constitution theorising aims at specifying the content or meaning of the constitution, essential for sound constitutional decision-making. A normative

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<sup>23</sup> Keith E. Whittington, 'Constitutional Theory and the Faces of Power' (2014).

<sup>24</sup> Andrew Coan, 'The Foundations of Constitutional Theory'(2017) ALS, 836.

<sup>25</sup> David A. Strauss, 'What Is Constitutional Theory?' (1999) 87 CLR 3, 582.

basis has explained constitutional theory as preserving legal stability or democratic authority. Along with this, emphasises also made on the recognition of hierarchical pluralist theory pertaining to constitutionality. The hierarchical pluralist theory integrates two or more bases of normative and their associated theories linked to constitutional context, which are further used to establish a strong set of hierarchical rules for its application<sup>26</sup>.

Further, Coan (2017) has shed crucial light on the taxonomy for organising the normative basis linked to constitutional theory across four key categories; metaphysical, procedural, positivist and substantive. The metaphysical taxonomy has claimed that the correct approach to the decision-making of constitutionalism follows deductively from the concept of nature or interpretation of the law. Procedural taxonomy claims that the constitutional decision-making approach correctly follows from the ideal procedural legitimacy or fairness, requiring particular constitutional decision-making by the specific institutional actors. This ideal legitimacy or integrity is generally provided by democracy<sup>27</sup>. In objection to the views, Doyle (2018) has asserted that the Kelsen's theory of constitution explains the textual delineations of the national territory by making a significant attempt to explain the geographic referent to ultimate recognition rule, expresses a territorial claim and contract the national territory scope. The theory also claims that constitutional texts are most prominently, not self-executing; rather, it depends significantly on the foundational decisions that are reflected in the written conventional rules. The rules play a vital role in guiding constitutional order<sup>28</sup>.

A crucial application of the constitutional theories is examined in the framing of constitutions for countries across the globe. In this context, Abu- Karaki, Faqir and Marashdah (2011) have opined that the contemporary notion of democracy is claimed as inseparable from the state ideas. The State of Law claimed as restricted for all its actions according to the doctrine of the rule of law that highlights the presence of an impartial and free judiciary. By applying the constitution principles, the Jordanian constitution is developed that assures explicitly the separation between the three state organs, namely, the executive, judiciary and legislative branches. Among them, the judiciary is working as entirely independent from the influence of legislative and executives' branches<sup>29</sup>. On the other hand, Hamulak and Stehlik (2013) opined the doctrine of implied powers acting as the key constitutional theory in the decision-making in European countries. The application of it claims that the Union activities are required to

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<sup>26</sup> Andrew Jordan, 'Constitutional Anti-Theory' (2018), 1524.

<sup>27</sup> Andrew Coan, 'The Foundations of Constitutional Theory'(2017) ALS, 836.

<sup>28</sup> Oran Doyle, 'The silent constitution of territory' (2018) 16 IJCL 3, 899.

<sup>29</sup> Muddather Abu- Karaki, Raed S. AFaqir and Majed Ahmad K. Marashdah, 'Democracy & Judicial Controlling in Jordan A Constitutional Study' (2011) 4 JPL 2, 183.

attain the tasks and objectives concerning the integration. The European Union is declared as the self-sufficient entity that governs the conferred powers and responsibilities effectively autonomously and independently. It represents a perfect illustration of the outcome of super nationality<sup>30</sup>.

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<sup>30</sup> Ondrej Hamulak and Vaclav Stehlik, *European Union Constitutional Law: Revealing the Complex Constitutional System of European Union* (Palacky University Olomouc 2013).

## **Chapter 2: Need and Importance of Constitution in Providing Effective Legal Framework for New Generation Irrespective of Religion, Race, Nationality and Sex**

### **2.1 The Meaning, Need and the Main Functions of Constitutional Law**

This section has been developed in order to emphasise on the significance of constitutional law and the way it contributes to control the freedoms and rights of every individual in a country. This section gives an overall understanding of the constitutions and the role it plays in different countries. It helps in developing an insight regarding the importance of the constitutional law in different countries in order to protect the privilege of the citizens. This, in turn, will help in understanding the way constitutional law can help in mitigating inequalities within a country and enhance equality in society.

According to this study, the term “Constitution” is majorly referring to a primary collection of rules and principles that define the ideologies and mannerisms through which a country is governed. Additionally, the constitution specifies how power will be distributed and controlled as well as the rights and freedoms that are possessed by the citizens<sup>31</sup>. Regardless of factors such as type and length, a constitution should contain guidance to the following matters: rules and guidelines for conducting elections; the relationship, and hierarchy between critical institutions and, or branches of the government; where the sovereignty of the state lies; ways of amending that constitution; statement of the rights of the citizens; the type of government; and the values and principles the state wishes to project to the rest of the world<sup>32</sup>. The need of a constitution comes from as it is a responsibility to safeguard the individual rights that are provided to citizens irrespective of their class, sex, religion or personal appearance. Therefore, the goodness or effectiveness of a constitution is based on how it safeguards the rights and privileges of its citizens. As such, a constitution can be said to be a social contract between the government and its citizens<sup>33</sup>.

The law of a nation or state is governed by a constitution, and it is known as a written document that describes the fundamental authority that is owned by the government. Additionally, it defines the distributed power among the different government departments<sup>34</sup>. Thus, the laws of a nation should be guided by the provisions contained in the constitution, on

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<sup>31</sup> W. Elliot Bulmer, *A Model Constitution for Scotland: Making Democracy Work in an Independent State* (Luath Press Ltd 2013) p. 31.

<sup>32</sup> David S. Clark, *Encyclopedia of Law and Society: American and Global Perspectives Gale Virtual Reference Library* (SAGE Publications 2007) p. 419.

<sup>33</sup> David S. Clark, *Encyclopedia of Law and Society: American and Global Perspectives Gale Virtual Reference Library* (SAGE Publications 2007) p. 520.

<sup>34</sup> Beard, C.A. 2011. *An Economic Interpretation of the Constitution of the United States. The Law book Exchange, Ltd.*

the basis of which policies the government should formulate, thereby, no action can lead to a constitutional crisis<sup>35</sup>. The constitution of every nation is important for both the nation and people, as it provides social security to the people, and it also states privileges and rights. Besides that, it serves as a supportive pillar of the system of government and states; thereby, the actions which are going to be taken will be effective to govern as well as securing citizens. Thus, due to the importance of constitutional law, plenty of studies are carried out to elaborate on the role constitution in protecting human rights. For example, as the study of Loveland (2015) stated that constitutional law is basically controlling the relationships between the executive, the legislature and the judiciary with entities under its jurisdiction. Additionally, it defines the citizens' basic rights, as well as the relationship between the provincial, territorial, or state governments, and the central government in federal nations<sup>36</sup>. Anyway, Albert (2015) mentioned that based on its physical form, constitutional law can be classified into two forms, namely, the unwritten and written forms. For instance, in countries like India, Singapore and the United States, the constitutional law focuses on the written rules; those are approved when the country came into being. However, other constitutional laws, particularly in the United Kingdom, are highly relying on the unwritten rules; those are known as constitutional conventions. The status of constitutions, relying on unwritten rules, within constitutional law changes, and the conventions' terms are in a certain case contested strongly<sup>37</sup>.

Nevertheless, in the perspective of Sunday (2013), no rigid or specific definition can be assigned to the constitutional law. In broad terms, constitutional law can be understood as a key component of national law that is responsible for governing the systems of public administration and the relationship between the state and the citizens. However, for the aim of providing a full background about a country's constitution, there is a necessity to elaborate on the main functions of a constitution. For instance, constitutions conduct a vital role to determine a state's form, whether it is a monarchy or a democracy or a communist republic; and if democracy follows the system of parliamentary democracy or presidential democracy. Some views argued that constitutions stipulate laïcité (France), separate functioning, but the cooperation of the Church and State (Hungary), while the others rely on the state's basic religion (e.g. Nordic states), whereas most of the Islamic countries stipulate that the state

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<sup>35</sup> International Institute for Democracy and Electoral Assistance. 2014. What Is a Constitution? Principles and Concepts. [Online]. Available at: <[http://www.constitutionnet.org/files/what\\_is\\_a\\_constitution\\_0.pdf](http://www.constitutionnet.org/files/what_is_a_constitution_0.pdf)> accessed 13<sup>th</sup> April 2020.

<sup>36</sup> Ian Loveland, *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction* (Oxford University Press 2015), 56.

<sup>37</sup> Richard Albert, 'How unwritten constitutional norms change written constitutions' (2015) DULJ 38, 387.

religion shall be Islam. Secondly, a country's constitution lays down the authority, which is granted to the head of state and the government.

Furthermore, it portrays the method of electing the head of state and his deputies, if applicable, as well as the method of forming the government and its terms of reference. Thirdly, it portrays the authority of representing the nation in Parliament or the council/chamber of representatives. A Parliament can be unicameral or bicameral. The unicameral legislative body is considered as the simplest form of law-making bodies. For instance, under the Constitution of 1971, as amended in 2007, the legislature took the form of two chambers; those are including the People's Assembly and the Shura Council<sup>38</sup>. Where the Shura Council (Arabic: مجلس الشورى, its name roughly translates into English as "*the Consultative Council*", and it is a representative body that is cooperated with the lower house of parliament to form a legislature. The Egyptian Shura Council was abolished by the constitution of 2014. The Shura Council had to approve decisions; those are issued by the Parliament before their implementation. However, the Shura Council still exists and executing its functions in Saudi Arabia. The Shura Council was composed of members with different educational and cultural backgrounds, as it was important to have deputies for every class of society when voting on decisions. This structure resulted, example in Egypt, in those peasants and workers made up half of the members of the Shura Council. The Council also had to comprise members who had the required experience and knowledge to participate in decision-making. Members of the Shura Council were selected by the head of state or through elections. The role of the Shura Council was specifically to study the decisions, which were proposed by the Prime Minister and to make proposals or amendments concerning these decisions in line with the public interest. There were numerous laws and constitutional amendments that were adopted only with the involvement of the Shura Council. This was the case even when the head of state took any decision regarding emergent matters in the country<sup>39</sup>. Additionally, the head was obliged to ask for an opinion from the

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<sup>38</sup> The Constitution of the Arab Republic of Egypt, 1971 (as Amended to 2007). (Articles 194-205). [Online]. Available at: <<http://www.constitutionnet.org/files/Egypt%20Constitution.pdf>> accessed 17<sup>th</sup> April 2018.

<sup>39</sup> For regulations and models of emergency situations, see e.g. David Dyzenhaus, 'States of Emergency', in Michel Rosenfeld – András Sajó (eds.), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press, Oxford 2012) and for state analyses of Hungary, the Czech Republic, Slovakia and Poland, respectively, see: eg. Tímea Drinóczi, Lóránt Csink and István Sabjanics, 'Hungarian constitutional law and interpretations of security', in Agnieszka Bień-Kacała, Jiří Jirásek, L'ubor Cibulka, Tímea Drinóczi (eds.), *Security in V4 constitutions and political practices* (Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń 2016) pp. 177-199, Vera Jirásova and Jiří Jirásek, 'Concept of security of Czech Republic', in Agnieszka Bień-Kacała, Jiří Jirásek, L'ubor Cibulka, Tímea Drinóczi, eds., *Security in V4 constitutions and political practices* (Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń 2016) p. 65., 73-74., Martián Giba, 'State Security', in Agnieszka Bień-Kacała, Jiří Jirásek, L'ubor Cibulka, Tímea Drinóczi (eds.), *Security in V4 constitutions and political practices* (Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń 2016) p. 125., 129, Marek Domin, *Constitutional mechanisms for*

chairman of the Shura Council<sup>40</sup>. In Western democracies, the bicameral legislature is composed of two separate chambers, usually described as an 'upper house' and a 'lower house', as in Germany and the United States. These usually differ in the duties and powers they exercise – the upper house being more revisionary or advisory in parliamentary systems – and the methods used for the selection of members. Nevertheless, a legislature in a presidential system is often considered independent and coequal<sup>41</sup>. Fourthly, *the judiciary* is known as the judicial system or court system, and it is the system of courts that apply the law in the name of the State. The courts have the authority to settle disputes between individuals and between the State and individuals or between State organs themselves. The judiciary is also responsible for the official interpretation of laws, which are enacted by the Parliament and implemented by the government.

Here, the constitution must clearly and categorically define the terms of reference for each authority and separately in order to ensure the power's separation. The principle of power's separation is likely to be as a cornerstone for each Western democratic system, and the distribution of powers between the different bodies helps to improve and ensure the democratic idea aimed at securing basic human freedoms and resistance to injustice and tyranny. The principle of power's separation is applied in all countries. This is the case with the unwritten UK constitution and, for instance, with France, where the separation of powers and protection of rights and freedoms has been implemented since the French Revolution of 1789. Furthermore, it is convinced that the constitution has to set the rules and principles that guarantee civil freedoms and the human rights of citizens. These rights are including freedom of religion, freedom of opinion and freedom of the press, freedom of assembly and inviolability of the home and sanctity of private life.

In the perspective of Bogdandy and Bast (2009), a constitution is a set of general and fundamental guidelines and duties that describe the organisation and operation of the state. It consists of the fundamental norms underlying and directing all actions and decisions made by

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eliminating security risks, in Agnieszka Bień-Kacała, Jiří Jirásek, L'ubor Cibulka, Tímea Drinóczi (eds.), Security in V4 constitutions and political practices (Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń 2016) pp. 158-159, Agnieszka Bień-Kacała, 'Category of security in light of Polish Constitution', in Agnieszka Bień-Kacała, Jiří Jirásek, L'ubor Cibulka, Tímea Drinóczi (eds.), Security in V4 constitutions and political practices (Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń 2016) pp. 48-49.

<sup>40</sup> THE CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 1971 (as Amended to 2007). (Articles 194-205). [Online]. Available at: <<http://www.constitutionnet.org/files/Egypt%20Constitution.pdf>> accessed 17<sup>th</sup> April 2020.

<sup>41</sup> Chronowski Nóra – Drinóczi Tímea – Takács Tamara (eds.): Governmental Systems of Central and Eastern European States. Wolters Kluwer Polska - OFICYNA, Warszawa 2011.

the government. Considering the fundamental nature of a constitution and the significant role played by it in providing the groundwork to shape and facilitate the state, it is expected and believed that a constitution is an authentic and long-standing body of comprehensive body of law. It can be a political, legal and social instrument concurrently<sup>42</sup>. In this regard, it is highlighted that legally, a constitution protects human rights and helps in establishing a predictable legal environment. Being a supreme law, the provisions established by the constitution offers a framework that facilitates the operation of legislation, regulation, procedures and institutions. It communicates the citizen's rights that are not supposed to be infringed by the procedures, legislation or institutions and are required to be strictly followed and ensured by the state. Politically, the constitution establishes that, restricts and distributes the governmental powers and offers mechanisms to decide upon public policy. On the other hand, socially, a constitution might indicate a civic vision or a shared identity of the state, thereby expressing the principles or values that are commonly held by the people<sup>43</sup>.

As mentioned by Hedling (2017), a constitution is mainly aimed at serving numerous purposes, but most importantly, seeks to empower public institutions and regulate and authorise the establishment of public power. It serves as a legitimate political and legal body to identify and enforce laws, establish public services and administer disputes. For this purpose, it is required for the constitution to distribute duties, powers and responsibilities between the different government branches and regulate their conduct, operations and interrelations<sup>44</sup>. In order to disperse and establish its powers, the constitution can pursue a horizontal dimension or the vertical dimension. The horizontal powers imply the powers between the two chambers of a legislature, namely, the president and the prime minister. This dispersal of the powers is primarily designed to establish a system of checks and balances and ensure that no single entity assumes the entire concentrated powers. Simultaneously, it is also important that the constitution establishes an efficacious system of governance that can respond to the demands of the public<sup>45</sup>. The vertical distribution of power between the central and the subnational authorities is also established by the constitutions and is helpful in offering empowerment and recognition to the geographical regions and minority communities in the country. However, the dispersal and allocation of the vertical distribution of powers require maintaining a significant

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<sup>42</sup> Armin von Bogdandy and Jürgen Bast, *Principles of European Constitutional Law* (Bloomsbury Publishing 2009).

<sup>43</sup> Ibid.

<sup>44</sup> Nora Hedling, 'The Fundamentals of a Constitution (2017) Available at: <<https://www.idea.int/sites/default/files/publications/the-fundamentals-of-a-constitution.pdf>> accessed 28<sup>th</sup> February 2020.

<sup>45</sup> Ibid.



balance between centralisation and decentralisation to ensure development needs of the country and ensuring peace and harmony in the political, social and economic landscapes<sup>46</sup>.

It is further highlighted and explained in the report by International IDEA (2014) that the reconciliation and balance between the legal, political and social functions of the constitution are maintained by it through two main approaches. These can be identified as the procedural archetype and the prescriptive archetype and are based on the nature and aims of the document<sup>47</sup>. As per the procedural constitution, political and legal structures of the public institutions and establishes the legal limitations of the power held by the government to ensure the protection of the democratic procedure and fundamental human rights. The prescriptive constitution focuses on the fundamental function of the constitution, which is to serve as the primary charter of the identity of the state and plays a chief role in representing the goals and shared values underpinning the state. It offers a collective vision of the attributes of a good society based on the shared values and aspirations of a homogenous community<sup>48</sup>.

According to Loveland (2015), constitutional law relates to a package of laws that defines the structure, powers and role of various entities of a state, such as a legislature or a parliament, the judiciary, and the executive. Constitutional law is stated as rights, that are excavated in the state and federal constitutions. It basically controls the relationships between the executive, the legislature and the judiciary with entities under its jurisdiction. Constitution law also defines the citizens' basic rights, as well as the relationship between the provincial, territorial, or state governments, and the central government in federal nations<sup>49</sup>. Furthermore, Albert (2015) mentioned that based on its physical form, a constitution can be classified into forms, namely, the unwritten and written forms. For instance, in countries like India, Singapore and the United States, the constitutional law focuses on the written rules; those are approved amid the country was came into being. However, other constitutions, particularly in the United Kingdom, are highly relying on the unwritten rules; those are known as constitutional conventions. The status of constitutions, relying on unwritten rules, within constitutional law changes, and the conventions' terms are in a certain case contested strongly<sup>50</sup>.

According to Sunday (2013), no rigid or specific definition can be assigned to the

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<sup>46</sup> Ibid.

<sup>47</sup> International IDEA, 'What is a constitution? Principles and Concepts' (2014) Available at: <<https://www.idea.int/sites/default/files/publications/what-is-a-constitution-primer.pdf>> accessed 28<sup>th</sup> February 2018.

<sup>48</sup> Ibid.

<sup>49</sup> Ian Loveland, *Constitutional Law, Administrative Law, and Human Rights: A Critical Introduction* (Oxford University Press 2015), 56.

<sup>50</sup> Richard Albert, 'How unwritten constitutional norms change written constitutions' (2015) *DULJ* 38, 387.

constitutional law. In broad terms, constitutional law can be understood as a key component of national law that is responsible for governing the systems of public administration and the relationship between the state and the citizens. A key presupposition of the constitutional law is regarding the existence of the state, for whose governance, it utilises laws that help regulate and manage the functions and structures of the principle's bodies of the government and their relationship with each other and to the citizens<sup>51</sup>. In countries where the written constitution is followed, the rules contained in the constitution and the manner of their interpretation in the highest court having constitutional jurisdiction are emphasised. These principles, rules and practices are critical and crucial to understand the relationship between the legal constitution and the political constitution and offer a constitutional meaning to the disparate situations. The comprehension of the entire legal system is not facilitated through constitutional law. However, the manner of settling the powers, rights and duties addressed, are the central concerns to the constitutional law<sup>52</sup>.

Tushnet, Fleiner and Saunders (2013) explain that where a written constitution is absent, the constitutional law might be the same as the general laws. In this context, the literature explains that legislation, along with the Acts of Parliament has legislation that is enacted by the authorities and ministers and the Parliament is empowered to legislate upon it. The judicial precedent or the case law implies that the court decisions help explain the interpreting legislation. These courts include the European Court of Human Rights and the European Court of Justice<sup>53</sup>. The third component can be identified as the law and custom of Parliament that draws the authority in either house of the Parliament to undertake the responsibility of regulating its internal affairs. This is also a key concern for the two houses. In respect of the practices and customs within the government, it is perceived by the courts that these concerns are outside the purview of the law and are not enforceable directly in the absence of legislation; thereby, affecting them. Nevertheless, in exceptional circumstances, well-established governance might facilitate decisions by the courts to practical, lawful behaviour and decision making and act as per the established principle of legitimate expectations<sup>54</sup>.

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<sup>51</sup> Nicholas Sunday, 'Constitutional Law, Constitutionalism and Democracy' (2013) Available at: <<https://www.grin.com/document/213984>> accessed 13<sup>th</sup> April 2020.

<sup>52</sup> Ibid.

<sup>53</sup> Mark Tushnet, Thomas Fleiner and Cheryl Saunders, *Routledge Handbook of Constitutional Law* (Routledge 2013).

<sup>54</sup> Ibid.

## **2.2. Analysing the Viewpoint of Different Researchers in Regards to the Role of Constitution in Protecting the Rights of Citizens in a Country**

This section has been developed in order to get an overview of the previous researches that have already been conducted in the present research area so as get a significant route to proceed with the research further.

Indeed, there are numerous studies that slighted the light on exploring as well as explaining the importance of a country's constitutional law. For example, a study by Driver (2012) showed that the constitutional law seems to be significant around the world, as it sets out the way of how laws must be formulated in a particular country. It sets out the limits for various functionaries of the state and their roles and duties. It lays down the principles for the government as they should operate to become an ideal state. Therefore, a nation's constitutional law has three main functions; those are including creating a national government that consists of a legislative, judicial branch, an executive, and creates a balance among the three branches. It assists a country in dividing the power between the federal government and the state, as well as contributing to protecting the personal liberty of the citizens from intrusion by the government<sup>55</sup>.

In the viewpoint of Dann (2005), the constitutional laws contain various laws; those covering multiple aspects of a nation like the legal system, and the country's political structure. As for the legal system, constitutional laws have laws that determine the extent to which their power is and helps and keep the state of stability in the country<sup>56</sup>. Komarek (2014), added that these laws help to make the efforts of the political and public parties to reach out to others in order to have a better understanding of the laws. In addition to this, the constitutional laws are essential in a country as it acts as a guideline to govern the societies in the country. The absence of constitutional law can lead to significant conflicts and confusion among communities and social groups. Therefore, constitutional law is very crucial for the proper working of a country<sup>57</sup>.

According to Drymiotou (2018), constitutional law plays the most significant role by helping address the fundamental issues associated with the society and the government. The constitution law initiates with the drafting of the document, its adoption and application to societal and governmental issues and the effects of any amendment to address the issues not

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<sup>55</sup> Justin Driver, '*The significance of the frontier in American constitutional law*' (2012) 2011 TSCR 1, 345.

<sup>56</sup> Phillip Dann, '*Thoughts on a methodology of European constitutional law*' (2005) 6 GLJ 11, 1453.

<sup>57</sup> Jann Komarek, '*National constitutional courts in the European constitutional democracy*, (2014) 12 IJCL 3, 525.

prevailing in the original document<sup>58</sup>. The greater benefits of the constitutional law for the society are that it helps in limiting the power of the government in offering protection to individual liberties. It also helps in defining clear roles for the government such that no major disputes exist between the governmental parties and the constitution commits itself to the principles of democracy and the dignity of a citizen<sup>59</sup>. Further studies such as Hartog (2012), mentioned that law is important as it is a set of rules that concerns things that are acknowledged in the public areas. If there were no constitutional law, there might be conflicts among social networks and social gatherings. The constitutional law focuses even on simple reception to variations that occur in the public arena. Constitutional law plays a significant role as an operator of social change and modernisation. It is like an indicator of the concept of societal unpredictability<sup>60</sup>. Driver (2015), stated that one of the significant objectives of constitutional law is controlling the behaviour of people within society. Additionally, it guides in keeping the peace within a country in which freedom of citizens is valued. It also sets the rules for the government of the country and guides them the way they should operate for the betterment of the country's citizen. The constitutional law even helps people to realise the consequences of their actions; therefore, encouraging the citizens of a country to perform the right actions and concerning the country's development. For example, property law regulates the rights and duties of people toward tangible property and other possessions, as well as intangible properties like financial securities as well as bank accounts<sup>61</sup>.

Komarek (2014) stated that the constitution is very crucial because it helps in maintaining and protecting individual freedom. The constitution is observed to place the power from the hand of the government to the citizens and limits the power provided to the government and helps in building a system based on checks and balances. The constitution does not merely provide the framework for an efficient government but also deals with limiting the power of the government. It is known that power usually corrupts a system and an absolute power corrupts the system absolutely, therefore, a constitution is established in order to restrict the abuse of any power by those who are in authority. The constitution has the power to provide a legal framework for the people that is based on equality and also consists of duties that the citizens need to fulfil. The constitution is also essential because it is the backbone of a nation

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<sup>58</sup> Elena Drymiotou, *Human Rights, Constitutional Law and Belonging: The Right to Equal Belonging in a Democratic Society* (Routledge 2018).

<sup>59</sup> Ibid.

<sup>60</sup> Hendrik Hartog, 'Introduction to Symposium on "Critical Legal Histories": Robert W. Gordon'. 1984. *Critical Legal Histories. Stanford Law Review* 36: 57–125' (2012) 37 LSI 1, 147.

<sup>61</sup> Ibid.

upon which the nation is built and helps in adapting to an ever-changing society that gives priority to the equality of every citizen and that the people are not discriminated based on race, gender and religion. It protects the fundamental idea that all the citizens are united, which is truly remarkable<sup>62</sup>.

Driver (2015) added that the constitution is also crucial because it is a document that ensures that separation of powers and the liberty of an individual is maintained adequately. It is a blueprint of justice that acts as a barrier for the rules created by the majority and treats the majority and the minority equally. It consists of fundamental rights like ensuring equality before the law and providing equal protection of the law, helps in prohibiting the discrimination among the citizens on the grounds like nationality, race, sex and religion and makes sure that equal opportunities is provided to all the citizens irrespective of any such factors. Since the constitution holds such tremendous power, it can help in building a framework for the citizens that is not based on race, religion, gender and nationality and is based on equality of all<sup>63</sup>.

Administrative laws are considered as the laws that contribute to governs the actions of administrative interests. On the other hand, constitutional laws are considered as doctrines, laws and practices that help in governing the functioning of political communities. While no specific differentiation can be established between the administrative and the constitutional law, the former can be understood as the law that helps identify the duties and powers that help exercise and maintain a check on the powers of the government. The latter, on the contrary, largely focuses on the operations and functions of the official agencies in delivering services and in regulating the activities and conduct of the citizens. Some of the differences might also be identified between constitutional law and public international law<sup>64</sup>.

In this respect, Bianchi and Peters (2013) explain that public international law can be understood as a system of law whose chief function is the regulation of the relationship between states. The system assumes the state as a territory holding immense power and its own sphere of quality of independence of any superior. This feature gives it sovereignty within the sphere of power and the right to frame a law, not only for the citizens but also for the others. Its key focus, hence, can be identified to be external relations of the state with the other states in contract to the constitutional law, whose primary concern is the internal structure of the state and its relationship with its citizens and others residing within the territory or within its

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<sup>62</sup> Ibid 48.

<sup>63</sup> Ibid 52.

<sup>64</sup> Ibid.

jurisdiction<sup>65</sup>. Nevertheless, both of them focus on regulating power wielding the states through the legal process. Further, the procedure of extradition through which a convicted criminal having escaped from one state to another might be deported to the state where the crime was perpetrated and is operational in the international, as well as the national law. Since the year 1945, new forms of cooperation have been established between the states through an international organisation to help establish standards of conduct for the international community and public international law, which has been undergoing rapid evolution<sup>66</sup>.

In the same context, Elliot (2014) added that constitutional laws in countries help in forming the basic rights of the citizens living in a particular country. The constitutional laws guarantee various rights and provisions to individuals and groups on behalf of which they can ensure their dignity and wellbeing. It helps the people of the country to avail of the basic rights which are included in various constitutional laws, such as the right to freedom, right to speak, and right to life. Constitutional laws are also significant for controlling the power transfers at the time of national emergency. The national emergencies can be a set of disasters; those can damage some parts of the nation in a severe manner<sup>67</sup>.

Therefore, it has been perceived that an ample amount of research has already been conducted that focuses on explaining the constitutional law and its significance. However, there are minimal studies that have focused on identifying the issues present in the existing constitutional laws, and its limitations in addressing the inequalities in the countries.

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<sup>65</sup> Andrea Bianchi and Anne Peters, *Transparency in International Law* (Cambridge University Press 2013), pp. 223-224.

<sup>66</sup> *Ibid* 224.

<sup>67</sup> Mark Elliott, '*Constitutional Legislation, European Union Law and the Nature of the United Kingdom's Contemporary Constitution*' (2014) 10 ECLR 3, 379.

## **Chapter 3: Critical Analysis of the Jordanian Constitution for New Generation Irrespective of Religion, Race, Nationality and Sex**

### **3.1 Introduction**

In order to illuminate a crucial insight into the constitutional provisions of Jordan and European countries, the present section presents a detailed exploration of the previous related studies. In every country, the establishment of a robust and comprehensive constitution is the most pivotal element laying down the regulations pertaining to organisation, functions and the powers of the government. The constitution guides all the laws prescribed and enacted in a nation, based upon which the government policies are established<sup>68</sup>.

Moreover, this current section performs a detailed study of the existing literature to obtain a wider insight into the constitutional provisions of Jordan and European states. Therefore, an exploration of the ongoing changes in the constitutional theories and practices of European countries and Jordan have been made to gain a detailed knowledge of the countries' constitutional provisions. Based on this, a detailed comparison of Jordan's Constitution and other European countries' constitution has been made in this section to explore similarities and differences between them. The section further examines the suitable approaches for integrating the new legal framework in the existing constitution in regard to eradicate discrimination and foster equality across Jordan and European countries in the light of the view of several authors.

According to Helfont and Helfont (2012), the Constitution of Jordan has nine main components, in which, the first component is based on the state and the system of government. In this component, Articles 1 – 4, states the laws regarding the government system. The second component consists of citizens' rights and duties, which are relating to Article 5 – 23. In addition, the second component contains the laws and responsibilities, which should be followed by Jordanian citizens. The third component encompasses the general provisions of the nation and executive power. The other major components include the laws regarding legislative power, the judiciary, financial matters, general provisions and enforcement, as well as repeal of laws<sup>69</sup>. The constitutions of member states of the European Union also have similar types of providers; however, as most of the EU states are democratic states and Jordan has a monarchy, so there is a difference in the law at the elementary level.

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<sup>68</sup> Andrew Jordan, *Environmental Policy in the EU: Actors, Institutions and Processes*; 2nd Edition, (Routledge 2012).

<sup>69</sup> Samuel Helfont and Tally Helfont, 'Jordan: Between the Arab spring and the gulf cooperation council' (2012) 56 OR 1, 82.

Alomari (2012) stated that the Jordanian Constitution 1952 is considered to be the most mature constitution in the Arab world. The Hashemite Kingdom of Jordan is a constitutional monarchy that is independent of the sovereign Arab state. This constitution has adopted the principle of cooperation between the executive powers and legislation. According to the Constitution of Jordan, the principle of powers' separation is mainly dealing with the relationship between the three main organs of government, which are the judiciary, legislature, and executive. The doctrine of separation can be understood as one of the most critical elements of any democratic system. Thus, the separation of power is observed to be of great importance in Jordan, as it provides significant checks and balances system and also divides power among various branches of government. This helps in maintaining a proper balance of power among all individual in the government, and ensures that power is shared effectively<sup>70</sup>. The presence of monarchy in Jordan and democratic government in most of the EU countries creates a difference between the legal system of Jordan and EU member states.

The major Articles in the Constitution of Jordan are the ones focusing on Rights and Freedom, Powers of the King, Executive Authority, Legislative Authority and Judiciary. In this context, Kumaraswamy (2019) explains that Articles 6, 7, 8, 15, 16, 17, 18 and 20 focuses on the rights and freedom as established in Chapter II of the Constitution and ensure that any form of assault, public freedom and rights are identified as a crime punishable under the law. There is also inadmissibility of detention, arrest or restriction to the freedom of citizens except in alignment with the provisions of the law. These provisions aim at promoting freedom of thought, opinion, and expression to the media and newspaper outlets. Licenses of media and newspaper outlets might not be cancelled except through a judicial order and as per the legal provisions. Hence, this provision, in turn, provides significant protection to the media and newspaper outlets<sup>71</sup>.

Chapter IV of the constitution titled, Executive Authority aims at addressing the king and the rights of the king in Articles 28-40. None of the amendments was introduced for these constitutional provisions. Chapter IV of the constitution titled, Executive Authority aims at addressing the king and the rights of the king in Articles 28-40. None of the amendments was introduced for these constitutional provisions. Articles expected to be deleted were retained, and the ones that were expected to be revised were kept intact. For instance, in Chapter IV (Part II) of the Jordanian Constitution, Article 45(i) was amended, which stated that the regulations

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<sup>70</sup> Mohammad Alomari, 'Measuring social factors in e-government adoption in the Hashemite Kingdom of Jordan' (2010) 1 IJDS 2, 163.

<sup>71</sup> P R Kumaraswamy, *The Palgrave Handbook of the Hashemite Kingdom of Jordan* (Springer Nature 2019).



developed by the Council of Ministers shall define the duties of the Council of Ministers, Ministers and the Prime Minister, and the King shall rectify these duties.<sup>72</sup> This highlights the extent to which the constitutional amendments did not consider any modification in the constitutional provisions associated with the rights of the king. However, a loophole in the Jordan constitution can be observed as a new article was introduced that allowed the king the right to appoint the leader and members of the Constitutional Court. This shows that the judiciary does not have a complete independency.

Furthermore, the King also holds the right of commuting any sentence, granting a special pardon, and confirming a death sentence. This highlights that it is the final judgement of the King that really matters in the Country<sup>73</sup>. Furthermore, Articles 34, 35 and 36, which have been highly controversial regarding the powers of the king were kept intact despite amendments<sup>74</sup>. A critical examination of the legal provisions in the Constitution of Jordan regarding the powers and rights of the king in Articles 28-40 highlights that a lot of power continues to be vested in the hands of the king that helped elevate him to the level that makes him even powerful than the state. In this context, it can be identified that the word, 'king' and the powers and rights of the king appears in the constitution 73 times whereas, the word 'people' was mentioned one time and the words 'nation' and 'state' were mentioned 32 times and 33 times, respectively. This also highlights the superiority of the king within the constitution was intact because of roles of other judicial and legislative institutions that were believed to be assuming constitutional authority as crucial pillars of the regime<sup>75</sup>. The presence of monarchy is easily observed in the constitution and the legal framework as the king is provided with the additional powers and considered as ahead of a nation that is not the case with most of the EU member states as they have democracy and people elect the government that develop legislations as per the benefits of the people.

### **3.2 A Brief History of Jordanian Constitution**

At the end of World War I, Jordan was awarded to the United Kingdom marking the end of the reign of the Ottoman Empire that had been in Jordan since 1516<sup>76</sup>. The 1946 and the

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<sup>72</sup> ILO, 'The Constitution of The Hashemite Kingdom of Jordan' Available at: <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_125862.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125862.pdf)> accessed 17<sup>th</sup> May 2020.

<sup>73</sup> Sufian Obeidat, 'Jordan's 2016 constitutional amendments: A return to absolute monarchy?' (27 May 2016) Available at: <<http://constitutionnet.org/news/jordans-2016-constitutional-amendments-return-absolute-monarchy>> assessed 26<sup>th</sup> May 2020.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Robins, Philip. *A history of Jordan*. Cambridge University Press, 2019.

1928 constitutions did not differ substantially. Both constitutions placed powers in the hands of monarchs<sup>77</sup>.

The 1952 constitution came with well-articulated rights and freedoms together with the safety measure and assurances governing the exercise of these rights. It is also vital to note that these rights were based on the importance of equality. As a result of the 1952 constitution, albeit for a short time, Jordan elections were conducted in a free and fair manner, parliament exercised its required role of supervision and legislation, and political parties and press enjoyed a substantial amount of freedom<sup>78</sup>.

Under the leadership of King Abdullah II in 1999, more than a third of the articles of the Jordanian constitution was amended. The most critical of these amendments was the reduction of powers of the executive branch of the government. Among these were the powers to postpone elections indefinitely, the establishment of a constitutional court, establishment of an independent body that is independent, and powers to issue interim laws. These amendments, however, did not have the desired effect on the development of political parties and the establishment of a parliamentary system<sup>79</sup>. In addition, the amendment of the constitution saw powers added to the king<sup>80</sup>. These amendments were seen to have brought back the atmosphere of the constitutions of 1928 and 1946. For instance, the Constitutions of 1928 and 1946 did not adopt the democratic principles that would highlight the accountability of government. It basically limited the responsibilities of the government before the King<sup>81</sup>. In a similar way, the amendments made under the rule of King Abdullah II also gave the supreme power to the King.

This context in regards to the amendment of the Jordanian constitution has been elaborated in the later section to get a better understanding on the amendments of the Constitution of Jordan and their impact in the country. The Jordanian Constitution has nine chapters. Chapter one has provisions about the state and system of government. The chapter has four articles within which the state is declared a sovereign, Islam the religion and Arabic the official language. Further, articles 3 and 4 declare that Amman is the capital city of Jordan and gives facets of the Jordanian flag, respectively<sup>82</sup>. Chapter two of the constitution entails articles that delve into the rights and duties of Jordanians. The chapter runs from article 5 which

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<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Hamouri, M. (2015) *Constitutional and Legal Requirements for Real Political Reform, Why and How?* pp.159–164, Dar Wael Publishing and Distribution.

<sup>81</sup> Mohammed T B Salameh and AzzamAAnanzah, 'Constitutional Reforms in Jordan: A Critical Analysis' (2015) 24 *DOMES* 2, 139-160.

<sup>82</sup> Constitution of the Hashemite Kingdom of Jordan. *Chapter One*.

states that the Jordanian nationality shall be defined by law to article 23 which gives provisions about the rights of workers and freedoms of association of workers in the form of trade unions. Generally, chapter two of this constitution delves into rights and freedoms in all the relevant constitutional forms<sup>83</sup>.

Chapter three is about powers, and it goes further to give its general provisions. Article 24 declares that the nation shall be a source of all powers and that these powers shall be exercised in accordance with the constitution. Articles 25 and 26, states that the legislative and executive powers respectively shall be vested in the king through various provisions. Lastly, article 27 vests judicial powers on the courts and that all legal judgements are passed in the name of the king<sup>84</sup>. Chapter four that includes articles 28 to 61 is divided into parts I and II. Part I speaks about the King and His prerogatives. Part II which starts from Article 41 gives the details of the ministers<sup>85</sup>.

Chapter 5 delves into legislative power. The legislative powers are wielded by the national assembly which consists of the Senate and the Chamber of Deputies. This chapter is further divided into three parts. Part I gives provisions about the Senate (Articles 63 – 66), Part II states provisions about the Chamber of Deputies (Articles 67 – 74), and finally, Part III gives the provisions that govern both Houses (Articles 74 – 96)<sup>86</sup>. Chapter six, that contains Articles 97 to 101, speaks about the provisions of the Judiciary<sup>87</sup>.

Chapter seven of the Jordanian Constitution highlights financial matters such as taxation, financial auditing, and budgets. This chapter runs from article 111 to article 119<sup>88</sup>. Chapter 8 (Articles 120 – 127) gives the general provisions. Article 120, for example, states that The administrative divisions of the Hashemite Kingdom of Jordan, the establishment of the Government Departments, their classification, designations, the plan of operations and the manner of the appointment of civil servants, their dismissal, their discipline, supervision and the limits of their competence and powers shall be determined by regulations issued by the Council of Ministers with the approval of the King<sup>89</sup>. Article 127 of this chapter speaks about the army, their recruitment and the organisation of the police<sup>90</sup>. Finally, chapter nine gives details about the enforcement and repealing of laws<sup>91</sup>.

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<sup>83</sup> Constitution of the Hashemite Kingdom of Jordan. *Chapter Two*.

<sup>84</sup> Constitution of the Hashemite Kingdom of Jordan. *Chapter Three*.

<sup>85</sup> Constitution of the Hashemite Kingdom of Jordan. *Chapter Four*.

<sup>86</sup> Constitution of the Hashemite Kingdom of Jordan. *Chapter Five*.

<sup>87</sup> Constitution of the Hashemite Kingdom of Jordan. *Chapter Six*.

<sup>88</sup> Constitution of the Hashemite Kingdom of Jordan. *Chapter Seven*.

<sup>89</sup> Constitution of the Hashemite Kingdom of Jordan. *Chapter 8, Article 120*.

<sup>90</sup> Constitution of the Hashemite Kingdom of Jordan. *Chapter Eight*.

<sup>91</sup> Constitution of the Hashemite Kingdom of Jordan. *Chapter Nine*.

### 3.3 Amendments of the Jordanian Constitution

King Abdullah II took power in 1999 and launched the economic modernisation campaign, but that program was not accompanied by genuine political reforms until the events of September 11, 2001, the American occupation of Iraq in 2003, and the terrorist bombings of hotels in Amman in 2005. All the above events led to a violent environment on the national and regional levels and, consequently, did not provide an opportunity for political reform. On the contrary, the democratic process retreated as the Thirteenth Parliament was dissolved in 2001 before completing its constitutional mandate<sup>92</sup>. General elections were postponed for two years with the excuse that regional conditions did not allow parliamentary elections in Jordan. When elections were conducted in the following years (2003, 2007, and 2010), they were marred by fraud, causing the Houses of Representatives to weaken, and decreasing the confidence of citizens in an institution that is assumed to undertake a key role in governance, according to the constitution<sup>93</sup>.

In 2009, the popular movement started with economic demands, such as the protests of port workers in Aqaba, workers at the Ministry of Agriculture, teachers demanding the establishment of a professional association, and a movement of military pensioners. These popular movements started even before the so-called Arab Spring, which began in Tunisia in 2010. The response of the regime to these demands was rather cool and hesitant. However, the revolutions of the Arab Spring, including the failure of regimes in Tunisia, Libya and Egypt, prompted calls in Jordanian streets throughout the country for fundamental reforms in the structure of the political system, which was badly affected by corruption and looting of national resources<sup>94</sup>. The state lost its prestige, and citizens lost confidence in the institutions of the state, particularly Parliament. This prompted the political regime to take a number of steps to absorb popular frustration without prejudice to the privileges of power centres and hotbeds of corruption. Among these steps was the formation of a national dialogue committee, which was comprised of various political positions. The committee developed recommendations including the need for constitutional amendments, adopting modern elections laws leading to the formation of parliamentary governments, creating political party laws to enrich partisan

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<sup>92</sup> Bulent Aras, *War in the gardens of Babylon: Middle East after the Iraqi War (Vol. 3)* (Harwood Academic Publishers 2004).

<sup>93</sup> Bani Salameh, Mohammed Torki, and Azzam Ali Ananzah. "Constitutional reforms in Jordan: a critical analysis." *Digest of Middle East Studies* 24, no. 2 (2015): 139-160.

<sup>94</sup> Lucas, Russell. "Press laws as a survival strategy in Jordan, 1989–99." *Middle Eastern Studies* 39, no. 4 (2003): 81-98.

pluralism. Election laws and political party laws were among the most important laws regulating political activity and provided a gateway to comprehensive political reform<sup>95</sup>.

Based on the recommendations of the National Dialogue Committee, King Abdullah II decided to form a royal committee in 2016<sup>96</sup> to review the constitution and to come up with a proposal to carry out the necessary amendments to bring about the anticipated political reform and promote political life in the country. The Royal Committee entrusted with constitutional review included a number of conservative personalities, none of whom had ever called for constitutional amendments, but without constitutional law jurists, experts or reform activists. The work of the committee was performed with the total absence of transparency (which was presumably required). Therefore, the committee's recommendations did not rise to the Jordanians' expectations. The government presented these committee recommendations to both parliamentary bodies, the Lower House of Representatives and Senate, for approval, which took place in swift sessions despite the fact that such constitutional provisions required sufficient time, by law, to debate changes that would govern the Jordanian people for many decades to come. Of the 131 constitutional articles, 42 were amended, comprising approximately two-thirds of the articles. The main amendments are:

### **3.3.1 Articles Related to Rights and Freedoms**

The Amendments to the Constitution concerned the rights and freedoms set forth in Chapter II of the Constitution. Trade union work was protected through the inclusion of the word "unions" in Article (16) of the Constitution. In fact, these constitutional rights and freedoms of Jordanian citizens were contained in international human rights conventions and covenants ratified by Jordan, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights (Bani Salameh, 2007)<sup>97</sup>.

### **3.3.2 Articles Related to Executive Authority**

Major amendments to the executive authority were made in terms of its formation, functions, ministerial statements, and responsibilities to the House of Representatives. Article 8 was amended to state that ministerial positions and their like shall be assumed only by

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<sup>95</sup> Clark, Janine A., and Amy E. Young. "Islamism and family law reform in Morocco and Jordan." *Mediterranean Politics* 13, no. 3 (2008): 333-352.

<sup>96</sup> Amman, 'King receives report of the Royal Committee for Developing the Judiciary and Enhancing the Rule of Law' (26 February 2017) Available at: <<https://kingabdullah.jo/en/news/king-receives-report-royal-committee-developing-judiciary-and-enhancing-rule-law#:~:text=The%20royal%20committee%20was%20formed,reform%20process%20and%20improve%20legislation.>> accessed 11<sup>th</sup> July 2020.

<sup>97</sup> Lichti, R. L., H. N. Bani-Salameh, B. R. Carroll, K. H. Chow, B. Hitti, and S. R. Kreitzman. "Donor and acceptor energies for muonium in GaAs." *Physical Review B* 76, no. 4 (2007): 045221.

Jordanians who are not citizens of any other country. This provision was aimed at ensuring loyalty and faith on the part of the holders of these positions to facilitate accountability in cases of corruption, which might be hindered by their holding citizenship of another country. Another major and positive amendment was introduced to Article 53, indicating that each formed cabinet shall present its ministerial statement of confidence in the House of Representative if the House was in session. If the House was not in session, a special session should be called for the cabinet to offer its ministerial statement requesting confidence. Should the House be dissolved, the cabinet is to offer its ministerial statement to the next House of Representatives and request the confidence thereof. The amendment omitted the Speech of the Throne, which allowed cabinets to form in the absence of the House of Representatives, as a ministerial statement to obtain confidence from the House. This change was due to the fact that the voting behaviour of MPs was influenced by the Speech of the Throne presented as a ministerial statement. Therefore, MPs rarely would deny confidence to a cabinet offering the Speech of the Throne as a ministerial statement<sup>98</sup>.

Other amendments related to executive authority were introduced to Article 55, which indicated that trials of ministers for crimes related to their performance should take place before regular competent courts in the capital according to the provisions of the law. Before this amendment, ministers were prosecuted before a High Council composed of the Speaker of the Senate and eight members, three of whom were elected Senate members, in addition to the five judges of the highest regular court, where decisions required a majority of six. This amendment has helped in providing a fair judgement regarding the ministers who have committed crime, and reduce the chances of bias judgements. The council was of a political nature as it comprised a mixture of politicians and jurists; its performance, however, was rather weak throughout its term<sup>99</sup>. One other major amendment introduced to the constitution related to executive authority was the establishment of an independent institution to oversee elections in Article 67, namely, the Independent Elections Commission. This change represented the end of an era of dominance by the executive authority over all election processes, such as registration, preparation of voter lists, the nomination process, election campaigns, voting, counting of ballots, and announcing results. Experience points to the obvious interference of the executive authority in the electoral process, tampering with the voters' will to the extent of scandalously falsifying elections. Entrusting an independent institution to supervise elections was a major

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<sup>98</sup> Abu-Karaki, Muddather, Raed SA Faqir, and Majed Ahmad K. Marashdah. "Democracy & Judicial Controlling in Jordan: A Constitutional Study." *J. Pol. & L.* 4 (2011): 180.

<sup>99</sup> Ibid.

step, which may have contributed to restoring the balance between legislative and executive authority, especially if the Independent Elections Commission succeeded in assuming its optimal role under democratic election laws<sup>100</sup>. It is not a de facto independent institution as this institution was developed under the Jordanian Constitution. Independent institution of election is composed of four members and a President, who are elected by a Royal Decree<sup>101</sup>.

### 3.3.3 Articles Related to Legislative Authority

The introduced constitutional amendments included a number of provisions to restore balance between legislative and executive authority. In the past, the dominance of the executive authority over the legislative authority was provided by the power to dissolve Parliament and indefinitely postpone elections. Therefore, these constitutional amendments provided guarantees against the abuse of executive authority by dissolving Parliament. These provisions were as follows:<sup>102</sup>

- “According to the amendment introduced to Article 74 of the Constitution, a government witnessing Parliament dissolution is obliged to resign within a week of the dissolution date; the Prime Minister of that government may not be assigned to form the next government. This amendment represented a return to the provisions of the 1952 Constitution. However, forcing a government that witnesses the dissolution of Parliament to resign within a week of the dissolution and banning its Prime Minister from forming the next government has been considered another guarantee against the abuse of the executive authority”.
- “Amendments deleted paragraphs 4, 5, and 6 of Article 73 of the Constitution. These paragraphs granted the King the authority to indefinitely postpone elections if emergencies were foreseen by the Council of Ministers implying that conducting elections was not possible”.
- “Article 73 provided that in cases when the House of Representatives was dissolved, new legislative elections should be held within four months of the date of dissolution; otherwise, the dissolved House should return with full constitutional authority”.

Other major amendments introduced to the constitution and related to the executive authority included limiting the authority to hear electoral appeals by the judiciary, so that,

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<sup>100</sup> Torki Bani Salameh, Mohammed. "Political reform in Jordan: Reality and aspirations." *World Affairs* 180, no. 4 (2017): 47-78.

<sup>101</sup> IEC, ‘Independent Election Commission – Jordan’ Available at: <<https://www.iec.jo/en/other/independent-election-commission-jordan-0>> accessed 21<sup>st</sup> June 2020.

<sup>102</sup> Bani Salameh, Mohammed Torki, and Azzam Ali Ananzah. "Constitutional reforms in Jordan: a critical analysis." *Digest of Middle East Studies* 24, no. 2 (2015): 139-160.

within 15 days from election results having been published in the official gazette, each voter would have the right to appeal to the Appeal Court in the constituency of the MP whose membership was challenged in his constituency. Decisions of the Appeal Court would be final and could not be appealed by virtue of the amendment introduced in Article 71; the court would be responsible for resolving disputes regarding the validity of representatives' membership<sup>103</sup>.

One more positive and important amendment related to legislative authority lengthened the duration of regular sessions to six months, according to the amendment to Article 78, from the previous length of four months, which was a short period in view of the complexity and multiplicity of parliamentary work. Therefore, lengthening the duration of sessions of the House of Representatives would help MPs to perform their duties of control, accountability, and legislation more effectively.

### **3.3.4 Articles Related to the Judiciary**

The constitutional amendments included a number of provisions that promoted the independence of the judiciary: "The judiciary is an independent authority assumed by the various types and degrees of courts and issues all decisions in the name of the King." That amendment also promoted the role of the judiciary in safeguarding individual rights and freedoms to ensure that laws and regulations endorsed by virtue of the Constitution would not undermine the essence of these rights. Among the major amendments was the amendment introduced to Article 98 of the Constitution establishing a Judicial Council to assume all affairs related to the judiciary, such as appointing, promoting, relocating and dismissing judges, and ensure the administrative and financial independence of this council from the executive authority. All matters related to judges, such as appointments, promotions, relocations, assignments, and pensions, fell under the jurisdiction of the Judicial Council alone without interference from the executive authority. Judicial Council is not de facto independent; rather the president of the council is appointed by the King<sup>104</sup>.

Article 101 of the Constitution was also amended to state that civilians were to be prosecuted in penal cases before their natural judge, a civil judge. Crimes of treason, espionage, terrorism, drugs, and money counterfeiting were excluded. Accordingly, the jurisdiction of the State Security Court was limited to the above-mentioned crimes, which was consistent with international standards and conventions, particularly the Universal Declaration of Human

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<sup>103</sup> Najjar, Orayb Aref. "Media policy and law in Egypt and Jordan: continuities and changes." *Arab Media: Power and Weakness* (2008): 217-233.

<sup>104</sup> FAO, 'Constitution of the Hashemite Kingdom of Jordan' Available at: <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC128635/> accessed 25<sup>th</sup> June 2020.



Rights. One other amendment related to the judiciary was the establishment of the Constitutional Court by virtue of Articles 58, 59, 60, and 61 of the Constitution. The Constitutional Court is not de facto independent as it is established by law, and its judgement is also issued by the King<sup>105</sup>. The court's major mission was to oversee the constitutionality of the laws and regulations endorsed by the executive authority. The Constitutional Court would have the final say in constitutional interpretation. This step had been due since the 1990 issuance of the National Charter, which demanded the establishment of a constitutional court to adjudicate on constitutional issues in cases presented thereto and on appeals related to the constitutionality of laws and regulations. That a constitutional court is a main democratic pillar of the state is recognised by all legislation in Arab and foreign states<sup>106</sup>.

### **3.4 Responses to Constitutional Amendments**

These constitutional amendments produced controversy and debate throughout the country. Public opinion was divided on these amendments, where some supported, and others opposed them, and each side had its own arguments and evidence. The supporting side considered these amendments sufficient to meet the peoples' demands. The amendments ensured individual rights and freedoms and made the executive authority a guardian of these rights and freedoms, which may regulate but not restrict. This party considered these amendments representative of a major political step in the history of the Jordanian state, which would have positive impacts on the concept of citizenship by enabling the Jordanian citizen to assume political rights and promote the rule of law and institutions<sup>107</sup>.

Furthermore, in defence of these amendments, supporters of the constitutional amendments suggested that these amendments opened the door for change and reflected a state of compromise between leadership and the people. That is, the political regime responded positively to demands for constitutional reform; these amendments laid the foundation for a new phase of the Jordanian state with comprehensive reform in all fields. In addition, this team of politicians in favour of the amendments to the constitution argued that these amendments emphasised the ability of Jordan to renovate political life and promote democratic processes by widening the base of political participation and popular participation in decision-making<sup>108</sup>. According to politicians who supported these amendments, they (the amendments) symbolised

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<sup>105</sup> Ibid.

<sup>106</sup> Rath, Kathrine. "The process of democratization in Jordan." *Middle Eastern Studies* 30, no. 3 (1994): 530-557.

<sup>107</sup> Bani Salameh, Mohammed Torki, and Azzam Ali Ananzah. "Constitutional reforms in Jordan: a critical analysis." *Digest of Middle East Studies* 24, no. 2 (2015): 139-160.

<sup>108</sup> Lucas, Russell E. *Institutions and the Politics of Survival in Jordan: Domestic responses to external challenges, 1988-2001*. SUNY Press, 2012.

the complete separation of powers and good governance principles; and they served as a road map for work performed by all powers in the Jordanian state without assault by one authority against the other. This change strengthened the confidence of citizens in the state's institutions and reflected positively on their rights and freedoms, ensuring their future within a state of law, justice, and equality<sup>109</sup>.

Taher Elmasri, the former Speaker of the Parliament, described these amendments as radical changes to institute comprehensive reform, promoting the concept of the people's will in decision-making and strengthening the political and social structure of the state by consolidating the balance of powers and activating the powers of Parliament. Elmasri emphasised that these amendments achieved the institutional integration of the state's authorities, promoted equality principles among all its citizens, and promoted principles of peaceful and democratic power transfer based on free and fully vigorous parliamentary exercise<sup>110</sup>.

Finally, the supporters of the amendments believed that these amendments represented a historical moment in the reformation of Jordan. The amendments represented an era of transition to an even better position. According to this team of politicians which is in favour of the amendments to the constitution, the changes improved and advanced the 1952 Constitution. Whereas King Abdullah II formed the Constitution Amendment Committee in response to broad national demands, it is believed that a serious political will on the part of the decision-makers in the country existed to bring about the anticipated reform and meet the aspirations and expectations of citizens in preparation for the return of the parliamentary government<sup>111</sup>.

However, the team of politicians that opposed these constitutional amendments believed that, despite some positive amendments to the constitution, the reforms did not live up to the required level at this stage. Furthermore, they did not reflect the expected goal of upgrading political and partisan life in preparation for a parliamentary exercise contributing to the activation of the parliamentary regime in which a constitution is based.

While opposition criticises many articles of the constitution and the amendments, it focuses on articles 34, 35, and 36, which address the powers of the king. Meanwhile, supporters of the constitutional amendments refuse to consider the same articles, using the excuse that

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<sup>109</sup> Gross, Oren. "Chaos and rules: Should responses to violent crises always be constitutional." *Yale LJ* 112 (2002): 1011.

<sup>110</sup> Barany, Zoltan. "Unrest and state response in Arab monarchies." *Mediterranean Quarterly* 24, no. 2 (2013): 5-38.

<sup>111</sup> Clark, Janine A., and Amy E. Young. "Islamism and family law reform in Morocco and Jordan." *Mediterranean Politics* 13, no. 3 (2008): 333-352.

amending these articles would upset the balance, particularly the balance of power in the country. In addition, forming a government with a parliamentary majority, according to supporters of the king, requires a transitional period during which political parties prepare realistic political programmes that satisfy the needs and aspirations of citizens so that they can join a political party with enthusiasm. Political parties in the country, however, still suffer from weakness; fragmentation; and reluctant public membership, which does not exceed one per cent of total citizens. The parties lack internal democracy while tribal membership still dominates political life in Jordan. Political parties in Jordan, with the exception of the Islamic Action Front Party, perform only one function, which is giving a democratic label to the political regime and producing some personal gains for those who work therein. Therefore, it is fair to say that political parties in Jordan are dead, but not yet buried<sup>112</sup>.

Mr Ahmed Obaidat, the Head of the National Reform Front in Jordan, replies to a team of politicians in favour of the amendments to the constitution that believes the constitutional amendments were suitable to the present and future of Jordan said, "Our Constitution clearly stipulates that the ruling regime is a parliamentary hereditary monarchy. If the 1952 Constitution stipulated such provisions as early as that, how can it be claimed now, after sixty years of social and political advancement due to people's struggle, that amending such provisions is not yet due"<sup>113</sup>.

In general, the opposition to the constitutional amendments criticises many provisions, including the amendments, and calls for rephrasing many of them and adding some public matters to other provisions<sup>114</sup>. Below are the major criticisms presented by opposition to the constitutional amendments:

- Article 25 of the Constitution entrusted Parliament and the king with legislative authority; Parliament comprises both a Senate and a House of Representatives, and the king appoints senate members. In view of the principle that the people are the source of power, then it follows that the people also elect Senate members. Anticipated reform aims eventually to create a parliament that represents the genuine will of the people who elected the members of this council. Obviously, maintaining an unelected Senate

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<sup>112</sup> Ibtissam al-Attiyat and others, *Building Democracy in Jordan: Women's Political Participation, Political Party Life, and Democratic Elections* (IDEA and ANND 2005).

<sup>113</sup> Lucas, Russell. "Press laws as a survival strategy in Jordan, 1989–99." *Middle Eastern Studies* 39, no. 4 (2003): 81-98.

<sup>114</sup> Turki Bani Salameh, Mohammed. "Political reform in Jordan: Reality and aspirations." *World Affairs* 180, no. 4 (2017): 47-78.

as part of the legislative authority signifies the confiscation of the will of people and represents a stain on the conscience of the people<sup>115</sup>.

- Article 34 of the Constitution empowered the king to conduct public elections, call the House of Representatives for sessions, dissolve the House and Senate, and dismiss any member. Some opponents who demanded amendments challenged this article. Dissolving the parliament would be limited by constitutional guarantees and parameters to ensure its stability, continuity, and effectiveness, and the dissolution order of the House may be issued only in emergency cases that can be reasonably justified. The dissolution of a newly elected House shall not be allowed before a specified period, ensuring continuity and effectiveness. Article 35 gave the king absolute power to appoint and dismiss the prime minister and ministers and accept their resignations upon the recommendation of the prime minister. Articles 45 and 51 of the Constitution provide for the governance and government obligations towards the general policy of the state and operations of internal and external affairs. In addition, based on the principle of the correlation between authority and responsibility, forming a government from the parliamentary majority in the House of Representatives enables the government to exercise its constitutional authority as long as it enjoys the confidence of the house. Hence, the government is obliged to resign only upon losing a vote of confidence in observance of the fundamentals and traditions of the parliamentary system and in the consolidation of a parliamentary government as opposed to a government of figures. Therefore, the king distances himself from exercising executive authority and stands at an equal distance from all authorities, keeping in mind that the right of the king to choose the prime minister may result in reappointing the same prime minister under whose term Parliament was dissolved<sup>116</sup>.
- Article 36 empowered the king to appoint and dismiss the speaker and members of the Senate. This right has been like a sword threatening the heads of senate members and has prevented them from fully assuming their roles in control and legislation. Members of the Senate, however, need some type of immunity. Opponents called for electing members of this council and reducing the number of senate members to a quarter or one-third instead of half the number of members of the House of Representatives. In joint sessions, the proportion of senators reaches one-third of Parliament members,

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<sup>115</sup> Amin Al-Mashaqbeh, *Jordanian Political System* (Xlibris US 2019).

<sup>116</sup> *Ibid.*

which is a high percentage and leads to the dominance of senators over decisions endorsed by joint sessions of the parliament that usually require the votes of two-thirds of the attending members. Accordingly, the Senate alone is able to prevail in any draft resolution because it is not possible for a draft resolution to win 100% of votes in the House of Representatives<sup>117</sup>.

- Article 55 is related to the prosecution of ministers before competent courts in the capital, Amman. Opponents believe that this article violates the equality principle set forth in Article 6 of the Constitution, which implies that Jordanians are equal before the law without discrimination. Article 58 provides for appointing the chairman and members of the Constitutional Court by the king as a substitute for the Higher Council. Establishing the court shall be based on substantive rules and not on the will of a person. The court is composed of nine members appointed by the king for six-year non-renewable terms. Note that the executive authority, without participation from any other authority, dominates the appointment of court members. Furthermore, the limitation of membership to six non-renewable years deprives the court of experiences gained by its members at the end of the six-year term and thus limits its effectiveness. In addition, ambiguity about the formation of the court exists, such as depriving lawyers and specialists who meet the conditions to be judges of court membership. The major role in selecting members of the Constitutional Court was assigned to the House of Representatives to ensure its minimum independence<sup>118</sup>.
- Article 60 of the Constitutional Court limits the right to challenge the constitutionality of laws by Senate; House of Representatives; Council of Ministers; and head of the Appeals Court, depriving citizens; private law figures; civil society organisations; and other parties with a direct interest in the nullification of laws of the right to challenge the constitutionality of laws. This limit prevents the protection of citizens' rights because the essence of creating a Constitutional Court is to ensure and protect the rights of individuals and groups as well as to ensure the peoples' control of the House of Representatives and the government. Accordingly, the constitution should provide for the right of every interested party to challenge the constitutionality of any legislation

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<sup>117</sup> Ibid.

<sup>118</sup> International Business Publications, Jordan Country Study Guide: Strategic Information and Developments (International Business Publications 2012).

before the Constitutional Court. This right is included in many international constitutions, such as those of the U.S., Germany, and Belgium<sup>119</sup>.

- Article 94 provides for the provisional laws issued by the Council of Ministers. The opponents recommend an amendment to this provision of the constitution so that these laws shall be annulled by the law if not presented to the House of Representatives during the first session. Some of these laws are of a temporary nature, and their effects should be eliminated as soon as possible so as not to force these laws as *fait accompli* against the will of the constitutional legislator<sup>120</sup>.
- Article 99 of the Constitution retained special courts, such as the State Security Court. The constitutional amendments retained this court and upgraded its rank but should have eliminated, especially because its jurisdictions are included in the jurisdictions of other types of penal courts. In all cases, the jurisdiction of the State Security Court does not justify the continued presence of this court because this disintegrates the judiciary and weakens its independence. The on-going global trend is to eliminate such exceptional courts because their existence is contrary to the principles of human rights as well as relevant international conventions ratified by Jordan<sup>121</sup>. In addition, the verdicts of these courts are not recognised internationally.
- Constitutional amendments never touched on Articles 124 and 125, which relate to states of emergency, defence, law, and the imposition of martial law. These articles should be amended so that a state of emergency is limited and the matter is not left to the Council of Ministers. Rather, the declaration of a state of emergency and its duration should be subject to approval by the House of Representatives. In all cases, administrative decisions issued according to such provisional legislation should be subject to the control of the High Court of Justice in the consolidation of the pillars of rights, justice, and law and to promote a democratic structure<sup>122</sup>.

In general, opponents of the recently introduced constitutional amendments found them inadequate for producing a constitutional reform process that lays down a democratic base for power-sharing. The reforms also emptied the constitutional principle that the people are the source of the power of its essence. Thus, these changes prevented the empowerment of the Jordanian people to exercise their natural right to produce the legislative authority; such a right

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<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Britannica Educational Publishing, Syria, Lebanon, and Jordan (Britannica Educational Publication 2011).

had been provided for by the Jordanian Constitution since it was first drafted in 1952 without any progress towards its realisation. Furthermore, the constitutional amendments avoided altering constitutional provisions related to the relationship between authority and responsibility, and such a correlation represented a cause of imbalance in the relation between the authority of the king as head of the state and the executive authority represented in the Council of Ministers' general mandate as stipulated in the constitution<sup>123</sup>.

Therefore, loud voices that call for constitutional reform are still widespread throughout the country, and reform is at the top of the agenda of popular movement activists. The recent amendments were insufficient from the viewpoint of these activists to produce the anticipated political reforms (Bani Salameh, 2013)<sup>124</sup>. Hence, this movement has continued, keeping in mind that this road is long. However, these activists are convinced that there is no way to build a nation and homeland without the right foundation, no matter the costs and sacrifices. This position reflects the recent assault by the Jordanian security state against the peaceful reform movement to eliminate it through a so-called soft coup. Consequently, this move signals a return to the old manner of devoting the state of intelligence service to restricting freedoms and settling old accounts with symbols of reform (Qamhawi, 2014)<sup>125</sup>.

The main aim of this section is to discuss about the amendments made in the provisions and the responses provided on them. It is essential to discuss the amendments so that grounds for improvement can be identified for developing a framework for the new generation.

### **3.5 The Power of Separation and Jordanian Political System**

The principle behind the power of separation is considered to be an important element when a constitution is designed and according to the rule of law. In addition to this, it is to be noted that the power of separation plays a major role to prohibit absolutism as well as arbitrariness among various authorities. It is achieved by balance, cooperation, checks and equality. It is evident that this system divides the duties as well as tasks of the states into three categories, which are judicial, executive and legislative. Apart from this, it is also observed to be responsible for the responsible and smooth working of the power of separation among various countries that are observed to be adopted constitutions. In the same context, it is to be noted that the Constitution of Jordan works on the principle of division of working among powers, which as a result helps in the establishment of cooperation among these powers. It is assured by the Jordanian Constitution that there is separation among the three organs of the

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

State that are mentioned above. Additionally, as per the legislature of the Jordan, the law-making power is used by the National Assembly, and the King in power in Jordan and the executive power is in hands with the King and the cabinets of the King. However, it is to be mentioned that the judiciary is not influenced by the powers of the executives and the legislation and in a similar manner the courts of the country are also not influenced by any authority and only by the law<sup>126</sup>.

According to the viewpoint of Muddather *et al.* (2011), the power of the legislation allows it to have the right to oversee the performance of the power of the executive and also hold it accountable<sup>127</sup>. However, even after this, the executive power is observed to have the right to propose the drafts of the laws and also issue provisional laws when it is noticed to be necessary. Apart from this, it is important to be mentioned that the Jordanian Constitution has adopted a principle, that is, a kind of principle of cooperation among the executive powers and the legislative powers in order to enact the legislation and also form the base of the parliamentary and constitutional life in the State. It also established the crucial principles of the democracy that is inspired by the country<sup>128</sup>. Additionally, the principle of the separation of powers is observed to handle the interrelations that are present between the organs of the government, which are the judiciary, executive and legislature, in order to develop the exclusiveness in terms of the working of these organs and hence ensure a strict boundary to the powers<sup>129</sup>. In addition to this, it is evident that the mutual control has been established in the Jordanian Constitution among the three above mentioned power over each other as per exercising several rights<sup>130</sup>:

- It is to be noted that the right based on the submission of the draft laws is present with executive power. Nevertheless, the right to amend, reject or pass any draft law is present between the House of Representatives.
- Apart from this, it can be stated that the legislative power is observed to have the right to control the operations that are performed by the executive power. It means that the right to hold the accountability of the ministers is present in the hands of the Parliament. In this, the Parliament can hold the ministers accountable for the actions, whereas, the

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<sup>126</sup> Shatnawi, Faisal. (2002). *The Principles of the Constitutional Law & Constitutional System in Jordan* (In Arabic), (1sted), Amman: Daar Al. Hamid for Publication and Distribution.

<sup>127</sup> Muddather Abu- Karaki, Raed S. AFAQIR, Majed Ahmad K. Marashdah. (2011). *Democracy & Judicial Controlling in Jordan A Constitutional Study*. *Journal of Politics and Law*, Vol. 4, No. 2; September 2011. doi:10.5539/jpl.v4n2p180.

<sup>128</sup> Amin Almhakbh. 'King and the three authorities', The Ministry of Political Development, Amman. 2012.

<sup>129</sup> Ibid.

<sup>130</sup> The Constitution of The Hashemite Kingdom of Jordan (Articles 41-61).



members of the legislative power that are observed to be presented by the Parliament are observed to have the right to ask questions from the ministers and also take actions to dismiss the ministry. However, on the other hand, it is to be noted that the executive power, which is observed to be used by the King, is noticed to have the right to dissolve the House of Representatives<sup>131</sup>.

- In addition to this, it is to be noted that the executive power is observed to have the right to be meeting the National Assembly and also postpone the ordinary sessions or also hold or ask for a session that is an exception. It is observed from these rights that there is interference caused by the executive powers in the affairs of the Parliament and also provide a sort of control on the Parliament.
- Apart from this, the Jordanian Constitution is observed to define the functions as well as the duties of the three powers, such as the relationship between the powers is based on integration and balance and is observed to be participatory. Since the legislative power is observed to have the right to hold accountable the powers of the executive, the government is noticed to be controlled by the Parliament<sup>132</sup>.
- Another power that is in the hands of the executive is to dissolve the Parliament and also call and hold new elections. However, on the other hand, it is necessary to be mentioned that the legislative power can grant confidence and also hide the confidence or also abstain the people from voting at all.

It is to be mentioned that the Jordanian Constitution of 1952 is observed to organise the relationship between both the powers, which are the executive power and the legislative power. Therefore, the relationship that is present between these two powers is based on participation and of balancing in alignment with the provisions present in the Constitution<sup>133</sup>.

Therefore, developing a responsible government that is observed to exercise the powers that are based on effective terms and are in accordance with the provisions of the Constitution

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<sup>131</sup> Dr. Khaled Mohsen. February 2015. Election under Jordanian Legal Electoral System: a Comparative Study (Jordan, Britain, Germany). International Journal of Humanities and Social Science. Vol. 5, No. 2.

<sup>132</sup> Amin Almhakbh. 'King and the three authorities', The Ministry of Political Development, Amman. 2012.

<sup>133</sup> The relationship between these powers is a relationship of cooperation, and each has the right to control and check the other power. «The authorities in the State consist of executive, legislative and judicial authorities. These authorities shall cooperate in the performance of their functions and the relationship between these authorities is a cooperative relationship, which indicates that the Jordanian political system is based on the principle of flexible separation between the three powers (executive, legislative, judicial), so that the relationship between these authorities is participatory based on balance and complementarity, the legislative authority has the right to have control over the executive power and hold it accountable, and on the other hand, the executive power has the right to propose draft laws and the right to issue provisional laws when necessary.

is crucial. Here, the term responsible government can be understood as the executive government, which is highly responsive to Parliament. The commitment of the organs of the government, as well as all the authorities to the provisions mentioned in the laws as well as the Constitution, are mentioned below:

- “It is observed to be the sole responsibility of all the organs of the government as well as the authorities and the people to exercise the legislative, judicial and executive powers to apply and observe the provisions that are present in the Constitution”.
- “Apart from this, the political rights and the rules that are observed to be established by the Constitution needs to be enforced”.
- “The House of Representatives has actual control over the operations of the government in alignment with the provisions of the Constitution”.
- “There is an existence of the positive relationship as per the cooperation among the powers of the State in order to achieve the national interest that is also in alignment with the provisions present in the Constitution”.

From the above discussion, it can be concluded that the Jordanian Constitution is observed to be not respectful of the power of division in an effective manner and is also observe to be non-supportive of the idea of constitutionalism as per the western countries.

### **3.6 The Parliamentary System**

It is to be noted that the present Jordanian Constitution is observed to have been broken from the mixed composition of the powers that were present in the earlier version of the Jordanian Constitution<sup>134</sup>. One of the major drawbacks in this scenario is that it was not able to ban the members of the Parliament from engaging with the ministry. It is to be noted that it clearly conflicted with the modern democracies in which the members of the Parliament are only allowed to be observed of the performance of the government. In a similar manner, in some of the parliamentary systems, the people are not allowed to be a member of both Parliament as well as the ministry<sup>135</sup>. Therefore, it is noticed that most of the provisions of the Jordanian Constitution are adopted in alignment with the contemporary democracies and from

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<sup>134</sup> The old Jordanian Constitution, Article 57 “The High Tribunal shall consist of the Speaker of the Senate as President and eight members, three of whom shall be selected by ballot by the Senate from amongst its members and five members to be selected from amongst the judges of the highest Civil Court in order of seniority. In case of necessity, the number shall be completed from the presidents of the lower courts, also in order of seniority”.

<sup>135</sup> Suad Sharqawi, ‘Political systems in the modern world’ (Cairo, Egypt: Arab Renaissance Publishing House) 2007.

the parliamentary systems; however, the Jordanian Constitution of 1952 is observed to derive the rules and provisions from the version of the Belgian Constitution.

It is observed to be based on the principles of constitutional monarchy, in which the monarch is observed to be immune from the responsibilities as well as the liabilities. Similarly, on the other hand, it is evident that both the constitutions have the same philosophical and legal basis and also have the same philosophy of governance. It is to be noted that adopting and working as per the parliamentary monarchy, the governance method ensures that there is the separation of powers, ministerial responsibility is adopted, and rights are ensured, and the citizens are provided with the freedom that they need in a very clear and precise form<sup>136137</sup>. As per Article 24 of the Jordanian Constitution, it is observed to provide the fact that the nation is the source of all the powers. Therefore, it is evident that as per the sovereignty provided to the nation, it is capable of exercising the powers in such a manner that is in alignment with the present Constitution and constitutes the pillar of democracy. The Jordanian Constitution is also observed to lay down a two-chamber system, also known as the "bicameral parliamentary system"<sup>138139</sup>.

### **3.7 Form of the Constitution of Jordan**

The Jordanian Constitution has dictated a number of rights, entitlement and powers of the King as demonstrated in Section 1, Chapter IV, on the King and his rights, involving the current Constitution's Articles 28-40<sup>140</sup>. Hence, the King of Jordan performs maximum of his rights defined in the Constitutions via providing the Royal Decree,<sup>141</sup> which the competent Ministers, along with the Prime Minister, have signed. As the King is considered as the chief executive, the armed forces' commander-in-chief and the State's Head, as well as is immune from responsibilities and liabilities, and the responsibility is carried by the Council of

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<sup>136</sup> Mohammad Hammouri, *Rights and Freedoms Between Political Whims Constitutional Requisites*, First Edition (2010), p. 197.

<sup>137</sup> The Belgian Constitution is the supreme law of Belgium. The Constitution was adopted by the National Congress on February 7, 1831 after Belgium's declaration of its independence in 1830, and established Belgium as a constitutional monarchy. On July 14, 1993, the Constitution of 1831 was significantly revised and changed the form of government of Belgium from a unitary state to a federal State. The Constitution was last amended in 2012, and this 29th version consolidates all amendments up to this date. See <[https://www.dekamer.be/kvvcr/pdf\\_sections/publications/constitution/GrondwetUK.pdf](https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf)>

<sup>138</sup> The Constitution of The Hashemite Kingdom of Jordan (Articles 3-27).

<sup>139</sup> Rainer Grote, Tilmann J. Röder, *Constitutionalism, Human Rights, and Islam after the Arab Spring*, Aug 2016.

<sup>140</sup> The Constitution of The Hashemite Kingdom of Jordan (Articles 28-40).

<sup>141</sup> The King exercises the powers vested in him by Royal Decree. Every such Decree shall be countersigned by the Prime Minister and the Minister or Ministers concerned. The King expresses his concurrence by placing his signature above the said signatures.

Ministers; therefore, the King need not perform his rights individually. In the political system of Jordan, the King is regarded as the head of state, as well as the national identity, and unity of state's symbol, and possesses the highest status in Jordan that cannot be affected by any means. The rules of the King are founded on many kinds of legitimacy, like national and historical legitimacy, political legitimacy, and religious legitimacy on the basis of continuous communication, popular satisfaction and acceptance, and lastly the achievement's legitimacy at every level, such as social, political and economic.

The parliament of Jordan comprises of two chambers, namely, the House of Representatives and the Senate. The King appoints the former, and the electorate directly appoints the latter that fits into the framework of the parliament adopted by several countries, specifically some of Arabic countries like the Kingdom of Morocco and the Republic of Egypt, and the United Kingdom. The parliamentary system of Jordan is a system in which the King is not responsible politically to the House of Representatives. The King is regarded as a constitutional monarchy's head where he retains substantial power<sup>142</sup>. Besides this context, the two chambers, along with the government, are accountable, and this is perceived via the cooperative relations between the executive power and the legislation, along with their interchangeable control over one another.

### **3.8 The Power of Legislative**

The 1952 Constitution of Jordan, as well as its revision have been currently allocated, applicable in Chapter VI to the power of legislative under "The Legislative Power - The National Assembly" title. As discussed above, as per Article 62, the House of Representatives, also known as the Chamber of Deputies and the Senate are two chambers that forms the National Assembly. The people's power of the legislative shall be performed by Parliament; however, the 1952 Jordanian Constitution develops the presence of a relationship among the executive power and the legislative power based on mutual and cooperative control. Putting it another way, the Jordanian Constitution provides the executive power with the right to publish provisional laws, as well as to put forward draft laws when considered necessary that make it capable of participating in the process of legislative; in exceptional situation, which might threaten the existence of the state like internal disturbances, natural disasters, terrorism or war. At present, the Constitution permits the Parliament to assign its power of legislative to the

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<sup>142</sup> IBP, Inc, 'Jordan Country Study Guide Volume 1 Strategic Information and Developments'. Lulu.com, 2012, ISBN 1438774702, 9781438774701.

power of executive in order to make it capable of participating in the process of legislative; hence, to maintain control on the executive<sup>143</sup>.

The legislative body that represents the people in Jordan is regarded as the House of Representatives, in which a secret, famous direct ballot elects every member. The right to appoint the Chamber of Deputies' members is a right confirmed for all Jordanian nationals who has age over 18 years<sup>144</sup>. Elections are conducted in Jordan, based on the kingdom's division into several electoral districts that means that all districts have a number of seats as per the population they possess. Jordan's new electoral law has presented a system of an open proportional list at the district level for reducing the parliamentary seat's number from one-fifty to one-thirty for the power of legislative<sup>145</sup>.

### **3.9 The House of Representatives' Mandate**

The 1952 Constitution of Jordan, involving the May 2016 revision, anticipates in Article 68 that the term of the House of Representative's mandate is four calendar years, starting from announcement date of the general election's results in the Official Gazette (as revised in 16 February 1960, the Official Gazette No. 1476). After the possibility of the term's extending, Article 68 has been amended as follows: By a Royal Decree, the King may prolong the House's term for a period of one year or more and less than two years<sup>146</sup>. For this amendment, the fundamental judgement was to face the issue of holding legislation elections' possibility at the defined time because of the circumstances of the constitutions caused by the West Bank's Israeli occupation deranging the integration between two shores. Hence, the right of extending the House of Representatives' term was given to the King after its mandate's expiration for a time of less than two years as an option to holding a new election of legislative. For the first time, the preceding text was applied on 15 April 1971, at the time when the Council of Representatives' mandate that was appointed on 15 April 1967 expired. In regards to the inability of holding new election of legislatures in the western and eastern banks because of the western bank's occupation in June of the same year by Israel, the council's mandate was

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<sup>143</sup> Ali Mouhafidha "The Restricted Democracy- The Case of Jordan 1989-1999," The Center of Arab Unity Studies: Markaz Dirasat al Wihda al Arabiya, Beirut, Lebanon.2001.

<sup>144</sup> Fayez Zraiqat, 'Parliamentary institution and its role in the political development' 2004.

<sup>145</sup> ANJA WEHLER-SCHOECK 'Parliamentary Elections in Jordan, A Competition of Mixed Messages, September 2016.

<sup>146</sup> The Jordanian constitution states that the political system in Jordan is a parliamentary, hereditary monarchy. The monarchy is considered one of the oldest systems in history. This system has evolved into three types: absolute monarchy, restricted monarchy, and modern constitutional monarchy.

extended on the basis of Article 68 of the Constitution's provisions until 15 April 1973<sup>147</sup>.

### 3.10 The Senate's Power

In several bicameral nations, like Jordan, that is an effective bicameral legislation system's example present in a unitary state, the prevailing power of legislative is the House of Representatives, as it demonstrates the popular will, because the people elects it. A bicameral parliament is referred to as the one, which consists of two distinct assemblies that should both agree at the time of the making of new laws<sup>148</sup>. The Senate, along with the House of Representatives, has a significant role in the government of Jordan's operation. Besides passing legislation, a right performed together by both the chambers, the Senate even has several special and unique powers. If there is any difference of perception between the two chambers in regards to any bill, the House of Representative and the Senate conduct a joint meeting, which the Senate's speaker presides over. As specified by the Constitution's Article 91, the Prime Minister shall mention any draft law to the House of Representatives, and the House should be empowered to reject, amend, or accept the draft law. However, in every case, the House should mention the draft law to the Senate. A law cannot be promulgated unless passed by both the House of Representatives and the Senate, and unless the King confirms it<sup>149</sup>. Besides its legislative functions, the oversight functions exercised by the Senate. The oversight of the executive power's actions and works is one amongst the fundamental functions of the

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<sup>147</sup> Ali Mouhafidha "The Restricted Democracy- The Case of Jordan 1989-1999," The Center of Arab Unity Studies: Markaz Dirasat al Wihda al Arabiya, Beirut, Lebanon.2001.

<sup>148</sup> Braizat, F. Public Opinion Poll Unit Centre For Strategic Studies Jordan University 12/07 'Democracy in Jordan 2007'.

<sup>149</sup> Hassan Abu Zaid, Balance and Audit of Authorities, Cairo, 2003.

See also Article 91 – Constitution of Jordan. The Prime Minister shall refer to the Chamber of Deputies any draft law, and the Chamber shall be entitled to accept, amend, or reject the draft law, but in all cases the Chamber shall refer the draft law to the Senate. No law may be promulgated unless passed by both the Senate and the Chamber of Deputies and ratified by the King.

Article 92 – Should either House twice reject any draft law and the other accept it, whether or not amended, both the Senate and the Chamber shall hold a joint meeting under the chairmanship of the Speaker of the Senate to discuss the matters in dispute. Acceptance of the draft law shall be conditional upon the passing of a resolution by a two-thirds majority of the members of both Houses present. If the draft law is rejected as described above, it shall not be placed again before the House during the same session.

Article 93 – (1) Every draft law passed by the Senate and the Chamber of Deputies shall be submitted to the King for ratification. (2) A law shall come into force after its promulgation by the King and the lapse of thirty days from the date of its publication in the Official Gazette unless it is specifically provided in that law that it shall come into force on any other date. (3) If the King does not see fit to ratify a law, He may, within six months from the date on which the law was submitted to him, refer it back to the House coupled with a statement showing the reasons for withholding his ratification.

(4) If any draft law (other than the Constitution) is referred back within the period specified in the preceding paragraph and is passed for the second time by two-thirds of the members of each of the Senate and the Chamber of Deputies, it shall be promulgated. If the law is not returned with the Royal ratification within the period prescribed in paragraph (iii) above, it shall be considered as promulgated and effective. If any draft law fails to obtain the two-thirds majority of votes, it cannot be reconsidered during the same session, provided that the National Assembly may reconsider the draft during its next ordinary session.

Senate in agreement with the Senate's Internal Regulations and the Constitution. Because of the oversight function of the Senate's nature, it has two significant roles.

Political oversight is the first role that lies in supervising the Government's work in running state affairs<sup>150</sup>, undertaking its conformity to the laws and regulations of the States, and the Constitution for realising the interest of the public, and protecting it<sup>151152</sup>. The Senate performs its function of oversight via many tools discussed in the Constitution and the Senate's Internal Regulations as follows: the posing of interrogation, questions, putting forward a general discussion topic, complaints, petitions, and suggestions. The financial oversight is the second role, which is carried out through the following: The Senate engages in adopting the draft law of state budget, oversees concessions contracts and taxation <sup>153</sup>, for ensuring that no fee or tax is imposed without any law adopted by the House of Representatives and the Senate. In contrast, the House of Representatives exercises financial oversight, along with the Senate. Hence, it can be perceived that both houses have an entitlement of monitoring the policy of the Government and overseeing State affairs via overseeing concession contracts and taxation, as well as adopting the draft law of state budget. The Senate of Jordan has even plays a crucial role in political reform process via studying the interim legislations that has been passed by the national Assembly, along with approving them for accelerating the political reform process. It is perceived that the Senate exercises oversight effectively in Jordan.

### **3.11 Analysis of the provision that prevents Discrimination on race, religion and sex in Constitution of Jordan**

In the same context, Warrick (2016) added that the 1952 Jordanian Constitution specifies the fundamental rights and duties of citizens in Articles 5 – 23. This allows the Jordanian citizens to exercise these rights based on their citizenship. For instance, according to Article 6, there can be no discrimination among citizens based on religion, race, and language<sup>154</sup>. However, there is no significant law in the Jordanian constitution that provides complete

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<sup>150</sup> The King holds absolute power, exercises his powers within the limits prescribed by the Constitution. The King is not accountable to the House of Representatives or Senate which is appointed by him, the King is the head of a constitutional monarchy in which the King retains substantial power.

<sup>151</sup> Muddather Abu- Karaki, Raed S. AFAQIR, Majed Ahmad K. Marashdah. (2011). Democracy & Judicial Controlling in Jordan A Constitutional Study. Journal of Politics and Law, Vol. 4, No. 2; September 2011. doi:10.5539/jpl.v4n2p180.

<sup>152</sup> Al.Shudfat, HamdahOlian. (2007). The Separation between the Authorities and the Controlling on the Activities of Legislative & Executive Authorities: A Comparative Study, Master Dissertation, Juridical and Legal Studies Faculty, Al. Bait University.

<sup>153</sup> Ibid.

<sup>154</sup> Catherine Warrick, 'Law in the service of legitimacy: Gender and politics in Jordan' (Routledge 2016).

protection to the rights of the non-citizens. It is evident that children who are born to a Jordanian and a non-Jordanian parent still struggle for obtaining even the basic services and rights in Jordan. Although they are provided with small measures like permission to get access to the identity card, they still did not obtain full citizenship<sup>155</sup>.

Jordanian Constitution framework tends to emphasis to equal rights to all the Jordanians as, in Article 6, Chapter II of Jordanian Constitution, it has been highlighted that all the citizens of Jordan must be equal in front of the law. No discrimination should be witnessed between the citizens in regards to their duties and rights on the grounds of language, religion or race. However, the lack of mentioning women specifically bounds the enforcement of such texts of the Constitution to men and may also be dependent on the individual judges' legal interpretation. Due to lack of particular references to restricting the acts of discrimination on the basis of sex, the grounds of eradicating such discriminations in daily practices and laws, as well as for protecting the rights of women are limited in Jordan<sup>156</sup>.

However, it has further been observed that Jordan has been increasing pressure on the concept of liberalisation and to establish a higher degree of liberalisation among the citizens. On the contrary, the religious authority of Jordan has also given the right to grant and govern the social entitlements of the Jordanians. In the Jordanian Constitution, Articles 103(ii) provides direct power to religious authority. This Article provides them with the power to include themselves to define citizenship's concept that affects the duties and rights, and also the citizen's identity in a state. In order words, this article has given the authority to the religious institution to govern the private affairs of the citizens, and thereby constitutionally granted rights of women. All these aspects are contradictory to the ideology of liberalism and equality as the Constitution of Jordan has provided the authority to conservatives for guarding access to particular rights<sup>157</sup>.

In the current world, women have been accepted as an influential figure concerning politics; however, in Jordan, the traditional stereotypes of gender are still being utilised for justifying discrimination against women, which affects their participation in political, as well as public aspects. In Jordan, politics are basically referred to as the male domain, and therefore, political

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<sup>155</sup> HRW, 'Jordan: Small Step for Non-Citizen Children' (7 October 2018) Available at: <<https://www.hrw.org/news/2018/10/07/jordan-small-step-non-citizen-children>> assessed 30th May 2020.

<sup>156</sup> OECD, *Women in Public Life Gender, Law and Policy in the Middle East and North Africa: Gender, Law and Policy in the Middle East and North Africa* (OECD Publishing 2014) p.50.

<sup>157</sup> Rania F. Al-Rabadi and Anas N. Al-Rabadi, 'Inequality Analyses of Gendering Jordanian Citizenship and Legislative Rights' (2018) 19 *JWS* 6, 359.



decisions are taken by men, which, in turn, predominantly serve the interests of men. There are minimal female representations in Jordanian political parties that are considered as weak in parliament. Furthermore, the increase in movements of religious fundamentalist has been a factor that has impeded the roles and opportunities of civil society and women to enter public life and politics. Women are basically considered as secondary citizens in Jordan, which, in turn, affects their self-esteem as it limits the ability of women to cast their own vote, function independently, or join politics. Gender stereotypes are greatly utilised to consciously limit the participation of female politicians on the political fronts, which fosters discrimination against gender and sex in Jordan<sup>158</sup>.

Although, the education system of Jordan ensures equal access to both young women and men, resulting in fostering a population of highly educated women with a significant ability to advance the social, political and economic development of Jordan. However, it cannot be denied that a significant gap still exists for women among the acceptable social norms and constitutional rights, along with cultural restraints and traditional expectations, which continue to restrict the advancement of women. Although Jordan has included quotas for women in municipal and national bodies, the participation of women in politics is still limited as only one-sixth of the total seats in the parliament of Jordan are occupied by women. This clearly highlights the disparities that exist in the Constitution of Jordan in relation to sex and gender. Furthermore, it has been observed that there is no specific law in the Jordanian Constitution that criminalises or defines domestic violence. There is even no mechanism of enforcement to ensure law implementation in order to protect or promote gender equality<sup>159</sup>.

The citizenship of women in practice is not similar to what is reflected in the Constitution. In contrast, there has been essential progress in Jordan legislation's field that was obtained with significant revision or amendments of the Constitution in women's favour. These amendments have been stable with the National Charter and Constitution. It also in a certain extent aligns with the convention of international CEDAW ratified by Jordan. However, the Constitution still possesses a gap between law in practice and law in theory. This circumstance runs counter to equality's principle between the sexes in the Jordanian Constitution. Women in Jordan still face issues to enjoy their rights in the country. The representation of women in the Lower House, attitudes towards the role of women and public opinion regarding women, are essential.

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<sup>158</sup> Arab Women Organization, 'Women's Rights in Jordan' (2013) AWO, 1.

<sup>159</sup> USAID, 'Gender Equality And Female Empowerment' (2021) available at: <<https://www.usaid.gov/jordan/gender-equality-womens-empowerment>> accessed 25<sup>th</sup> April 2021.

However, significant issues still need to be considered; for instance, the religious power of the country believes that women tend to have limitations in regards to occupying positions in decision-making. The empowerment of women does not seem to be accepted by the religious authority, raising issues for the women in the country. Therefore, this makes it essential to reflect on the activism of women in the country, along with their consciousness and actions in relation to their rights in Jordan<sup>160</sup>.

Equality of the religions is promoted in the constitutions of Jordan as Article (6) (1) suggested that all citizens of Jordan are equal as per law and there should be no discrimination should be performed on the basis of ethnicity, race, religion and sex and they have equal rights and duties towards the nation. In addition to this Article 14 of the constitution stated that it is the duty of the state to safeguard the interests of the all the religion and provides the facilities to practise their worship. However, religious rights are only performed till they are consistent with the public order and do not harm anyone. The religious laws are developed only for personal status, and the Sharia courts are allowed to intervene in personal matters of the Muslim population and the matters that are related to Islamic endowments<sup>161</sup>.

Jordan also signed several international treaties, and due to this reason, the country followed several compulsions. It signed the Universal Declaration of Human Rights of 1948, whose Article 18 suggested that everyone should be provided with equal religious freedom and should be allowed to manifest worship, practice and teachings. Moreover, it also signed the International Covenant on Civil and Political Rights (ICCPR) that compel the nations to respect the political and civil rights of the people that includes freedom of religion, speech, assembly, electoral rights and the process of a fair trial. It is evaluated from the discussion that the constitution of Jordan provides religious freedom to its citizens, and as it is a Muslim dominated country as its most of the population follow Islam, the country has Sharia courts that have the power to intervene in religious matters and the issues between people belongs to the Muslim community. On the other hand, the constitutions of Jordan also provide equality to women as there are equal work-related laws for men and women in the country.

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<sup>160</sup> Ibid.

<sup>161</sup> Hani Ahmed Shboul, 'The Relationship between Religion and State in Jordan (Historical Perspective)' (2018) 4 IJHCS 49.

## Chapter 4: European perspective of Religion, Race, Nationality and Sex

### 4.1 History of the European Countries' Constitution

The Treaty Establishing a Constitution for Europe (TCE) was an unratified international proposal intended to create a consolidated constitution for the countries/member states of European Union (EU). The international proposal basically means a written agreement, convention, covenant or protocol that formally binds different countries in international law and hence TCE bind different countries with common international law to make institutions operate smoothly. The TCE was signed on October 2004 by representatives of the then 25 member states of the European Union. It was later ratified by 18 member states, which included referendums endorsing it in Spain and Luxembourg. However, the rejection of the document by French and Dutch voters in May and June 2005 brought the ratification process to an end. After a period of reflection, the Regulation of Lisbon was created to replace the TCE. This contained many of the changes that were originally placed in the TCE but were formulated as amendments to the existing proposals. Signed on December 2007, the Lisbon Regulation entered into force on 1 December 2009.

In the landmark case of *Van Gend en Loos v Nederlandse Administratie der Belastingen*, the court has passed the judgement that the treaties of Europe provide the rights for natural and legal processes. In this case, the court has found that the laws of the European community pose legal obligations on an individual along with providing them rights in the respective nation. Therefore, it is clear from the judgement of the case that the European Treaties poses a direct effect on the member states. In addition to this, the government of the member states are legally bound by the provisions of treaties. Thus, the laws of the European Union can be enforced by a person in the local court of the member states without a need for taking legal action by European Commission on the members' states for not following its legal obligations<sup>162</sup>.

The drafting for European countries' constitution began in a call for a new debate on the future of Europe at the Laeken European Council in December 2001. A European Convention was founded shortly afterwards which was chaired by former French President Valéry Giscard d'Estaing and composed of two Members of Parliament (generally one from the governing majority and one from the opposition) of each Member State and applicant state,

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<sup>162</sup> Van Gend en Loos v Nederlandse Administratie der Belastingen (1963) Case 26/62.

16 Members of European Parliaments (MEPs), two members of the European Commission<sup>163</sup> and a representative from each government. It met in public. Giscard d'Estaing proposed to draft a Constitution. Romano Prodi, the President of the European Commission, backed a draft text, called the 'Penelope Project', which contained a deeper integration of the countries and a clearer institutional model<sup>164</sup>.

The European countries' constitution has been well recognised by the societies for promoting social security, economic welfare and environment wellness. For instance, the constitution has emphasised on employment, the progress of society, human rights, equality, non-discrimination, solidarity as well as justice<sup>165</sup>. Thus, the countries perceived the constitution as a positive indicator to improve the progress and welfare of citizens and the economy. The constitution was formulated on the basis of establishing a common future with a consideration of interests of the European States and citizens. Article 1, based on the constitution, presents that the European Union is deemed as the Union of European States as well as the Union of European Citizens<sup>166</sup>.

The constitution of the European countries is divided in four parts and it follows the following format: Preamble; Part I (no title); Part II: Charter of Fundamental Rights; Part III: The policies and functioning of the Union; Part IV: general and final provisions; Annexes; Protocols; Declarations<sup>167</sup>. Part I serves as the most vital part of this constitution. It defines the Union. Additionally, it gives other aspects of the Union such as, Values, aims, powers, citizenship, rules, budgetary dispositioning and the institutions. Provisions on how to join the Union, suspension for it and modes of withdrawal are also included in this part. Part II contains the Charter for fundamental rights and is designed to protect citizens against EU laws that might infringe on basic human rights.

#### **4.1.1 Chronological Ratification Process**

Ratification process is necessary to be discussed as it informs regarding the provisions that were proposed by the government so that they can be analysed. After protracted negotiations in the Intergovernmental Conference (IGC) during the Italian presidency, disputes arose over the proposed framework for qualified majority voting: the final text of the TCE was

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<sup>163</sup> "The European Convention". European-convention.eu.int. Archived from the original on 2012-01-25. Retrieved 2020-04-03.

<sup>164</sup> "Penelope project on constitution" (PDF) (in Italian). Retrieved 2020-04-03.

<sup>165</sup> Europarl.europa.eu, *'The European Constitution'* (2005) available at: <<http://www.europarl.europa.eu/Europe2004/textes/2005-01-10-brochure-constitution-en-v02.pdf>> accessed 13<sup>th</sup> February 2020.

<sup>166</sup> Ibid.

<sup>167</sup> Pernice, Ingolf. "Multilevel constitutionalism and the Treaty of Amsterdam: European constitution-making revisited." *Common Market L. Rev.* 36 (1999): 703.

settled in June 2004 under the Irish presidency. The TCE for Europe was signed by 53 senior political figures from the 25 member states of the European Union. In most cases, heads of the state designated plenipotentiaries to sign the proposal, but some presidents also signed on behalf of states which were republics. Most designated plenipotentiaries were prime ministers and foreign ministers.

On 12 January 2005, the European Parliament voted a legally non-binding resolution in support of the Constitution by 500 votes in favour to 137 votes against, with 40 abstentions. Before an EU proposal could enter into force, it had to be ratified by all member states. Ratification takes different forms in each country, depending on its traditions, constitutional arrangements and political processes. Most member states ratify EU proposals following parliamentary votes, while some — notably Ireland and Denmark — sometimes hold referendums, in Ireland's case where the proposal requires a constitutional amendment as all amendments have to be approved by referendum. As a reaction to what was seen as the novel nature of the constitution, many advocates and opponents of the constitution argued that it should be subjected to referendums across the European Union member states<sup>168</sup>.

On 20 April 2004 then British Prime Minister Tony Blair unexpectedly announced an intention to hold a referendum, a proposal which he had previously rejected. A further seven member states announced or had already announced that they would hold referendums on the Constitution, these being Denmark, France, Ireland, Luxembourg, the Netherlands, Spain and Portugal. Spain was the first country to hold a referendum on the Constitution. On 20 February 2005, Spanish voters backed the proposal with 76% voting in favour to 24% against, on a turnout of 43%<sup>169</sup>. On 29 May 2005, the French people rejected the Constitution by a margin of 55% to 45% on a turnout of 69%. On 1 June, the Dutch rejected the constitution by a margin of 61% to 39% on a turnout of 62%. Notwithstanding the rejection in France and the Netherlands, Luxembourg held a referendum on 10 July 2005 approving the Constitution by 57% to 43%. It was the last referendum to be held on the Constitution as all of the other member states that had proposed to hold referendums cancelled them.

After rejection in the referendums of the French and Dutch, the European leaders decided to deliberate on the next step<sup>170</sup>. Consequently, they decided to form a group of

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<sup>168</sup> Honor Mahony (31 May 2003), "Ratification problems loom over Convention", EUObserver.com, retrieved 27 February 2009; Sarah Hall (26 May 2003), "Giscard backs calls for referendum on EU constitution", The Guardian, London, retrieved 27 February 2009; David Charter (21 October 2003), "Tories issue demand on Europe referendum", The Times, London, retrieved 27 February 2020.

<sup>169</sup> "Spain voters approve EU charter". BBC News. 20 February 2005. Retrieved 27 February 2020.

<sup>170</sup> Patrick Wintour (17 June 2005), "EU scraps timetable for ratifying constitution", The Guardian, London, retrieved 27 February 2020.

statesmen to consider possible actions<sup>171</sup>. This group of high-level European politicians – former prime ministers, ministers and members of the European Commission – first met on 30 September 2006 in Rome<sup>172</sup>. On 4 June 2007, this group, known as the Amato Group, presented its report. They proposed to establish a new Inter-Governmental Conference with a view to writing a new proposal which would rewrite the Maastricht Regulation, amend the Law of Rome and give the Charter of Fundamental Rights of the European Union a legally binding status. The new proposal would be based on the first and fourth parts of the Constitution, the rest of the Constitution's changes being achieved through amendments to the Law of Rome<sup>173</sup>. In the June 2007 European summit meeting, Member States agreed to abandon the constitution and to amend the existing regulations, which would remain in force. They also agreed to a detailed mandate for a new intergovernmental conference to negotiate a new proposal containing such amendments to the existing regulations (primarily the Law of Rome and the Law of Maastricht). These negotiations were completed by the end of the year. The new proposal, which had previously been referred to as the Reform Proposal, became the Lisbon Regulation on its signing in Lisbon on 13 December 2007.

#### **4.2 Constitution of European Countries**

Europe is considered to have several constitutions due to the national constitutions of the European Union's member states<sup>174</sup>. The Post World War-I era has turned out to be a silent revolution that brought representative democracy institutions, higher human rights standards, stronger electoral rights, set up of self-governance, clearer power division, and reinforcement of countries' national independence. The constitutions of the member states have superseded the absolute monarchy system and boarded on the route of European rule of law and understanding of democracy. The Post World War-I circumstances in Europe has played a vital role in encouraging the European countries for discarding the past and accepting an authentic blueprint of constitutions in order to achieve a progressive development. For instance, in the past, Poland had faced a multi-party, diverse political landscape; however, the assembly of the

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<sup>171</sup> Honor Mahony (28 September 2006). "Select group of politicians to tackle EU constitution". EUobserver.com. Retrieved 27 February 2020.

<sup>172</sup> Beunderman, Mark. "/ Institutional Affairs / EU 'wise' group welcomes new debate on constitution". Euobserver.com. Retrieved 2020-01-01.

<sup>173</sup> A New Treaty and Supplementary Protocols – Explanatory Memorandum (PDF), Brussels: Action Committee for European Democracy, 4 June 2007, p. 2, archived from the original (PDF) on 8 July 2007, retrieved 27 February 2020.

<sup>174</sup> George Papuashvili, Post-World War I comparative constitutional developments in Central and Eastern Europe (Oxford University Press 2017).

country was able to establish a commission that was tasked to draft a new constitution, which was ultimately adopted in 1921<sup>175</sup>.

Likewise, in Finland, the changes were driven by the revolutionary developments of 1905 in Russia; however, reform of parliament was set in place. The 1906 Parliament Act replaced the unicameral parliament (the Eduskunta) that was elected based on proportional representation and universal suffrage. Hence, as a consequence of this change, women and men, for the first time, were offered equal rights to vote in Europe. Later, the first election for parliament was taken place in 1907, providing 19 seats to women. In addition, Russia has elected the Constituent Assembly in 1919 via the democratic vote that has been marked by the participation of women in the election, democratic elements, as well as universal suffrage<sup>176</sup>. Furthermore, in 1918, Finland achieved its independence and in 1919 the country adopted a constitution. In a similar context, other countries of Europe, such as Hungary, France, Portugal, Austria, Greece and Germany, have also established their own constitution.

Amongst European countries, the European Court of Justice has consistently ruled since 1964 that EU law has primacy over the laws of member states in the areas where member states allow it to legislate. National law which is incompatible with an agreement already made at European level is deemed to be 'disapplied' when questions arise in courts. This controversial and fundamental principle of European Community law was first recognised in the case of *Van Genden Loos* in 1963 which was followed in *Costa v. ENEL* in 1964. According to the European Treaty on the Functioning of the European Union (TFEU), natural or legal persons are allowed to:

- Institute proceedings to the Court against an act addressed to them or a "direct and individual concern to them" Such a type includes direct "proceedings against the EU institutions for annulment and for failure to act"<sup>177</sup>.
- Comply actions to the Court for a failure to act, which happens when the counterpart, after two months from the call upon an act, has failed to produce and address "any act other than a recommendation or an opinion".

In the Article 256, it is stated that the "General Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the specialised courts" and also

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<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> "Competences of the Court of Justice of the European Union as a General Court". European Parliament. Archived from the original on 18 July 2019. Retrieved 18 July 2019.

it has "jurisdiction in all first instance actions or proceedings"<sup>178</sup>. Such a type includes direct "actions for annulment of acts of the institutions, bodies, offices or agencies of the EU or for failure to act brought against the institutions by individuals or legal persons"<sup>179</sup>. Also, the European Court of Human Rights (ECHR) supervises the High Contracting Parties' effort to enforce the Convention and the latter are those responsible for guaranteeing the rights and freedoms stemming from the Convention, in pursuance of the principle of subsidiarity enshrined in the Convention system under Article 1 ECHR. The regulation of Lisbon states that the "agreement on Union accession to the Convention for Human Rights" shall be acted and approved unanimously by the Council, and "after obtaining the consent of the European Parliament". The Council -which is an unelected organism- shall adopt any decision without involving the Parliament, "where agreements relate exclusively to the common foreign and security policy"<sup>180</sup>.

The EU countries' constitution mentions the ECHR explicitly only in the declarations as a regularly dialoguing counterpart of the Court of Justice, and with the Czech Republic stressing that "nothing in the Charter may be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised by the European Convention for the Protection of Human Rights and Fundamental Freedoms". In the *Loizidou v. Turkey*<sup>181</sup> case of 1995, the ECHR defined itself as "a constitutional instrument of European public order"<sup>182</sup> and, in the Bosphorus case of 2005, as the competent Court when an EU member State "could as a matter of law exercise independent discretion"<sup>183</sup>. It also ruled that "the Contracting Parties to the ECHR are not prohibited from transferring sovereign power to an international organisation, but that they remain responsible for all acts and omissions of their organs, regardless whether the act or omission was a consequence of domestic law or of the necessity to comply with international legal obligations", providing that "Convention rights continue to be 'secured'".

According to Riekmann and Wessels (2007), in order to cooperate effectively with the

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<sup>178</sup> De Burca, G. (2004). The Drafting of a Constitution for the European Union: Europe's Madisonian Moment or a Moment of Amdness. *Wash. & Lee L. Rev.*, 61, 555.

<sup>179</sup> Birkinshaw, Patrick. "Constitution for the European Union-A Letter from Home, A." *Eur. Pub. L.* 10 (2004): 57.

<sup>180</sup> Heyward, Madeleine. "What Constitutes Europe: Religion, Law and Identity in the Draft Constitution for the European Union." *Hanse L. Rev.* 1 (2005): 227.

<sup>181</sup> *Loizidou v. Turkey* is a landmark legal case regarding the rights of refugees wishing to return to their former homes and properties.

<sup>182</sup> Heyward, Madeleine. "What Constitutes Europe: Religion, Law and Identity in the Draft Constitution for the European Union." *Hanse L. Rev.* 1 (2005): 228.

<sup>183</sup> Pernice, Ingo. "Multilevel constitutionalism in the European Union." *European law review* 27, no. 1/6 (2002): 511-529.



25 members, it was essential for the European Union to be more democratic, more transparent and more effective. Therefore, for this purpose, the 25 members decided to modify the existing proposals into the Treaty establishing a Constitution for Europe (TCE), also referred to as the European countries' constitution. The European countries' constitution was embraced by the 25 European Union Heads of Government and State in Brussels in 2004. TCE was signed by 25 member states representatives of the European Union. The European countries' constitution states the fundamental objectives, spheres of action and values of the European Union. In accordance with the powers of the Union, the European countries' constitution also places the limit that should not be overstepped by the European Union<sup>184</sup>. However, this treaty that is called as Treaty of Lisbon, never come into force, and the model of parallel and overlapping and parallel spheres is in force. As per this model, the countries exist parallelly as no country is inferior or superior to another and laws of every country coexists. Moreover, the laws are overlapping in the manner that the laws have several parts merged.

Furthermore, Council of Bars and Law Societies of Europe (2005) asserted that the European countries' constitution is classified into four parts, namely, the Fundamental Rights' Charter of the Union, the operation and policies of the Union, the European Union's constitutional architecture, and final and general provisions. The overall format of the constitution of European is Part I (untitled), Part II (the Fundamental Rights' Charter), Part III (the functioning and policies of the Union) and Part IV (final and general provisions). Part I is stated as the core part of the Constitution. It indicates the aims, citizenship, values, powers, institutions, decision-making rules and budgetary arrangement of the Union. It also consists of provisions on connecting the European Union, withdrawal from it and suspension from it. Part II is focused on protecting the citizens against that law of EU that might violate their fundamental rights. The Charter had no legal binding force until the Constitutional Treaty came into effect. Part III integrates the previous articles of proposals concerning the policies of the Union. This part even goes into detail regarding home affairs and policy in the justice arena, institution, decision-making, financial arrangement and foreign policy. Part IV intends to measures the Member States must consider amending and rectifying the modified European countries' constitutional agreement<sup>185</sup>.

However, the polity relation integrating citizenry, individual citizens and political institutions could not work without the member state constitution's support. Nevertheless, the member

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<sup>184</sup> Sonja PuntischerRiekmann and Wolfgang Wessels, *The Making of a European Constitution: Dynamics and Limits of the Convention Experience* (Springer Science & Business Media 2007), 62.

<sup>185</sup> Council of Bars and Law Societies of Europe, 'Constitution for Europe' (2005) CCBE 1, 5.

states of the EU had approved the treaties significantly in agreement with their constitutions, as well as democratic legitimacy. EU's intergovernmental institutions perform under the national democratically legitimated entities guidance, and national parliaments also have direct participation in Union law-making. In addition, national authorities implement and enforce the Union legislative's major part, along with other measures<sup>186</sup>. Thus, it can be stated that the member states' constitutions and the legislative bodies of the EU work hand-in-hand in regards to establishing laws and protecting the rights of the citizens and the countries.

#### 4.2.1 Common Values of the Union

As stated in Articles I-1 and I-2, the Union is open to all European States that respect the member states' common values, namely: human dignity, freedom, democracy, equality, the rule of law, respect for human rights, minority rights, and a free market. Further, the member states also declare that the following principles prevail in their society: pluralism, non-discrimination, tolerance, justice, solidarity, equality of the sexes<sup>187</sup>.

#### 4.2.2 The provisions specified in Article I-3 <sup>188</sup>are:

- “Promotion of peace, its values and the well-being of its people”.
- “Maintenance of freedom, security and justice without internal borders<sup>189</sup>, and an internal market<sup>190</sup> where competition is free and undistorted”.
- “Sustainable development based on balanced economic growth and price stability, a highly competitive social market economy”.
- “Social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child”.
- “Economic, social and territorial cohesion, and solidarity among member states”.

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<sup>186</sup> Kaarlo Tuori, ‘The Many Constitutions of Europe’ (November 2016)  
<<https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935352.001.0001/oxfordhb-9780199935352-e-23?print=pdf>> accessed 15<sup>th</sup> November 2020.

<sup>187</sup> A draft Constitution for the European Union, available at:  
<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/272078/5872.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272078/5872.pdf)> accessed 12<sup>th</sup> April 2020.

<sup>188</sup> *ibid*

<sup>189</sup> The area of freedom, security and justice (AFSJ) is a collection of home affairs and justice policies designed to ensure security, rights and free movement within the European Union (EU). Areas covered include the harmonisation of private international law, extradition arrangements between member states, policies on internal and external border controls, common travel visa, immigration and asylum policies and police and judicial cooperation.

<sup>190</sup> The European Single Market, Internal Market or Common Market is a single market which seeks to guarantee the free movement of goods, capital, services, and labour – the ‘four freedoms’ – within the European Union (EU). The market encompasses the EU's 27 member states, and has been extended, with exceptions, to Iceland, Liechtenstein and Norway through the Agreement on the European Economic Area, to Switzerland through bilateral treaties, and to the United Kingdom through the duration of its transition period as specified in the Brexit withdrawal agreement.

- “Respect for linguistic and cultural diversity”.

The Objectives of the EU in relation to the world wide unions objectives are:

- “To uphold and promote its values and interests”.
- “To contribute to peace, security, the sustainable development of the Earth”.
- “Solidarity and mutual respect among people”.
- “Free and fair trade”.
- “Eradication of poverty and the protection of human rights, in particular the rights of the child”.
- “Strict observance and development of international law, including respect for the principles of the United Nations Charter”<sup>191</sup>.

Competences of the Union

The EU has six exclusive competences, policy areas in which member states have agreed that they should act exclusively through the EU and not legislate at a national level. The list remains unchanged from the previous proposals:

- Customs union;<sup>192</sup>
- Those competition rules that govern the internal market;
- Eurozone<sup>193</sup> monetary policy;
- Conservation of marine biological resources (the Common Fisheries Policy<sup>194</sup>);
- Common commercial policy;
- The conclusion of certain limited international agreements.

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<sup>191</sup> The Charter of the United Nations (also known as the UN Charter) of 1945 is the foundational treaty of the United Nations, an intergovernmental organization. The UN Charter articulated a commitment to uphold human rights of citizens and outlined a broad set of principles relating to achieving ‘higher standards of living’, addressing ‘economic, social, health, and related problems,’ and ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.’ As a charter, it is a constituent treaty, and all members are bound by its articles.

<sup>192</sup> The European Union Customs Union (EUCU) is a customs union which consists of all the member states of the European Union (EU), Monaco, the United Kingdom, and some dependencies of the United Kingdom which were not part of the EU. Some detached territories of EU members do not participate in the customs union, usually as a result of their geographic separation. In addition to the EUCU, the EU is in customs unions with Andorra, San Marino, and Turkey (with the exceptions of certain goods), through separate bilateral agreements. The customs union is a principal component of the European Union, since its establishment in 1958 as the European Economic Community.

<sup>193</sup> The Eurozone, officially called the euro area, is a monetary union of 19 of the 27 European Union (EU) member states which have adopted the euro (€) as their common currency and sole legal tender. The monetary authority of the Eurozone is the Eurosystem.

<sup>194</sup> The Common Fisheries Policy (CFP) is the fisheries policy of the European Union (EU). It sets quotas for which member states are allowed to catch each type of fish, as well as encouraging the fishing industry by various market interventions.

There are a number of shared competences. These are areas in which member states agree to act individually only where they have not already acted through the EU, or where the EU has ceased to act. Three new competencies have been added to those in previous proposals. There are a number of areas where the EU may take only supporting, coordinating or complementary action. In these areas, member states do not confer any competences on the Union, but they agree to act through the Union in order to support their work at the national level. Again, three new competencies have been added to those from previous proposals.

#### **4.2.3 ECHR law aspects**

Member states would have continued to co-operate in some areas of criminal judicial proceedings where they agree to do so, as at present. Under the TCE, seven new areas of co-operation would have been added: Child abuse, Drug trafficking, Fraud, Human trafficking, Political corruption, Terrorism, and Trafficking of arms.

#### **Solidarity Clause and the European Public Prosecutor**

The new solidarity clause of the TCE specifies that any member state which falls victim to a terrorist attack or other disasters will receive assistance from other member states if it requests it. The type of assistance to be offered is not specified. Instead, the arrangements will be decided by the Council of Ministers<sup>195</sup> should the situation arise<sup>196</sup>. Provision exists for the creation of a European Public Prosecutor's Office<sup>197</sup>, if all member states agree to it and if the European Parliament<sup>198</sup> gives its consent.

#### **4.2.4 EU law aspects**

The TCE includes a copy of the Charter already agreed to by all EU member states and came in force after treaty of Lisbon and prior to it was only a political declaration. This is included in the Constitution so that EU institutions themselves are obliged to conform to the

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<sup>195</sup> The Council of the European Union, often referred to in the treaties and other official documents simply as the Council and informally known as Council of Ministers, is the third of the seven Institutions of the European Union (EU) as listed in the Treaty on European Union. It is one of three legislative bodies and together with the European Parliament serves to amend and approve the proposals of the European Commission, which holds legislative initiative. The Council of the European Union and the European Council are the only EU institutions that are explicitly intergovernmental, that is forums whose attendees express and represent the position of their member state's executive, be they ambassadors, ministers or heads of state/government.

<sup>196</sup> Ondarza, Nicolai and Roderick Parkes. "Implementing the Lisbon Treaty's Solidarity Clause], SWP Comment, 2010; Ekengren, Markus et al. (2006) "Solidarity or Sovereignty? EU Cooperation in Civil Protection" in *Journal of European Integration* 28/5". Swp-berlin.org. pp. 457–476.

<sup>197</sup> The European Public Prosecutor's Office (EPPO) is an independent body of the European Union (EU) to be established under the Treaty of Lisbon between 22 of the 27 members of the EU following the method of enhanced cooperation. It will be based in Kirchberg, Luxembourg City alongside the European Court of Justice (ECJ) and the European Court of Auditors (ECA).

<sup>198</sup> The European Parliament (EP) is the legislative branch of the European Union and one of its seven institutions. Together with the Council of the European Union, it adopts European legislation, normally on a proposal from the European Commission.

same standards of fundamental rights. In the viewpoint of the European Parliament (2005), the European countries' constitution asserts the European Union as open and democratic equal states' and equal citizens' Union that proclaims the values of the Union. It also clarifies and confirms the policies of the Union, such as agricultural policy, currency, an internal market without limits, budget, freedom of establishment and movement, and minimising the development gap among different regions. The constitution of European countries also promises security, justice and freedom within the European Union's borders. It has also provided Europe with a significant role across the globe, along with a standard international policy. According to the constitution of European countries, the laws are proposed by the European Commission, concerning the broad policy guidelines of the European Council. The Council of Ministers and the European Parliament, equivalently, are responsible for agreement on any variation, that is necessary and then embrace the amended proposals<sup>199</sup>.

#### 4.2.5 Simplifications

The TCE made an effort to simplify jargon and reduce the number of EU legal instruments. However, it is a long document couched in technical terms, which proved unpopular when presented to French voters in their referendum on the TCE. The TCE unifies legal instruments across areas of policy (referred to as pillars of the European Union in previous proposals). Specifically:

- Regulations<sup>200</sup> (of the Community pillar) and 'Decisions' (of the Police and Judicial Co-operation in Criminal Matters<sup>201</sup> (PJC) pillar) both become referred to as European laws.
- 'Directives'<sup>202</sup> (of the Community pillar) and 'Framework Decisions'<sup>203</sup> (of the PJC pillar) both become referred to as European framework laws.

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199 European Parliament, 'The European Constitution' (2005) Available at: <http://www.europarl.europa.eu/Europe2004/textes/2005-01-10-brochure-constitution-en-v02.pdf> accessed on 24<sup>th</sup> April 2020.

<sup>200</sup> A regulation is a legal act of the European Union that becomes immediately enforceable as law in all member states simultaneously. Regulations can be distinguished from directives which, at least in principle, need to be transposed into national law.

<sup>201</sup> Police and Judicial Co-operation in Criminal Matters (PJCC) was the third of the three pillars of the European Union (EU). It was named Justice and Home Affairs (JHA) before 1999.

<sup>202</sup> A directive is a legal act of the European Union which requires member states to achieve a particular result without dictating the means of achieving that result. It can be distinguished from regulations, which are self-executing and do not require any implementing measures.

<sup>203</sup> A framework decision was a kind of legislative act of the European Union used exclusively within the EU's competences in police and judicial co-operation in criminal justice matters. Framework decisions were similar to directives in that they required member states to achieve particular results without dictating the means of achieving that result.

- 'Conventions' (of the PJC pillar) are done away with, replaced in every case by either European laws or European framework laws.
- 'Joint actions' and 'Common positions' (of what is now the Common Foreign and Security Policy Pillar<sup>204</sup>) are both replaced by Decisions.

Understanding the simplifications is necessary as it can help in maintaining the role of the Court of Justice of the EU and can also help in rendering the non-binding charter of the Fundamental rights that are binding legally.

#### **4.3 The Constitutional Conventions of the European Economic Area (EEA) and the Member States**

In relation to discrimination and equality, all the EEA member states, as well as the European Union, have one or more constitutional provisions. However, there are around three exceptions: those are including countries such as the United Kingdom, Denmark as well as Norway. Although, these countries are having constitutional protections regarding equality as well as discrimination, however, there are some significant differences between them regarding constitutional protections. For instance, one of these differences is that sometimes the provision will be introduced by some countries, those are having extensive experiences dating back to hundreds of years, and France can be presented as the best example for that (1798). Nevertheless, the provisions, in other states, are assumed to be recent vintage. Secondly, another difference is that regarding the enforceability of constitutional provisions it can be realised that though some constitutional provisions, are enforceable in courts by citizens of Austria as an example. On the other hand, in other states, it can be found constitutional provisions may not be thoroughly, and states such as the Netherlands can be provided as an example of these states<sup>205</sup>. For instance, in the Netherlands, some constitutional provisions are found not to be enforceable against an act of parliament. In other words, it is concluded that the status of legal of numerous rules dramatically differs from state to another. Therefore, that is assumed to affect the extent to which authoritative judicial interpretation of these constitutional provisions. Furthermore, another difference is that there are many states found to general equality through which individual or citizens are assumed as being, which in other words means that to be equal before the law. These countries are including Finland, Germany,

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<sup>204</sup> The Common Foreign and Security Policy (CFSP) is the organised, agreed foreign policy of the European Union (EU) for mainly security and defence diplomacy and actions. CFSP deals only with a specific part of the EU's external relations, which domains include mainly Trade and Commercial Policy and other areas such as funding to third countries, etc.

<sup>205</sup> Jacek Kugler, *Global Power Transition and the Future of the European Union* (Taylor & Francis 2017).

Estonia, Cyprus as well as Bulgaria. However, some other states those are including Belgium focusing on equality under the law. Many countries don't recognise the differences in language as an indicator to differentiate between citizens; in this regard countries such as Germany, Poland, and Czech focus on providing equally for both men and women<sup>206</sup>.

Some other differences are including that some countries such as Romania are having what's known as "closed system of grounds of prohibited discrimination". According to this system, the listed grounds are appearing to be grounded only where the discrimination is supposed to be prevented. However, other countries such as Poland are having what's known as open systems, through which the listed grounds are not given as well as the discrimination can be found to be prevented at any ground, or the country adopts a specific method for the aim of formulating closely in relation to an approach that is taken in the ECHR. Through which the grounds' list is determined, while "any other status" is employed as well. Thus, that will help to bring it closer to being an 'open' system in practice, and country like Portugal can be deemed as an example<sup>207</sup>. However, since this research focuses on comparing both constitutions, those are followed by Jordan and European countries; the researcher inferred that there are major differences, such as neutrality of state and religious state, and there are differences in the legal system itself. However, since there are many aspects of constitutional law that still need to be analysed in the context of Jordan and European states; this research was mainly conducted. However, the following section of this chapter focuses on presenting a detailed comparison of the Jordanian constitution, along with the constitution of the European countries<sup>208</sup>.

#### **4.4 Specific Aspects of EU Law and its Effect on the National Law**

The primary laws established by the EU are being contained in the treaties that are developed after the agreement of member states. These treaties provide guidance and structure about how EU members will operate and are mandatory for member states to be adopted. The EU laws provide a direct impact on how the member countries operate because it is considered superior to national laws. It means that the member states including France, Greece, Germany, Austria, Portuguese and Poland are not allowed to pass their own national laws that are found

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<sup>206</sup> Ibid.

<sup>207</sup> Christopher McCrudden and Sacha Prechal, 'The Concepts of Equality and Non-Discrimination in Europe: A practical approach (2006).

<sup>208</sup> Ibid.

contradictory to EU laws<sup>209</sup>. In fact, the EU laws can also overrule the national laws adopted by member states despite the laws of member states having been enacted earlier than the EU law. Hence, in general, the member states are needed to follow the provisions defined by EU laws and more specifically the Directives on human rights. For instance, all the member states in the EU have changed their national laws after the development of EU law like ECHR and ECJ<sup>210</sup>.

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<sup>209</sup> Government in Ireland, 'EU Law', (2021) available at: <[https://www.citizensinformation.ie/en/government\\_in\\_ireland/european\\_government/eu\\_law/european\\_laws.html#](https://www.citizensinformation.ie/en/government_in_ireland/european_government/eu_law/european_laws.html#)> accessed 26<sup>th</sup> April 2021.

<sup>210</sup> Sacha Prechal and Christopher McCrudden, 'The Concepts of Equality and Non-Discrimination in Europe: A practical approach', (2009) available at: <<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewiT-POk0-bwAhUQyzgGHRelAzcQFjAAegQIAxAD&url=https%3A%2F%2Fec.europa.eu%2Fsocial%2FblobServlet%3FdocId%3D4553%26langId%3Den&usg=AOvVaw26na-BgIYx5CydqDDl1YoT>> accessed 26<sup>th</sup> April 2021.



## **Chapter 5: Comparison of Jordanian and European Countries' Constitution**

The focal point of this chapter is to gain deeper and closer insights into the Constitutions of Jordan in relation to the Constitutions of European countries that is the main research question to be addressed. The comparison is pursued in the light of gender equality, followed by a brief discussion on the political representation and gender gap in European countries. Women participation and involvement is also discussed in the chapter, accompanied by insights into women diversity in the EU and Jordan. The chapter also covers the promotion and protection of human rights in the chosen research settings wherein economic and social rights of women's, and NHRIs are also explored. Besides this, the chapter has also provided light on the similarity and dissimilarity the in the Jordanian Constitution and the European countries' constitution, components of the Constitution of Jordan and European countries' that can enhance equality of rights for the new generation, the lacking areas in European countries' constitution and Jordanian Constitution and the stability of the European countries' constitution as well as Jordanian Constitution so as to answer sub-questions of the research. In order to extract the pertinent provisions that must be covered in the comprehensive legal framework, the Constitution of Jordan has been compared with constitutions of selected six European countries namely, France, Greece, Germany, Austria, Portuguese and Poland. The countries are selected for the purpose of comparison between the regulations of Jordan due to the reason that they are situated close to Jordan and have elements of law similar in order to make an easy comparison between the countries.

### **5.1 Gender Equality in European Countries' Constitutions and Jordan**

As the study concentrates on establishing an effective legal framework for the new generation, which is free from inequalities in regards to race, nationality sex and religion, it is essential to understand the gender equality in the Constitutions of both Jordan and the European Countries. Therefore, this section is focused on highlighting the gender equality context included in the Constitutions of the European Countries and Jordan in order to observe the gaps in the legislation, and develop a new framework to fill the existing gaps. This section also highlights the significance of gender equality in order to demonstrate the need for conducting the current study. It also reflects on the significance of political and public involvement of women in the countries.

In order to significantly compare and contrast the Jordanian Constitution and the Constitutions of the European Countries, some of the European Countries have been specifically selected, such as the Constitutions of France, Germany, Greece, Poland and Portugal. The reason behind selecting these countries is that as the study is focused on protecting individual's rights in regards to nationality, religion, race and sex, it has been observed that the Constitutions of Germany and Greece already have provisions of human rights regulatory provisions for protecting the rights of people. Hence, in order to have a significant comparative analysis between the Constitutions of different European Countries, these countries have been selected.

### **5.1.1 Gender Equality**

There is a group of legislative provisions that handle gender inequality that provides a legal framework that guarantees equality of women in their places of work, including the general working conditions. It was first composed of three directives. The first is based on equal pay, which involves the idea of equal pay for works with the same value as provided in the International Labour Organization<sup>211</sup>. The second directive is on equal treatment in various employment aspects, including dismissals, promotions, and hiring. The last directive is about equal treatment within social security issues. It is during the first to mid of the 1980s that two directives were recommended and equality adopted in 1986, all with limited scope.

The first proposed directive was on equality between women and men who were self-employed and on the equality for occupational social security. Some legislation facets were fundamental in the 1990s. In 1992, there was a directive that offered specific rights to breastfeeding, and expectant women called the Pregnant Workers Directive<sup>212</sup>. In 1993, the directive on Working Time was instituted in 1993. The Social Protocol that initially excluded the United Kingdom agreed to have the Parental Leave Directive that offered time off for fathers and mothers in specific situations. A directive on Occupational Social Security was approved in 1996 that amended the 1986 directive. The council adopted the Burden of the Proof directive that comprised the legislative description of provisions; indirect discrimination intended to regulate the legislation on the Burden of Proof associated with issues of sex discrimination.

A directive on the Part-time Workers banned the discrimination between workers who operated on a full-time or part-time basis in particular situations. Notable amendments of the

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<sup>211</sup> Christopher McCrudden, *Buying Social Justice* (Oxford University Press 2007).

<sup>212</sup> Christopher McCrudden, *Buying Social Justice: Equality, Government Procurement, & Legal Change* (Oxford University Press 2007).

Equal Treatment Directive of 1976 were presented in 2002 that member states were to implement in 2005<sup>213</sup>. Gender discrimination was forbidden in situations of goods and services in 2004. A directive on new recast was adopted in 2006 to bring together existing provisions of various directives on gender discrimination handling employment and apprise them to mirror case law of the European Countries. The Member States implemented the directive on 15<sup>th</sup> August 2009<sup>214</sup>. The instruments of soft law raised expectations and set standards with substantial indirect influence for the explanation of instruments dealing with hard laws, especially in the framework of national legislation. Therefore, it is not devoid of legal impact. The council and commission have espoused instruments in some areas involving gender equality and particularly areas of women representation, sexual harassment, affirmative action, and equal pay.

Article 6 of the Jordanian Constitution guarantees equality to all citizens before the legislation, but it seems like the Constitution enacted in 1952 is not effective enough in prohibiting gender discrimination or protecting gender disparity against women. Moreover, the Constitution provides equal pay rights to every worker, but it does not have any specific law in place, advocating equal pay rights to women. It is investigated that challenges are faced in securing the rights of women despite the active efforts of the government and substantial investment of the US government in securing human rights and democracy. The US government invested \$88.2 million on human rights programs and worked towards ensuring gender equality in Jordan in the time period of 2013 to 2015, but economic marginalisation of women has drastically worsened in the last decade<sup>215</sup>. Jordan's position on the Global Gender Gap Index reveals that current legislative practices and provisions are not supportive in fostering equal opportunity and encouraging economic participation of women. Despite being highly educated, less than 16 percent of women are employed in Jordan due to the absence of equal opportunity law and failure of the Constitution to prohibit gender-based discriminatory practices. Circumvention of maternity leave provisions and daycare facilities for working mothers by private employers' regulatory deficiencies in Jordanian Constitution. Women are entitled to only half of their parents' inheritance under Jordanian law wherein these norms are

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<sup>213</sup> Christopher McCrudden, *Buying Social Justice: Equality, Government Procurement, & Legal Change* (Oxford University Press 2007).

<sup>214</sup> David Feldman, *English Public Law* (2nd edn, Oxford University Press 2009).

<sup>215</sup> Freedom House. 2016. Why Is Jordan Backsliding on Gender Equality? [Online]. Available at: <<https://freedomhouse.org/article/why-jordan-backsliding-gender-equality>> accessed 26<sup>th</sup> June 2020.

originated and enacted in alignment with Shari'a, thereby restricting the economic independence of women.

Therefore, in the above discussion as per the comparison of the norms of gender equality present in Jordan and European countries, it is analysed that Jordan comprises of the highly educated population of women that fosters social, political and economic development of the country. However, a wide gap exists between men and women in Jordan in terms of opportunities at the workplace and education and in terms of acceptable social norms and constitutional rights due to cultural restraints and traditional expectations, as compared to European countries. Therefore, legal frameworks and governing institutions must provide a national framework for eradicating gender discrimination in Jordan and reducing the gender gap<sup>216</sup>.

### **5.1.2 Political Representation and the Gender Gap in European Levels**

There has been an increase in women percentage from a low 16.6 percentage of females for the initially elected legislature in 1979 that was done directly after every election to 35.8% after the elections of 2014. The recent figures in the European Parliament on gender balance indicate that the level of Members of the European Parliament that women represent has slightly progressed from the 2014 elections, which are currently at 36.1%<sup>217</sup>. It surpasses the global average for state parliament and beyond the average of the European Union for national parliament at 30.2%. Nonetheless, there are wide variations among the Member States ranging from high percentage, including Ireland and Croatia, both at 54.5% and Finland at 76.9% to others, including Bulgaria at 17.6% and Cyprus and Estonia both at 16.7%. However, Malta and Hungary are few member states in the EU that are trailing with merely 12% and 7.1% of women participation in parliament respectively.

Therefore, the structure of the European Commission is yet to attain gender parity. There are nine women in the existing twenty-eight commissioners. Federica Mogherini was a female commissioner who occupies the prominent post of Security Policy and Union for Foreign Affairs, which inhabits the noticeable position of High Representative and the only commissioner vice president out of the six<sup>218</sup>. The rest policy areas that female commissioners

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<sup>216</sup> Ibid.

<sup>217</sup> Rosamund Shreeves, Martina Prpic and Eulalia Claros, *Women in Politics in the EU-State of Play* (European Parliamentary Research Service 2019) available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS\\_BRI\(2019\)635548\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS_BRI(2019)635548_EN.pdf)> accessed 3<sup>rd</sup> January 2020.

<sup>218</sup> Rosamund Shreeves, Martina Prpic and Eulalia Claros, *Women in Politics in the EU-State of Play* (European Parliamentary Research Service 2019) available

run include trade, labour mobility, skills, social affairs, employment, transport, medium and small-sized enterprises, entrepreneurship, industry, internal market, gender equality and consumers, justice, regional policy, competition, society, and the digital economy.

## 5.2 Protection and Promotion of Human Rights

Respondents confirmed that girl's and women's rights include cultural, social, economic, civil, and political rights. The human rights for most girls and women are denied and violated regardless of the commitments. The respondents emphasized on interrelatedness and indivisibility of human rights and appreciated interrelation between the diverse violation of human rights that are women-based, including the rights and needs of girls<sup>219</sup>. Inequality and poverty are important factors that enhance susceptibility to gender-based violence, hunger, and discrimination. Macro-economic choices, systems, and patriarchal structures devalue the lives and influence of women who suffer unduly from precarious employment, unemployment, violence, war, and militarization. The choices negatively affect the safety, health, and time of girls and women. Besides, girls and women bear the burden of austerity measures such as budget cuts on social security, education, health, and public service.

The poor who are girls and women experience the vilest effect of national and global financial crises, Multi-lateral bodies and states have the responsibility to hold accountable corporations that disrupt the accountability of human rights in relation to the responsibility of protecting the rights of girls and women as guided in the UN Guiding Principles for Business and Human Rights. Respondents appreciated the fact that the majority of women suffer from intersecting kinds of discrimination. Additionally, women are vulnerable, particularly the refugee, afro-descendants, indigenous women, and minority groups. Other women that suffer include women as trafficking victims, women who rely on drugs, gender or sexuality, women of diverse sex, sex workers, and women discriminated based on family and domestic violence, and HIV status<sup>220</sup>. The human rights for girls and women are articulated in a diverse array of declaration, international proposals, and the political commitments at national, regional, and international levels.

The NHRIs emphasized that the government is tasked with the responsibility to without

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at:<[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS\\_BRI\(2019\)635548\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS_BRI(2019)635548_EN.pdf)> accessed 4<sup>th</sup> January 2020.

<sup>219</sup> NCHR, *Amman Declaration and Programme of Action* (The National Center for Human Rights 2012) available at: <[https://www.ihrec.ie/download/pdf/amann\\_declaration\\_november\\_2012.pdf](https://www.ihrec.ie/download/pdf/amann_declaration_november_2012.pdf)> accessed 28<sup>th</sup> December 2019.

<sup>220</sup> NCHR, *Amman Declaration and Programme of Action* (The National Center for Human Rights 2012) available at: <[https://www.ihrec.ie/download/pdf/amann\\_declaration\\_november\\_2012.pdf](https://www.ihrec.ie/download/pdf/amann_declaration_november_2012.pdf)> accessed 28<sup>th</sup> December 2019.

delay, implement the obligations and commitments that are approved. As a result, the NHRIs met and agreed to different areas of work and broad principles<sup>221</sup>:

- *“Mainstream and prioritize gender equality and human rights for girls and women during all activities, programs, policies, processes, and strategic planning to develop sustainable interventions to attain gender equality. It would also comprise implementing and developing training for NHRI staff and members about gender equality. It will also review the internal structures to attain gender equality in all aspects and levels of work. These include assuring NHRI of working areas that are free of bullying, violence, and sexual harassment. The NHRIs need to seek technical help from institutions, Regional Coordinating Committees, ICC, and the specialist UN agencies to support the efforts”.*
- *“Reinforce the coordination between the department of children and NHRI women's rights where it appears as relevant. Cooperation with specialized institutions, particularly at national levels addressing the issues and involvement with stakeholders and organizations at the intergovernmental and regional organization, civil societies, non-state actors, UN agencies, and the trade unions. The aim is to protect and promote gender equality and human rights for girls and women”.*
- *“Trail the fulfilment of the state of the obligations of human rights where NHRI allows a permit for the compliance of non-state actors with standards for human rights such as the ones that relate to gender equality and the rights of girls and women. NHRIs need to back the efforts to guarantee the rights of women of de facto and de jure or even practical equality with men whose recognition will need differential treatment and special measures. The efforts include the incorporation of gender equality and the human rights for girls and women in relevant policies and laws such as the Human Rights National Action Plans. For example, the twelve areas in Beijing Platform for Action should operate as the guiding framework to assess the action of the state to safeguard the human rights for girls and women”.*
- *“Investigate, conduct inquiries and respond to allegations that violate the rights of girls and women such as identity systemic identity, discrimination in political and public life, reproductive rights violation, cultural and social rights, economic violations, gender-based violence, and discrimination against girls and women that spreads the violation.*

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<sup>221</sup> NCHR, *Amman Declaration and Programme of Action* (The National Center for Human Rights 2012) available at: <[https://www.ihrec.ie/download/pdf/amann\\_declaration\\_november\\_2012.pdf](https://www.ihrec.ie/download/pdf/amann_declaration_november_2012.pdf)> accessed 28<sup>th</sup> December 2019.

*The reports and investigation ought to resort to approvals of state meeting responsibility to combat impunity and safeguard the rights of girls and women”.*

- *“Enable the girl's and women's access to justice, including non-judicial and judicial remedies, concerning the directive”.*
- *“The NHRIs should fully exercise the quasi-judicial powers to offer relief to girls and women victims and enable administrative action for the prosecution of offenders”.*
- *“Uphold the understanding of the rights of girls and women including the ones found in human rights standards and norms, Convention on the Rights of Persons with Disabilities, Convention on the Children Rights, International Covenant on Economic Social and Cultural Rights, International Covenant on Civil and Political Rights, and CEDAW into national policies and laws”.*
- *“Encourage and monitor the implementation for special procedures, and UN intergovernmental bodies of the United Nations such as Commission on Population and Development, Commission on the Status of Women (CSW), Human Rights Council, General Assembly and recommendations that states accept in the framework on Universal Periodic Review”.*
- *“Operate with the defenders of human rights for women and commit to the violations of particular gender that such defenders suffer for being women or based on gender-specific causes that promote and defend the access of remedies during violations”.*
- *“Form strategic associations with United Nations agencies, including OHCHR, UNFPA, UNICEF, UNDP, and UN Women, to improve the cooperation with NHRIs to protect and promote the human rights for girls and women”.*
- *“Carry out awareness-raising, promotion, and education activities on the human rights of girls and women, pertinent international standards, and gender equality. Specific attention needs to be given to eliminating customary and prejudices and practices grounded on the concept of superiority or inferiority of all genders and stereotyped roles of women and men. NHRIs are committed to eradicating stigma related to girls and women who speak in case of rights violations”.*
- *“Create guidelines related to the human rights for girls and women and trail state compliance using the guidelines”.*
- *“Work with entities and individuals and monitor non-governmental sphere and private sector to guarantee non-discrimination against girls and women”.*
- *“Follow up on business activities from global to local and report the adverse effects on*

*the enjoyment of the human rights for girls and women”.*

- *“Promote and prioritize gender equality and human rights for girls and women through involvement with regional and international human rights processes. It includes participation with universal processes, including the Vienna Program of Action, Beijing Platform of Action, ICPD Beyond 2014 Global Review, and the post-2015 development agenda”.*
- *“Ask states to rank human rights, including the ones for girls and women in their involvement with the trade and financial institutions and the intervention for the international agreement”.*

### **5.3 Women Involvement and Participation**

#### **5.3.1 The public and Political Involvement of Women**

Gender equality is a necessity for accountable, responsive, and effective democratic societies. It is also a means for enhancing legitimacy and credibility for the elected institutions. The participation of women is 21% in lower parliament houses in Europe and the Commonwealth of the Independent States, which is below 22.9% of the global average. The representation of women in elected offices at local levels is somehow low, especially in leadership and mayoral positions in the local councils and assemblies. Women only represent 15% of leaders and mayors of the municipal councils, whereas 35% for the municipal or local councillors<sup>222</sup>. Women continue to confront gender stereotypes concerning the capacities and roles to succeed in getting to the elected positions and even endure the impact of discriminatory culture, practices, policies, and legislation.

Men and women have formed government structures, strategic plans, and support mechanisms to address the challenges in the European Countries region to ensure that women can participate in political issues. The UNDP has enabled the development of structures in most nations appreciating the important responsibility they play in women empowerment as parliamentary representatives backing the introduction of parliament that is gender-sensitive and even adopting legislative framework and policies<sup>223</sup>. The Gender Equality Strategy for UNDP between 2014 and 2017 intended to cut down gender inequalities and eradicate poverty through security and empowerment of women’s rights that serve as the guiding manuscript for

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<sup>222</sup> UNDP, *Strengthening Women’s Political Participation* (United Nations Development Programme 2016) available at: <<https://www.undp.org/content/dam/rbec/docs/undp-rbec-strengthening-women-political-participation.pdf>> accessed 29<sup>th</sup> December 2019.

<sup>223</sup> UNDP, *Strengthening Women’s Political Participation* (United Nations Development Programme 2016) available at: <<https://www.undp.org/content/dam/rbec/docs/undp-rbec-strengthening-women-political-participation.pdf>> accessed 29<sup>th</sup> December 2019.



programming in the future and today.

The Sustainable Development agenda geared for 2030 and the seventeen Sustainable Development Goals introduced in 2015 is meant to function as the basis for UNDP to address women empowerment and gender equality<sup>224</sup>. The study will map accomplishments and initiatives that result in the development of pertinent SDGs such as the improvement of gender equality in parliamentary and society bodies, as indicated in Goals 16 and 5 alongside their objectives.

In Jordan, women and NHRIs public and political involvement has taken the following forms:

- “Campaign for the elimination of discriminatory legislation that hinders the ability of women to take part in political and public life”.
- “Uphold measures through the adoption of practices, laws, and education to remove stereotypes, cultural and social barriers, and traditions that prevent or discourage women from performing their responsibility to vote or even taking part in political, peace, and public processes”<sup>225</sup>.
- “Offer support and assistance to women who experience economic and social barriers to political and public participation such as impediments, poverty, language, and illiteracy to the freedom of movement for women to overcome the barriers”.
- “Stimulate the implementation of provisional special measures to guarantee that women remain well represented in appointed and elected positions within the judicial, legislative, and executive arms of government and even operate with the political parties to have affirmative measures to back the women contenders”.
- “Encourage strategies to warrant that the voices of girls are heard in issues that impact their wellbeing”.

Significant efforts have been made in the ECA area in terms of political participation and gender equality. It is because of the achievements of committees in charge of gender equality in the parliament and the women’s networks, cross-sector associations, political parties, and women’s caucuses. The formation of the groups is an improvement in itself that will be discussed in three sub-sections. The first sub-section will address gender-sensitive

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<sup>224</sup> UNDP, *Strengthening Women’s Political Participation* (United Nations Development Programme 2016) available at: <<https://www.undp.org/content/dam/rbec/docs/undp-rbec-strengthening-women-political-participation.pdf>> accessed 30<sup>th</sup> December 2019.

<sup>225</sup> NCHR, *Amman Declaration and Programme of Action* (The National Center for Human Rights 2012) available at: <[https://www.ihrec.ie/download/pdf/amann\\_declaration\\_november\\_2012.pdf](https://www.ihrec.ie/download/pdf/amann_declaration_november_2012.pdf)> accessed 28<sup>th</sup> December 2019.

procedures and rules in parliament. The sub-section will investigate the formation of gender equality groups, including their effect on the creation of parliament that is gender-sensitive comprising informal and formal parliamentary practices, and the institutional procedures<sup>226</sup>. The second sub-section will address equal empowerment and participation of women in elected positions. The sub-section will explore the level of women legislatures in parliament, including the substantive and empowerment of women, especially the increase in the involvement in making decisions about positions and institute abilities of women as elected leaders. The third sub-section will handle the legal framework for enhancing gender equality within society. It will also explore the gains made for the adoption of policies and laws committed to gender equality, such as inclusive approaches for national development, and the monitoring and establishing the implementation of gender equality alongside the legislative frameworks.

### **5.3.2 Context**

Some European nations marked women centenary in 2019 to secure the right to participate in national elections in Netherlands-Luxembourg, first women to take leadership positions in national parliaments in Austria-Luxembourg or taking part in the ministerial roles in Ireland. However, a century later, data across Europe indicated that women remain under-represented in making political decisions at European, national, and local levels. The European Institute for Gender Equality instituted the Gender Equality Index to evaluate the gender gaps for a certain period<sup>227</sup>. Power is an area where development is made during the last decade; it is also a place where gender gaps are broad. Sweden is now the only nation in European Union with a score of a hundred totalling gender balance and the first to score more than 90 in the indicator of political power based on the spread of women ministers, women in regional councils, and members of parliament. France and Slovenia are among the Member States that have progressed, although scores for some nations have reduced scores, whereas some are in the low base. The decline depicts the growth political representation of women, which is not necessarily self-evident or linear.

### **5.3.3 Women Diversity in the Jordan and European Union Politics**

There lacks European Union-wide data on the political illustration of various categories

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<sup>226</sup> Bharati Sadasivam, *Strengthening Women's Political Participation-An Analysis Of The Impact Of Women's Parliamentary Networks In Europe And Central Asia* (United Nations Development Programme 2016) available at: <<https://www.undp.org/content/dam/rbec/docs/undp-rbec-strengthening-womens-political-participation-final.pdf>> accessed 29<sup>th</sup> December 2019.

<sup>227</sup> Rosamund Shreeves, Martina Prpic and Eulalia Claros, *Women in Politics in the EU-State of Play* (European Parliamentary Research Service 2019) available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS\\_BRI\(2019\)635548\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS_BRI(2019)635548_EN.pdf)> accessed 3<sup>rd</sup> January 2020.

of women, including the ones in ethnic minorities, disabled women, younger or older women, LGBTI women, although the existing data indicate under-representation. For instance, the Roma minorities are among the groups that are under-represented in the European Union, OSCE, and Council of Europe have signalled a low number of women in elected positions in Roma. A report was done in 2018 indicated that European nations trail the universal pattern constituting male parliamentarians to outnumber the female colleagues in all age groups, notwithstanding the gender balance among the young member of parliaments<sup>228</sup>. Research has shown that in the entire account of the European Parliament, there are more young women than older or middle-aged women to be elected from 1979 to the recent 2014 and 2019 session.

Women representation in parliament, political participation, and elected positions are not sole means through which women are active politically and do not offer full picture for power. There is a lot that has been accounted for the voting behaviour of females for non-electoral forms for political participation, including campaigning, political persuasion, and protests engagement, where it has been seen that gender inequalities and variations still occur. Research has demonstrated that women have moved to advanced industrial societies in terms of voting preferences but not in post-communist societies as avenues that favour women's rights<sup>229</sup>. Current research outlines the growing popularity of the right-wing extremist and right-wing populist of women in Europe. The increase in these popularities is because of the capacity to satisfy the practical interests of women that includes social policies emphasizing on family welfare and improved family benefits.

The majority of the studies have revealed that women claim or tend to know less concerning politics compared to men though research has shown that factors comprising the format of survey questions that asked content or question make a great impact. It is challenging since political awareness is essential for active involvement in politics. The same outcome is observed in the Eurobarometer survey in 2018 that shows that women are vulnerable compared to men to indicate that they do not understand the response to questions that are politically related<sup>230</sup>.

The survey indicates that women are less interested in the affairs of the European Union

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<sup>228</sup> Rosamund Shreeves, Martina Prpic and Eulalia Claros, *Women in Politics in the EU-State of Play* (European Parliamentary Research Service 2019) available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS\\_BRI\(2019\)635548\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS_BRI(2019)635548_EN.pdf)> accessed 4<sup>th</sup> January 2020.

<sup>229</sup> Rosamund Shreeves, Martina Prpic and Eulalia Claros, *Women in Politics in the EU-State of Play* (European Parliamentary Research Service 2019) available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS\\_BRI\(2019\)635548\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS_BRI(2019)635548_EN.pdf)> accessed 5<sup>th</sup> January 2020.

<sup>230</sup> Kantar, *Standard Eurobarometer* (European Union 2018).

compared to men, with 49 percent of women appealing to be interested than 60 percent of men<sup>231</sup>. Though, the gap between women and men reduces voting in elections with nearly no variation between women and men in offering benefits to individual voting in European or national elections. Research has established that traditional gender variations involving voting weakened some decades back in most industrialized nations, but some studies indicate that it is an issue of national elections. However, there is a gender breach in voter turnout in all elections for second-order with an example of the European Parliament.

Studies in Jordan have revealed that women are steadily less probable to take part in political activities, including contributions to the campaign, letter to political leaders, and attending political organizations, and the outcome was frequent in studies evaluating some democratic systems. There are some explanations for the occurrence, although the most significant attributes to the variation to the diminished resources for women than men and the societal values that steer women from political activities<sup>232</sup>. Research reveals that eighteen industrialized democracies involving non-electoral involvement are likely to raise money or sign petition for political groups but unlikely to link demonstration. Women are likely to take part in activities associated with political consumption compared to men where they could boycott or purchase products for ethical or political grounds.

The municipal elections in March 2001, in France, did not generate the anticipated vague rose; but the French politics are nevertheless on a uniquely pinker point. Since its adoption last year, the legal provision on political parity, assuring equal access to political presentation for both females and males, has been enforced for the first time. It has been found that women for a very long period did not gain fair representation in French politics and French women have only gained the right to vote and requisite eligibility to extended office service since 1944, which is considerably later than in nations like Britain, Germany and the United States. This level of women representation in the political domain is low than other countries of EU, except Greece<sup>233</sup>. Representation of women in National assembly has increased steadily, from merely

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<sup>231</sup> Rosamund Shreeves, Martina Prpic and Eulalia Claros, *Women in Politics in the EU-State of Play* (European Parliamentary Research Service 2019) available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS\\_BRI\(2019\)635548\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS_BRI(2019)635548_EN.pdf)> accessed 5<sup>th</sup> January 2020.

<sup>232</sup> OECD, *Women's Political Participation in Jordan* (OECD 2018) available at: <<https://www.oecd.org/mena/governance/womens-political-participation-in-jordan.pdf>> accessed 5<sup>th</sup> January 2020.

<sup>233</sup> Caroline Lambert, 'French Women in Politics: The Long Road to Parity' available at: <<https://www.brookings.edu/articles/french-women-in-politics-the-long-road-to-parity/>> accessed 15<sup>th</sup> February 2020.

12.3 per cent at the 2002 election, to approx 38.6 per cent in the following year<sup>234</sup>. The country largely values women representation now; however, most of the parties still prioritise women over men for election. This situation prevails in the country even after having a system in which funding of a party is restricted in case women do not constitute at least 49 per cent of candidates<sup>235</sup>.

On the other side in Germany, only 5 out of 16 state-level boards are governed by women, and the country presents a good example for the rest of the world concerning women's political representation. Germany is led by Merkel, for a period of the last 13 years, who emerged as one of the most influential female politicians across the world. This is not only the success store of Germany, Andrea Nahles, the leader of the centre-left Social Democrats (SPD) is also a female depicting the growing representation of women in the political field of Germany. Though Germany's early efforts to strengthen gender equality made it one of the leading nations making rigorous attempts to augment their political representation, the country has still fallen behind in this initiative. The lack of robust women representation in German politics is an indicator of the dominant problems of gender quality in the nation, too and in other sectors and across public life, women in Germany are hindered in attaining high-profile leadership profile. The development of ration of women in the federal parliament of Germany is apparent from the fact that women engagement was merely 20.5 per cent in 1990-94 to 30.9 per cent since 2017 showcasing enormous growth in this line<sup>236</sup>.

Jordan has taken some steps to reform the institutional and legal framework to promote improved inclusion of women in politics and even improve the general political involvement at the local and national level. Ratification for global conventions has principles that support gender equality, such as ICCPR, ISECR, and CEDAW, to protect the rights of women as the focal point<sup>237</sup>. In 1991 the state formed the Jordanian National Commission for Women to serve as the countrywide power for women affairs. The commission alongside the civil society, women activists and associations, pushed for fundamental social and legal reforms to increase and equalize the involvement of women in all realms of life regarding political participation,

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<sup>234</sup> Jemima Kelly, 'France elects record number of women to parliament' (Reuters, 19 June 2021) available at: <<https://www.reuters.com/article/us-france-election-women-idUSKBN19911E>> accessed 15<sup>th</sup> February 2020.

<sup>235</sup> Ibid.

<sup>236</sup> 'Deutsche Welle,' In German politics, women still have a long way to go' available at: <<https://www.dw.com/en/in-german-politics-women-still-have-a-long-way-to-go/a-46226146> > accessed 15<sup>th</sup> December 2020.

<sup>237</sup> OECD, *Women's Political Participation in Jordan* (OECD 2018) available at: <<https://www.oecd.org/mena/governance/womens-political-participation-in-jordan.pdf>> accessed 7<sup>th</sup> January 2020.

access to employment, personal status, and civil liberties. Making progress on the concerns in Jordan has been difficult. However, the increase of women selected for decision making as a sign that things are changing. There are distinguished laws amendments relating to the rights of women where the female members of parliament have remained vocal supporters. The amendments have augmented gender equality in Jordan and even enhanced amelioration momentum of additional laws to eradicate gender discrimination, including Personal Status Law, suggested amendments in Labour Law.

The dismantling of article 308 in 2016 in Penal Code, also called Marry the Rapist Law, appears to have indicated the defining moment for Jordan<sup>238</sup>. The decision in parliament was to repeal and not amend article 308 nurtured greater unity in civil society clusters in the campaign efforts to fight for the repeal. The issue outlined the consideration for a mushrooming democratic ecosystem with Member of Parliament, civil society, and the media enmeshed in the consultation and debate with each other to arrive at conclusions.

The transition of Jordan to decentralized governance and parliamentary democracy serve as prospects for women to expand political stake and voice equal claim for decision making roles in male-dominated avenues. The government organizations are on the way to follow a set of standards reinforced by equality, accountability, and transparency. The al Hussein series for King Abdullah II for discussion papers form the background for the transformation of Jordan to civil society, including the Jordanian National Commission for Women, which steers the elevation for women<sup>239</sup>.

#### **5.3.4 Women's and NHRIs Social and Economic Rights**

- “Report and monitor states for compliance with the responsibilities to fulfil, protect, and respect the cultural, social, and economic rights for women and assure non-discrimination during the exercise of the rights. Specific attention needs to be paid to guarantee that women enjoyment of cultural, social, and economic rights from the perspective of austerity measures to financial crises”.
- “Back initiatives to analyse states spending available resources on the realisation of the progress of women on cultural, social, and economic rights by inspiring the state to utilise gender basis in the planning process, gender budgeting, and human rights tools.

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<sup>238</sup> Rosamund Shreeves, Martina Prpic and Eulalia Claros, *Women in Politics in the EU-State of Play* (European Parliamentary Research Service 2019) available at: <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS\\_BRI\(2019\)635548\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/635548/EPRS_BRI(2019)635548_EN.pdf)> accessed 7<sup>th</sup> January 2020.

<sup>239</sup> UNDP, *Jordan Poverty Reduction Strategy* (United Nations Development Program 2013) available at: <<https://www.undp.org/content/dam/jordan/docs/Poverty/Jordanpovertyreductionstrategy.pdf>> accessed 9<sup>th</sup> January 2020.

NHRIs need to share results with Parliaments as a basis for deciding on budgeting and safeguard the utilisation of parliament to gender budgeting and budgeting human rights”<sup>240</sup>.

- “Evaluate and monitor laws, budgets, and public policies, including trade and macroeconomic policies and also strategies such as population and poverty reduction at the attainment of the Millennium Development Goals. There is also engagement with pertinent sectors with the perception of promoting the elimination of provisions that seem discriminatory on women and, whenever appropriate, promote corrective action”.
- “Enable training of government officials, parliamentarians, judges, prosecutors, and lawyers on cultural, social, and economic rights”.
- “Facilitate and support access to remedies particularly for women who have experienced violations of the cultural, social, and economic rights and campaign for the justifiability of cultural, social, and economic rights in nations”<sup>241</sup>.
- “Carry out awareness activities using women to enlighten them concerning the mechanisms and rights at their disposal for claiming their cultural, social, and economic rights”.
- “Back efforts is to monitor assistance programs for development to guarantee that they do not take advantage or discriminate against women and instead prioritize the attainment of human rights for girls and women and gender equality”.
- “Support or monitor efforts for women entitlement to decent work such as equal access for education and remuneration, professional and training development, and ensuring the wellbeing, safety, and health at places of work”.
- “Support or monitor efforts for unpaid work involving women and offer suggestions to back women with caring roles such as flexible working arrangements, remunerated parental leave, and enough child care while stimulating equal division for labour”<sup>242</sup>.

The purpose of this section is that NHRI is observed to have clearly defined roles for participation in the international human rights system and provide recommendations at the national level. Motivation can be taken from the above points in order to develop a framework of equality and freedom for the new generation.

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240 Jeong-Woo, Koo and Francisco O Ramirez, ‘National incorporation of global human rights: Worldwide expansion of national human rights institutions, 1966–2004’, (2009) 87(3) SF1353.

241 Ryan Goodman and Thomas Pegram, *Human rights, state compliance, and social change: assessing national human rights institutions* (Cambridge University Press 2011).

242 Brian Burdekin, *National Human Rights Institutions in the Asia Pacific Region* (MartinusNijhoff Publishers 2007).

## 5.4 Discrimination on the Basis of Religion

There have been many member states in the EU that have considered not defining discrimination on grounds in their associated implementing legislation like Slovenia, Serbia, Romania and France. In contrast, there is also a small number of countries that have defined the basis of discrimination either in their accompanying documentation like explanatory memorandum or in their legislation itself. Such groups include countries such as Ireland, Germany, Denmark, Finland and Greece<sup>243</sup>. Hence, for the purpose of comparing discrimination aspects among EU countries and Jordan, the one of the member state that does not define discrimination in their implemented legislation while two of the member states with some definition of discrimination on the specific ground have been selected on a random basis to better the context of discrimination on the basis of religion. Therefore, this particular section discusses discrimination on the basis of religion in the European countries mainly France (with no defined legislation on the grounds of discrimination), Greece and Germany (with some of the grounds of discrimination defined in the legislation) and in Jordan with reference to their respective constitutions.

### First: In Europe

The French constitutional law on equality appeared first in Article VI of the Declaration of the Rights of Man and of the Citizen (DDHC) in the year 1789. At the present, the equality rights in France contain the constitution from 1979 DDHC and the constitution from the Fifth Republic established in the year 1958 that keeps citizens before the law. equality regardless of ethnic race, religion or origin<sup>244</sup>. Article 1 in the law on 9<sup>th</sup> December 1905 about the separation of state and church ensured the entitlement to rights of belief and religion<sup>245</sup>. However, it enshrined a great separation that implied that the government neither fund nor recognize any religion in the second article. The French Republic in article 1 described as secular in the 1958 constitution. The secularism principle is interpreted.

The current legislation of French on equality safeguards discrimination based on religion in employment areas such as membership of trade union, professional advancement,

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243 European Commission, 'European network of legal experts in gender equality and non-discrimination', (2017) available at:

<[https://www.google.com/url?sa=t&rc=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewiVuYeEuMvwAhWhjuYKHZX0Bx8QFjAAegQIAhAD&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fjust%2Fdocument.cfm%3Faction%3Ddisplay%26doc\\_id%3D49316&usg=AOvVaw0Wk8h5uEMhBgHGD3MIxIWK](https://www.google.com/url?sa=t&rc=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewiVuYeEuMvwAhWhjuYKHZX0Bx8QFjAAegQIAhAD&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fjust%2Fdocument.cfm%3Faction%3Ddisplay%26doc_id%3D49316&usg=AOvVaw0Wk8h5uEMhBgHGD3MIxIWK)> accessed 1st May 2021.

<sup>244</sup> Lokiec P, 'Discrimination Law in France', available at:

<[https://www.jil.go.jp/english/events/documents/clls08\\_lokiec.pdf](https://www.jil.go.jp/english/events/documents/clls08_lokiec.pdf)> accessed 1st May 2021.

<sup>245</sup> Nassima Ferchiche and Blandine Chelini, *Religion and the Secular State: French Report* (HAL 2017) available at: <<https://hal-amu.archives-ouvertes.fr/hal-01432382/document>> accessed 9<sup>th</sup> January 2020.



conditions, training, and access. Variations in the treatment based on religion are permitted in a case stemming from open and determining occupational needs as long as the goals are legitimate, and the requirements are proportionate<sup>246</sup>. The shield against discrimination based on the race found in the broader French civil law is great, while employment contains access to services and goods, health, education, social benefits, and social protection. Discrimination based on religion and access to employment, services, and goods is punishable as stipulated in the French Penal Code.

In 2004, the High Authority against Discrimination and for Equality was established to address forms of discrimination that domestic legislation prohibits and the competency to support victims to explore issues of discrimination. In 2011, the authority combined with other institutions to set a protection body called Defender of Rights for single rights<sup>247</sup>. Europe has Muslims who could be discriminated against for various reasons such as ethnicity and religion. The European Commission carried out a European Union survey in 2008, recommending that discrimination based on ethnicity and religion impacts religious and ethnic minorities. It is only 4% of defendants who indicated that they were discriminated against on the basis of ethnicity and religion during the past year, which translates to 2% in every ground. However, 12% of the religious minorities and 23% of the defendants associated with ethnic minorities and thinking they had been discriminated based on religion and ethnicity in that order. In addition to this, in the case of the migration wave in 2015, in which more than one million migrants reached EU, the tension kept on rising due to the disproportionate burden faced by countries of EU having majority of the migrants. In this case, the constitution of EU had policies and actions to protect the human rights of the migrants. These includes international refugee law and international and regional human rights law<sup>248</sup>.

The Greek constitution through Article 3 enacts the right to freedom of religions to all its citizens which is categorized in two parts wherein the first part relates to the right or freedom to worship in public or in private, any religion whose practices are not contradicting morals and public order. In addition, the Greek government is legally obligated to provide protection to cemeteries, minority religious foundations, and churches. Further, it is noted in regard to the minority rights and religious freedom in Greece that it is well protected via international human

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<sup>246</sup> Gert Vermeulen and Ellen Desmet, *Essential Texts on European and International Asylum and Migration Law and Policy* (Maklu 2017).

<sup>247</sup> Liesbeth Merckx, *Choice and Prejudice-Discrimination against Muslims in Europe* (Amnesty International 2012) available at: <<https://www.amnesty.si/media/uploads/files/eur010012012en.pdf>> accessed 10<sup>th</sup> January 2020.

<sup>248</sup> MelaniBarlai, *The Migrant Crisis: European Perspectives and National Discourses* (Lit Verlag 2017).

rights instruments and the Treaty of Lausanne. As per the Treaty, the Muslim minority possesses the right to elect a religious leader as per their choice and address family conflicts or other disputes having personal grounds via applying Islamic law. However, it is found that the procedure of appointing the religious leader often become a point of conflict amid the minority and the state. The institution of religious leader has created political concerns, causing issues amid the minority and the state. On the contrary, it is argued that applying Islamic law in resolving family matters within the Muslim minority lead to infringe the provisions of international treaties and constitution concerning the principles of non-discrimination. The Greek constitution states the Orthodox Christianity is Greece's dominant religion and the state guarantees complete freedom of worship to all religions. However, the recent incident of the Greek government's denial to build a mosque in Athens contradicts the constitutional provisions assuring non-discrimination on the grounds of religion<sup>249</sup>.

The constitution of Germany restricts religious discrimination and gives proper autonomy of conscience and faith and to practice one's faith and religious values. 16 states of the nation exercise considerable freedom on religious groups, their registration and practices. However, unrecognized groups are not eligible for tax benefits. Authorities observed the activities of the Church of Scientology that reported continuous discriminatory behavior against its members. The constitution stipulates that individuals are not required to disclose their religious convictions and they shall not be compelled to involve in religious acts. The constitution also affirms that religious instructions can be a part of curriculum but parents have proper rights and freedom to decide whether their child would receive religious instructions or not in schools. The constitution also guarantees the right to formulate state groups and religious groups and they also have the right to organize private gatherings without constraints. In addition, religious groups that are registered with Public Law Corporation can receive grants and public subsidies from the government and can also render religious services in prisons, hospitals and the military<sup>250</sup>.

Amnesty International presented qualitative findings and quantitative information from secondary sources. The amount of data and information in various nations varies significantly, just like domestic machinery to address discrimination. States adopt measures to handle the freedom to be free from forms of discrimination, which is likely to vary according to relevant

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<sup>249</sup> Georgios Karyotis and Stratos Patrikios, 'Religion, securitization and anti-immigration attitudes: The case of Greece' (2010) 47 JPR 43.

<sup>250</sup> Ruud Koopmans and Susanne Veit and Ruta Yemane, 'Taste or statistics? A correspondence study of ethnic, racial and religious labour market discrimination in Germany' (2019) 42 ERS 233.

circumstances and challenges in the nation, although it ought to follow minimum prerequisites. Prohibition of indirect and direct discrimination in all life spheres and grounds<sup>251</sup>;

- “Independent ant-discrimination bodies at national levels monitor and make suggestions concerning the respect to legislation for non-discrimination that have operative investigative authority. It is a responsibility to explore personal complaints about discrimination in the public and private sector and take enforceable and binding decisions and enough funds and staff”.
- “Access to operative judicial remedies is for targets of discrimination like the provision for legal relief and depiction that non-government agencies make”.
- “Collective burden of proof for claims of discrimination in civil and administrative courts so that individuals who regard themselves wronged establish facts that presume discrimination. It is upon the defendants to validate lack of discrimination”.
- “Operative monitoring on the effect of policies and legislation on various groups and gathering of precise but disaggregated information to the utilization in addressing and identifying discrimination”.

## **Second: In Jordan**

The constitution asserts Islam as the state religion but protects free exercise to religious rites and forms of worship provided; they are steady with morality and public order. The constitution indicates a lack of discrimination in the duties and rights of citizens based on religion. It also indicates that the King ought to be a Muslim<sup>252</sup>. Therefore, the constitution permits religious courts such as non-Muslim courts and Sharia to serve as Muslim courts for religious groups that the government recognizes.

The constitution fails to handle the freedom to change to another faith, and neither are their penalties for doing that under the civil law. The law and the constitution permit sharia courts to establish the affairs of civil status for Muslims and enable the courts to prevent Muslims from changing to other religions. The Sharia law indicates that converted Islam remains Muslims and is entitled to Sharia though considered apostates<sup>253</sup>. Neither the criminal

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<sup>251</sup> Liesbeth Merckx, *Choice and Prejudice-Discrimination against Muslims in Europe* (Amnesty International 2012) available at: <<https://www.amnesty.si/media/uploads/files/eur010012012en.pdf>> accessed 11<sup>th</sup> January 2020.

<sup>252</sup> Ecoi, 'USDOS – US Department of State: “2018 Report on International Religious Freedom: Jordan”, Document #2011162 - Ecoi.Net' (*Ecoi.net*, 2018) available at: <<https://www.ecoi.net/en/document/2011162.html>> accessed 12<sup>th</sup> January 2020.

<sup>253</sup> USDS, 'Jordan - United States Department of State' (*United States Department of State*, 2019) available at: <<https://www.state.gov/reports/2018-report-on-international-religious-freedom/jordan/>> accessed 12<sup>th</sup> January 2020.

code nor the penal code stipulates punishment for apostasy. Nonetheless, Sharia courts contain jurisdiction over inheritance, divorce, and marriage and people are declared apostates and could have their marriages disinherited or annulled exclusive of will indicating otherwise. Members of the society could file a complaint on apostasy against people to the Sharia Public Prosecution, which consults Council of Churches before changing to Islam from Christian to prevent changes for purposes of divorce or marriage only and not religious principles. The penal code has articles that criminalize acts like portraying Jordanians in a way that disrupts their dignity, undermine the regime, blasphemy for Abrahamic faiths, and hatred incitement per state functions.

Authorities have the right to prosecute people who proselytize Muslims based on the provisions of the penal code against hurting the national unity or inciting sectarian conflict. Cases are often tried in various courts, although the prosecutions could take place in State Security Court. The offences are executed through with a fine of 50 Jordanian dinars or imprisonment for two years<sup>254</sup>. Most Islamic religious sects do not require being registered or recognized using the constitution. The non-Islamic sets should have official recognition via registration. They could administer rites like marriage in case of registration as denominations taking into account that there is no provision dealing with civil marriage. These people could enter into contracts, open bank accounts, and their land. Religious groups could be itemized as associations and operate through acknowledged denomination on issues of inheritance, divorce, and marriage but could open bank accounts and own properties. They ought to get state approval to admit foreign funding. Renowned non-Islamic religious sets are exempted from tax but are not granted state subsidies to the Islamic religious sects.

Religious formations that are not recognized lack the legal status and could not undertake administrative tasks like hiring staff, buying real estate, and opening bank accounts. People could exercise such functions and designate people to carry out activities on behalf of such unidentified groups. The group has to submit data of religious doctrine, budget, list of members, and the bylaws to qualify as an identified religious group<sup>255</sup>. The prime minister deliberates with the Council of Church Leaders and interior minister to determine the recognition or registration of Christian groups. The state advisory agencies involving the head

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<sup>254</sup> IRFR, *Jordan 2018 International Religious Freedom Report* (United States Department of State 2018) available at: <<https://www.state.gov/wp-content/uploads/2019/05/JORDAN-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>> accessed 12<sup>th</sup> January 2020.

<sup>255</sup> Ecoi, 'USDOS – US Department of State: “2018 Report on International Religious Freedom: Jordan”, Document #2011162 - Ecoi.Net' (*Ecoi.net*, 2018) available at: <<https://www.ecoi.net/en/document/2011162.html>> accessed 12<sup>th</sup> January 2020.

of eleven countries that are acknowledged as Christian denominations are also part and parcel of determination.

The state refers to criteria regarding appreciation of Christian groups; the teachings of the group should not dispute the nature of the traditions, customs, public ethics, and constitution. A regional body that includes four church families; evangelical/protestant, eastern orthodox, orthodox, and catholic and also the Middle East Council of Churches should recognize the criteria<sup>256</sup>. The religious doctrine should not be aggressive to Islam as the government religion, while the membership of the group should satisfy the minimum number of persons with an accurate figure taken to consideration.

The law includes eleven Christian religious groups that are officially recognized, including Coptic, United Pentecostal, Seventh-day Adventist, Syrian orthodox, Lutheran, Maronite Catholic, Anglican, Melkite Catholic, Armenian Orthodox, Roman Catholic, and Greek Orthodox<sup>257</sup>. In 2015, some five extra denominations for evangelical Christian previously registered within the Ministry of Justice and acknowledged with the interior ministry but not allowed to form a court such as Baptists, Missionary and Christian alliance, Assemblies of God, Nazarene Church, and the free Evangelical church. The state refutes official recognition of religious groups such as Jehovah's witnesses. The state granted the legal rank to the Church of Jesus Christ in 2018 for the latter-day saints<sup>258</sup>.

### **Comparison of Constitution on Discrimination Between European Countries Constitution and Jordan Constitution**

It has been analysed that the EU member states have developed effective anti-discriminatory constitutions that result in increasing the legal protection of people from being discriminated against on the basis of ethnic and racial origin, disability, belief, age and sexual orientation. It is also the fact that many of the member states provide additional protection to their citizens from the specified EU laws like that of Germany and Greece; however, there are some countries whose constitution have minor gaps because of not providing the direct definition of discrimination like that of France<sup>259</sup>. In opposite to this, the constitution of Jordan

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<sup>256</sup> IRFR, *Jordan 2018 International Religious Freedom Report* (United States Department of State 2018) available at: <<https://www.state.gov/wp-content/uploads/2019/05/JORDAN-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>> accessed 12<sup>th</sup> January 2020.

<sup>257</sup> Ecoi, 'USDOS – US Department of State: “2018 Report on International Religious Freedom: Jordan”, Document #2011162 - Ecoi.Net' (*Ecoi.net*, 2018) available at: <<https://www.ecoi.net/en/document/2011162.html>> accessed 13<sup>th</sup> January 2020.

<sup>258</sup> *Ibid.*

<sup>259</sup> European Commission, 'European network of legal experts in gender equality and non-discrimination', (2017) available at:

protects the discriminatory acts against people and provide rights for nay forms of worship but also conspires Islam as the religion of the country. Moreover, although the constitution in Jordan provides the right to duty and religion but also indicates the state’s king should be Muslim. Despite the fact that the constitution provides protection to people from discriminatory acts, the minority citizens are often found being discriminated in most of the aspects of life whether it is related to getting justice in court or getting a higher position at work or politics that must need to be considered by the Jordan government.

### **5.5 Member States and Constitutional Provisions for Equality**

The strategy for non-discrimination and equality could be viewed as well as constitutional texts for various states in European countries. For example, article 6(2) in Bulgaria indicates that “There should not be restricted or privileges of rights based on property status, social or persona status, political affiliation, opinion, education, religion, origin, sex, ethnic self-identity, nationality, and race.” Additionally, Article 28(2) about the Cyprus constitutions requires that “every individual should enjoy the liberties and rights offered in the constitution without indirect or direct discrimination against persons on the basis of social class, wealth, colour, birth, social or national descent, political convictions, sex, language, religion, race, and community” unless there is a definite provision to that is contrary to the constitution<sup>260</sup>.

The Czech constitution comprises the idea of equality and the non-discrimination principle. The Charter of Fundamental Rights and Freedom in article 3 reveals that “every person is assured the right to basic freedom and fundamental rights without regard to birth, property, membership in ethnic or national minority, social or national origin, political conviction, religion, faith, language, skin colour, race, or gender”<sup>261</sup>. The Latvian Constitution in article 91 indicates that Human rights should be attained without any form of discrimination. The Slovakian Constitution in Section 12(2) indicates that “freedoms and fundamental rights are assured to all people in the area of Slovak republic regardless of descent, property, ethnic or national origin, social or national origin, political conviction, religion, and belief, language, skin colour, race, or sex.” Nobody should be discriminated against, preferred, or harmed based on these grounds. Article 14 of the Slovenian Constitution suggests that every person is assured

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<[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiVuYeEuMvwAhWhjuYKHZX0Bx8QFjAAegQIAhAD&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fjust%2Fdocument.cfm%3Faction%3Ddisplay%26doc\\_id%3D49316&usg=AOvVaw0Wk8h5uEMhBgHGD3MlxIWK](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiVuYeEuMvwAhWhjuYKHZX0Bx8QFjAAegQIAhAD&url=https%3A%2F%2Fec.europa.eu%2Fnewsroom%2Fjust%2Fdocument.cfm%3Faction%3Ddisplay%26doc_id%3D49316&usg=AOvVaw0Wk8h5uEMhBgHGD3MlxIWK)> accessed 3<sup>rd</sup> May 2021.

<sup>260</sup> IBP, Inc., *Cyprus Country Study Guide Volume 1 Strategic Information and Developments* (Lulucom 2012).

<sup>261</sup> Ibid.

fundamental freedoms and equal human rights regardless of personal circumstance, disability, social status, education, birth, material standing, political conviction, religion, language, sex, race, or national origin. This is an effective constitution that can be used for enhancing the equality of rights in Jordan. Hence, the government in Jordan can adopt the same approach as the situation of Germany, even where it is not ostensible from the constitution text. It provides a direction for the constitutions that struggle to incorporate aspects of human rights in them.

### **5.5.1 Comparison Evaluation of the Constitution of France and Jordan**

The constitution of France is compared as it is one of the country in the EU, where the rights of people are of priority, with Jordan so that loopholes can be identified effectively. The Preamble of France 1958 (rev.2008) specifies that the French people proclaim their connection to the national sovereignty principles and peoples' rights as articulated in the Declaration of 1789. It is accompanied and confirmed by the Preamble concerning the Constitution of 1946, and to the responsibilities and rights illustrated in the Charter for the Environment of 2004. Through the integrity of these principles and the individuals' self-determination, the Republic assures to the overseas territories that it will abide by the new institutions grounded on the common norms of equality, fraternity, liberty and developed for facilitating their democratic development. Article 1 clearly affirms that France shall be democratic, secular and social Republic. France shall guarantee the equality of every citizen before the legal system without discrimination on the basis of race, religion or origin. In regard to gender-based equality, the Article promotes equal access by females and males to elective posts and offices, along with the social accountability and professional positions<sup>262</sup>. France evident to have a Bicameral Parliament, supporting the use of legislated and voluntary party quotas for the lower and upper house, whereas, Jordan also Bicameral Parliament, supporting the use of legislated quotas for the lower and upper house only with 15% reservation of seats for women in the Majlis Al-Nuwaab (lower house). On the other hand, France is the first country that has introduced the provision of 50% compulsory gender parity, and thus, women have 40% seats reserved in the Assemblée Nationale (lower house) and 33% in Senate<sup>263264</sup>. This highlights that the Constitution in both the countries differ in terms of providing a compulsory reservation to

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<sup>262</sup> Constitute. 2008. France 1958 (rev. 2008). [Online]. Available at: <[https://www.constituteproject.org/constitution/France\\_2008?lang=en](https://www.constituteproject.org/constitution/France_2008?lang=en)> accessed 29<sup>th</sup> May 2020.

<sup>263</sup> International IDEA, 'Gender Quotas Database' (2020) available at: <<https://www.idea.int/data-tools/data/gender-quotas/country-view/86/35>> accessed 26<sup>th</sup> June 2020.

<sup>264</sup> International IDEA, 'Gender Quotas Database' (2020) available at: <<https://www.idea.int/data-tools/data/gender-quotas/country-view/154/35>> accessed 26<sup>th</sup> June 2020.

women in parliamentary tasks. It clearly shows that the constitution of France has more provisions in terms of equality of women, which is not effective in the case of Jordan.

The French Code of Education is a crucial component of the Constitution of France aiming to promote equality between males and females and acknowledge gender-based equality as the legal obligation and a pivotal assignment for the National Education System. Article L.121-1 of the French Code of Education states the higher educational institutions, secondary schools and primary schools should transmit work methodologies, as well as knowledge. They should support the equality between women and men, specifically for the orientation goals<sup>265</sup>. On the contrary, in Jordan, the rights of women have receded even after the progressive official stance of the monarchy and massive investment in advancing human rights and democracy in the country. The economic marginalisation of women has worsened drastically in Jordan over the last decade and has been the dominant factor in the country's terrible track record concerning women's rights. The particular score of Jordan in regard to opportunity and engagement for women fallen down 28 per cent on the Global Gender Gap Index from 2008 to 2015. Only Yemen, Syria and Pakistan ranked lower than the country on this dimension<sup>266</sup>. This revealed that on comparing gender-based equality in Jordan with the Constitutional support to male and female in France has revealed that the differences are initiated with democratic and monarchy nature of the countries. In gender gap, the global ranking of France is 12, wherein Jordan has 138<sup>th</sup> rank; out of 149 countries, with 144<sup>th</sup> rank in economic participation and opportunity, 45<sup>th</sup> rank in educational attainment and 129<sup>th</sup> rank in political empowerment of women. This further highlights that women have lower participation in parliament, ministerial positions, political leadership and years as head of state, in comparison to France<sup>267</sup>. This illuminates the urgent need to make amendments in the Jordanian Constitution for promoting sustainable development and democracy, particularly in consideration of the women's advancement.

In respect to human rights, the French Constitution acknowledges human rights as the inalienable rights for all individuals, regardless of the place of residence, gender, nationality, colour, religion, national or ethnic origin or any other status, and encompasses a multitude of themes. The human rights protection, as consecrated in the Universal Declaration of Human

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<sup>265</sup> Equal Rights Trust. 2007. France: Gender Discrimination in the Fields of Education. [Online]. Available at: <[https://www.equalrightstrust.org/sites/default/files/ertdocs/Microsoft%20Word%20-%20France%20-%20gender%20-%20education%20\\_Hogan%20and%20Hartson\\_.pdf](https://www.equalrightstrust.org/sites/default/files/ertdocs/Microsoft%20Word%20-%20France%20-%20gender%20-%20education%20_Hogan%20and%20Hartson_.pdf)> accessed 29<sup>th</sup> May 2020.

<sup>266</sup> Freedom House. 2016. Why Is Jordan Backsliding on Gender Equality? [Online]. Available at: <<https://freedomhouse.org/article/why-jordan-backsliding-gender-equality>> accessed 29<sup>th</sup> May 2020.

<sup>267</sup> World Economic Forum, 'The Global Gender Gap Report 2018' (2018) <[http://www3.weforum.org/docs/WEF\\_GGGR\\_2018.pdf](http://www3.weforum.org/docs/WEF_GGGR_2018.pdf)> accessed 26<sup>th</sup> June 2020.



Rights, is at the core of the United Nations work. The Constitution proclaims that such rights are indivisible, universal, interrelated and interdependent. Such rights constitute the founding aspects of the French Republic as proclaimed in the French Constitution's preamble. Thus, it is examined that upholding dignity towards human rights is the focal point of the democracy exercise in France as its commitment as the member of EU and other international organisations. Moreover, in pursuit of the robust human rights goals, the French Constitution entails collaboration with the international organisations, international community and non-governmental organisations both foreign and national. Decisions of the tribunals, EU courts and the domestic courts in the member states of the EU are observed to pertain to the human rights that are published in the reports of human rights and decisions of European Court of Human Rights<sup>268</sup>.

In contrast, even after growing concern about human rights in Jordan, the Constitutions of Jordan in 1928 and 1946 lacked behind in clearly stating the fundamental rights and freedoms of human beings. While the Jordanian Constitutions incorporated in 1952 had certain improvements in comparison to previous Constitutions, and explicitly includes the concepts regarding human rights in elaborated texts. The Constitution is regarded as the supreme law defining the association of a state with its people, thus affirms the respect and protection for human rights. However, the reality is not the same in Jordan as a considerable difference exists between theoretical context and actual practices<sup>269</sup>. Thus, it is analysed that the Constitution of Jordan is not effective in practical terms in comparison to that of France in assuring fundamental human rights<sup>270</sup>. Besides This, as similar to France, it has been analysed from the aforementioned discussion that the constitutional practise of other states such as Bulgaria, Cyprus, Czech, Latvian, Slovakian and Germany are found focused on the principle of equality and non-discrimination; however, in Jordan, it seems like the country's constitutions require significant changes because it fails to provide equal rights to women. This is evident from the fact that the engagement and opportunity record of Jordan over the Global Gender Gap Index has declined by 28% in 2015<sup>271</sup>. In order to assure religion-based equality, the French Constitution facilitates explicit freedom of religion, and the other French policies and laws

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<sup>268</sup> Ministry of Europe and Foreign Affairs. 2020. France Diplomacy. [Online]. Available at: <<https://www.diplomatie.gouv.fr/en/french-foreign-policy/human-rights/>> accessed 29<sup>th</sup> May 2020.

<sup>269</sup> Mohammed Torki Bani Salameh and Samid A Darawsheh, 'Human rights in the Jordanian constitution: Between theoretical texts and practical application' (2018) 6 IJHRCS 71.

<sup>270</sup> Freedom House. 2016. Why Is Jordan Backsliding on Gender Equality? [Online]. Available at: <<https://freedomhouse.org/article/why-jordan-backsliding-gender-equality>> accessed 29<sup>th</sup> May 2020.

<sup>271</sup> Ibid

support this freedom. France was prominently a Catholic nation, but continual conflicts between the Republic and Church led to the enforcement of a 1905 law requiring the separation of state and religion. This law guaranteed a secular state and entitled discrimination on the grounds of religion as the illegal practice. It also imposed restrictions on the state in relation to officially recognising, endorsing or extending financial aid to religious groups. However, most worship place prevailing in 1905 were Catholic for which the government presently aids numerous Catholic churches, but not different religious places devoted to other faiths. Further, the Muslim communities are still facing intense scrutiny by the government authorities with the aim of tracking terrorist activities in the economy<sup>272</sup>.

On the other side, the Constitution of Jordan characterises the state as a civil society, not religious in terms of theocratic aspects. The state has not been developed on religious grounds, and no legitimacy exists on the grounds of religious ideology. However, it was not foundations on the radical secularism that germinates a confrontational spirit with religious and conservative trends in the society. Further, there is no provision or ambiguity in the Articles of the Constitution that make Islam a superior religion and explicitly state that every Jordanian shall be equal in the legal system<sup>273</sup>. Therefore, it is inferred that as a whole the French Constitution even after textual assertions to promote equality in religious terms lacks behind in awarding equal treatment to people of different religions. In contrast, the Jordanian Constitution upholds free exercise of customs and worships of varied forms unless such practices contravene the morality or public order of the state. These dimensions make it an inclusive Constitution extending freedom to believe in any religion.

### **5.5.2 Comparative Assessment of the Constitution of Greece and Jordan**

Article 22 of the 1975 Constitution of Greece specifies that all workers regardless of sex or any other distinction shall be entitled to equitable pay for work of same value. Numerous legislative initiatives have been pursued by the Greek government from the beginning of 1980s focussed on the development of an officially transparent and fair labour market that offers the opportunity for women to gain statutory rights. The EC membership's contribution in relation to the employment policies has been very critical; yet direct discrimination has not been controlled, whereas indirect discrimination has not been properly administered by employers,

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<sup>272</sup> The Institute on Religion and Public Policy. 2015. [Online]. Available at: [https://www.justice.gov/sites/default/files/pages/attachments/2015/12/30/france\\_immigration\\_report.pdf](https://www.justice.gov/sites/default/files/pages/attachments/2015/12/30/france_immigration_report.pdf) accessed 29<sup>th</sup> May 2020.

<sup>273</sup> Hani Ahmed Shboul, 'The Relationship between Religion and State in Jordan (Historical Perspective)' (2018) 4 IJHCS 49.

employees and organisations which reflects the lacking areas of the constitutions of Greece<sup>274</sup>. On the other side, the Jordanian Constitution is known for withdrawing certain fundamental rights of women even after the progressive moves of the monarchy and extensive investment made by the US government to promote human rights and democracy in the community that is the main lacking area in Jordan constitutions. This suggests the needs for rethinking over the ways to promote gender equality. New approaches need to emphasise on motivating local societies and the grassroots not connected to Amman, in the domains where the conservative stereotypes and patriarchal culture are embedded<sup>275</sup>.

In terms of human rights, the Constitution of Greece signifies the protection and respect of the value of the people as the principal responsibilities of the state in its Article 2. Article 5 entitles equal status to all Greeks before the law, and all the citizens can apply for public service, leaving ones who are within the ambit of special laws<sup>276</sup>. Human rights issues of the country include an allegation of refoulement of asylum prospects, corruption, and criminalisation of libel, refugee children, women and violence focusing LGBTI persons. The Greek government continually strives for investigating, prosecuting and punishing officials' abusing human rights. Thus, it is inferred that the Greek Constitution contains stringent provisions to control human rights abuses thereby promoting supporting equality in the society<sup>277</sup>. The 1952 Jordanian Constitution, which is presently in force, encompasses a wide spectrum of political and civil rights for the citizens. This has been amended by a couple of legislating governing the application of these duties and rights of the country; for assuring their enjoyment. However, in terms of real practice, a vast difference is observed in the theoretical texts and the protection of human rights. This needs assurance that the provisions listed in the Jordanian Constitutions are respected by all bodies and authorities to affirm the dignity towards human rights<sup>278</sup>. In comparison to Greece Constitution, Jordan Constitution is examined to lack in providing effective legal status to refugees. The government of Jordan is evident to not take any effective steps for providing legal status to refugees or Palestinians. The issue is mainly

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<sup>274</sup> European Parliament. 2013. Policy Department Citizens' Rights and Constitutional Affairs. [Online]. Available at: <[https://www.europarl.europa.eu/RegData/etudes/note/join/2013/493028/IPOL-FEMM\\_NT\(2013\)493028\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2013/493028/IPOL-FEMM_NT(2013)493028_EN.pdf)> accessed 29<sup>th</sup> May 2020.

<sup>275</sup> Freedom House. 2016. Why Is Jordan Backsliding on Gender Equality? [Online]. Available at: <<https://freedomhouse.org/article/why-jordan-backsliding-gender-equality>> accessed 29<sup>th</sup> May 2020.

<sup>276</sup> The Constitution of Greece. 2020. The Fifth Revisionary Parliament of the Hellenes Resolves. [Online]. Available at: <<http://www.hri.org/docs/syntaxma/artcl25.html>> accessed 29<sup>th</sup> May 2020.

<sup>277</sup> Bureau of Democracy, Human Rights and Labour. 2018. Greece 2018 Human Rights Report. [Online]. Available at: <<https://www.state.gov/wp-content/uploads/2019/03/GREECE-2018-HUMAN-RIGHTS-REPORT.pdf>> accessed 29<sup>th</sup> Many 2020.

<sup>278</sup> Mohammed Torki Bani Salameh and Samid A Darawsheh, 'Human rights in the Jordanian constitution: Between theoretical texts and practical application' (2018) 6 IJHRCS 71.

prevailed for the refugees fled from Iran and Syria in the country because of the war. Ensuring their legal status is examined as the key lacking dimension of Jordan Constitution. Therefore, it is analysed that stringent norms and methods need to be incorporated in the Constitution of Jordan to assure that human rights protection is not limited to texts only rather that actually controls violation of human rights. Here, the main concern for the country is to contribute significantly in protecting and promoting the importunity, vitality and sensitivity of human rights<sup>279</sup>.

The Greek Constitution illustrates freedom concerning religious conscience as inviolable and extends freedom of working with certain restrictions. The legal system prohibits offences contravening religious peace covering religious insult and blasphemy, as punishable with imprisonment of up to 2 years. However, despite such provisions, media reported frequent incidents of hate speech, anti-Muslim assaults, anti-Semitic discrimination and vandalism. Therefore, the Greek Constitution requires amendments and modifications to control such religion-based abuses harming morality and ethnicity in society<sup>280</sup>. The Jordanian Constitution is not structured on religious grounds, nor is founded on the religious phenomenon. The Constitution is known for balancing the religious and civil needs and upholds this feature since its imposition till now<sup>281</sup>. Therefore, it is examined that the Jordanian system is more effective than the Greek Constitution to protect the equality of the new generations in terms of religious practices.

### **5.5.3 Comparison of Germany Constitutional Law with Jordanian Constitutional law**

As per the report of the European Commission by Botsch (2015), Germany is the most populous country of the EU with a greater segment of women. Germany is a democratic nation having social federal governance system. However, in contrast to other European countries, the performance of Germany in attaining gender equality is claimed as mediocre, wherein the rank of the country in the European Gender Equality Index is examined than the average of EU. The legal framework of gender equality in the country is based upon fundamental rights reckoned in the Basic Law 1949. Article 3 proclaimed the equality rights of men and women; wherein further developments had been introduced to foster gender equality in the country. After this,

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<sup>279</sup> Shadi Adnan Alshdaifat, 'Review of Human Rights under the Jordanian Constitution' (2014) 29 JLPG, p.38.

<sup>280</sup> United States Department of State. 2018. Greece 2018 International Religious Freedom Report. [Online]. Available at: <<https://www.state.gov/wp-content/uploads/2019/05/GREECE-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>> accessed 29<sup>th</sup> May 2020.

<sup>281</sup> Hani Ahmed Shboul, 'The Relationship between Religion and State in Jordan (Historical Perspective)' (2018) 4 IJHCS 49.

in 2001, the Federal Equality Law came into force that had introduced the gender mainstream principles in the public administration as per the Proposal of EU Amsterdam of 1999. However, it is still found to be not effectively pursued in Germany<sup>282</sup>. The Federal Anti-Discrimination Agency (ADS) is also in the country to provide unbiased support people faced discrimination on the grounds of gender, ethnic origin, religion, age, disability or sexual orientation that can be considered to be incorporated by Jordan for new generations because promoting gender equality is found at the initial level in Jordan, as still the country is witnessed of struggling in this aspect<sup>283</sup>. In contrast to this, However, the constitutional provisions of the Jordanian Constitution, mainly Article 6, had stated that all Jordanians are equal before the law in regard to rights and obligations. Along with this, the country has ratified its 17 human-rights instruments, Labour law, Social Security Law, Civil Status Law, women and media, and Interim Personal Status Law. However, on comparing the Jordanian gender equality legislation comprehensively with the Germany Constitutional Law, it is examined that there is no specific term "gender" in their any provisions for equality which can be considered as its lacking area. Instead, the Basic Law of the country of 1928 is witnessed to link the principle of gender equality to the Islamic law standards that further limits female rights. This depicts a significant difference between the countries' Constitution, as Jordan is examined to have a lack of clear and comprehensive legislation for gender equality<sup>284285</sup>.

Further, with precise regard to women rights, in 2006, Gender Equal Treatment Act (AGG) became effective that implemented four directives in Europe pertaining to racial equality, employment equality, gender equality for products and services, and employment gender equality had been introduced that can enhance equality of rights for the new generation. These are protecting citizens from discrimination in private, civil service, social and employment law. This has helped in promoting women role in administration by establishing performance-related quotas. Apart from this, to raise women participation in the decision-making process, a quota law was enacted in December 2014 in against the CDU/CSU group parts at the Bundestag<sup>286</sup>. Earlier, an issue of women underrepresentation has been examined

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<sup>282</sup> Elisabeth Botsch, 'The Policy on Gender Equality in Germany', (2015) European Commission, 1-36.

<sup>283</sup> European Institute for Gender Equality, 'Germany' (2020) Available at: <<https://eige.europa.eu/gender-mainstreaming/countries/germany>> accessed 29<sup>th</sup> May 2020.

<sup>284</sup> The Law Library of Congress, 'Legal Provisions on Gender Equality' (2020) Available at: <<https://www.loc.gov/law/help/gender-equality/legal-provisions-gender-equality.pdf>> accessed 29<sup>th</sup> May 2020.

<sup>285</sup> Hashemite Kingdom of Jordan, 'JORDAN' (2010) Available at: <<https://www.un.org/womenwatch/daw/Review/responses/JORDAN-English.pdf>> accessed 29 May 2020.

<sup>286</sup> European Institute for Gender Equality, 'Germany' (2020) Available at: <<https://eige.europa.eu/gender-mainstreaming/countries/germany>> accessed 29<sup>th</sup> May 2020.

at the decision-making positions, wherein the presence of non-binding agreement is examined ineffective and less positive to promote equal opportunities at the workplace for men and women<sup>287</sup>. In comparison to Germany legislative support to women's rights, the Jordanian Constitution is found debilitated; depicting the lowest level of women economic participation in the country against other nations<sup>288</sup>. Though for protecting rights of both women and men, Jordanian citizenship law and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) are there in the country, yet it examined to not extend equal rights. The provision of the Nationality Law is examined to contradicting with Article 9 and paragraph 2. Apart from this. various other articles are there that contradicts to women rights and violence against them, such as the non-removal of the Penal Code articles 98 and 340 and the Crime Prevention Act 1927 has raised women sufferings and threatening by the male members of their family. It has provided the right to hold a woman in protective custody without any precise time limit based on the fact of preventing crime against her. On the other hand, the lack of effective enactment of Article 72 in the labour law has made the women victimised with the issue of work-life balance, due to which private sector organisations are sometimes limiting their female employees' segment for avoiding the obligation of providing such services. This has accentuated the gender gap in economic participation and job more in the country<sup>289</sup>.

In addition to this, human rights are respected and enshrined in Germany under its Basic Law, reflecting the commitment of the country for protecting dignity, respect and freedom of people in the country. It is clearly mandated in Article 1 of the Basic Law that acknowledges inalienable and inviolable human rights. In Germany, the European Human Rights Convention and its enforcement by the European Court of Human Rights (ECHR) is made<sup>290</sup>. In contrast to Germany, Jordan is evident in continuously violating the human rights pertaining to free assembly, free expression and women's rights which is the major lacking area of Jordanian constitution. Jordanian law, Electronic Crimes Law 2015, Public Gatherings Law and Criminal Prevention Law are constantly curtaining the expression freedom, equality and stepping up to arrest dissidents, journalists and activists under the vague and broad provisions of the country.

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<sup>287</sup> Elisabeth Botsch, 'The Policy on Gender Equality in Germany', (2015) European Commission, 1-36.

<sup>288</sup> USAID, 'Gender Equality and Female Empowerment' (2020) Available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=538&file=EnglishTranslation> accessed 29<sup>th</sup> May 2020.

<sup>289</sup> A National Coalition led by the Arab Women Organization, 'Women's Rights in Jordan' (2013) Available at: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=538&file=EnglishTranslation> accessed 29<sup>th</sup> May 2020.

<sup>290</sup> Press and Information Office of the Federal Government, 'Basic Law' (2020) Available at: <https://www.bundesregierung.de/breg-en/chancellor/basic-law-470510> accessed 29 May 2020.

Along with this, Article 9 of the nationality law of Jordan is explored to not allow the marriage of Jordanian women to non-Jordanian for passing out their nationality to their children and spouse<sup>291</sup>. This highlights that human rights are still found in a vacuum not effectively placed and promoted in the Jordan in contrast to Germany due to lack of constitutional measures and their enforcement.

#### **5.5.4 Comparison of Austria Constitutional Law with Jordanian Constitutional law**

Austria, a European member state has the long history of providing consideration to gender equality, evident with the adoption of the Equal Treatment Act in 1979 for men and women equal participation and remuneration in the private sector. After this, the Equal Treatment Act was adopted in 1993 in the Federal Service to provide special support to women at the workplace, and women quota started to regulate by the law under it. The Federal Constitution Law of the country employs Federal Equal Opportunities Act and Equal Opportunities Act to provide gender equality in the country. Para 1 of Article 7 of the law consider all citizens of the country as equal in front of the law, and para 2 claimed that state, municipalities and provinces should acknowledge men and women equality<sup>292</sup>. Federal Equal Opportunities Act of the country focuses on encompasses aspects including gender discrimination directly or indirectly, sexual harassment, career advancement aspects to women and affirmative action plan, and harassment issues. Along with this, in 2000, the Federal Government of Austria has showcased its commitment to attaining equality for women and men across all aspects of life by implementing gender mainstreaming<sup>293</sup>. In contrast to this, Jordan Constitution has laid down no specific legislation of gender mainstreaming, and gender-based violence, which is a prominent issue at the workplace. Apart from this, despite the inclusion of women quotas in the municipal and national administration, the participation of women in politics has remained limited. The present Electoral Law in the country is found

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<sup>291</sup> Human Rights Watch, 'Jordan' (2020) <<https://www.hrw.org/middle-east/n-africa/jordan>> accessed 29<sup>th</sup> May 2020.

<sup>292</sup> Lisa Herburger, Peter Koller and Roberta Schaller-Steidl, 'Gender Equality and Non-Discrimination Laws in Austrian Higher Education', Federal Ministry of Science, Research and Economy, 2.

<sup>293</sup> Australian Presidency of the Council of the European Union, 'Gender Equality in Austria Milestones, successes and challenges' (2018) Available at: <[https://www.frauen-familien-jugend.bka.gv.at/dam/jcr:67b5975f-358e-474e-9b3c-5c81b3167fca/Gleichstellung\\_Broschuere\\_Ratsvorsitz\\_EN\\_RZ16.pdf](https://www.frauen-familien-jugend.bka.gv.at/dam/jcr:67b5975f-358e-474e-9b3c-5c81b3167fca/Gleichstellung_Broschuere_Ratsvorsitz_EN_RZ16.pdf)> accessed 30<sup>th</sup> May 2020.

unable to promote women participation in the political world<sup>294</sup><sup>295</sup>. Hence, the government in Jordan can focus on considering the Acts of Austria like Federal Equal Opportunities Act and Equal Opportunities Act for enhancing the equality of rights for the new generation.

On the other hand, to promote human rights, Austria has remained the member of the Human Rights Council in period 2019-2021. Along with this, in pursuant to the UN General Assembly Resolution A/RES/60/251, the country has presented its pledge for ensuring human rights. Austria has also ratified the conventions documented in the agreements, such as International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), and International Convention on the Elimination of All Forms of Racial Discrimination (1965). Along with this, the Convention on the Elimination of All Forms of Discrimination against Women (1979), International Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984), and Convention on the Rights of the Child (1989) are also implemented in the country to protect and foster human rights<sup>296</sup>. In contrast to this, despite banning the violation of human rights by the Jordanian Constitutions, a wide range of human rights issues are prevalent in the country. The issues of torture by officials, detention and arbitrary arrest, restriction on freedom of expression, press, infringement of privacy rights of citizens, women honour killing, and violence against LGBTI are examined as the key barriers in promoting human rights in the country<sup>297</sup>. These issues are creating a significant obstruction in promoting freedom, freedom of speech, equality, dignity and various other human rights in the country.

Further, in Austria, the people have statutorily guaranteed freedom of religion from the past two centuries, initiated with the Patents of Tolerance 1781/82, which is further constitutionally guaranteed by the Article 14 of the country's Basic Law<sup>298</sup>. Jordanian Constitution has declared Islam as the religion of the state and safeguards all forms of religious rites and worships in the country until they are in alignment with the morality and public order.

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<sup>294</sup> USAID, 'Gender Equality and Female Empowerment' (2020) Available at: <<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=538&file=EnglishTranslation>> accessed 30<sup>th</sup> May 2020.

<sup>295</sup> A National Coalition led by the Arab Women Organization, 'Women's Rights in Jordan' (2013) < Available at: <<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=538&file=EnglishTranslation>> accessed 29 May 2020.

<sup>296</sup> Embassy of Austria, 'What are Human Rights?' (2020) Available at: <<https://www.austria.org/what-are-human-rights>> accessed 30<sup>th</sup> May 2020.

<sup>297</sup> International Religious Freedom Report for 2018, 'Jordan 2019 Human Rights Report' (2019) 'Gender Equality in Austria Milestones, successes and challenges' Available at: <<https://www.state.gov/wp-content/uploads/2020/02/JORDAN-2019-HUMAN-RIGHTS-REPORT.pdf>> accessed 3<sup>rd</sup> June 2020.

<sup>298</sup> Embassy of Austria, 'Austria's Religious Landscape' (2020) available at: <<https://www.austria.org/religion>> accessed 3<sup>rd</sup> June 2020.



In contrast to Austria, Sharia courts possess the jurisdiction of all matters of Muslims as per the Constitution, and Christian groups face problems in protecting their rights in the presence of increasing dominance of security forces and the religion constantly criticised by the people<sup>299</sup>. This highlights that in Austria, Jordan has a high dominance of a religion that governs the whole public order and religious beliefs and practices in the country.

### **5.5.5 Comparative Analysis of Portuguese Constitutional Law for Equality Rights and Jordanian Constitutional Law**

Article 13, under the Constitution of Portugal, relates to the principle of equality and asserts that every resident shall be equal and have the same social dignity before the law. It is explicitly written in the constitution that no citizen shall be favoured, privileged, exempted or deprived of any fundamental human rights on the basis of sex, language, race, religion, economic situation, sexual orientation, education and ideological or political belief. The Portuguese constitutional law does not directly refer to the European Convention of Human Rights (ECHR). Still, its Article 8 establishes the need for automatic reception of rules and regulations included in an international instrument. Article 7 states that Portugal must positively contribute towards strengthening actions of the European States for sustaining peace, democracy, justice and economic progress. Further, Article 24 to Article 46 is based on freedom, guarantee and human rights in Portugal. On the other side, with an amendment in Jordanian constitution, Articles 6 to 9, Article 15 to 18 and Article 20 emphasise the importance of human rights and freedom by considering any impediment to the fundamental rights to be a punishable offence<sup>300</sup>. It is analysed in the light of equality rights and legislative policies of Portugal that there are adequate provisions for securing human rights regardless of gender, religion, race and nationality but there is a need to direct effort towards policy implementation.

The Portuguese Constitution enshrines the doctrine of gender equality and strives to alleviate gender disparity in the country. Promoting gender equality is the focal area of the State under the domain of human rights and equality. It is noted that Portugal ratified the law for eradicating all sorts of discriminatory practices against women in the year 1980 and became the first EU member state to ratify the convention on gender and equality. Two key policy

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<sup>299</sup> International Religious Freedom Report for 2018, 'Jordan 2018 International Religious Freedom Report' (2019) available at: <<https://www.state.gov/wp-content/uploads/2019/05/JORDAN-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>> accessed 3<sup>rd</sup> June 2020.

<sup>300</sup> European Union Agency for Fundamental Rights. 2019. The EU Charter of Fundamental Rights in Portugal. [Online]. Available at: <[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-eu-charter-in-portugal.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-eu-charter-in-portugal.pdf)> accessed 3<sup>rd</sup> June 2020.

instruments are put in place by the state, which is the National Plan against Domestic Violence and the National Plan for Equality combining the facets of non-discrimination, gender and citizenship. It is found that significant efforts are made for empowering women and securing women rights wherein the plans for addressing the issue of domestic violence have proved to be quite effective and their impact is clearly visible in Portuguese society. It is examined that the government played an active role in fostering gender equality by supporting municipalities, voluntary firms, businesses and ministries in design and implementation of gender equality plans by launching funding programmes<sup>301</sup>.

As a whole, it is inferred that a significant expansion and progress is seen in Portugal in terms of reinforcing gender equality policy in the last decade and especially after 1974. However, this rich cycle of gender equality frameworks and policy implementation is hindered by the reversal of valuable accomplishments generated by the policy developments. It is revealed that gender equality rights and women rights policies are facing threats from the austerity plans as they have decreased the funding and resources available for undertaking such initiatives, mainly due to economic downfall<sup>302</sup>.

Article 7 of international relations explains that Portugal must be governed via the code of conduct and norms of national independence, the rights of individuals, human rights, peaceful conflict resolution and equality amid states for ensuring cooperation at all level. Other than this, Portugal advocates the demolition of colonialism, dominion, exploitation and imperialism for ensuring justice and peace among people and in the state. It is mentioned that the government prosecuted and punished individuals convicted for violation of human rights. The governing bodies encouraged female victims to file complaints and operated around 26 emergency shelters and 39 safe houses for rendering support to the women suffering from domestic violence. However, it is observed the issue of violation of human rights in terms of domestic violence against women is prevailing in the region<sup>303</sup>. Irrespective of the presence of law provisions, the issue of human rights violation, mainly against women sustain in this region. Therefore, effective implementation of policies, strict punishment and close governance is required for securing human rights and alleviating gender inequality concerns.

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<sup>301</sup> European Union Agency for Fundamental Rights. 2019. The EU Charter of Fundamental Rights in Portugal. [Online]. Available at: <[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-eu-charter-in-portugal.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-eu-charter-in-portugal.pdf)> accessed 3<sup>rd</sup> June 2020.

<sup>302</sup> Octavio Amorim Neto and Marina Costa Lobo, 'Portugal's semi-presidentialism (re) considered: An assessment of the president's role in the policy process, 1976–2006' (2020) 48 EJPR 234.

<sup>303</sup> Ibid.

There is a need for effective and robust regulatory actions to deal with the rising challenges of domestic violence against women and gender disparity. Similarly, it is assessed in relation to Jordanian constitutional law that it does not lack the provisions for promoting fundamental freedoms and human rights and they also complement international human rights norms, but their application in practice is limited, and they remain constricted to theoretical texts. The issue of infringement of several human rights principles in Jordan indicates the need for substantial improvement, primarily in the areas of secrecy of communication, freedom of movement, press and opinion<sup>304</sup>.

Article 41 of Portuguese Constitutional law provides freedom of religion, worship and conscience to its citizens wherein it is asserted that no individual can be persecuted or exempted from civic duties on the grounds of his or her religious observance. All religious communities and churches are given the freedom to perform austerities and organise ceremonies. Additionally, the law forbids employers from exhibiting any discriminatory practices against workers on the grounds of their religious beliefs in Portugal. On the other side, it is found in relation to religion in Jordan that the government does not put restrictions on practicing any religion or faith, but it also does not give recognition to all religious groups, thereby intensifying the issues of societal disparity. It is often seen that Muslims converting to different religion tend to face the problems of governmental discrimination<sup>305</sup>. In addition, it is also revealed that religious minorities in Jordan commonly face the issues of social and legal prejudice due to their religious identities, thereby signifying the need for amendments in constitutional law governing religion<sup>306</sup>.

### **5.5.6 Comparative Analysis of Poland's Constitutional Law for Equality Rights and Jordanian Constitutional Law**

Article 32 within the legal constitutional framework of Poland regards equal state to all the individuals in front of the law and emphasises on the right of equal treatment via public official or authorities. Any kind of discrimination is strictly prohibited in the social, political and economic sphere in the country for establishing equality and ensuring compliance with fundamental human rights. Further, article 33 advocates equal rights for men and women in

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<sup>304</sup> Eduarda Ferreira and Maria João Silva, 'Equality policy in Portugal: the case of sexual orientation' (2011) CDICS142.

<sup>305</sup> Susser, Asher. "Jordan 2011: Uneasy lies the head." Brandeis University Crown Center for Middle East Studies 52 (2011).

<sup>306</sup> Paula Campos Pinto, 'At the crossroads: human rights and the politics of disability and gender in Portugal' (2011) 5 Alter 116.

social, political, economic and family life. Along with this, there is a strong focus on equal rights for both the genders and reinforcement on gender equality, especially in the areas of promotion and employment, education, equal compensation at work and social security. Other than this, it is considered necessary to eliminate the practice of exhibiting bias between genders while rendering public honours<sup>307</sup>. It is stated that Poland's adherence to the EU principles resulted in improving its legal framework dealing with equality rights and some major changes introduced in the labour code contributed to establishing equality at all level. It is revealed that the EU significantly affected the process of gender mainstreaming in its member states, mainly in Poland as its projects centred on equal opportunity for both the genders are co-funded by the European Social Fund, and it required gender impact analysis<sup>308</sup>.

The UN committee identified the need to eradicate discriminatory practices against women in Poland and expressed its concerns over institutional mechanisms governing gender mainstreaming in Poland. It is investigated that the nation does not have any exclusive governing body for securing women's rights and protecting gender equality, and there is the scarcity of resources. Major improvements are witnessed in regard to the gender equality in Poland, but there is need for more policy-level changes and regulate the action of authorities as women's rights activists and support groups are denied of funding and necessary resources without any clear rationale<sup>309</sup>.

It is noted concerning human rights in Poland that Article 35, Article 36, Article 38 and Article 39 provides the freedom to develop and maintain customs, offers the right to protection while residing in foreign countries and legal protection respectively. However, despite exclusive Articles for the protection of human rights and freedom, human rights in Poland are under attack. In a similar context, human rights issues are persistent in Jordan regardless of human rights policies and law provisions. The Polish government has introduced a new policy and legislative measures that are affecting human rights in an adverse manner. It is expressed that the government interfered with judicial and administrative independence in the region, which adversely affected justice and human rights. In addition, the government is also deemed responsible for interfering with freedom of expression and public media's independence along

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<sup>307</sup> Alexandra Gerber, 'The letter versus the spirit: Barriers to meaningful implementation of gender equality policy in Poland' (2010) 33 WSIF 30.

<sup>308</sup> Ibid.

<sup>309</sup> Helen Keller and Alec Stone Sweet, *A Europe of rights: the impact of the ECHR on national legal system* (Oxford University Press 2008).

with deploying counterterrorism measures that in turn weakened fundamental rights<sup>310</sup>. Other than this, illegally targeting foreigners and Muslim communities, posing restricting on reproductive rights of women, disrupting the right giving freedom to free assembly and wrongful interference in freedom of association are other key issues that reflect infringement to human rights and freedom of citizens in Poland. It is evaluated that Poland is culturally different from other member states of the EU, particularly with respect to the rights of LGBT communities<sup>311</sup>.

It is noted in regard to religion that Article 53 ensures religious freedom and freedom of conscience for everyone. No one is allowed to compel others to perform or not perform the religious practice. However, churches in the nation are standing to file a complaint against the constitutional law which depicts the need for employing effective measures under the law to secure rights to religious freedom in Poland. As a whole, it is assessed that there are major differences in securing human rights, ensuring gender equality and protecting religious freedom in EU member states not in theoretical texts of constitutional law but in practice. There is a need for a radical transformation in the application of legal framework and policies in Poland and Portugal for securing human rights and ensuring gender equality<sup>312</sup>.

## **5.6 Ongoing Changes in Constitutional Theories and their Practices in European Countries and Jordan**

In the light of the State of Law and Rule of Law theoretical postulations of the constitution, Abu- Karaki, Faqir and Marashdah (2011) have opined a long history and development of constitutional aspects in the country. The literature embarks substantial changes in the constitutional aspects of Jordan, wherein the principle of 'sovereignty of nation' is evident as the most crucial democratic principle of the new society. The enactment of a liberal constitution is noticed in 1952 by the first parliament of the country, but substantial democratic features of the constitution have remained deficient in the country up to 1954 amendment. The amendments made significant emphasise on the sovereignty of the states that is the crucial democratic principles of the new societies. The amendment of 1952 in the Constitution of Jordan has described the ruling system of the country as parliamentary with the

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<sup>310</sup> Ibid.

<sup>311</sup> European Institute for Gender Equality. 2020. Gender mainstreaming in Poland. [Online]. Available at: <https://eige.europa.eu/gender-mainstreaming/countries/poland> accessed 6<sup>th</sup> June 2020.

<sup>312</sup> Ibid.

hereditary monarchy, wherein the majesty of the King is claimed as the head of the three-state branches, including legislative, executive and judicial<sup>313</sup>.

In arguing of the views, Doumi (2018) has opined that in the early years, Jordanians had experienced a series of pioneering democratic experiences and highlighted a series of amendments that resulted in losing several of the democratic principles. The substantial changes had been noticed from 1942 to 1946 to 2012. The key amendments witnessed with the introduction of substantial changes in Jordan's constitution involve the areas concerning rights and freedom, executive authority, legislature, judiciary and public liberties<sup>314</sup>. Democratic reform is significantly made to ensure security, and early 2016, the parliament has approved the constitutional amendments that have strengthened the executive power at the cost of judiciary and legislative. Subsequently, the King was empowered to appoint the General Intelligence Directorate (GID), Constitutional Court members and chief judge unilaterally, helped in appointing the army commander and Gendarmerie and Chief Justice. This led to end up the accountability exists in the legislative aspect of the government<sup>315</sup>.

In arguing to this, Halmai (2018) has pointed out Hungary as a prominent illustration of constitutional changes in the EU countries. Hungary has witnessed substantial political transitions that have presented a crucial example of constitutional backsliding from a robust liberal democratic system to the liberal system having strong authoritarian elements. In this context, the literature has argued despite having legal authority; the EU has remained failed to protect the constitutionalism values, as the country is examined to have preference over applying the indirect means of pressure. Presently, a new hybrid type of regime is constituted in the Hungarian constitutional system between the full-fledged democratic and the totalitarian regime<sup>316</sup>.

It is evaluated in regard to France, Greece and Germany's Constitutional laws that there is a presence of effective human rights policies and regulatory provisions to protect rights of individuals regardless of sex, religion, nationality and race. No substantial gap exists between enacted policies and law and their implementation. However, European countries such as Portugal and Poland are found to be largely involved in the violation of human rights and

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<sup>313</sup> Muddather Abu- Karaki, Raed S. AFAQir and Majed Ahmad K. Marashdah, 'Democracy & Judicial Controlling in Jordan A Constitutional Study' (2011) 4 JPL 2, 183.

<sup>314</sup> Khair Bani Doumi, 'Public Freedoms in the Jordanian Constitution: Rhetorics and Realities' (2018) 8 JMCJ 4, 5.

<sup>315</sup> Bertelsmann Stiftung, 'BTI 2018 | Jordan Country Report' (2020) Available at: <<https://www.bti-project.org/en/reports/country-reports/detail/itc/JOR/>> accessed 25<sup>th</sup> October 2019.

<sup>316</sup> Ibid.

obstructing women's rights. There is a need for radical changes in policy implementation and decrease the gap between Constitution in place and its implementation.

#### Summary

It is summarised in regard to the discussion centred on the comparison of constitutions of the European countries such as Greece, Germany and France with Jordanian constitution in regard to Gender Equality, women participation, protection of human rights, political representation and discrimination on the grounds of religion. It is examined that despite the enactment and presence of legal provisions and principles governing human rights, women participation, gender equality and religious discrimination in France, Greece and Germany, the incidences of discriminatory practices against minorities and women are common, especially discrimination on the basis of religion. Therefore, it is essential to bridge the gap between presence of constitutional provisions and their implementation in practice. It is analysed concerning Jordan that women participation is low, political participation of women is low and gender inequality is high along with religious discrimination due to absence of strict legal provisions and regulatory measures.

## **Chapter 6: Findings, Discussion and Conclusion**

### **6.1 Findings**

#### **Theme 1: Jordanian Constitution, its Main Elements and Effectiveness in Fostering Equality**

The theme has been designed on the basis of the patterns identified across the secondary evidence concerning to Jordanian constitution and human rights advocates by it. It is reviewed in this context that Jordan has the constitutional monarchy and executive authority is vested to the King and Council of Ministers. With regard to human rights, Jordanian constitution is evident as the oldest constitution of Arab containing articles associated to rights and freedom of people and a precise chapter concerning the “Rights and Duties of Jordanians”. The constitution affirms that people of the country are equal in front of the law without any discrimination on the duties and rights, irrespective of race, religion and language. It also ensures the right to equality to the people before the law, along with ensuring the necessity of equality, independence and social justice before the judiciary. Public freedom is also ensured by the constitution by providing people the freedom to present opinion and expression in distinct media, religious beliefs, assembly and forming political parties and associations. In this regard, the constitution of the country is evident as the key source of authority of the nation, the principle document of separation of powers and ensures the parliamentary system of royal foundation. This refers people as the key source of legitimacy and authority, wherein, the ballot exercises the constitutional institutionalism and sovereignty for the rule of law, providing a crucial foundation for the ensuring individual freedoms, rights and environment against tyranny and despotism<sup>317</sup>.

The emphasis on the development and establishment of constitution in the country is evident with the participation in political movements and called for freedom emerged to the surface in Jordan since 1921 with the institutionalisation of State. The constitution of 1928 was not rejected by the citizen that led to the formation of new constitutional law in 1946 wherein Article 2 declared the Hashemite Kingdom of Jordan a sovereign and independent state. Moreover, the constitutional law was amended in 1952 for addressing regional circumstances and dealing with internal development issues. Further, Jordan witnessed major constitutional amendments during the reign of King Abdullah 2 such as Iraq's occupation by the US, the emergence of Arab Spring and freedom of Egypt, Libya and Tunisia as a result of Arab Spring.

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<sup>317</sup> Shadi Adnan Alshdaifat, ‘Review of Human Rights under the Jordanian Constitution’ (2014) 29 JLPJ, 31.



It is examined that Jordanians' participation on Arab Spring revolution brought major changes in the political structure of Jordan and laws concerning corruption, wealth accumulation and election. As a whole, it is found that the Jordanian constitution of 1952 is amongst one of the rick law regimes in terms of fundamental freedom and human rights<sup>318</sup>.

The Jordanian constitution comprises of diverse chapters, articles and based upon several doctrines that shape its key elements. With regard to equality, Article 6 has clearly stated that Jordanians are equal before the laws and there shall be no discrimination between the people for rights and duties, on the basis of race, language or religion, Article 5 claimed law defines Jordanian nationality, and Article 7 has guaranteed personal freedom without infringement of rights and inviolability of private life. There are further wide range of articles including Article 1, Article 8, Article 9, Article 10, Article 11, Article 12, Article 14, Article 15, Article 17, Article 18, Article 21, 23 and 23, and Article 101 to protect human rights in the country<sup>319320</sup>. Apart from this, the doctrine of the separation of power is evident as the key element of Jordan constitution holding high prominent in providing significant check and balancing system and power among distinct government branches. The doctrine plays the pivotal role in prohibiting absolutism and arbitrariness among distinct authorities of the nation. This is attained by balancing, checking, collaborating and ensuring equality by dividing the duties and tasks of the states among judicial, executive and legislative aspects<sup>321</sup>.

However, on examining the effectiveness of Jordanian constitution, the reality of human rights and equality has been highly distinct in practice, depicting a huge difference between subjective texts and reality in Jordan. In this regard, it is reviewed from the insights made in secondary evidence that Article 1 highlighted the significance of parliamentary regime over the royal pillar. However, the parliamentary regime is non-existent in Jordan, which indicates limited power and ability of Jordanian citizens to make substantial governmental changes<sup>322</sup>. Article 6 within the Jordanian constitution caught the attention of policymakers and governing bodies due to its discriminatory nature. Discrimination in social and legal matters, especially in cases of divorce, inheritance, marriage and personal status against women as well as various

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<sup>318</sup> Mohammed T Bani Salameh and Samid A Darawsheh 'Human rights in the Jordanian constitution: between theoretical texts and practical application' (2018) 6 IJHRCS 70, 72.

<sup>319</sup> Shadi Adnan Alshdaifat, 'Review of Human Rights under the Jordanian Constitution' (2014) 29 JLPJ, 31.

<sup>320</sup> Mohammed Turki Bani Salameh, 'Political reform in Jordan: Reality and aspirations' (2017) 180 World Affairs 4, 47.

<sup>321</sup> Shatnawi, Faisal. (2002). *The Principles of the Constitutional Law & Constitutional System in Jordan* (In Arabic), (1sted), Amman: Daar Al. Hamid for Publication and Distribution.

<sup>322</sup> Mohammed T Bani Salameh and Samid A Darawsheh 'Human rights in the Jordanian constitution: between theoretical texts and practical application' (2018) 6 IJHRCS 70, 72.

Jordanian males questioned the efficacy of Jordan's constitutional law in establishing equality. Discriminatory provisions against women are rooted in the cultural and tribal heritage of Jordan, and it further affected the laws and rights concerning education, elections, employment and health. Overall, it is evaluated that the Jordanian constitution does not lack fundamental freedom and violate human rights as its provisions are in line with international standards and policies. However, there is a vast gap between theory and practice due to ineffective implementation of theoretical texts which highly emphasise on principles and doctrine of human rights. It is necessary to eliminate the contradiction amid the practical translation and the constitutional texts existing in Jordan to eliminate the issues relating to the infringement of human rights and equality<sup>323</sup>.

It is noted that articles relating to the freedom of opinion, the secrecy of correspondence, freedom of the press and freedom of movement within Jordanian constitutional law contravene the international agreements and standards, thereby highlighting the gap between practice and theory. On the other side, it is observed that the Jordanian King is taking crucial steps in the direction of establishing a constitutional monarchy with the reformation of the Jordanian Constitutional Court (JCC). The JCC is formed in 2012 in the Arab region, and it is enforced for enhancing legal transparency and strengthening the role of the legal system and improving the facets of accessibility, efficacy and democracy concerning law<sup>324</sup>.

It is analysed that the JCC reform focuses on procedural, substantive and democratic dimensions to bridge the gap between theory and practice and ensure adherence to international conventions of human rights and equality. However, it is criticised that the JCC does not have clarity in its legal philosophy as the unconventional nature of JCC is in contrast to the monarchical regime of Jordan. In addition, it is observed that the proper adoption of JCC reforms can enable in safeguarding the rights of Jordanian citizens and mitigating the concerns surrounding discrimination<sup>325</sup>. As a whole, it is investigated that the Jordanian constitution points out executive monarchic rule while also mandating the segregation of state powers and ensuring the regulation of financial affairs and constitutional regulations. It is deduced from the review that Jordan has made notable progress in the domain of human rights in the country and praised largely by the international bodies and organisations, but still need to contribute

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323 Ibid.

324 Shams Al Din Al Hajjaji, 'Jordanian Constitutional Court: Toward a Democratic, Effective and Accessible' (2018) 5 *IJICL* 269, 270.

325 Ibid.

more towards promotion and protection of human rights for importunity, sensitivity and vitality, along with enhancing the effective application of the provisions in reality<sup>326</sup>.

## **Theme 2: European Countries' Constitution, their Key Components and Efficacy in Promoting Equality**

The theme has been formulated from the data and patterns identified with regard to equality, human rights and non-discrimination aspects in the European countries' laws and constitution. There are three key sources of law for equality and non-discrimination, which are of prominence in the country for developing the associated concepts. These are the constitutional tradition of the member states and the EEA countries, human rights law and EC law. With regard to EC law, equality is evident as its key general principle, which precludes the comparable situations from being getting differently treated, and the different situations from getting treated in the same way, until the treatment is justified objectively. This represents the principle that everyone is equal before the law is examined as the key principle of the EC law. The fundamental rights identified with specific regard to equality aspects is linked with religious equality and prohibition of sex-based discrimination. Article 141 eliminates sex-based discrimination, equal pay provision for men and women and equality with regard to working conditions<sup>327</sup>. The case of *P v S and Cornwall CC* [1996] had held the role of equality as the fundamental right, claiming discrimination of the basis of gender is prohibited under the EC law<sup>328</sup>.

The foundational values and principles of EU concerning human rights, constitutional rules and law and human rights are grounded in constitutional doctrines of the Member States, so they also shared by the states. Value foundation within the EU is signified in the domain of fundamental rights, and it is shaped and reformed in the last few years by the Court of Justice of the EU (CJEU). The European Charter of Fundamental Rights is enacted in 2003 in alignment with the European legal system. Article 2 within the treaty on European Union (TEU) emphasises upon respect for equality, democracy, autonomy, human dignity, the rule of law and the rights of minorities<sup>329</sup>. It is noted that European countries have their own legal orders that are distinct from international law. Overall, the legal system of the EU has its own

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<sup>326</sup> Mohammed T. Bani Salameh and Samid A. Darawsheh, 'Human rights in the Jordanian constitution: between theoretical texts and practical application' (2018) 6 IJHRCS 1, 70.

<sup>327</sup> Christopher McCrudden and Sacha Prechal, 'The Concepts of Equality and Non-Discrimination in Europe: A practical approach', (2019) <<https://ec.europa.eu/social/BlobServlet?docId=4553&langId=en>> accessed 24 September 2020.

<sup>328</sup> *P v S and Cornwall CC* Case C-13/94 [1996] ECR I-2143.

<sup>329</sup> López Garrido D and López Castillo A, 'The EU framework for enforcing the respect of the rule of law and the Union's fundamental principles and values' (2019) 25 IPPDCRCA 2, 5.

sources of law wherein primary legislation precedes the hierarchy, and it is depicted in the form of general legal principles and the Treaties. Furthermore, international agreements and secondary legislation are other key sources of European countries' legal system. The prime sources of the EU law are outlined as TEU, Charter of Fundamental Rights of the EU, TEFU, international agreements, secondary legislation and principles of Union law<sup>330</sup>. The effectiveness of the rights and principles of EU constitutions in combating discrimination is being reflected through two controversial cases including the two landmark cases including the case of Defrenne and the case of Mangold. In the Defrenne case, it was stated by the court that respecting the personal human rights of people is the most common community law principle that must need to be achieved. It was also held by the court that Article 119 provides a direct horizontal effect on the case wherein the judges reached to decision stating that the elimination of discrimination on the basis of sex forms is one of the fundamental rights of every citizen. Similarly, in the case of Mangold, it was held that equal treatment must be practised in the field of occupation and employment rather than discriminating against people on the basis of their age<sup>331</sup>.

Another key source or component of equality in European countries is the European Convention of Human Rights (ECHR) of the constitution. ECHR protects the human rights of the people of the countries belonging to the European Council. All the 47 member states, including the UK, are examined to sign the Convention, which is titled as 'Convention for the Protection of Human Rights and Fundamental Freedoms' in a complete sense. Herein, article 14 of ECHR has provided rights and freedoms stated in the Convention should be remained secured without discrimination on the grounds of race, colour, religion, language, political and other distinct opinions, origin, property, birth and national minority association<sup>332333</sup>. Similarly, Protocol 12 is another convention that provides fundamental rights as well as fundamental freedom to citizens in EU states. It restricts people to be discriminated against on any of the

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<sup>330</sup> Oliver Mader, 'Enforcement of EU Values as a Political Endeavour: Constitutional Pluralism and Value Homogeneity in Times of Persistent Challenges to the Rule of Law' (2019) 11 HJRL 133, 135.

<sup>331</sup> European Union Institute, 'SOCIAL AND NON-DISCRIMINATION PROVISIONS IN THE EMPLOYMENT FIELD IN THE CHARTER', (2019) available at: <[https://cjc.eui.eu/wp-content/uploads/2020/05/eNACT\\_Handbook\\_Social-rights-compresso.pdf](https://cjc.eui.eu/wp-content/uploads/2020/05/eNACT_Handbook_Social-rights-compresso.pdf)> accessed 24<sup>th</sup> April 2021.

<sup>332</sup> Equality and Human Rights Commission, What is the European Convention on Human Rights? (2019) available at: <<https://www.equalityhumanrights.com/en/what-european-convention-human-right>> accessed 27<sup>th</sup> September 2020.

<sup>333</sup> Christopher McCrudden and Sacha Prechal, The Concepts of Equality and Non-Discrimination in Europe: A practical approach, (2019) available at: <<https://ec.europa.eu/social/BlobServlet?docId=4553&langId=en>> accessed 27<sup>th</sup> September 2020.

grounds like language, opinion, social or national origin, minority, birth, race, sex or another status<sup>334</sup>.

Further, Article 2 TEU stresses on abidance to some of the common values for the EU's member states to ensure creating a society that fosters equality, solidarity, justice, pluralism and non-discrimination between both the genders. Integration and enforcement of values in member states is deemed to be a political procedure which is mainly governed or regulated by legal procedures. The constitutional text of Article 2 TEU does impose these values to member states, but values are considered to be common amid the Member States. Overall, it is assessed that values surrounding human rights and discrimination are not legally binding in nature by their compliance is required under Article 49 and the Copenhagen criteria. Members States are expected to adhere to human rights norms and values enacted in Article 2. Further, it is clarified in Article 7 TEC that a systematic violation of the values can lead to damaging consequences to states. In this relation, it is assessed that in 2017, the EU started the first stage of the enforcement against Poland as per provision Article 7 TEU<sup>335</sup>.

It is found that some of the Member States within the EU comply with a composite structure wherein Germany depicts federalism, Italy represents regional State, and the United Kingdom is viewed as Devolution State. The EU represents a combined region where power is classified amid different autonomous regions, regions and several states. European countries are dedicated to fostering equality and eliminating discriminatory practices. In this context, it is noted with respect to Austria that a special body is formed under the Federal Ministry to address and alleviate discriminatory issues against women<sup>336</sup>. Article 12 and 13 restrict employers to provide equal treatment to all the workers regardless of their gender, religion and other attributes outlined under Article 2. However, it is explored that in the absence of

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<sup>334</sup> Council of Europe, 'Details of Treaty No.177' (2021) available at: <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/177#:~:text=fran%C3%A7ais%20italiano%20%D1%80%D1%83%D1%81%D1%81%D0%BA%D0%B8%D0%B9-Protocol%20No.,a%20general%20prohibition%20of%20discrimination.&text=The%20Protocol%20removes%20this%20limitation,ground%20by%20any%20public%20authority.>> accessed 25<sup>th</sup> April 2021.

<sup>335</sup> Oliver Mader, 'Enforcement of EU Values as a Political Endeavour: Constitutional Pluralism and Value Homogeneity in Times of Persistent Challenges to the Rule of Law' (2019) 11 HJRL 133, 134.

<sup>336</sup> European Parliament, 'Main Characteristics of the European Union's Legal System' (2020) Available at: <<http://www.europarl.europa.eu/unitedkingdom/en/education/teachingresources/howeuworks/legalsystem.html>> accessed 30<sup>th</sup> January 2020.

systematic and coherent equality data, implementation of robust policy actions and alleviation of discriminatory structural patterns have become a complex process in Austria<sup>337</sup>.

Hungary is another example of a Member State that caught the attention of the EU and the parliament in the light of gradually degrading constitutional conditions in Hungary. Undermining the values outlined under Article 2 TEU is not only threatening to citizens of Hungary but also to the EU's constitutional laws, their efficacy and practical implementation. Issues concerning privacy, data protection, academic freedom, minority rights, social and economic rights of refugees and the right to fair treatment in Hungary over the span of eight years caught the attention of European Parliament. The parliament took major steps from enforcing media law to passing a proposal calling highlighting the infringement of fundamental values by Hungary to deal with the derogatory situation prevailing in Hungary<sup>338</sup>. In order to deal with such situations in future, an inter-institutional framework is proposed which would enable the member states to ensure and monitor compliance with fundamental rights and values. On examining, several different and overlapping sources of EC law have been evident to establish non-discrimination norms and equality, binding the EC institutions and the Member States. Equality is examined as one of the key fundamental values of the EU, integrated for establishing a solid legislative framework for the protection of people against different discrimination forms across the EU.

The Preamble of France 1958 illustrates that the French people hold a robust connection to the peoples' rights and the national sovereignty principle as illuminated in the Declaration of 1789. The integration of such principles accompanied by the self-determination of individuals' helps in affirming that common standards of liberty, equality and fraternity are maintained thus help in democratic development. Article 1 guarantees; equality to everyone before the country's legal system and prevents any discrimination on the grounds of origin, religion, or race<sup>339</sup>. The French Code of Education is a key element of the Constitution focused on strengthening equality between females and males and acknowledges gender-based equality as the prominent legal obligation<sup>340</sup>. Within the EU, the Constitution of Greece is also efficacious enough is promoting equality and assuring fair treatment of all workers irrespective of sex. Different legislative initiatives have been launched by the government from the start of 1980s

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<sup>337</sup> LillaFarkas, Analysis and comparative review of equality data collection practices in the European Union (Publications Office of the European Union 2017).

<sup>338</sup> Ibid.

<sup>339</sup> International IDEA, 'Gender Quotas Database' (2020) < <https://www.idea.int/data-tools/data/gender-quotas/country-view/86/35> > accessed 26<sup>th</sup> June 2020.

<sup>340</sup> Freedom House. 2016. Why Is Jordan Backsliding on Gender Equality? [Online]. Available at: <<https://freedomhouse.org/article/why-jordan-backsliding-gender-equality>> accessed 29<sup>th</sup> June 2020].

emphasising the establishment and management of an official fair and equitable labour market render an opportunity to females for procuring statutory rights. However, it has been identified that direct discrimination still exists in the country whereas proper administration over indirect discrimination lacks suggestion need for certain alternations to ensure equality in respect to nationality, race, religion and sex. Article 5 of the Constitution grants equal status to every Greek before the law, and entitles opportunity to every citizen to apply for public service except ones who fall within the ambit of special laws. However, issues surrounding human rights are still prevalent in the country, including corruption, criminalisation, refoulement concerning asylum prospects, and violence centred on LGBTI persons. The government is showcasing serious concerns regarding such issues by thriving to investigate, prosecute and impose penalties on officials disregarding human rights<sup>341</sup>.

Germany is one of the most leading countries of the EU, and it is popular as a democratic society with a robust social federal governance mechanism. The legal framework concerning gender equality is reliant upon fundamental rights defined in the Basic Law 1949. It is further analysed that Article 3 proclaims the equal rights for both women and men, whereby further developments have been noticed for fostering gender equality. However, in comparison to other European countries, its performance in terms of attaining gender equality is average<sup>342</sup>. Austria is also a European member state which has a sound record of considering gender equality through the adoption of the Equal Treatment Act in 1979 and adoption of the Equal Treatment Act in 1993 in the Federal Service was also a significant move made for extending special support to women in the organisations<sup>343</sup>.

It is also analysed that Portuguese also upholds the principle of equality Article 13 postulate that everyone shall be equal and awarded with the same social dignity in front of the law. The Constitution explicitly specifies that no favour, privilege or exemption shall be entitled to any person on the grounds of religion, race, language, sex, educational background and political assumptions<sup>344</sup>. Poland is also a member state of EU which is making rigorous attempts to prohibit any form of discrimination in the economic, social and political landscape

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<sup>341</sup> Bureau of Democracy, Human Rights and Labour. 2018. Greece 2018 Human Rights Report. [Online]. Available at: <<https://www.state.gov/wp-content/uploads/2019/03/GREECE-2018-HUMAN-RIGHTS-REPORT.pdf>> accessed 29<sup>th</sup> June 2020.

<sup>342</sup> Elisabeth Botsch, 'The Policy on Gender Equality in Germany', (2015) European Commission, 1-36.

<sup>343</sup> Lisa Herburger, Peter Koller and Roberta Schaller-Steidl, 'Gender Equality and Non-Discrimination Laws in Austrian Higher Education', Federal Ministry of Science, Research and Economy, 2.

<sup>344</sup> European Union Agency for Fundamental Rights. 2019. The EU Charter of Fundamental Rights in Portugal. [Online]. Available at: <[https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-eu-charter-in-portugal.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-eu-charter-in-portugal.pdf)> accessed 30<sup>th</sup> June 2020.

of the country to establish equality and abide with the basic human rights. Article 33 of the country's Constitution lays strong emphasis on securing equal rights for men; as well as women and reinforces gender equality particularly in education, employment and social security<sup>345</sup>. Therefore, it is examined that the Constitutions of different European nations value equality and avoid discrimination in respect to nationality, religion, sex or race; however, issues are prevalent in certain countries like Germany and Greece even after enforcement of a legal system valuing human rights and fairness.

### **Theme 3: Comparison of Jordanian and European Countries' Constitutional Law**

It is found from the critical assessment of constitutional law of European nations and legislative system of Jordan that one of the key differences lie in Jordan's legal system which is the combination of civil law and Islamic religion and the legal system followed within European nations which is divided into three groups<sup>346</sup>. It is examined that the civil law system, the common law system and the bi-juridical system are followed by European nations, and there are legal consequences for the member states in case of violation of common values and fundamental rights principles<sup>347</sup>. On the contrary, a huge gap is observed between practical implementation and constitutional texts, thereby reflecting non-compliance with statutory provisions and lack of consideration to human rights values and principles. There is a need for emphasising the respect for human rights policies and adherence to the international convention to reduce discriminatory practices against women. Article 128 of the Jordanian constitution states that any kind of amendment in human rights policies and freedom is admissible only to the extent to which they benefit the citizens and overall community. There is a need for building respect for human rights values to improve Jordan's situation regarding dealing with safety and security of citizens and ensuring adherence to international standards and constitutional texts relation to equality and human rights<sup>348</sup>.

One of the key similarities found between Jordanian constitution and constitution of European countries is related to constitutional monarchic rule wherein the prime minister or president has authority to exert his power in governance and King or queen has limited power. It is noted that continental European countries follow the civil law system, but states such as

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<sup>345</sup> Alexandra Gerber, 'The letter versus the spirit: Barriers to meaningful implementation of gender equality policy in Poland' (2010) 33 WSIF 30.

<sup>346</sup> Curtis R Ryan Hashemite Kingdom of Jordan (Routledge 2018) 120.

<sup>347</sup> European Parliament, 'Main Characteristics of the European Union's Legal System' (2020) Available at: <<http://www.europarl.europa.eu/unitedkingdom/en/education/teachingresources/howeuworks/legalsystem.html>> accessed 5<sup>th</sup> February 2020.

<sup>348</sup> Mohammed T BaniSalameh and SamidADarawsheh 'Human rights in the Jordanian constitution: between theoretical texts and practical application' (2018) 6 IJHRCS 70, 71.



Ireland, Cyprus, Malta and the UK follow common law. Other than this, it is found that Vatican City follows a religious constitution and Andorra abides by the bi-juridical law. Further, it is evaluated with respect to the fundamental rights given to Jordanian citizens by constitution include freedom of speech, right to elect representatives for municipality and parliament. In addition, religious freedom and freedom of association are given to citizens. On the other side, the aforementioned rights and some of the additional rights are given to the citizens of European nations<sup>349</sup>. Article 28 within Jordanian constitutional law gives sovereignty to the King in terms of giving rights and authority to appoint the Prime Minister and order elections for the appointment of the Chamber of Deputies. One of the main loopholes within the Jordanian constitution exists in terms of the absence of provisions proving accountability and responsibility of the King. However, European countries exercise population-based election where citizens are given the right to elect a president as per their choice<sup>350</sup>.

It is examined concerning the legal system of Jordan that it is rooted in the separation of power, namely, judiciary, executive and legislative powers. Jordanian constitutional law enforced in 1952 requires all the key authorities to exercise the mandate and perform their respective duties without interfering or obstructing the functioning of other key authorities. Overall, it is mentioned that three powers segregated within the Jordanian constitution need to be complementary, flexible and balanced. The idea of separation of power aims to eliminate the abuse of power and safeguard the freedom, along with promoting equality for all the citizens. Moreover, the legislative body performs the function of law-making, and the executive body can play its role in effective law implementation. Further, the judiciary facilitates in enforcing the law ensures that if one power violates human rights and values of citizens through its functioning, then the other power has the right to interfere and restrict the abuse of authority and power<sup>351</sup>.

It is evaluated in the light of EC law and anti-discrimination directive that the doctrine of equal and fair treatment must not prevent any member state from employing particular measures and taking actions to compensate for drawbacks linked to the directive. Member states of the EU are given adequate rights to take positive actions in the direction of addressing social discriminatory issues against women and minority groups. For instance, in Malta,

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<sup>349</sup> Anna Van der Vleuten, *The price of gender equality: Member states and governance in the European Union* (Routledge 2016) 72.

<sup>350</sup> Dimitry Kochenov and Laurent Pech, 'Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality' (2015) 11 *ECLR* 512, 520.

<sup>351</sup> Shams Al Din Al Hajjaji, 'Jordanian Constitutional Court: Toward a Democratic, Effective and Accessible' (2018) 5 *IJICL* 269, 275.

specific provisions are introduced within laws for taking positive actions against discrimination or inequality to sustain compliance with equality and non-discrimination against women and men. However, it is observed that there are few gender and race directives that focus primarily on generating results on a wide level and accomplishing equality objectives in European countries like effect utile of the EU law.

There are provisions in the Jordanian constitutional law which do not extend the similar rights to women and men. Even after the publication of the CEDAW in the year 2007 in the official gazette, which in theory makes it essential in the national legal framework, the Nationality Law regarding its discriminatory provisions counters Article 9, paragraph 2. It opposes the agenda of international human rights agreements. Political reasons have been used since long as justifications by the government not to amend the constitutional law. The inability of women because of discriminatory rules in the Jordanian constitutional law to validate their nationality to their children and husbands in complicated as women are perceived as the second-class citizens by the legal system which legitimises the cultural and social patriarchy by systematically disowning females of their fundamental rights<sup>352</sup>. On the other side, the principle of equality is considered a necessary element of contemporary constitutional law in different European countries. The commitment of the European Union to the non-discrimination principle was reassured in the Charter of Fundamental Rights in the year 2000 that specifies that any discrimination on the basis of colour, race, sex, social or ethnic origin, language, religion, genetic features, belief or political perspective, membership of any minority group, birth and disability shall be prohibited. It is found that even though every member state has transposed the directives into their constitutional law, a range of discrepancies still prevails in the varied national anti-discrimination legislation. For instance, the transportation methods vary significantly between countries, from ones where a legal instrument contains the whole anti-discrimination legal framework to ones where an exclusive number of provisions are spread across national law in areas like administrative law, labour law and criminal law<sup>353</sup>.

The Preamble of France 1958 clearly states that the citizens proclaim their association to the national sovereignty principles and the fundamental rights as specified in the Declaration of 1789. The rights and responsibilities are clearly mentioned in the Charter for the Environment of 2004. The Republic ensures that the common rules of fraternity, equality and liberty are abided in the territories via the integrity of such principles and the self-determination

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<sup>352</sup> Mohammed T BaniSalameh and SamidADarawsheh, 'Human rights in the Jordanian constitution: between theoretical texts and practical application' (2018) 6 IJHRCS 1, 78.

<sup>353</sup> MiekeVerloo, *Varieties of opposition to gender equality in Europe* (Routledge 2018).

of the public at large. The country's constitutional law assures that equality is guaranteed to every citizen before the law system without any form of discrimination on the grounds of religion, origin or race<sup>354</sup>. In relation to the gender gap, France occupies 12<sup>th</sup> rank whereas Jordan is at 138<sup>th</sup> position clearly depicting the efficacy of French constitutional law in guaranteeing equality to all. In the Jordanian Constitution, women have limited indulgence in parliament, political leadership and ministerial roles in comparison to France illuminates the needs for significant amendments and reforms in the Jordanian Constitutions to propagate democracy and sustainable growth of all<sup>355</sup>.

Greece, being another member state of EU, is also effectively affirming equality to every worker irrespective of sex or any other ground of segregation in Article 22 of the 1975 Constitution of Greece. The Article assures that every worker is entitled to equitable pay and apart from this dimensions different legislative initiatives have been taken by the Greek government from the start of 1980s centred on the development of an officially fair and transparent labour market which extends to the opportunity to women to enjoy statutory rights<sup>356</sup>. Jordanian Constitution, on the other hand, withdraws certain basic rights of women ever after certain progressive initiatives being taken by the monarchy and huge investment made by the US government to foster democracy and human rights in the society<sup>357</sup>. On the basis of the comparison between the Jordanian Constitution and the Constitution of two member states of the EU that are France and Greece, it is examined that new approaches need to be integrated into the prevalent constitutional provisions of Jordan with the motto of promoting gender equality.

It is examined that France upholds human rights and ensures to the overseas territories that it will comply with the emerging institutions on the basis of common principles of fraternity, liberty, and equality to attain democratic development. The country awards equal growth opportunities to both males, and females to political positions, and corporate profiles. France is the foremost economy to introduce the provision of 50 per cent mandatory gender parity and reserves 40 per cent seats for women in the Assemblée Nationale whereas 33 per cent in Senate. On the other side, the Jordanian Constitution also extends legislated quotas for the upper and

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<sup>354</sup> Sophie Byron, *The Constitution of France: A contextual analysis* (Bloomsbury Publishing, 2012).

<sup>355</sup> Máiréad Dunne and NaureenDurrani and Kathleen Fincham and others. *Troubling Muslim youth identities: Nation, religion, gender* (Springer 2017).

<sup>356</sup> AikateriniArgyrou and Stelios Charitakis 'Gender equality in employment utilising female social entrepreneurship in Greece' (2017) 12 ICCLJ 2, 55.

<sup>357</sup> Peter A Ferguson 'The State of Jordanian Women's Organizations-Five Years Beyond the Arab Spring' 5 PG 2, 64.

lower house with only 15 per cent reservation for females in the Mailis Al-Nuwaab. It is thus, examined that both countries offer compulsory reservation to females in parliamentary tasks; however, the Constitution of France is more efficacious in regard to advancing equality of women<sup>358</sup>.

It is also evaluated that the French Constitution encompasses collaboration with the international community, international organisations and non-governmental entities both national; and foreign. Further, assuring dignity towards human rights is the key point of the democratic exercise in the country in the form of commitment as the EU member and other international entities. In contrast, the Jordanian Constitution even after explicitly includes the concepts concerning human rights in comprehensive texts; however considerable difference exists between actual implementation and theoretical contexts of constitutional provisions<sup>359</sup>.

It is further assessed that Constitution of Greece also combats discrimination and guarantees equality wherein Article 22 explicitly states that all workers regardless of sex or any other criteria shall be given equitable or reasonable way for the work of equal value. Apart from this, various legislative initiatives have been initiated by the Greek government from the commencement of 1980s centred on the development of fair and transparent labour market which renders special opportunity for women to help them in availing statutory rights<sup>360</sup>. The Jordanian Constitution, on the other hand, is withdrawing some fundamental rights of women even after making progressive moves of the monarchy and considerable investment made by the government of the United States to enhance democracy and human rights in the society<sup>361</sup>. Therefore, it is examined that Jordanian Constitution needs to rethink the innovative ways for promoting gender equality by inspiring local communities and grassroots not associated with Amman.

Germany is another populous country of EU with a significant proportion of women, and it is a democratic economy with a sound and inclusive social federal governance system; however, its performance in terms of managing gender equality is mediocre in relation to other member states of the EU. Article 3 of the Constitution claims the equality rights of both men,

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<sup>358</sup> International IDEA, 'Gender Quotas Database' (2020) < <https://www.idea.int/data-tools/data/gender-quotas/country-view/86/35> > accessed 9<sup>th</sup> July 2020.

<sup>359</sup> Mohammed Torki Bani Salameh and Samid A Darawsheh, 'Human rights in the Jordanian constitution: Between theoretical texts and practical application' (2018) 6 *IJHRCS* 71.

<sup>360</sup> *Ibid.*

<sup>361</sup> Freedom House. 2016. Why Is Jordan Backsliding on Gender Equality? [Online]. Available at: <<https://freedomhouse.org/article/why-jordan-backsliding-gender-equality>> accessed 9<sup>th</sup> July 2020.

and women; and constant developments are evident to encourage gender equality<sup>362363</sup>. However, the Jordanian Constitution is still at the initial level in this aspect as no clear provision stresses the term 'gender' in regard to the quality provisions. Even the Basic Law of the nation of 1928 links gender equality to the standards and norms of Islamic law which further hinder women rights<sup>364</sup>.

Austria also presents a long history of valuing gender equality and forbidding any kind of discrimination with the consideration of the Equal Treatment Act in 1979. Additionally, Federal Equal Opportunities Act emphasis aspects related to gender discrimination, both indirect; and direct; career advancement, and sexual harassment to women; and harassment issues. The government of Austria also shows dedication to attain equality regardless of gender in numerous spheres of life by enforcing aligning gender mainstreaming<sup>365</sup>. On the contrary, Jordanian Constitution has declared Islam as the prime religion of the society, and other religious groups in the community such as Christian experience issues in safeguarding their key rights in the prevalence of rising dominance of security forces and other religion is continually criticised by individuals<sup>366</sup>. The Constitutions of Poland and Portuguese are also influential enough in comparison to that of Jordan in practising equality irrespective of race, nationality, sex and religion; however certain loopholes do exist demanding few amendments that make the existing legal frameworks more compatible from the perspective of the new generation.

#### **Theme 4: Approaches for Establishing a Robust Legal Framework through Integration of Jordanian and European countries' constitution to Eradicate Discrimination and Promote Equality in Jordanian and European Nations**

JCC's legitimacy is deemed to be challenging in a monarchical regime as in the majority of democratic monarchical systems, courts can declare certain legislation to be unconstitutional, but judiciary does not have the right to strike down enforced law. On the contrary, in the UK, courts have the power to issue unconstitutionality of the law but

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<sup>362</sup> Ibid.

<sup>363</sup> Elisabeth Botsch, 'The Policy on Gender Equality in Germany', (2015) European Commission, 1-36.

<sup>364</sup> Hashemite Kingdom of Jordan, 'JORDAN' (2010) Available at: <<https://www.un.org/womenwatch/daw/Review/responses/JORDAN-English.pdf>> accessed 11<sup>th</sup> July 2020.

<sup>365</sup> Australian Presidency of the Council of the European Union, 'Gender Equality in Austria Milestones, successes and challenges' (2018) Available at: <[https://www.frauen-familien-jugend.bka.gv.at/dam/jcr:67b5975f-358e-474e-9b3c-5c81b3167fca/Gleichstellung\\_Broschuere\\_Ratsvorsitz\\_EN\\_RZ16.pdf](https://www.frauen-familien-jugend.bka.gv.at/dam/jcr:67b5975f-358e-474e-9b3c-5c81b3167fca/Gleichstellung_Broschuere_Ratsvorsitz_EN_RZ16.pdf)> accessed 11<sup>th</sup> July 2020.

<sup>366</sup> International Religious Freedom Report for 2018, 'Jordan 2018 International Religious Freedom Report' (2019) Available at: <<https://www.state.gov/wp-content/uploads/2019/05/JORDAN-2018-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>> accessed 12<sup>th</sup> July 2020.

disregarding the validity and applicability of law is not within the power of courts. Further, in the Netherlands, the constitution does not allow courts to review existing treaties, directives and laws. Hence, it is critically assessed that the capabilities and influence of the power of JCC is sensitive and contradictory to the functioning of law and the political system within the monarchical region. In a similar context, it is expressed in relation to the constitutional law within the European countries that it is essential for the Union to sign Article 6(2) of human rights so that the European Court of Human rights can exert supreme control over infringement of human rights values and equality norms. In addition, it is recommended that the European countries and the Union must propose a conditionality clause for implanting cohesion policy to ensure that the fund allocation is entitled to supporting State and not violating the rule of law and human rights values of the EU. As a whole, it is proposed that the new legal framework should include and mandate abidance with Article 7(1) TEU for fostering equality for new generations in the European countries and such clause need to be included in Jordanian constitution to mitigate discrimination<sup>367</sup>.

It is suggested in relation to JCC law that currently its competencies are limited to constitutional interpretation and constitutional supervision over legislation, so, it is beneficial to add conflict of jurisdictions and the preventive control within competencies of JCC. It is noted that JCC must take responsibility for resolving disputes or contradictory nature of distinct legal institutions functioning within Jordan. It is explained that the legal system of Jordan is pluralistic in nature as it encompasses civil system function and religious system<sup>368</sup>. The conflicting situation amid jurisdictions among various courts needs to be given to the courts. For example, the constitutional court in Spain has the power to exercise its influence in case of a dispute between self-governing communities and the state council. Similarly, it is found that Egypt's Supreme Court plays an effective role in dealing with jurisdiction disputes. In this line, it is recommended that the establishment of a legal framework that supports new generation and promotes equality in the society regardless of age, gender, sex and religion require two key procedural amendments<sup>369</sup>. It is expressed that abolishment of the constitutional role of Court of Cassation from JCC can enable in increasing accessibility of JCC. Further, proficient dealing with the cases of discrimination and inequality require the decentralisation of the case referral

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<sup>367</sup> Andrea Eriksson, 'European Court of Justice: Broadening the scope of European non-discrimination law' (2009) 7 *IJCL* 731, 735.

<sup>368</sup> Shams Al Din Al Hajjaji, 'Jordanian Constitutional Court: Toward a Democratic, Effective and Accessible' (2018) 5 *IJCL* 269, 275.

<sup>369</sup> Samuel Helfont and Tally Helfont, 'Jordan: Between the Arab spring and the gulf cooperation council' (2012) 56 *Orbis* 82,84.

authority. Judges must possess the right to direct a constitutional claim and transfer it to the JCC as it directly affects the ability of constitutional law to establish equality and ensure compliance with human rights principles. It is found in regard to Germany that it has given the power to all its courts to review certain laws, their implementation and constitutionality<sup>370</sup>. After gaining insights into the lacking dimensions of the Constitutions of different European nations and Jordan, it is recommended that a policy and legal framework which holds security actors accountable for overseeing any issue challenging equality. Developing such a system demands securing a political commitment from the top-most levels of leadership and appropriate management within different sectors to enforce policies and strategies related to response and prevention of any discrimination. It is important to outline operational policies, institutional policies and code of conduct for promoting zero tolerance for violence against females and direct the roles of polices and related uninformed personnel in areas like protection of survivors, incident response and referrals<sup>371</sup>.

The issue of reasonable accessibility duties and accommodation in line with the development of positive duties in the ECHR and EC law, positive duties are predominantly placed on national public bodies in the form of an outcome of the constitutional provision or domestic legislation. The main purpose behind such aspects is to attain substantive equality to a certain extent, and this as a crucial approach that can be embedded in the new framework robust enough to overrule discrimination and assure equality. It is vital to include the role of civil society in the legal Constitution of the country and in this relation the recognition of the position of civil society need to be outlined in terms of monitoring that human rights implemented to reinforce the knowledge of individuals as rights holders. This entails their right to involve freely, actively and rationally in the development of national human rights and development-oriented policy measures. It has been evident that the right to participation takes on the specific force for ones who remain, or have been subjected to marginalisation historically. It is a fact that the basic human rights norms concerning freedom of speech and freedom of association are integral for the agenda of women human rights to strengthen their potential to engage freely and coherently in the decisions which influence their enjoyment of numerous human rights. It is necessary to emphasise on making women's groups aware of the need for linking with the groups devoted to human rights for the purpose of bridging the human

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<sup>370</sup> Paz Andrés Sáenz De Santa María, 'The European Union and the Law of Treaties: A Fruitful Relationship' (2019) 30 EJIL721, 740.

<sup>371</sup> UN Women, Establish a strong legal and policy framework (Virtual Knowledge Centre to End Violence against Women and Girls) Available at: < <https://www.endvawnow.org/en/articles/1577-establish-a-strong-legal-and-policy-framework.html> > accessed 18<sup>th</sup> October 2020.

rights, as well as the development agenda. Such links are likely to have an intrinsic influence on the potential of women's groups to actively engage in the realisation of gender equality as an issue connected with rights in development<sup>372</sup>.

As human rights constituting equality are perceived in the international law as regulations enforceable only against the State and its agents, a substantial proportion of gender-based violence and gender discrimination will continue to remain outside the ambit of effective enforcement. Moreover, growingly infringements of fundamental rights through discrimination take place due to the actions and roles of non-state actors. Gender-based violence takes place in the family and in the society, and in most of the instances; the perpetrators are usually non-state actors and private individuals. It has been explored that economic policies have resulted triggered privatisation in developing, as well as developed nations and human rights and gender equality in case they are to be realised, need to be respected, accomplished and safeguarded both in the private and public realm. Thus, the constitutional provisions in the new framework committed to eradicate discrimination and attain equality, need to clearly enlist the responsibilities and obligations in regard to human rights and gender equality for both public as well as the private domain<sup>373</sup>.

## **6.2 Discussion**

The research has made a detailed comparative study on the constitutional aspects of members in European Union and Jordan. The comparative study has remained significantly focused on exploring the effectiveness of current constitutional elements in preserving the rights of a new generation without any discrimination on the ground of religion, nationality, race and sex. In order to examine it, qualitative based research has been performed focused upon performing an interview with the people having substantial knowledge of constitutional law and legislation and collecting data via distinct secondary sources. Based on the findings drawn from the collected data, it is discussed that the constitution is the crucial guide for a nation that prescribes the regulations concerning the functioning, organisation and power of the government. In Jordan and European Union countries' also, the constitution law is discussed to set out the limit for various functionaries of the state, roles and duties that help in becoming the ideal state. Along with this, it balances power between state and federal government, protects the citizens' rights, and guarantee various rights and provisions of the groups and

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<sup>372</sup> Savitri Goonesekere, 'A Rights-Based Approach to Realising Gender Equality' (DAW News Archive) Available at: <<https://www.un.org/womenwatch/daw/news/savitri.htm>> accessed 1<sup>st</sup> October 2020.

<sup>373</sup> Ibid.



individuals. The literary findings have supported the view in the light of constitutional theory, John Har Ely's theory and normative basis of the nature of hierarchical rules for its application in the development of the constitution.<sup>374375</sup>

On performing a detailed study of the constitutional elements of Jordan, it is discussed that in the country a robust constitution has been established in the country that does not lack fundamental freedom and any violation of human rights. The provisions of it are found in alignment with the international standards and policies, for which significant changes have been made in the country's constitution. However, on evaluating critically, a significant gap between theory and practice has been observed which was discussed in the findings in the case of Jordan. It is discussed in the gaps existing in between the secrecy of correspondence, freedom of movement, press and secrecy of correspondence that is found contravening to the international standards and agreements. In support of this, the literary evidence has highlighted the lack of clarity concerning to legal philosophy due to the controversial nature of Jordanian Constitutional Court, which was not in alignment to monarchical nature of the regime in Jordan<sup>376</sup>.

In contrast to this, across the European Union countries, the own source of law, international agreements and secondary legislation are examined as the key source of the countries' legal system. TEU, Charter of Fundamental Rights of the EU, TEFU, international agreements, principles of Union law and secondary legislation are examined as the prime source. In detail context to this, the literary findings have highlighted that European countries' constitution is highly effective in making the EU open and democratic that significantly focuses on ensuring the security, justice and freedom within the European Union's borders<sup>377</sup>.

The constitution of Jordan and European countries are based on constitutional monarchy that has been evolved with considerable changes in the legislations and integration of the new framework and articles. It has been discussed that political development, stability, equality and conflict management are critical concerns of the constitutions and thus, changes are undertaken to direct robust legislative system with the efficient judicial and constitutional system to safeguard individuals and political system of the countries. Review of the pertinent studies to gain knowledge of differences between Jordanian and European countries'

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<sup>374</sup> David A. Strauss, 'What Is Constitutional Theory?' (1999) 87 CLR 3, 582.

<sup>375</sup> Andrew Jordan, 'Constitutional Anti-Theory' (2018), 1524.

<sup>376</sup> Mohammad Alomari, 'Measuring social factors in e-government adoption in the Hashemite Kingdom of Jordan' (2010) 1 IJDS 2, 163.

<sup>377</sup> European Parliament, 'The European Constitution' (2005) Available at: <<http://www.europarl.europa.eu/Europe2004/textes/2005-01-10-brochure-constitution-en-v02.pdf>> assessed 9<sup>th</sup> February 2020.

constitution has indicated wider areas of differences. It has been discussed that both constitutions have a good number of laws for equality, privacy, human rights protection and individual freedom.

However, in the context of the comparison, European countries' legal framework or constitution are found more effective than Jordan. In Jordan constitution, it shall be required to focus on eradicating partiality to keep off differences due to race, religion, language and nationality. From the critique of the studies, it has been generalised that mixture of Islamic and civil law in the legal system of Jordanian constitution should focus on the separation of powers in relation to the executive, judicial and legislative for the efficient functioning of the new system or framework for the new generation. As per Article 6 of the Jordanian Constitution, it is crucial to emphasis on non-discriminatory practices to promote equal opportunity in the country. The flaws found in the constitution of Jordanian in contrast to the European countries' constitution indicated the need for the efficient implication to lessen the gap in the theory and practice. The incorporation of the changes in the norms is not limited to the stability of the political and legal system, while it focused on the protection of the rights of individuals in the country for their development. The review of the articles in the constitution of Jordan has indicted key focus on the protection of human rights, and their equality and freedom are to be initiated towards individuals and the country's development. The new legal framework is designed in the alignment of the objective of serving benefits to the community, so as to ensure development at the utmost extent. Citizens' security and safety along with respect for their rights shall be focused in the constitution of Jordan likewise in European countries to prevent issues of corruption and impartiality.

It has been argued that the Jordanian constitution needs to be improved specifically in alignment with the international standards and effective practical execution to secure rights of the new generation. Based on the critical assessment, it has been discussed that judicial controlling, along with democracy, would have a profound impact on human freedom irrespective of any discrimination. Jordanian constitution for human rights protection, economic rights and freedom of minorities in the country should be promoted. In contrast to the European countries' constitution, at present; the constitution of Jordan is comparatively less stable and thereby; development of the new legal framework.

From the above discussion, it can be concluded that there are various provisions against discrimination on the basis of caste, religion, gender and race in both Jordan and European countries. For instance, women in the country are discriminated on the basis of status and are considered inferior to men. In addition to this, the non-Jordanians in the country are not

included in the law and are highly discriminated. Same is the case with the European countries as laws are present against discrimination. However, they are incorporated only in a few states. Thus, it concluded that amendments need to be made in the legal framework of Jordan to eradicate the discrimination against non-Jordanians, women and remove corruption as well. In the same way, amendments in the legal framework of European countries must be made to strict actions should be taken against people who do not follow the rules.

The element of equality and human rights are considered in the constitution of Jordan, and it is one of the countries in the Arab region that has a chapter regarding the freedom and rights of the people. The constitution has stated that every citizen of the country is equal to the law and has equal rights and duties without any discrimination on the basis of region, caste and colour. Article 5 defines the claims of the nationality of the people, and Article 6 defines that all the citizens of Jordan should be considered as equal in law. However, there is some element of discrimination that are rooted in the cultural beliefs and due to which the law is unable to implement equality properly in the country. This fact is verified with the findings of literature as Article 185 of JPSL has authorised *Wali* as a legal guardian of women below the age of 30 years. On the other hand, *Wali* is only able to make decisions of male till age 18 years that is the main point of discrimination against women in the country<sup>378</sup>.

It can be discussed in the light of the comparative evaluation of Jordanian constitution and constitution of France that French constitution is developed and enacted with focus on liberty, fraternity, and equality of citizens and democratic development of the nation. Article 1 ensures that France remains secular, democratic and social republic and every citizen must be guaranteed equality on the grounds of religion, origin or race before the constitution. It is analysed in regard to gender equality that in France, constitutional provisions foster equal access via males and females to elective offices and posts in addition to professional positions and social liability. A bicameral parliament in France supports and promotes the utilisation of voluntary and legislated party quotas for the upper as well as the lower house. In a similar manner, Jordan also observes bicameral parliament, supporting legislated quotas for the upper and lower house with mere 15% seats reserved for the female population in the lower house. France became the first nation which introduced a compulsory provision of 50% gender

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378 Afaf Jabiri, *Gendered Politics and Law in Jordan: Guardianship Over Women* (PALGRAVE MACMILLAN 2018).

equality, which resulted in around 40% seats reserved for female candidates in lower house and approximately 33% seats in Senate<sup>379</sup>.

It is evident from the statistics and the above-presented information that there is a huge gap concerning women participation, their political representation and gender parity in France as an EU nation and Jordan. Jordanian constitution needs to be amended and integrated with provisions that promote equal rights and participation as well as a compulsory reservation for women in parliament. It is pointed out that the education system plays a crucial role in promoting gender equality and women's political presentation; hence, the French Code of Education is regarded to be a vital element of the constitution. As per French Code of Education, it is essential for primary and secondary schools and the higher educational institutions to promote gender equality, particularly for the orientation objectives. On the other hand, in Jordan, despite significant advancement and investment in human rights and the progressive monarchy, the position of women has deteriorated in terms of their rights and equality. There is a significant focus on human rights protection and non-discrimination on the grounds of race and religion in France as enacted in the preamble of the French constitution. In contrast, the literature reveals that due to wide gap between actual practice and theoretical context in Jordan, there is a need for major improvements in actual implementation to ensure preserving fundamental rights and alleviating discriminatory practices on the basis of gender, race and religion<sup>380</sup>.

It is noted in relation to the Greek constitution and Article 22 that all employees regardless of gender or other distinctions are subjected to equal pay for similar work profile or any work performed which is of the same value. Several legislative initiatives are undertaken via the Greek government since the 1980s for establishing and sustaining a fair labour market, affirming statutory rights of women. However, there is a need for proper monitoring and strict punishment for organisations or employers involved in indirect discrimination in Greece under constitutional amendments. Moreover, the Jordanian constitution has enacted measures for strengthening and promoting women's fundamental rights in the region as a result of investments made via the US government, but gender inequality persists at the grass-root level in Jordan, and no major improvements are witnessed due to strong embeddedness of patriarchal culture and the conservative stereotype norms. The Greek constitution demonstrates freedom

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<sup>379</sup> International IDEA, 'Gender Quotas Database' (2020) Available at: < <https://www.idea.int/data-tools/data/gender-quotas/country-view/86/35>> accessed 20<sup>th</sup> October 2020.

<sup>380</sup> Freedom House, 'Why Is Jordan Backsliding on Gender Equality?' (2016) [Online]. Available at: <<https://freedomhouse.org/article/why-jordan-backsliding-gender-equality>> accessed 25<sup>th</sup> October 2020.

with respect to religious conscience, and it prohibits offences that contravene religious peace consisting of blasphemy and harm to religious sentiments to be punishable with around two years' imprisonment<sup>381</sup>. However, incidences of religious discrimination, hate speeches, vandalism and anti-Muslim assaults are often reported in Greece irrespective of a strong emphasis on the constitution in minimising religious and racial discrimination. It is suggested that the Greek constitution needs modifications to regulate or alleviate religion-based violence and abuse, damaging harmony and morality in society. Moreover, it is assessed in regard to human rights protection in Greece that the presence of stringent provisions in restricting human rights violation contributed to strengthening rights of vulnerable groups, LGBTI, refugees and women. The Jordanian constitution has not made any remarkable progress in protecting and giving effective legal status to migrants as Syrian and Iranian refugees often struggle to gain a legal identity and protect their fundamental rights<sup>382</sup>.

It is illustrated with regard to Germany's legal framework relating to gender parity and Article 3 that specific attention is given to gender equality in the public and private domain, but a gap is observed in pursuance and effective implementation of the gender mainstream ideologies. The anti-Discrimination agency is contributing towards providing fair support to individuals facing inequalities on the basis of ethnicity, gender, sexual orientation, disability, age and religion. Similarly, the Jordanian constitution also gives priority to equality and human rights with the ratification of labour law, civil status law, social security law and interim personal status law. However, it is evident that the Jordanian constitution does not differentiate any equality provision and regulatory measure with specific reference to gender. Gender equality principles in Jordan are still heavily influenced or linked via the Islamic law standards that do not boost female rights in the contemporary era<sup>383</sup>. Overall, there is a major requirement to form comprehensive and clear legislation to promote gender equality in Jordan for which reference can be taken from European countries' constitutions and Gender Equal Treatment Act. This Act affirms racial equality, gender equality for services and products and employment equality so that citizens can be protected from any prejudice in civil services, private services, employment law and social situations. Further, Article 1 mandates protection of respect, dignity and autonomy of individuals in the nation. Germany abides by the conventions of the European

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<sup>381</sup> The Constitution of Greece. 2020. The Fifth Revisionary Parliament of the Hellenes Resolves. [Online]. Available at: <<http://www.hri.org/docs/syntagma/artcl25.html>> accessed 1<sup>st</sup> November 2020.

<sup>382</sup> Mohammed Torki Bani Salameh and Samid A Darawsheh, 'Human rights in the Jordanian constitution: Between theoretical texts and practical application' (2018) 6 *IJHRCS* 71.

<sup>383</sup> Hani Ahmed Shboul, 'The Relationship between Religion and State in Jordan (Historical Perspective)' (2018) 4 *IJHCS* 49.

Court of Human Rights and imposes strict fines against human rights violation. On the other side, Jordan experienced human rights violation in the areas of free expression, free assembly and rights of women. Poor constitutional measures and Article 9, which restricts marriage of non-Jordanian individuals with Jordanian women exhibit prominence of gender inequality and human rights violation in Jordan and the need for constitutional amendments<sup>384</sup>.

On the basis of gathered and analysed data, it is found that Austria, a member country of EU has a long record of offering gender equality as apparent from the implementation of the Equal Treatment Act in 1979 with the main agenda of affirming the participation and remuneration of women is same as men in the private domain. Following this, the Equal Treatment Act was implemented in 1993 within the Federal Service for rendering special support to women in work-life; and the law also started regulating women quota. In addition to this, it can be discussed that Austria's Federal Constitution Law employs the Equal Opportunities Act and Federal Equal Opportunities Act to guarantee gender equality in the economy. Federal Equal Opportunities Act of Austria stresses covering aspects such as gender discrimination both directly or indirectly; career advancement, sexual harassment aspects to females and affirmative action plan; and issues related to harassment. The Act is identified to be the effective element that can be considered by the government in Jordan for fostering equality of rights for the new generation. A strong commitment was also evident in 2000 whereby the country's Federal Government emphasised achieving equality for men and women across different spheres of life by enforcing gender mainstreaming<sup>385</sup>.

On the other side, Jordan Constitution does not contain any particular legislation to oversee gender-based violence and gender mainstreaming that is a critical issue expanding across the workplaces. In the political contexts also, the consideration of women quotas in the national and municipal administration is very low, and the existing Electoral Law of the country is not effective enough in terms of promoting women engagement in the political world. In contrast to this, Austria continued as the member state of the Human Rights Council in 2019-2021 for supporting human rights. The country has also ratified the conventions documented in the agreements like International Covenant on Economic, Social and Cultural Rights (1966), International Conventions on the Elimination of All Types of Racial Discrimination (1965) and International Covenant on Political and Civil Rights (1966). The Jordanian Constitution, on the

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<sup>384</sup> Elisabeth Botsch, 'The Policy on Gender Equality in Germany' (2015) European Commission, 1-36.

<sup>385</sup> Lisa Herburger, Peter Koller and Roberta Schaller-Steidl, 'Gender Equality and Non-Discrimination Laws in Austrian Higher Education', Federal Ministry of Science, Research and Economy, 2.

other side, even after forbidding the violation of human rights, has failed to control a variety of human rights issues. The issues regarding torture by officials, arbitrary arrest, detention and obstruction on freedom of press, expression; violence against LGBTI and women honour killing have been identified as the leading barriers to the promotion of human rights in Jordan. It has been evaluated that such issues are obstructing freedom of speech, dignity, equality and different forms of human rights in the country<sup>386</sup>.

It is also evaluated that people in Austria have statutorily assured freedom of religion from the last two centuries; commenced with the Patents of Tolerance 1781-1782 that is constitutionally assured by Articles 14. Jordanian Constitution has established Islam as the religion of the region and prevents all kinds of religious worships and rites in the economy until they are integrated with the public order and morality. Moreover, Sharia courts unlike the courts of Austria hold the jurisdiction of different matters of Muslims as per the Constitution, and Christian groups face different problems in safeguarding their rights mainly because of the growing dominance of security forces and soaring criticism of the religious practices by the public at large<sup>387</sup>. Therefore, it is deduced that Austria just like other European Countries is progressive enough in upholder gender equality and human rights whereas Jordan needs to make significant amendments in the existing legal system and norms to improvise the prevalent scenario.

The Constitution of Portugal also values the principle of equality within Article 13 and assures that every resident shall be treated equally and be entitled to the same social dignity in front of the law. The Constitution especially mentions that no citizen shall be privileged, favoured, or exempted of any important human right on the basis of race, religion, language, sex, sexual orientation, economic condition, and political belief. The Portuguese Constitution sets down the doctrine of gender equality and thrives for alleviating gender disparity in the economy, and the key agenda of the State is to elevate gender equality within the domain of human rights. The country also refined the law to eradicate varied types of discriminatory practices targeting females in 1980 and emerged as the first member state of the EU to ratify the convention on equality and gender. Apart from these important attempts have been made by the country to empower women and control any violation of their fundamental rights. The plans to address the challenge of domestic violence in Portuguese have been extensively

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<sup>386</sup> A National Coalition led by the Arab Women Organization, 'Women's Rights in Jordan' (2013) < Available at: <<https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=538&file=EnglishTranslation>> accessed 1<sup>st</sup> November 2020.

<sup>387</sup> USAID, 'Gender Equality And Female Empowerment' (2021) available at: <<https://www.usaid.gov/jordan/gender-equality-womens-empowerment>>. accessed 27<sup>th</sup> April 2021.

effective, and their effect is highly apparent in the Portuguese community. Government is also playing a leading role in encouraging gender equality by assisting voluntary organisations, municipalities, ministries and businesses in designing and enforcement of gender equality plans by supporting funding programs<sup>388</sup>. In contrast to this, Jordanian Constitutional law even after containing provisions to promote fundamental freedoms and human rights which are also aligned with international human rights systems, lacks behind in assuring their application in real-time and thus the norms are confined to theoretical texts only. Issue of human rights infringement largely challenging equality and fair treatment of women in the society reveals an urgent need for significant improvements especially by emphasising on the secrecy area of communication, freedom of opinion and press<sup>389</sup>.

Poland is also constantly working to guarantee equal status to all individuals in front of the legal system and prohibits any form of discrimination in the community's economic, political and social sphere. Poland's abidance with the principles of the EU helped in laying down a legal framework with clear equality rights and certain major reforms within the labour code helped to ensure equality at different levels of the society<sup>390</sup>. Gender mainstreaming process of Poland has been widely influenced by the core gender equality policies of the EU as Poland has entered into different projects focused on extending equal opportunity to men and women as co-introduced by the European Social Fund. However, the country lacks a separate body to direct and monitor the rights of women and prevent infringement of their fundamental rights<sup>391</sup>. However, even after some lacking aspects in Poland's constitutional provisions, its condition is far better than Jordan where religious norms and rules still undermine equality and human rights.

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<sup>388</sup> Octavio Amorim Neto and Marina Costa Lobo, 'Portugal's semi-presidentialism (re) considered: An assessment of the president's role in the policy process, 1976–2006' (2020) 48 EJPR 234.

<sup>389</sup> Eduarda Ferreira and Maria João Silva, 'Equality policy in Portugal: the case of sexual orientation' (2011) CDICS142.

<sup>390</sup> Alexandra Gerber, 'The letter versus the spirit: Barriers to meaningful implementation of gender equality policy in Poland' (2010) 33 WSIF 30.

<sup>391</sup> European Institute for Gender Equality. 2020. Gender mainstreaming in Poland. [Online]. Available at: <<https://eige.europa.eu/gender-mainstreaming/countries/poland>> accessed 6<sup>th</sup> November 2020.



It is evaluated from the themes that women of European countries enjoy autonomy and freedom at a greater level as the provisions of equal pay along with social and religious equality. The principles of equality and human rights are considered as foundational values of EU, and due to this, they are included in the constitution of member states. Article 2 of the treaty on EU especially focuses on democracy, equality, human dignity, autonomy and equal rights to every citizen. One of the most prominent factors that are reflected in the constitution of almost all countries includes equality and non-discrimination norms that advocate dignity and respect for every citizen. It is also reflected in the literature that the issue of gender equality is considered as hard and soft policy instrument that helps in maintaining gender equality in the member countries<sup>392</sup>. On the other hand, the concept of equality is enshrined in the constitution of the member state of EU as it ensures economic, social and political equality to the citizens of member states<sup>393</sup>. Moreover, it is also evaluated that the constitutions of member states of the EU provide equality to the members starts at a larger level. On the other hand, it is also analysed that the constitution of Jordan also provides equality to its citizens and has provisions against discrimination.

It is evident that there are major differences, such as neutrality of state and religious state, and there are differences in the legal system itself. It can be also established that even similarities, which are seen as such at first glance, cannot be assessed as genuine similarities. This is the case, for instance, with the understanding of the separation of powers. This short comparative note has revealed that there are many aspects of constitutional law that still need to be analyzed in the context of Jordan and European states.

### **6.3 Conclusion**

With respect to the first objective of the research, the European countries' constitution has been classified into four sections. The first section is named as Part I, which is the fundamental part of the European countries' constitution. It describes the powers, citizenship, decision-making rules, aims, values and the Union's budgetary setups. The second section is the Fundamental Rights' Charter (Part II), which considers the protection of the citizens against the EU law that may go against their basic rights. The third section is named as functioning and policies of the Union or Part III, which merges the articles of the previous treaties,

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<sup>392</sup> Emanuela Lombardo and Maxime Forest, *The Europeanization Of Gender Equality Policies* (Palgrave Macmillan 2012).

<sup>393</sup> Malcolm Ross and Yuri Borgmann-Prebil, *Promoting Solidarity In The European Union* (Oxford University Press 2010).

regarding the policies of the European Union, into one Constitutional Treaty. The fourth section, that is, final and general provisions (Part IV) focuses on the operations that should be considered by the Member states in order to rectify and amend the changed Treaty of European countries' constitution. In the European Union, there are different states and each of the state has a different constitution. This research objective reflects different aspects of different constitutions of Member states of the EU. On the basis of this discussion, it can be concluded in different constitutions there are various rules and legal considerations which are having different impacts and implications of contemporary society.

In alignment with objective two, it can be concluded that constitutional law is very crucial in countries as it sets how the laws governing the people, rules and regulation of the country will be set. There are various components of the constitution of a country. In the context of Jordan, the constitution is divided into nine parts. The first component is based on state and government system, and the second is based on rights and duties of the people living in the country that is Jordanians. The other components encompass general provisions of the nation, executive power, legislative power, the judiciary, financial matters, general provisions and enforcements and repeal of laws. It has also been inferred from this objective that the constitution of Jordan is considered to be the most mature constitution in the Arab world and is also a constitutional monarchy that is an independent sovereign Arab state. The constitution of Jordan of 1952, the fundamental rights and duties of the citizens are mentioned in the article 5-23. The citizens of Jordan can exercise these rights based on their citizenship. It has also been inferred from objective two that the constitution of Jordan considers no discrimination against the people living in the country or the citizens of the country, that is, Jordanians. For instance, article 6 states that there can be no discrimination against the citizens of Jordan based on caste, religion, race and gender. However, this does not include non-Jordanians living in the country. Thus, it is evident that amendments need to be made in the constitution of Jordan according to the present world so that there is no discrimination among people no matter which country they belong to and live in.

From objective three, it can be concluded that constitutional theories are observed to play a vital role to govern and guide the framing of a constitution. It is inferred that the constitutional theory is a decisive framework that has conflict images which are shaped between the Supreme Court and the political branches of the new deal. In this objective, John Har Ely's theory of judicial review has been defined according to which the judges need to limit themselves for questioning the process as it has helped in ensuring the judicial review democratic legitimacy.

This objective has also revealed that the framing of the constitution is based on the decision making that consists of a review of the judiciary and the study of the decision of the power of the judiciary. Many authors are observed to define constitutional theory to be both descriptive and prescriptive. In contrast, many authors are observed to have the opinion that constitutional theories aim at specifying the meaning of the constitution and its importance to make effective decisions. It has also been inferred that the constitutional theories are linked to the normative basis based on four categories which are metaphysical, positivist, procedural and substantive.

According to Kelsen's theory of constitution, it is claimed that constitutional texts depend mostly on foundational decisions which is reflected in the conventional rules. The rules are observed to play a crucial role in guiding the constitutional order in both Jordan and European countries. It is inferred that the Jordanian constitution assures that there is a clear separation between three organs of the state, which are legislative, executive and judiciary branches. However, in the European countries doctrine of implied powers is observed to act as the main theory of constitution.

From the fourth objective, it has been concluded that the State of Law and Rule of Law theoretical postulations of the Constitution has suggested a vast development, as well as the history of the country's constitutional aspects. Substantial changes have been noted in Jordan's constitutional aspects, wherein the sovereignty of nation's rule is noticeable as the most critical democratic rule of the new community. The liberal Constitution's enactment was observed in 1952 by the country's first Parliament; however, upto 1954 amendment, the considerable Constitution's democratic features have remained inferior in the country. The 1952 amendment in the Jordanian Constitution has stated the country's ruling system as parliamentary along with hereditary monarchy; however, the King's majesty is claimed as the superior of the state branches, namely judicial, executive and legislative.

It has also been opined that Jordanians had experienced many pioneering democratic experiences in the early years and had also highlighted several amendments that led to the loss of many democratic principles. The substantial transformation has been observed from 1942 to 1946 and 1946 to 2012. Under King Abdullah II leadership, Jordanian has witnessed changes, wherein the country has examined to be stable in the state turmoil from Iraq to Syria. The democratic reform was essentially made in order to ensure safety and security. Later, in the initial period of 2016, the Parliament has authorised the constitutional amendments that have supported the power of the executive at legislative and judiciary cost.

Furthermore, Jordan's constitutional theories have been modified in specific to unification or association similar to constitutional practices or law in the EU. The practical and theoretical alignment ensure the legislative system to be transparent that is an essential part of the impartiality and equality. Political power and effective governances are other significant changes observed in constitutional theories and practices in the European countries and the Jordanian Constitution.

It has also been noted that constitutional theory is subjected to change in specification of the connection with the society to assure respect to the legitimation as consideration to the state and social connection contributes to creating robust political system. In Jordan's legal and political system, it is essential to develop a change in the specification to the integration and identification of the cultural features. The Constitutional theories are essentially concerned with the elements that develop a strong political system to accelerate legitimacy in the present legal framework.

In alignment with objective five, it is inferred that there are many differences between the constitution of European countries and that of Jordan. It is concluded that Jordan is observed to follow a constitutional monarchy and the current monarch of Jordan is offered the position of chief executive and commander in chief. The executive powers are under the king of Jordan. However, the judicial branch of Jordan is independent. In contrast, it has been inferred that only in some countries of Europe, constitutional monarchy is followed, which resulted after the French revolution. It is examined that the Jordanian Constitution framework stresses on equal rights for every Jordanian as in Article 6 of Chapter II it demonstrates that every citizen is equal before the law. The Jordanian Constitution also values no discrimination concerning rights and duties based on religion, race or language. However, still, certain loopholes exist with the Constitution, and this includes lack of specific context on women that certainly bounds the applicability of the tests to men and might also be reliant on the interpretations made by individual judges. It is deduced that lack of specific references to avoid the discriminatory acts concerning sex, the basis of hindering discrimination in routine laws and practices and obstructing women rights are the main limitations in the Jordanian Constitution. Further, traditional stereotypes are still prevalent in Jordan, which are devoted to justifying discrimination against females, that influences their engagement in the political and public domain. Thus, the political structure of Jordan is male-dominated and implicitly prioritises the needs of male populations.

The education sector of Jordan provides equal access to men and women and result in fostering an educated population with a substantial potential to speed up the economic, political and

social development of the country. However, a considerable gap still exists for females among constitutional rights and effective social norms. Therefore, disparities exist in the Jordanian Constitution in regard to gender signifying the need for promoting gender equality. On the positive note, it is identified that the country is growingly emphasising on liberalisation for guaranteeing liberal atmosphere to the citizens. However, the religious authorities of the country have the right to entitle social entitlements to particular groups which generate religious minorities. It is further recognised that the Constitution of France proclaims robust connectivity with the rights of people and national sovereignty principles and Article 1 asserts that the country shall be secular, democratic and social Republic. The French Code of Education is a key component of the Constitution intending to promote equality between men and women and acknowledges gender-based equality as a legitimate responsibility. Thus, the Jordanian Constitution can embrace key points from the Preamble of France 1958 (rev.2008) to stimulate gender equality and develop an equitable society.

Further, the Constitution of Greece specifies that every worker irrespective of sex or any other distinction shall be awarded to reasonable pay for work of similar value. The Constitution also considers human rights issues of the economy such as the challenge of refoulement of asylum prospects, criminalisation, corruption and violent acts targeting certain groups such as LGBT. The Portuguese Constitution encompasses the doctrine of gender equality and thrives for eradicating gender discrimination in social and political structures. Advancing gender equality is the central aspect of the State under the category of equality and human rights. Significant progress has been recently evident in the country's gender equality policy; however, certain threats have emerged from the austerity plans. In comparison to Germany's Constitution in supporting women participation in the economic domain, the Constitution of Jordan is debilitated portraying the restricted involvement of women. Thus, the Jordanian Constitution can incorporate certain changes as per the constitution of different European countries that are effective enough in forbidding inequality on the basis of religion, culture or gender.

It can also be concluded that Jordan is a free sovereign Arab state. However, the EU is formed due to European integration. It is also observed that European countries follow a composite structure consisting of devolution, federalism and regional states and the power is divided between states and central government, however, in the case of Jordan, the constitution followed several developmental stages, and the final one was in 1952 which was capable of addressing the issues. The Jordanian legal system is a mixture of Islamic religion and civil law.

It is significant for the Constitution of Jordan to separate the powers of the state by dividing them into legislative power, executive power and judicial power.

All these powers are controlled by a particular monarch that is bound by the Constitution. However, the legal system of the EU constitution is divided into three groups, that is, common law system, bi-judicial system and civil law system. The bi-judicial system comprises of both civil law and common law, and the civil law is similar in all the states of Europe except Vatican City, which follows religious law. As discussed earlier that Jordan follows constitutional monarchy, the Hashemite Kingdom's throne is ruled by the King.

The King of the Kingdom is the main commander and has the powers to order an election and appoint the Prime Minister. However, the European citizens have the right to vote and elect their preferred members and choose the candidate of the parliament. Both the Constitution of Europe and Jordan focus on no discrimination on the ground of race, language and religion. However, the European countries' constitution also focuses on no discrimination on the basis of nationality.

From objective six, it can be concluded that suitable approaches are needed in the legal framework to eradicate discrimination in both Jordan and European countries. It is necessary because the legislative framework of Jordan is not unified, and the political equality and stability is absent in European countries.

Thus, to counter these, amendments need to be made in the legal framework. The essential focus of change concerning the Jordanian Constitution is oriented in the direction of democracy building that directs to ensure political stability and development. Another real and significant change in Jordan can be the development of the Constitutional Court which will help in establishing the wide and effective legal framework and jurisdiction. Modified legislation was adopted in March 2007 in the specification of the Constitution of Jordan's political life. Other essential changes in constitutional theories and practices in the constitution of European countries and Jordan are political power and effective governance. This change would result in good freedom of citizens due to the separation of King's power at the legislative, executive and judicial level.

Overall, it is inferred that the system of government in Jordan is based on the separation of the three powers (Legislature, Executive, and Judiciary). According to the Jordanian Constitution of 1952, which has specified the mandate of the three authorities, every authority shall exercise its mandate without interference into the business of the other authorities. The relationship between these three powers is balanced, complementary, participatory and flexible. The Jordanian Constitution provides for the separation of powers between the

executive, legislative, and judicial powers of government by laying down the articles relating to each power in a separate chapter from the other powers. They are regulated in such a way that guarantees that the three powers do not interfere with each other. The intention behind this is to prevent the concentration of power and provide for checks and balances.

I observed from the discussion that there exists a significant difference between the constitutional law of Jordanian and European countries. On the one side, the legal system in Jordan combines both Islamic religion and civil law while on the other side the legal system in European countries follows the bi-juridical, common law system and civil law system. In particular, I got to know that Islam is the basis of the constitution in Jordan, which is found to be different from the constitution in European countries. I also found that the major difference also exists between human rights laws in both Jordanian and European countries. The human rights concepts in Jordanian constitutions do not provide fundamental freedoms to citizens. The constitution that was established in the year 1952 regarding human rights is still being followed today in Jordan that provides a guarantee to protect its citizens and their human rights. Nevertheless, in reality, the life of citizens is not found actually protected as per the provision of the constitution in Jordan, but the human rights constitution in the European countries is very strict in safeguarding and protecting their citizens. However, the constitution of monarch rule in both Jordanian constitution and European constitution is found to provide the more power to the president and prime minister in Jordan to control and govern as compared to King or Queen.

It is concluded that the purpose of the idea of separation of powers is to ensure that governance of the State should not come within the sole authority of one organ of the State. The idea of the separation of powers is aimed at preventing abuse of power and safeguarding freedom for all. Therefore, the authorities must be separated to prevent the onset of tyranny, by limiting power concentrated in one individual or in one institution so as to balance and limit government power. There are three functions of government, the legislative function is performed by the law-making body, the executive function is carried out by the law-applying body and the judicial function is fulfilled by the law-enforcing body. If one power of government overreaches its power or infringes on the rights of citizens, the other power can intervene.

Thus, in regards to the main research question of the study, it can be stated that the comparative study has turned out to be beneficial for the study as it clearly demonstrated the common components and the diverse components of the constitutions of European countries and the

Jordanian Constitution, which distinctly demonstrated the flaws in the constitution with regards to discrimination on the basis of sex, nationality, religion and race. Along with flaws, it has also helped in identifying the positive approaches included by the countries in their constitutions in order to foster equality among the citizens. This comparison has significantly helped in identifying the direction following which a new framework can be developed for the present generation that can give them a nation, free from discriminatory practices. Thus, in consideration of the first sub-question of the research, significant dissimilar and similar elements have been perceived in European countries' constitutions and the Jordanian Constitution. For instance, Austria's Federal Equal Opportunities Act concentrates on aspects like indirect and direct gender discrimination; aspects of sexual harassment, and career advancement to women, along with action plan; as well as other harassment issues. The Federal Government of the country significantly concentrates on establishing equality among women and men in the country. In a similar context, The Constitution of France also gives significant emphasis to gender equality and also has legislation that concentrates on fostering equality among men and women. In contrast, the Jordanian Constitution does not have any significant law that concentrates on diminishing gender-based violence.

In regards to second sub-question, Federal Equal Opportunities Act of Austria is an effective element that can foster equality of rights for the new generation. Furthermore, the Portuguese Constitution's Article 13, which values the norm of equality and assures equal treatment of citizens, is also an effective element to establish equality in the country. In addition, the abidance of Poland with the EU's norms also guides in establishing a framework that can foster equality. In a similar context, the Portuguese Constitution's Article 41 also offers freedom of worship, conscience and religion to the citizens, which is also an efficient element. In addition, Article 3 of the Constitution of Germany also proclaims equal rights for women and men. The Constitution of Greece's Article 22 specifies equal pay to both men and women in the country. Another most significant element is the Code of Education of France that significantly contributes to fostering equality among men and women in the country. All these components can effectively contribute to enhancing equal rights for the new generation. However, in regards to the third sub-question, major lacking is witnessed in the Constitution of Jordan as it fails to provide equal rights to the citizens, and also lacks a legal framework that concentrates on reducing gender-based violence in the country. Even the Constitution of Poland has failed to provide protection to the rights of the citizens in the country. Nevertheless, considering the fourth sub-question, it can be stated that the countries have started giving attention to the issues



of inequality in the countries, and reforming their constitutions accordingly to promote equality in future.

## **Chapter 7: Recommendations and Development of Effective Legal Framework for New Generation**

### **7.1 Recommendations**

Based on the comprehensive review and comparison of Jordanian constitution with the European constitution, and the gaps identified in protecting the rights of new generation and promoting human equality in Jordan, the current section of the chapter aims at proposing a suitable range of recommendations to strengthen the domain and address the gaps. This is proposed in reference to presenting the current state, and then measures are recommended. In reference to this, it is reviewed that the Constitution of the Jordan can be amended to encompass other basic principles of the law that lay significant importance on the human rights of people irrespective of race, caste, religion or gender. One of the areas that require improvement is extending the applicability of the constitution to all the people living in Jordan, which also includes non-Jordanians in regards to the International Covenant in Civil and Political Rights. In addition to this, there should also be no discrimination between a Jordanian and a non-Jordanian resident based on rights, for instance, the right to freedom of expression.

Another crucial area related to this context is the right to non-discrimination and equality before the law. The basic principle to which Jordan has already taken steps is the non-discrimination on the basis of sex, race and religion. However, the country can make amendments in its constitution enshrining non-discrimination in particular women who face disadvantages under the current Jordanian laws such as discrimination on the basis of personal status and in passing on their nationality to their children<sup>394</sup>.

The legal framework of Jordan can also strengthen the right to freedom of expression, association and peaceful assembly in the constitution by removing the current limits on these rights under the domestic law and exceed those which are permitted under international law. The legal framework of Jordan can also include an explicit prohibition of torture and ill-treatment that is in alignment with the convention against torture and cruelty and inhuman and degrading treatment or punishment. In the year 2008, the Constitution of Jordan criminalised torture to people. However, it failed to criminalise ill-treatment or inhuman and degrading treatment or punishment. There are also recurrent allegations regarding torture in Jordan. Therefore, the constitution can make amendments and create provisions against torture. It

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<sup>394</sup> Human Rights Watch, 'Jordan: Letter with Recommendations for Constitutional Revisions' (2011) 2020 Available at: <<https://www.hrw.org/news/2011/07/05/jordan-letter-recommendations-constitutional-revisions>> accessed 18<sup>th</sup> February 2020.

would help in sending a clear signal and strengthen judges and prosecutors in order to eliminate this prohibited practice<sup>395</sup>.

In addition to this, the legal framework of Jordan can encompass the reference to the rights to work, education, health and social security. Currently, the Constitution of Jordan is observed to provide the right to work, however, the international obligations of Jordan under the International Covenant on economic, social, and cultural rights and carry with them state duties in order to have a progressive realisation of these rights. Therefore, the legal framework of Jordan can make amendments and guide the lawmakers and the government officials so that they can formulate new laws and policies that can be helpful in order to address the rights discussed<sup>396</sup>. It is also recommended that a proposed change can be included to have an independent election and political part laws in Jordan. Therefore, Jordan can consist of an independent electoral commission under the judicial provision and further the country can also make amendments in the constitution to have international right to have timely, free and fair elections in the country. Currently, it is observed in the country that the fairness of the polls conducted are not up to the mark, namely the vote of one elector is not equal to the vote of another. Therefore, amendments can be made in the legal framework of Jordan regarding this<sup>397</sup>.

The EU law has introduced many social protections and rights, such as environmental standards, consumer and employment, as well as equality and data protection. However, its influence has rather been rough and ready. Therefore, greater consistency and coherence is required to be obtained by embracing internationally-recognised social, environmental, economic and cultural rights into the European Countries' constitution. The foreign rules-based order should be developed in order to guide security and peace, promote and protect human rights, as well as sustainable development. At present, it is approaching under pressure from individuals, who prioritise his/her, self-interest over the foreign organisation. Embracing the

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<sup>395</sup> OECD, 'Enhancing the legal framework for sustainable investment: Lessons from Jordan' (2019) Available at: <<https://www.oecd.org/mena/competitiveness/Enhancing-the-Legal-Framework-for-Sustainable-Investment-Lessons-from-Jordan.pdf>> accessed 23<sup>rd</sup> February 2020.

<sup>396</sup> Ilia Shalhoub, 'Comparative Report on the State of the Judiciary in Egypt, Jordan, Lebanon and Morocco' (2019) Available at: <[https://www.ifes.org/sites/default/files/comparative\\_judiciary\\_report\\_final.pdf](https://www.ifes.org/sites/default/files/comparative_judiciary_report_final.pdf)> accessed 23<sup>rd</sup> February 2020.

<sup>397</sup> UPR, 'Database of Recommendations' (2020) 2020 Available at: <[https://www.upr-info.org/database/index.php?limit=0&f\\_SUR=86&f\\_SMR=All&order=&orderDir=ASC&orderP=true&f\\_Isue=All&searchReco=&resultMax=300&response=&action\\_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly](https://www.upr-info.org/database/index.php?limit=0&f_SUR=86&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Isue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly)> accessed 1<sup>st</sup> April 2020.

rights in the constitution, the countries would be driving a welcome support signal for the foreign rules-based order<sup>398</sup>.

The European Commission has attempted to secure more systematic and greater public participation in the formation of the policies of the European Union. However, the Commission must consult on a large scale prior to proposing legislation, and should also develop and publish consultation documents wherever appropriate. The European Countries' constitution should develop requirements for the European Council when the Council acts in the legislative capacity. The constitution should also propose the needs for the Commission, ensuring active and early public participation in every policymaking. The constitution must develop requirements for the European Court of Justice in order to provide access to justice to the Non-Government Organisations. The Parliament of Europe should not be elected in accordance with national law. Instead, every European party should be elected as per the wide European program based on an election system of Europe<sup>399</sup>.

Parties must be motivated to present practicable and realistic election programmes to the process of election. The European Union also requires enhancing its capability to act; however, simultaneously, the principle of subsidiarity should not be ignored in order to provide respect to the Member states' sovereignty. In order to do so, competencies need to be assigned in accordance with expertise correspondent to a federal system where competencies are interconnected with the environment in which the most efficient administration is possible<sup>400</sup>. The growing constitution of treaties should also end, which means the introduction of a lean European Countries' constitution. The European Countries' constitution should not be imperilled to political deliberation on a daily basis. The EU should promote international regulatory cooperation because informing one another and cooperating with each other on the earlier duration of the process helps the competent authorities and regulators come up with appropriate solutions to similar issues, concerning their respective standards and policy objectives. The EU can also develop a better law-making contract that would help in enhancing the way the EU enacts and also ensure that the legislation of the EU serves businesses and citizens in a better way<sup>401</sup>.

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<sup>398</sup> Francesco Rossi Dal Pozzo, *EU Legal Framework for Safeguarding Air Passenger Rights* (Springer 2014), 115.

<sup>399</sup> Clare Coffey, 'The Draft Constitution for Europe: maintaining progress towards a green constitution' Available at: <<https://ieep.eu/uploads/articles/attachments/cbe5aff7-63d3-4e61-9d97-7e345e7dccb2/constitutionpaper.pdf?v=63664509690>> accessed 2<sup>nd</sup> April 2020.

<sup>400</sup> Ibid.

<sup>401</sup> Europe.eu, 'Treaty Establishing a Constitution For Europe' (2005) Available at: <[https://europa.eu/european-union/sites/europa.eu/files/docs/body/treaty\\_establishing\\_a\\_constitution\\_for\\_europe\\_en.pdf](https://europa.eu/european-union/sites/europa.eu/files/docs/body/treaty_establishing_a_constitution_for_europe_en.pdf)> accessed 4<sup>th</sup> April 2020.

Women's subordinate position in the community is reflected in many national legal systems like that of Jordan. Girls and women often witness discrimination with respect to property law, family law, and employment and inheritance rights. It is also examined that women also often encounter issues in accessing justice institutions. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been integrated by the United Nations General Assembly in 1979 and has been approved by 187 out of 194 countries, and it is an overreaching framework which can certainly assist in establishing an all-inclusive legal mechanism to overcome the disproportionate discrimination experienced by girls and women. With its consideration in designing of the new framework for the new generation, it would be essential for states to take action in different domains in particular in the social, political, cultural and economic fields, and adopt adequate measures encompassing legislation to support the advancement and full-paced development of women with the ultimate motive of guaranteeing the enjoyment and exercise of human rights; and fundamental freedoms on the basis of equality with male counterparts. CEDAW also mandates the state parties to submit a report to the Committee of CEDAW after every four years illuminating achievements and progress. The valuable propositions in CEDAW are capable of addressing women's equal rights to health, employment, education and training by making calls for the incorporation of temporary special initiatives to redress the inequality between men and women while also devoting specific attention to the rural women and involving them in the progressive processes<sup>402</sup>.

The Committee then issues recommendations, and such review and enforcement process is anticipated to make sure a constructive dialogue takes place for tailoring the integration of CEDAW as per local scenarios. The Convention can stringently govern the actions of state actors in respect to revising constitutions, altering discriminatory policies and laws, supporting the development of new legislation and determine court decisions<sup>403</sup>. Moreover, for making optimum usage of the rights-based approach to attain the equality agenda, it is imperative to keep a rigorous check on the domestic implementation of the international human rights norms. The very nature of regional and international human rights standards demands enforcement at the national level. They need state parties to take requisite measures of a policy, administrative and legislative nature; and to offer adequate remedies in case of any contraventions for making

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<sup>402</sup> Ann Kangas and Human Haider and Erika Fraser and others, 'Gender: Legal Framework and access to justice' Available at: <<https://gsdrc.org/topic-guides/gender/legal-framework-and-access-to-justice/>> accessed 3<sup>rd</sup> October 2020.

<sup>403</sup> Ibid.

sure that the established rights and extended freedoms are actually experienced so this is a reasonable consideration for the new framework<sup>404</sup>.

## **7.2 Suitable Approaches for Integrating New Legal Framework in the Existing Constitution in Regard to Eradicating Discrimination and Foster Equality Across Jordan and European Countries**

According to Nasrawin (2016), constitutional theories in Jordan are changed in specific to the association or unification, same as constitutional law or practices in the European countries. It has been reviewed that theory and practice of legislative framework is not quite unified in Jordan and thus proper enactment of theory into practice is the first and foremost change that shall be ensured for the association<sup>405</sup>. In the present, major laws enacted in Jordanian Constitution to protect political rights, as well as civil rights includes

- Equity and equality before the law in Article 6(1) & (2) of the Constitution of Jordan, 1952,
- Right to personal liberty in Article 7 of the Constitution of Jordan, 1952
- Individual freedom in Article 8 of the Constitution of Jordan states 1952
- Privacy in the Article 10 of the Constitution of Jordan, 1952<sup>406</sup>.

The alignment of theories and practices ensure a transparent legislative system which is an integral part of equality or impartiality. In a similar way, Abu-Karaki, Faqir, and Marashdah (2011) revealed that laws and democracy both are important areas in the context of the constitutional safeguards in Jordanian law. As per the article 24 of Jordanian Constitution, “*Nation is the source of all powers, and it shall exercise its powers in the manner prescribed by the present Constitution*”<sup>407</sup>. The key focus of change in the Constitution of Jordan as per this article is directed towards democracy building that directs to ensure political development and stability. For judiciary independence, the general foundation was established in the Jordanian Constitution. In addition to this, the establishment of constitutional court is also significant, which indicated the real change of Jordan. This change shall be required for establishing wide jurisdiction and efficient legal framework to keep a check on the implication of constitutional laws and regulations on the institutions and individuals as a whole.

Moreover, in March 2007; new legislation was adopted in specific of the political life

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<sup>404</sup> Savitri Goonesekere, ‘A Rights-Based Approach to Realising Gender Equality’ (DAW News Archive) Available at: <<https://www.un.org/womenwatch/daw/news/savitri.htm>> accessed 24 December 2020.

<sup>405</sup> Laith K. Nasrawin, Protecting Human Rights Through Constitutional Adjudication - Jordan as a Case Study’ (2016) 25 DMES 264, 272.

<sup>406</sup> Muddather Abu- Karaki and Raed S. AFAQIR and Majed Ahmad K. Marashdah, ‘Democracy & Judicial Controlling in Jordan A Constitutional Study’ (2011) 4 JPL 180, 186.

<sup>407</sup> Ibid, 180.

in the Constitution of Jordan. Additionally, "the UN Convention on Elimination of all forms of discrimination against women (CEDAW)" has published in the Constitution of Jordan, but needs to be amended in the relation of bringing up all its reservations<sup>408</sup>. For the issue of corruption, Jordan's government followed contemporary policy and legislation; such as "Law on the Establishment of the Anti-Corruption Commission 2006" and "Law on Financial Disclosure"<sup>409</sup>.

From the perspective of Warrick (2016), the constitutional theory is substantial to be changed in specific to the "relationship with society" to ensure "respect to legitimation" because consideration to the social and state relationship contributes to developing robust political system<sup>410</sup>. In the existing political and legal system of Jordan, it is important to bring change in specific to the identification and integration of the cultural elements. Constitutional theories are importantly focused on the aspects that build strong political system to elevate legitimacy in the existing legal framework. It has been critiqued that change in the constitutional theory in the relation of developing and pursuing an effective political system in the country. It has been generalised that effective legal framework is being demanded a change in the enactment of the constitutional theories in a stringent way to keep off issues in the existing legislative framework. Mark Dawson and Floris de Witte (2016) exhibited a new constitution for the EU for conflict resolution and political stability, along with equality. These changes in the constitution of the EU countries develop a commitment towards political equality, thus change in the "law of conflict" of the EU focused on the integration along with transparency or accountability standards to prevent the risk of political conflicts and inequalities<sup>411</sup>.

Furthermore, the Jordanian government should implement Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in order to eliminate gender discrimination. Jordan Constitution can draft law for gender equality in which the definition of inequality among men and women must be involved. As discussed earlier, due to the lack of specific mention of women, women tend to be deprived of many legal supports. Therefore, it is essential for the Jordanian government to involve the word women or gender into Article 6 or any other law developed for eradicating gender inequality. In addition to the context, Jordanian government should provide at least 30 per cent of quota to women in parliament in

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<sup>408</sup> Ibid, 186.

<sup>409</sup> Ibid, 186.

<sup>410</sup> Catherine Warrick, *Law in the Service of Legitimacy: Gender and Politics in Jordan* (Routledge 2016).

<sup>411</sup> Mark Dawson and Floris de Witte, 'From balance to conflict: a new constitution for the EU' (2016) 22 *ELJ* 1, 19.

order to increase the participation of women in the political front, which will play a significant role in eradicating gender and sex discrimination. A further addition to the context, a specific law, should be developed that criminalises all violence that women has to face, including removing the exceptions which permit underage marriage, marital rape, and decriminalisation of abortion for rape victims. These shall help in protecting women's right in Jordan and will also help women to build self-esteem, which will motivate them to stand against any violence and fight for their rights<sup>412</sup>.

Jordan basically avoids recognising the refugees officially under the domestic laws and considers Iraq and Syrian refugees as guests, visitors, or irregular guests, which restricts their ability to look for lawful employment or legal support. This, further, makes them vulnerable to any form of discrimination, and women tend to face sexual violence or other forms of violence. Therefore, Jordanian government should implement the resolutions of Security Council, as well as CEDAW that aim in protecting women from any form of violence, including sexual violence, incidents of rape, and trafficking, which will safeguard the Syrian women and improve their situations in the camps of refugees and will also provide them with human, social and civil rights. It is essential for the government of Jordan to make sure that legal status is provided to the refugees of Iraq and Jordan to eliminate discrimination<sup>413</sup>. Furthermore, the Jordanian government should extend the Constitution's applicability to every individual under the jurisdiction of Jordan, involving non-Jordanians, excluding certain political rights, like some rights in relation to public affair participation. No discrimination should exist, for instance, the right to freedom of expression, among non-Jordanian and Jordanian of the Kingdom<sup>414</sup>.

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<sup>412</sup> Ibid.

<sup>413</sup> International Labour Organisation, 'Access to work for Syrian refugees in Jordan: A discussion paper on labour and refugee laws and policies' (2015) ILO, 1-30, p.11.

<sup>414</sup> HRW, 'Jordan: Letter with Recommendations for Constitutional Revisions' (2011) Available at: <<https://www.hrw.org/news/2011/07/05/jordan-letter-recommendations-constitutional-revisions>> accessed 26<sup>th</sup> July 2020.





### 7.3 Future Research Work

The current research compares the Constitution of Jordan and European countries in an attempt to build a robust legal framework for a new generation for fostering equality and eliminating discriminatory concerns rooted in religion, gender and nationality. The researcher adopted secondary tools for gathering relevant data regarding the research objectives. In future, the researcher can use the focus group method for addressing the research problem and conduct more detailed research. Further, the researcher can focus on drawing inferences by performing a comparative analysis of the US and some of the European Countries' constitutions which would further enable in finding differences and similarities between both the constitutions and determine the areas of improvement in terms of effective implementation. The researcher can focus on comparing the constitutional effectiveness of two or three European countries of the European Union with Jordan to deduce more specific outcomes in the light of research problem in future investigation. Additionally, the researcher can use the case study analysis method in exploring this subject area in future.

#### **7.4 Research Limitations**

The study is primarily focused on utilising library sources. The researcher explored updated sources and some of the credible academic journals to draw crucial findings in the light of objectives. However, the researcher faced difficulties in producing comprehensive findings and examining information obtained from library research method. The process of analysis became cumbersome and lengthy that adversely affected the quality of results and created difficulty in deriving definite results. The results have the possibility of bias as outcomes are drawn in the light of individual perceptions derived from literature review, and less attention is given to the inclusion of logical arguments and facts.

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### **Others**

A framework decision was a kind of legislative act of the European Union used exclusively within the EU's competences in police and judicial co-operation in criminal justice matters. Framework decisions were similar to directives in that they required member states to achieve particular results without dictating the means of achieving that result.

A passerelle clause is a clause in treaties of the European Union that allows the alteration of a legislative procedure without a formal amendment of the treaties. The use of a passerelle clause required unanimity of all member states although member states with opt-outs and those not participating in an area under enhanced cooperation may not have a vote.

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Police and Judicial Co-operation in Criminal Matters (PJCC) was the third of the three pillars of the European Union (EU). It was named Justice and Home Affairs (JHA) before 1999.

The Common Foreign and Security Policy (CFSP) is the organised, agreed foreign policy of the European Union (EU) for mainly security and defence diplomacy and actions. CFSP deals only with a specific part of the EU's external relations, which domains include mainly Trade and Commercial Policy and other areas such as funding to third countries, etc.

The European Commission (EC) is the executive branch of the European Union, responsible for proposing legislation, implementing decisions, upholding the EU treaties and managing the day-to-day business of the EU. Commissioners swear an oath at the European Court of Justice in Luxembourg City, pledging to respect the treaties and to be completely independent in carrying out their duties during their mandate. The Commissioners are proposed by the Council of the European Union, on the basis of suggestions made by the national governments, and then appointed by the European Council after the approval of the European Parliament.

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The European Council (informally EUCO) is a collective body that defines the European Union's overall political direction and priorities. It comprises the heads of state or government of the EU member states, along with the President of the European Council and the President of the European Commission.

The European Parliament (EP) is the legislative branch of the European Union and one of its seven institutions. Together with the Council of the European Union, it adopts European legislation, normally on a proposal from the European Commission.

The European Public Prosecutor's Office (EPPO) is an independent body of the European Union (EU) to be established under the Treaty of Lisbon between 22 of the 27 members of the EU following the method of enhanced cooperation. It will be based in Kirchberg, Luxembourg City alongside the European Court of Justice (ECJ) and the European Court of Auditors (ECA).

The European Union adopts legislation through a variety of legislative procedures. The procedure used for a given legislative proposal depends on the policy area in question.

The Jordanian constitution states that the political system in Jordan is a parliamentary, hereditary monarchy. The monarchy is considered one of the oldest systems in history. This system has evolved into three types: absolute monarchy, restricted monarchy, and modern constitutional monarchy.

The King exercises the powers vested in him by Royal Decree. Every such Decree shall be countersigned by the Prime Minister and the Minister or Ministers concerned. The King expresses his concurrence by placing his signature above the said signatures

The King holds absolute power, exercises his powers within the limits prescribed by the Constitution. The King is not accountable to the House of Representatives or Senate which is appointed by him, the King is the head of a constitutional monarchy in which the King retains substantial power.

The president of the European Commission is the head of the European Commission, the executive branch of the European Union. The president of the Commission leads a cabinet of commissioners, referred to as the college, collectively accountable to the European Parliament.

The procedures for voting in the Council of the European Union are described in the treaties of the European Union. The Council of the European Union (or simply "Council" or

"Council of Ministers") has had its voting procedure amended by subsequent treaties and currently operates on the system set forth in the Treaty of Lisbon

Van Gend en Loos v Nederlandse Administratie der Belastingen (1963) Case 26/62 was a landmark case of the European Court of Justice which established that provisions of the Treaty Establishing the European Economic Community were capable of creating legal rights which could be enforced by both natural and legal persons before the courts of the Community's member states. This is now called the principle of direct effect.

Vera Jirásova and Jiří Jirásek, 'Concept of security of Czech Republic', in Agnieszka Bień-Kacała, Jiří Jirásek, L'ubor Cibulka, Tímea Drinóczi, eds., Security in V4 constitutions and political practices (Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, Toruń 2016) p. 65., 73-74

Withdrawal from the European Union is the legal and political process whereby an EU member state ceases to be a member of the Union. Article 50 of the Treaty on European Union (TEU) states that "Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements". The Government of the United Kingdom triggered Article 50 to begin the UK's withdrawal from the EU in March 2017 following a June 2016 referendum, and the withdrawal was scheduled in law to occur on 29 March 2019.